AGENDA
BASIC SCHOOL FOR MAGISTRATES: WINTER 2014
JANUARY 27-31, 2014
CHAPEL HILL, N.C.

MONDAY, January 27

9:00	**Welcome** Dona Lewandowski, School of Government
9:15	**Remarks** John Smith, Director, Administrative Office of the Courts
9:35	**Involuntary Commitment (IVC)** (60 min) Mark Botts, School of Government
10:35	**Break**
10:45	**IVC, cont'd** (90 min) Mark Botts, School of Government
12:15	**Lunch at SOG**
1:00	**IVC, cont'd** (60 min) Mark Botts, School of Government
2:00	**Welcome to the Job!** (45 min) Dona Lewandowski, School of Government
2:45	**Break**
2:55	**Intro to Law & Judicial Process** (75 min) Dona Lewandowski, School of Government
4:10	**Break**
4:20	**Small Claims Procedure** (70 min) Dona Lewandowski, School of Government
5:30	**Adjourn**

Tuesday, January 28

9:00	**Revisiting Yesterday** (15 min) Dona Lewandowski, School of Government
9:15	**Small Claims Procedure, cont'd** (75 min) Dona Lewandowski, School of Government
10:30	Break
10:40	**Small Claims Procedure, cont'd** (110 min) Dona Lewandowski, School of Government

12:30 **Lunch at SOG**

1:15 **Contracts** (60 min)
Dona Lewandowski, School of Government

2:15 **Break**

2:20 **Contracts, cont'd** (60 min)
Dona Lewandowski, School of Government

3:20 Break

3:25 **Contracts, cont'd** (70 min)
Dona Lewandowski, School of Government

4:35 **Break**

4:45 **Torts** (45 min)
Dona Lewandowski, School of Government

5:30 **Adjourn**

Wednesday, January 29

9:00 **Revisiting Yesterday** (15 min)
Dona Lewandowski, School of Government

9:15 **Landlord-Tenant Law** (75 min)
Dona Lewandowski, School of Government

10:30 **Break**

10:40 **Landlord-Tenant, cont'd** (110 min)
Dona Lewandowski, School of Government

12:30 **Lunch at SOG**

1:15 **Landlord-Tenant, cont'd** (75 min)
Dona Lewandowski, School of Government

2:30 **Break**

2:40 **Landlord-Tenant, cont'd** (80 min)
Dona Lewandowski, School of Government

4:00 **Break**

4:10 **Landlord-Tenant, cont'd** (80 min)
Dona Lewandowski, School of Government

5:30 **Adjourn**

Thursday, January 30

8:30 **Review for Test (attendance optional)**
Dona Lewandowski, School of Government

9:00 **Revisiting Yesterday** (15 min)
Dona Lewandowski, School of Government

9:15 **Legal Issues in Domestic Violence** (105 min)
Dona Lewandowski, School of Government

11:00	**Break**
11:10	**Actions to Recover Personal Property** (80 min) Dona Lewandowski, School of Government
12:30	**Lunch at the SOG**
1:15	**Contempt** (30 min) Dona Lewandowski, School of Government
1:45	**Ethics** (45 min) Dona Lewandowski, School of Government
2:30	**Break**
2:40	**The Struggle Toward Fairness: Avoiding Bias** (90 min) Dona Lewandowski, School of Government
4:10	**Break**
4:15	**NCAOC Language Access Services for Magistrates** (75 min) Kelie Myers, Administrative Office of the Courts
5:30	Adjourn

Friday, January 31

8:45	**Revisiting Yesterday** (15 min) Dona Lewandowski, School of Government
9:00	**AOC: Handling Money** (60 min) AOC-FMA--TBD
10:00	**Break**
10:15	**Understanding Domestic Violence** (135 min) Chief District Court Judge J. Corpening, District 5
12:30	**Lunch at SOG**
	Evaluations & Test

Week I: Magistrate CLE hours: 1920 =32 hours

Total available NC Bar CLEs: 12 hours for two weeks (10 general and 2 ethics)

Basic School for Magistrates: Week I

School of Government, Chapel Hill, NC
January 27-31, 2014

EVALUATION

SESSION EVALUATION

Monday, January 27, 2014

Involuntary Commitment
Mark Botts, School of Government

Please rate your instructor's teaching:	*Strongly Disagree*				*Strongly Agree*
1. The instructor presented the material clearly.	1	2	3	4	5
2. The instructor was knowledgeable and well-prepared.	1	2	3	4	5
3. The instructor's pace was appropriate.	1	2	3	4	5
4. Overall, the session was skillfully done.	1	2	3	4	5

Please share any additional comments about the instructor's teaching. If you indicated that you were dissatisfied with one or more aspects of the instructor's teaching, we are particularly interested in learning how he or she can do better in the future:

Please rate the session content:	*Strongly Disagree*				*Strongly Agree*
5. The session content is important for my professional development.	1	2	3	4	5

6. Was the content appropriate for your level of knowledge? Too easy About right Too difficult

Please share any additional comments about the session's content. If you indicated that you were dissatisfied with one or more aspects of the session's content, we are particularly interested in learning how we can do better in the future:

Welcome to the Job

Dona Lewandowski, School of Government

Please rate your instructors' teaching:	*Strongly Disagree*				*Strongly Agree*
1. The instructors presented the material clearly.	1	2	3	4	5
2. The instructors were knowledgeable and well prepared.	1	2	3	4	5
3. The instructor's pace was appropriate.	1	2	3	4	5
4. Overall, the session was skillfully done.	1	2	3	4	5

Please share any additional comments about the instructor's teaching. If you indicated that you were dissatisfied with one or more aspects of the instructor's teaching, we are particularly interested in learning how he or she can do better in the future:

Please rate the session content:	*Strongly Disagree*				*Strongly Agree*
5. The session content is important for my professional development.	1	2	3	4	5

6. Was the content appropriate for your level of knowledge?	Too easy	About right	Too difficult

Please share any additional comments about the session's content. If you indicated that you were dissatisfied with one or more aspects of the session's content, we are particularly interested in learning how we can do better in the future:

Introduction to Civil Law and Judicial Process

Dona Lewandowski, School of Government

Please rate your instructor's teaching:	*Strongly Disagree*				*Strongly Agree*
1. The instructor presented the material clearly.	1	2	3	4	5
2. The instructor was knowledgeable and well prepared.	1	2	3	4	5
3. The instructor's pace was appropriate.	1	2	3	4	5
4. Overall, the session was skillfully done.	1	2	3	4	5

Please share any additional comments about the instructor's teaching. If you indicated that you were dissatisfied with one or more aspects of the instructor's teaching, we are particularly interested in learning how he or she can do better in the future:

Please rate the session content:	*Strongly Disagree*				*Strongly Agree*
5. The session content is important for my professional development.	1	2	3	4	5

6. Was the content appropriate for your level of knowledge? Too easy About right Too difficult

Please share any additional comments about the session's content. If you indicated that you were dissatisfied with one or more aspects of the session's content, we are particularly interested in learning how we can do better in the future:

Small Claims Procedure

Dona Lewandowski, School of Government

Please rate your instructors' teaching:	*Strongly Disagree*				*Strongly Agree*
1. The instructors presented the material clearly.	1	2	3	4	5
2. The instructors were knowledgeable and well prepared.	1	2	3	4	5
3. The instructor's pace was appropriate.	1	2	3	4	5
4. Overall, the session was skillfully done.	1	2	3	4	5

Please share any additional comments about the instructor's teaching. If you indicated that you were dissatisfied with one or more aspects of the instructor's teaching, we are particularly interested in learning how he or she can do better in the future:

Please rate the session content:	*Strongly Disagree*				*Strongly Agree*
5. The session content is important for my professional development.	1	2	3	4	5

6. Was the content appropriate for your level of knowledge? Too easy About right Too difficult

Please share any additional comments about the session's content. If you indicated that you were dissatisfied with one or more aspects of the session's content, we are particularly interested in learning how we can do better in the future:

Tuesday, January 28, 2014

Small Claims Procedure, Continued
Dona Lewandowski, School of Government

Please rate your instructor's teaching:	*Strongly Disagree*				*Strongly Agree*
1. The instructor presented the material clearly.	1	2	3	4	5
2. The instructor was knowledgeable and well prepared.	1	2	3	4	5
3. The instructor's pace was appropriate.	1	2	3	4	5
4. Overall, the session was skillfully done.	1	2	3	4	5

Please share any additional comments about the instructor's teaching. If you indicated that you were dissatisfied with one or more aspects of the instructor's teaching, we are particularly interested in learning how he or she can do better in the future:

Please rate the session content:	*Strongly Disagree*				*Strongly Agree*
5. The session content is important for my professional development.	1	2	3	4	5

6. Was the content appropriate for your level of knowledge? Too easy About right Too difficult

Please share any additional comments about the session's content. If you indicated that you were dissatisfied with one or more aspects of the session's content, we are particularly interested in learning how we can do better in the future:

Contracts
Dona Lewandowski, School of Government

Please rate your instructor's teaching:	*Strongly Disagree*				*Strongly Agree*
1. The instructor presented the material clearly.	1	2	3	4	5
2. The instructor was knowledgeable and well prepared.	1	2	3	4	5
3. The instructor's pace was appropriate.	1	2	3	4	5
4. Overall, the session was skillfully done.	1	2	3	4	5

Please share any additional comments about the instructor's teaching. If you indicated that you were dissatisfied with one or more aspects of the instructor's teaching, we are particularly interested in learning how he or she can do better in the future:

Please rate the session content:	*Strongly Disagree*				*Strongly Agree*
5. The session content is important for my professional development.	1	2	3	4	5

6. Was the content appropriate for your level of knowledge? Too easy About right Too difficult

Please share any additional comments about the session's content. If you indicated that you were dissatisfied with one or more aspects of the session's content, we are particularly interested in learning how we can do better in the future:

Torts
Dona Lewandowski, School of Government

Please rate your instructors' teaching:	*Strongly Disagree*				*Strongly Agree*
1. The instructors presented the material clearly.	1	2	3	4	5
2. The instructors were knowledgeable and well prepared.	1	2	3	4	5
3. The instructor's pace was appropriate.	1	2	3	4	5
4. Overall, the session was skillfully done.	1	2	3	4	5

Please share any additional comments about the instructor's teaching. If you indicated that you were dissatisfied with one or more aspects of the instructor's teaching, we are particularly interested in learning how he or she can do better in the future:

Please rate the session content:	*Strongly Disagree*				*Strongly Agree*
5. The session content is important for my professional development.	1	2	3	4	5

6. Was the content appropriate for your level of knowledge? Too easy About right Too difficult

Please share any additional comments about the session's content. If you indicated that you were dissatisfied with one or more aspects of the session's content, we are particularly interested in learning how we can do better in the future:

Wednesday, January 29, 2014

Landlord-Tenant Law
Dona Lewandowski, School of Government

Please rate your instructor's teaching:	*Strongly Disagree*				*Strongly Agree*
1. The instructor presented the material clearly.	1	2	3	4	5
2. The instructor was knowledgeable and well prepared.	1	2	3	4	5
3. The instructor's pace was appropriate.	1	2	3	4	5
4. Overall, the session was skillfully done.	1	2	3	4	5

Please share any additional comments about the instructor's teaching. If you indicated that you were dissatisfied with one or more aspects of the instructor's teaching, we are particularly interested in learning how he or she can do better in the future:

Please rate the session content:	*Strongly Disagree*				*Strongly Agree*
5. The session content is important for my professional development.	1	2	3	4	5

6. Was the content appropriate for your level of knowledge?	Too easy	About right	Too difficult

Please share any additional comments about the session's content. If you indicated that you were dissatisfied with one or more aspects of the session's content, we are particularly interested in learning how we can do better in the future:

Thursday, January 30, 2014

Legal Issues in Domestic Violence
Dona Lewandowski, School of Government

Please rate your instructor's teaching:	*Strongly Disagree*				*Strongly Agree*
1. The instructor presented the material clearly.	1	2	3	4	5
2. The instructor was knowledgeable and well prepared.	1	2	3	4	5
3. The instructor's pace was appropriate.	1	2	3	4	5
4. Overall, the session was skillfully done.	1	2	3	4	5

Please share any additional comments about the instructor's teaching. If you indicated that you were dissatisfied with one or more aspects of the instructor's teaching, we are particularly interested in learning how he or she can do better in the future:

Please rate the session content:	*Strongly Disagree*				*Strongly Agree*
5. The session content is important for my professional development.	1	2	3	4	5

6. Was the content appropriate for your level of knowledge? Too easy About right Too difficult

Please share any additional comments about the session's content. If you indicated that you were dissatisfied with one or more aspects of the session's content, we are particularly interested in learning how we can do better in the future:

Actions to Recover Personal Property

Dona Lewandowski, School of Government

Please rate your instructor's teaching:	*Strongly Disagree*				*Strongly Agree*
1. The instructor presented the material clearly.	1	2	3	4	5
2. The instructor was knowledgeable and well prepared.	1	2	3	4	5
3. The instructor's pace was appropriate.	1	2	3	4	5
4. Overall, the session was skillfully done.	1	2	3	4	5

Please share any additional comments about the instructor's teaching. If you indicated that you were dissatisfied with one or more aspects of the instructor's teaching, we are particularly interested in learning how he or she can do better in the future:

Please rate the session content:	*Strongly Disagree*				*Strongly Agree*
5. The session content is important for my professional development.	1	2	3	4	5

6. Was the content appropriate for your level of knowledge? Too easy About right Too difficult

Please share any additional comments about the session's content. If you indicated that you were dissatisfied with one or more aspects of the session's content, we are particularly interested in learning how we can do better in the future:

Contempt

Dona Lewandowski, School of Government

Please rate your instructor's teaching:	*Strongly Disagree*				*Strongly Agree*
7. The instructor presented the material clearly.	1	2	3	4	5
8. The instructor was knowledgeable and well prepared.	1	2	3	4	5
9. The instructor's pace was appropriate.	1	2	3	4	5
10. Overall, the session was skillfully done.	1	2	3	4	5

Please share any additional comments about the instructor's teaching. If you indicated that you were dissatisfied with one or more aspects of the instructor's teaching, we are particularly interested in learning how he or she can do better in the future:

Please rate the session content:	*Strongly Disagree*				*Strongly Agree*
11. The session content is important for my professional development.	1	2	3	4	5

12. Was the content appropriate for your level of knowledge?	Too easy	About right	Too difficult

Please share any additional comments about the session's content. If you indicated that you were dissatisfied with one or more aspects of the session's content, we are particularly interested in learning how we can do better in the future:

Ethics

Dona Lewandowski, School of Government

Please rate your instructor's teaching:	*Strongly Disagree*				*Strongly Agree*
13. The instructor presented the material clearly.	1	2	3	4	5
14. The instructor was knowledgeable and well prepared.	1	2	3	4	5
15. The instructor's pace was appropriate.	1	2	3	4	5
16. Overall, the session was skillfully done.	1	2	3	4	5

Please share any additional comments about the instructor's teaching. If you indicated that you were dissatisfied with one or more aspects of the instructor's teaching, we are particularly interested in learning how he or she can do better in the future:

Please rate the session content:	*Strongly Disagree*				*Strongly Agree*
17. The session content is important for my professional development.	1	2	3	4	5

18. Was the content appropriate for your level of knowledge? Too easy About right Too difficult

Please share any additional comments about the session's content. If you indicated that you were dissatisfied with one or more aspects of the session's content, we are particularly interested in learning how we can do better in the future:

The Struggle Toward Fairness: Avoiding Bias
Dona Lewandowski, School of Government

Please rate your instructor's teaching:	*Strongly Disagree*				*Strongly Agree*
19. The instructor presented the material clearly.	1	2	3	4	5
20. The instructor was knowledgeable and well prepared.	1	2	3	4	5
21. The instructor's pace was appropriate.	1	2	3	4	5
22. Overall, the session was skillfully done.	1	2	3	4	5

Please share any additional comments about the instructor's teaching. If you indicated that you were dissatisfied with one or more aspects of the instructor's teaching, we are particularly interested in learning how he or she can do better in the future:

Please rate the session content:	*Strongly Disagree*				*Strongly Agree*
23. The session content is important for my professional development.	1	2	3	4	5

24. Was the content appropriate for your level of knowledge? Too easy About right Too difficult

Please share any additional comments about the session's content. If you indicated that you were dissatisfied with one or more aspects of the session's content, we are particularly interested in learning how we can do better in the future:

NCAOC Language Access Services for Magistrates
Kellie Myers, Office of Language Access, AOC

Please rate your instructor's teaching:	*Strongly Disagree*				*Strongly Agree*
25. The instructor presented the material clearly.	1	2	3	4	5
26. The instructor was knowledgeable and well prepared.	1	2	3	4	5
27. The instructor's pace was appropriate.	1	2	3	4	5
28. Overall, the session was skillfully done.	1	2	3	4	5

Please share any additional comments about the instructor's teaching. If you indicated that you were dissatisfied with one or more aspects of the instructor's teaching, we are particularly interested in learning how he or she can do better in the future:

Please rate the session content:	*Strongly Disagree*				*Strongly Agree*
29. The session content is important for my professional development.	1	2	3	4	5

30. Was the content appropriate for your level of knowledge?	Too easy	About right	Too difficult

Please share any additional comments about the session's content. If you indicated that you were dissatisfied with one or more aspects of the session's content, we are particularly interested in learning how we can do better in the future:

Friday, January 31, 2014

AOC: Handling Money
Rodney Strickland, AOC-FMA

Please rate your instructor's teaching:	*Strongly Disagree*				*Strongly Agree*
31. The instructor presented the material clearly.	1	2	3	4	5
32. The instructor was knowledgeable and well prepared.	1	2	3	4	5
33. The instructor's pace was appropriate.	1	2	3	4	5
34. Overall, the session was skillfully done.	1	2	3	4	5

Please share any additional comments about the instructor's teaching. If you indicated that you were dissatisfied with one or more aspects of the instructor's teaching, we are particularly interested in learning how he or she can do better in the future:

Please rate the session content:	*Strongly Disagree*				*Strongly Agree*
35. The session content is important for my professional development.	1	2	3	4	5

36. Was the content appropriate for your level of knowledge? Too easy About right Too difficult

Please share any additional comments about the session's content. If you indicated that you were dissatisfied with one or more aspects of the session's content, we are particularly interested in learning how we can do better in the future:

Understanding Domestic Violence
Chief District Court Judge Julius Corpening, District 5

Please rate your instructor's teaching:	*Strongly Disagree*				*Strongly Agree*
37. The instructor presented the material clearly.	1	2	3	4	5
38. The instructor was knowledgeable and well prepared.	1	2	3	4	5
39. The instructor's pace was appropriate.	1	2	3	4	5
40. Overall, the session was skillfully done.	1	2	3	4	5

Please share any additional comments about the instructor's teaching. If you indicated that you were dissatisfied with one or more aspects of the instructor's teaching, we are particularly interested in learning how he or she can do better in the future:

Please rate the session content:	*Strongly Disagree*				*Strongly Agree*
41. The session content is important for my professional development.	1	2	3	4	5

42. Was the content appropriate for your level of knowledge? Too easy About right Too difficult

Please share any additional comments about the session's content. If you indicated that you were dissatisfied with one or more aspects of the session's content, we are particularly interested in learning how we can do better in the future:

CONFERENCE EVALUATION

Conference Content
Please rate the length of each session:

	Session Length		
	Too Short	Just Right	Too Long
Involuntary Commitment			
Welcome to the Job			
Introduction to Civil Law & Judicial Process			
Small Claims Procedure			
Small Claims Procedure, Continued			
Contracts			
Torts			
Landlord-Tenant Law			
Legal Issues in Domestic Violence			
Actions to Recover Personal Property			
Contempt			
Ethics			
The Struggle Toward Fairness: Avoiding Bias			
NCAOC Language Access Services for Magistrates			
AOC: Handling Money			
Understanding Domestic Violence			

Are there any topics that we should offer at future conferences?

Please rate the conference content:	*Strongly Disagree*				*Strongly Agree*
1. The conference (as a whole) will be useful to me.	1	2	3	4	5
2. The conference materials will be useful to me.	1	2	3	4	5

Please share any additional comments about conference content. If you indicated that you were dissatisfied with one or more aspects of conference content, we are particularly interested in learning how we can do better in the future:

Please rate the logistics of the conference:	*Strongly Disagree*				*Strongly Agree*
1. Registering for the conference was simple and straightforward.	1	2	3	4	5
2. Before attending the conference, I received appropriate and timely information about conference logistics.	1	2	3	4	5
3. The room set-up was appropriate for this conference.	1	2	3	4	5
4. On-site School of Government staff was informed and helpful.	1	2	3	4	5

Please share any additional comments about <u>conference logistics</u>. If you indicated that you were dissatisfied with one or more logistical aspects of the conference, we are particularly interested in learning how we can do better in the future:

How did you find out about the conference? (please check all that apply)

___ Postcard Announcement
___ Email Announcement
___ School of Government Flyer
___ School of Government Website
___ School of Government Listserv
Please specify: _____
___ Referral from Colleagues
___ Web Search
___ Advertisement
___ School of Government Blog
Please specify: _____
___ Other, Please specify: _____

TAB:

General

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:

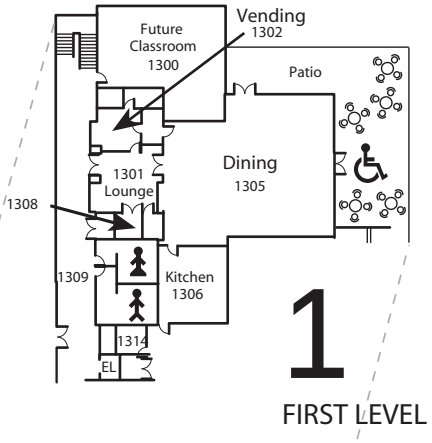
- Study to reorganize state government
- Study of the state's court system
- North Carolina Constitutional Commission
- Local Government Study Commission
- Open Meetings Study Commission
- NC Sentencing and Policy Advisory Commission
- Governor's Crime Commission on Juvenile Crime and Justice

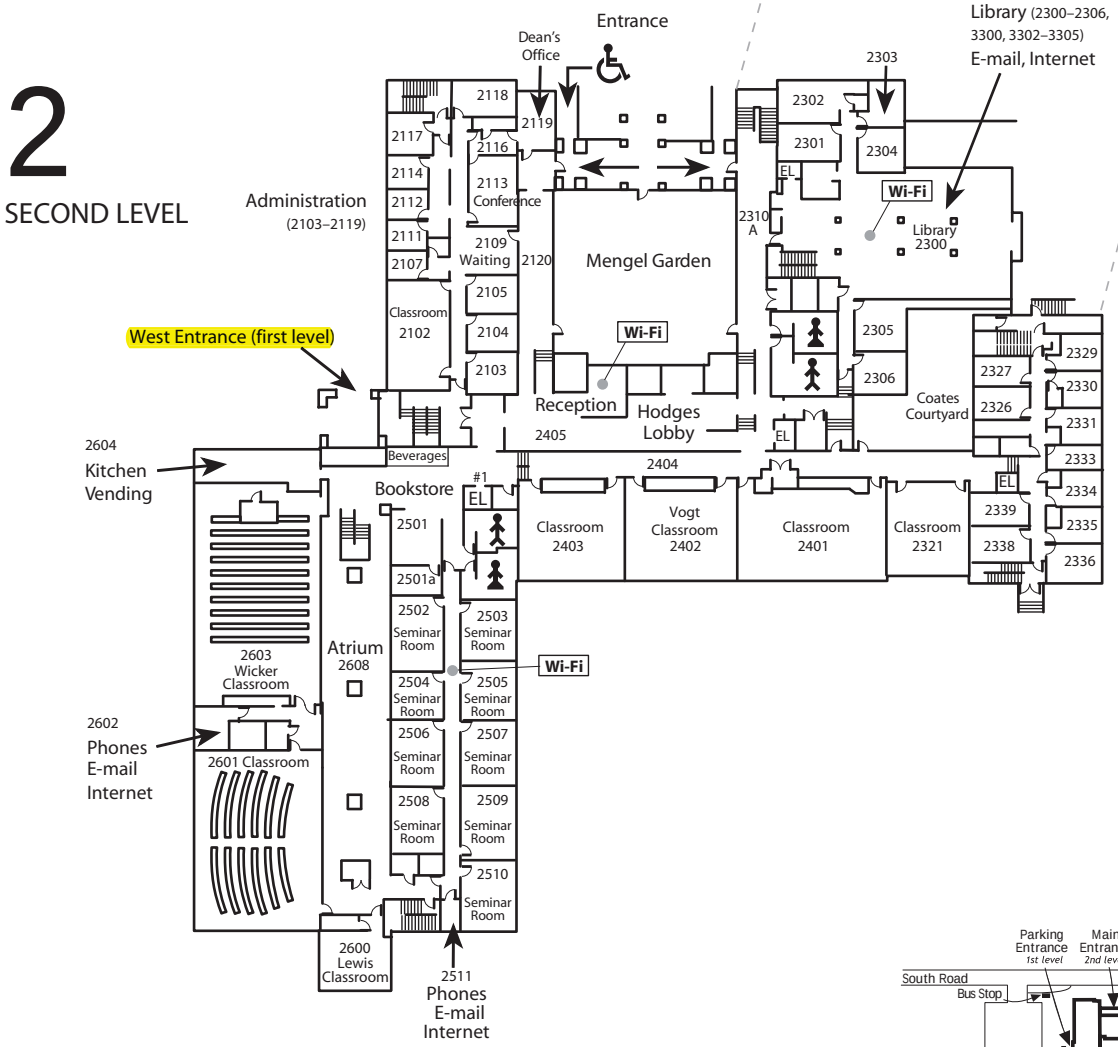
Support for the School of Government
Operating support for the School of Government's programs and activities comes from many sources, including state appropriations, local government membership dues, private contributions, publication sales, course fees, and service contracts. Visit www.sog.unc.edu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

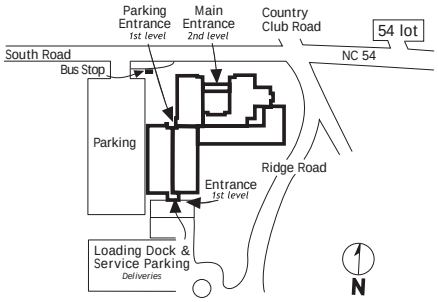
Knapp-Sanders Building

School of Government
UNC-Chapel Hill

May 2008
Guest Map







DIRECTIONS TO THE SCHOOL OF GOVERNMENT

Knapp-Sanders Building, UNC-Chapel Hill
Corner of South Road (Highway 54) and Country Club Road
Chapel Hill, North Carolina
Telephone: 919.966.5381

The Knapp-Sanders Building is located at the intersection of South Road and Country Club Road. (Note: Raleigh Road becomes South Road at this intersection.)

From the West

Take I-40 East/I-85 North toward Raleigh and Durham. When the road splits, follow I-40 East toward Raleigh.

From I-40 East, take Exit 273 (Highway 54 West) and turn right at the top of the ramp. From this point, it is 3.4 miles to the School of Government's parking deck. Continue on Highway 54 West toward the UNC campus, passing the Friday Center on the left. Continue under the overpass for Highway 15-501 and Highway 54 Bypass. Continue up the hill and through the intersection with Country Club Road. After crossing Country Club Road, immediately turn left into the School of Government's gated parking deck.

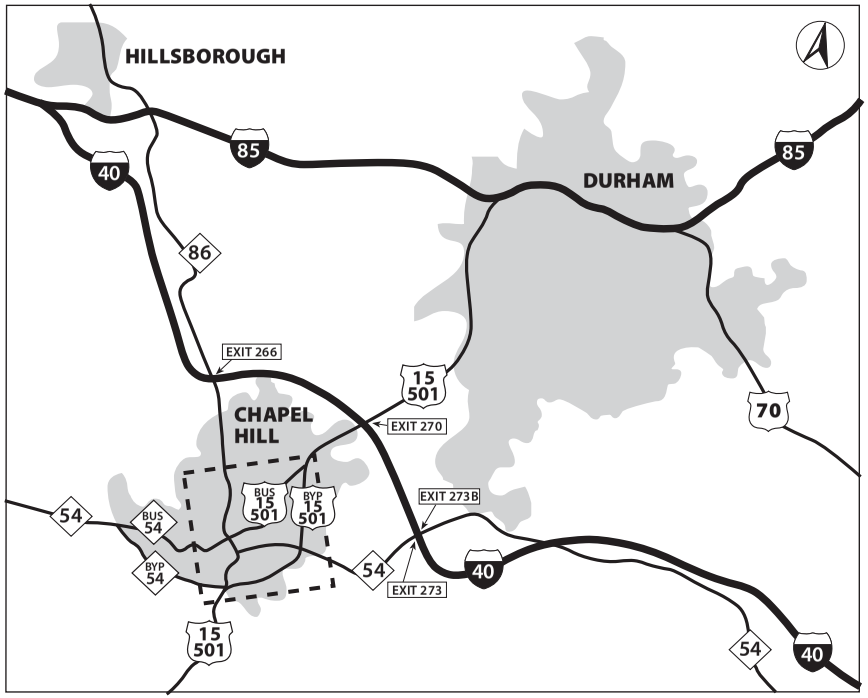
From the East

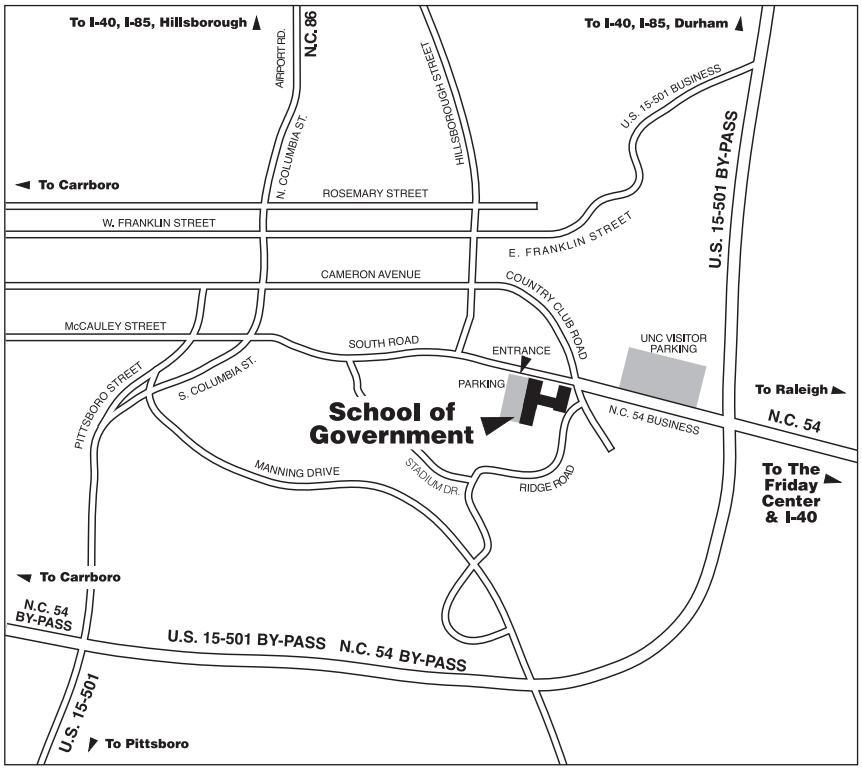
From I-40 West, take Exit 273 (Highway 54 West toward Chapel Hill) and merge right at the top of the ramp. From this point, it is 3.4 miles to the School of Government's parking deck. Continue on Highway 54 West toward the UNC campus, passing the Friday Center on the left. Continue under the overpass for Highway 15-501 and Highway 54 Bypass. Continue up the hill and through the intersection with Country Club Road. After crossing Country Club Road, immediately turn left into the School of Government's gated parking deck.

Parking

To enter the top level of the parking deck, use the key code that was sent to you in advance, or press the intercom call button to speak to the School's receptionist. Once you park and enter the building, please go to the reception desk (second floor) and request a visitor parking permit. This permit must be displayed on the dashboard of your car the entire time you are visiting the School of Government.

Additional parking is available at the UNC Visitors lot on Highway 54 just east (downhill) of the School and the Country Club Road intersection.





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

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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, U.S. District Judge for the Eastern District of North Carolina. She is a member of the North Carolina State Bar. Denning earned an AB in journalism and mass communication and a J.D. with high honors, Order of the Coif, from the University of North Carolina at Chapel Hill.

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

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Alyson Grine joined the School of Government in 2006. Prior to that, Grine worked for five years as an assistant public defender representing many non-English speaking Hispanic clients in Orange and Chatham counties. She previously served as a judicial clerk for Chief Justice Henry Frye of the NC Supreme Court in 2000 and Judge Patricia Timmons-Goodson of the NC Court of Appeals in 1999. Grine earned a BA with distinction from UNC-Chapel Hill, a MA in Spanish from the University of Virginia, and a JD with honors from UNC-Chapel Hill.

Areas of interest: Indigent defense education; criminal law and procedure

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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.

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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

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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.

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Jessie Smith joined the SOG in 2000. Before that, she practiced law at Covington & Burling in Washington, D.C. She also clerked for the U.S. District Judge W. Earl Britt in the U.S. District Court for the Eastern District of N.C and for Senior U.S. Circuit Judge J. Dickson Phillips Jr. in the U.S. Court of Appeals for the 4th Circuit. At the SOG, Jessica teaches and consults with judges and other public employees involved in the criminal justice system. Jessica earned a B.A., cum laude, from the University of Pennsylvania and a J.D., magna cum laude, Order of the Coif, from the University of Pennsylvania Law School, where she was managing editor of the Law Review. She was the 2006 recipient of the Albert & Gladys Hall Coates Term Professorship for Teaching Excellence.

Areas of Interest: Criminal law and procedure; evidence

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

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Judge John Smith, Director (919) 890-1000

George Dennis, Handling (919) 890-1019
Money/Receipts or check with Field Auditor

Joe Plemmons, Handling (919) 890-1019
Money/Receipts or check with Field Auditor

Tony McKinney, Handling (919) 890-1069
Money/Receipts or check with Field Auditor

Personnel Benefits (ask for one of the following depending on your last name)

Debbie Perkinson (A-F) (919) 890-1120
Kara Rouse (G-M) (919) 890-1106
Bob McKane (N-Z) (919) 890-1117

Other Personnel Matters (919) 890-1000

Gloria Lennon, Payroll (919) 890-1015

Lynn Holder, Travel (919) 890-1010

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

Magistrate Support Staff (919) 890-1400

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

Address: P.O. Box 2448
Raleigh, NC 27602
(919) 890-1300

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

COUNTY	NCAOC Court Services Division CLERK & MAGISTRATE SUPPORT
ALAMANCE	Joe Privette
ALEXANDER	Dori Wynter-Mitchell El
ALLEGHANEY	Brent Sheppard
ANSON	Bruce Saburn
ASHE	Brent Sheppard
AVERY	Brent Sheppard
BEAUFORT	Ashley Confroy
BERTIE	Susan Gralla
BLADEN	Kim Whitfield
BRUNSWICK	Kim Whitfield
BUNCOMBE	DeShield Smith
BURKE	Brent Sheppard
CABARRUS	Bruce Saburn
CALDWELL	Brent Sheppard
CAMDEN	Susan Gralla
CARTERET	Ashley Confroy
CASWELL	Joe Privette
CATAWBA	Dori Wynter-Mitchell El
CHATHAM	Krystal Tart
CHEROKEE	DeShield Smith
CHOWAN	Susan Gralla
CLAY	DeShield Smith
CLEVELAND	Brent Sheppard
COLUMBUS	Kim Whitfield
CRAVEN	Ashley Confroy
CUMBERLAND	Sherry Rackley
CURRITUCK	Susan Gralla
DARE	Ashley Confroy
DAVIDSON	Melissa Jackson
DAVIE	Rebecca Saleeby
DUPLIN	Kim Whitfield
DURHAM	Joe Privette
EDGECOMBE	Susan Gralla
FORSYTH	Melissa Jackson (Primary Clerk)/ Rebecca Saleeby (Primary Magistrate)
FRANKLIN	Krystal Tart
GASTON	Bruce Saburn
GATES	Susan Gralla
GRAHAM	DeShield Smith
GRANVILLE	Joe Privette
GREENE	Ashley Confroy
GUILFORD	Rebecca Saleeby (Primary Clerk)/ Krystal Tart (Primary Magistrate)
HALIFAX	Susan Gralla
HARNETT	Sherry Rackley
HAYWOOD	DeShield Smith
HENDERSON	DeShield Smith
HERTFORD	Susan Gralla
HOKE	Sherry Rackley
HYDE	Ashley Confroy
IREDELL	Dori Wynter-Mitchell El
JACKSON	DeShield Smith

JOHNSTON	Krystal Tart
JONES	Kim Whitfield
LEE	Krystal Tart
LENOIR	Ashley Confroy
LINCOLN	Dori Wynter-Mitchell El
MACON	DeShield Smith
MADISON	DeShield Smith
MARTIN	Sherry Rackley
MCDOWELL	Brent Sheppard
MECKLENBURG	Melissa Jackson (Primary Clerk)/ Dori Wynter-Mitchell El (Primary Magistrate)
MITCHELL	Brent Sheppard
MONTGOMERY	Bruce Saburn
MOORE	Krystal Tart
NASH	Krystal Tart
NEW HANOVER	Kim Whitfield
NORTHHAMPTON	Susan Gralla
ONSLOW	Kim Whitfield
ORANGE	Joe Privette
PAMLICO	Ashley Confroy
PASQUOTANK	Susan Gralla
PENDER	Kim Whitfield
PERQUIMANS	Susan Gralla
PERSON	Joe Privette
PITT	Sherry Rackley
POLK	Brent Sheppard
RANDOLPH	Krystal Tart
RICHMOND	Bruce Saburn
ROBESON	Kim Whitfield
ROCKINGHAM	Rebecca Saleeby
ROWAN	Rebecca Saleeby
RUTHERFORD	Brent Sheppard
SAMPSON	Ashley Confroy
SCOTLAND	Bruce Saburn
STANLY	Bruce Saburn
STOKES	Rebecca Saleeby
SURRY	Rebecca Saleeby
SWAIN	DeShield Smith
TRANSYLVANIA	DeShield Smith
TYRRELL	Ashley Confroy
UNION	Bruce Saburn
VANCE	Susan Gralla
WAKE	Sherry Rackley (Primary Clerk)/ Joe Privette (Primary Magistrate)
WARREN	Susan Gralla
WASHINGTON	Ashley Confroy
WATAUGA	Brent Sheppard
WAYNE	Ashley Confroy
WILKES	Brent Sheppard
WILSON	Ashley Confroy
YADKIN	Dori Wynter-Mitchell El
YANCEY	Brent Sheppard

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
http://www.sog.unc.edu/node/84

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

School of Government's Family Law Website
http://www.sog.unc.edu/node/1225

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
http://www.sog.unc.edu/node/487

School of Government's Big Law Listserv
http://lists.unc.edu/read/all_forums/subscribe?name=smclaims_magistrate
(You will enter the following to subscribe: Name, Email address, Create a password This will create your account which will be forwarded for approval. Once the account has been approved you will be notified.)

North Carolina Judicial Center

901 Corporate Center Drive

From North, US 1

Take US 1 south toward Cary. Take Hillsborough St exit toward State Fairgrounds. Slight right onto Chapel Hill Rd, Then turn right at light onto Corporate Center Drive, then left into the NC Judicial Center (old Nortel Bldg)

From East,

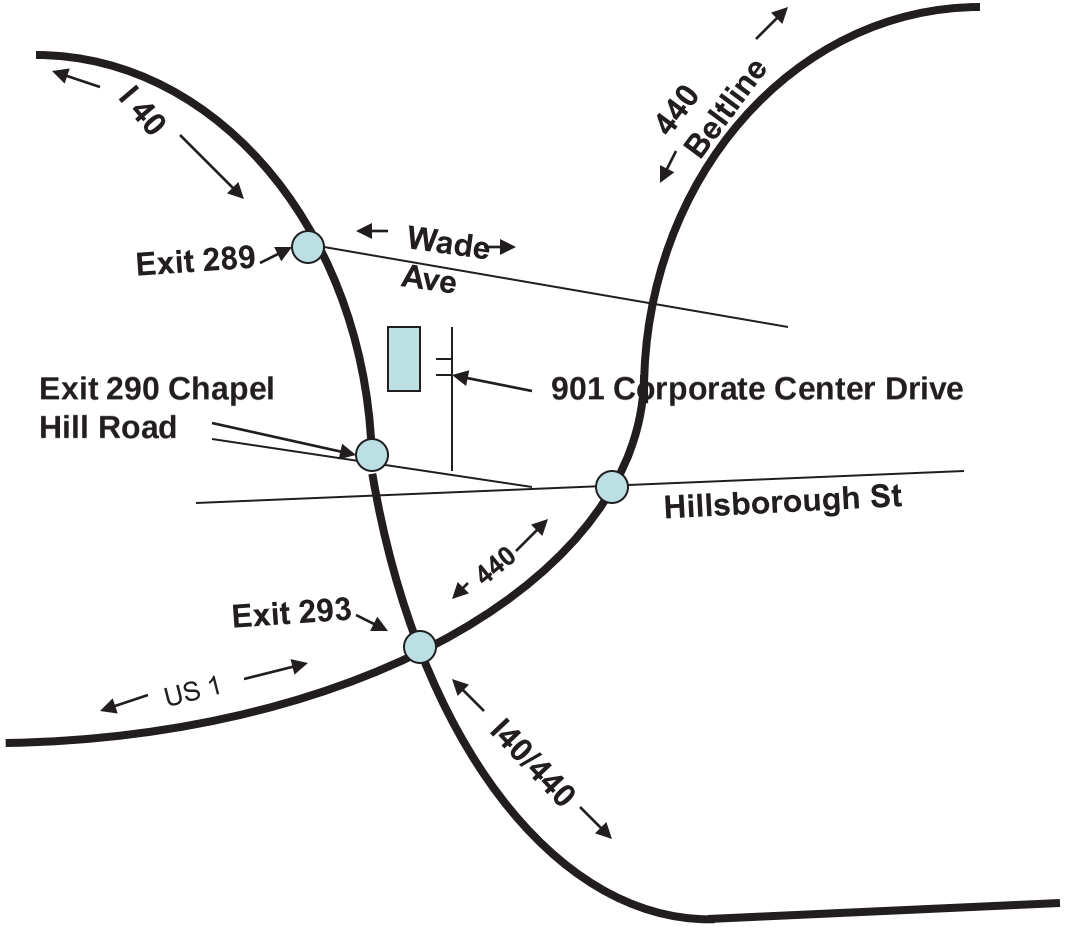
Take I 40/440 toward Durham. Exit 290, turn right onto Chapel Hill Rd. Then turn left at light onto Corporate Center Drive, then left into the NC Judicial Center (old Nortel Bldg)

From West,

Take I 40 East toward Raleigh, Exit 290, turn left onto Chapel Hill Road, then left onto Corporate Center Drive at light, then left into the NC Judicial Center (old Nortel Bldg.)

From South, US 1

Head north on US 1, take exit 293B onto I 40 heading toward Durham. Take exit 290, then turn right onto Chapel Hill Rd., then left onto Corporate Center Drive at light then left into the NC Judicial Center (old Nortel Bldg.)



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 Lynn Holder at the AOC at the number below.

Lynn Holder
Accounting Specialist II
901 Corporate Center Dr
PO Box 2448
Raleigh, NC 27602
919.890.1010

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

Breakfast	$ 8.20
Lunch	$ 10.70
Dinner	$ 18.40
Lodging (actual cost, up to)	$ 65.90
Total Daily Rate	$ 103.20
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 $8.20 for breakfast if you left before 6:00 a.m. and may claim $18.40 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 $65.90, 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.

Click The Box Above To Calculate The Total Cost

STATE OF NORTH CAROLINA

Judicial Branch Of Government

REIMBURSEMENT OF TRAVEL AND OTHER EXPENSES INCURRED IN THE DISCHARGE OF OFFICIAL BUSINESS

G.S. 138-6

INSTRUCTIONS: Prepare two typewritten copies. Forward the original copy of this form and all necessary receipts/supporting document (hotel, registration, parking, airline, rail, bus, out-of-state authorization) to the Administrative Office of the Courts, Attn: Financial Services Division, Courier Box 56-10-50, Raleigh, NC, OR if courier is not available, mail to P. O. Box 2448, Raleigh, NC 27602. Retain copy for your records.

☐ Directors Office	☐ Warehouse	☐ Supreme Court	☐ Public Defender's Office	☐ DA's Conf.	☐ Office Ind. Def.	
☐ Sr. Deputy Director	☐ Print Shop	☐ Court Of Appeals	☐ Special Counsel's Office	☐ Guardian ad Litem		
☐ Human Resources	☐ Court Svcs	☐ Superior Court	☐ Appellate Def's Sers.	☐ Sentencing Services		
☐ Financial Services	☐ Technology Svcs	☐ District Court	☐ Judicial Standards Comm.	☐ Sentencing Comm.		
☐ Purchasing	☐ Legal Svcs	☐ CSC's Office	☐ District Attorney's Office	☐ Dispute Res. Comm.		

Payee's Name And Address ☐ ***Check If Name Or Address Change***	*Title*	*Headquarters (City)*
	Social Security No. (Last 4 Digits)	*Travel For (Month And Year)*	*Date Request Prepared*

Under penalties of perjury, I certify this is a true and accurate statement of the city of lodging, expenses, and allowances incurred in the service of the state.

(Signature Of Claimant)

I have examined this reimbursement request and certify that it is just and reasonable.

(Signature Of Supervisor)

Total Cost	$0.00
Less Advance	
Reimbursement	$0.00

FOR USE BY NCAOC FINANCIAL SERVICES DIVISION

COMPANY	ACCOUNT	CENTER	AMOUNT
	532714		
	532721		
	532724		

Date

Verified And Approved For Payment:

	TRAVEL *(Show Each City Visited)*		TRANSPORTATION			SUBSISTENCE			OTHER EXPENSES	
Day	From	To	(1) Mode	Daily Private Car Mileage	Amount	(2) Type	In-State	Out-of-State	Explanation	Amount
			P			B				
			A			L				
	Purpose of Trip:		B			D				
	Depart Time	Return Time	R			H				
			P			Total	**$0.00**	**$0.00**		**$0.00**
			A			B				
	Purpose of Trip:		B			L				
	Depart Time	Return Time	R			D				
			P			H				
			S			Total	**$0.00**	**$0.00**		**$0.00**
	Purpose of Trip:		B			B				
	Depart Time	Return Time	R			L				
			P			D				
			A			H				
	Purpose of Trip:		B			Total	**$0.00**	**$0.00**		**$0.00**
	Depart Time	Return Time	R			B				
			P			L				
			A			D				
	Purpose of Trip:		B			H				
	Depart Time	Return Time	R			Total	**$0.00**	**$0.00**		**$0.00**
			P			B				
			A			L				
	Purpose of Trip:		B			D				
	Depart Time	Return Time	R			H				
						Total	**$0.00**	**$0.00**		**$0.00**

(1) Mode of Travel:	(2) Type of Subsistence:	In-State	Out-of-State
P-Pr-owned car	Breakfast	$ 8.20	$ 8.20
A-Air	Lunch	$ 10.70	$ 10.70
B-Bus	Dinner	$ 18.40	$ 20.90
R-Rail	Room	$ 65.90 + Tax	$ 77.90 + Tax
	24-hr. period	$ 103.20	$117.70

Total Trans.	Total Auth. Sub.	Total Auth. Sub.	Total Other Exp.
$0.00	$0.00	$0.00	$0.00

Check List: **(1) Claimant and supervisor signature (2) Depart and return times required to claim meals (3) Must have itemized hotel receipt - credit card receipt not accepted.**

NOTE: *Purpose of trip must be noted, please indicate purpose of trip under city visited.*

(Over)

	TRAVEL *(Show Each City Visited)*		TRANSPORTATION			SUBSISTENCE			OTHER EXPENSES	
Day	**From**	**To**	**(1) Mode**	**Daily Private Car Mileage**	**Amount**	**(2) Type**	**In-State**	**Out-Of-State**	**Explanation**	**Amount**
	TOTALS BROUGHT FORWARD				$0.00		$0.00	$0.00		$0.00
			P			B				
			A			L				
	Purpose of Trip:		B			D				
	Depart Time	Return Time	R			H				
						Total	$0.00	$0.00		$0.00
			P			B				
			A			L				
	Purpose of Trip:		B			D				
	Depart Time	Return Time	R			H				
						Total	$0.00	$0.00		$0.00
			P			B				
			S			L				
	Purpose of Trip:		B			D				
	Depart Time	Return Time	R			H				
						Total	$0.00	$0.00		$0.00
			P			B				
			A			L				
	Purpose of Trip:		B			D				
	Depart Time	Return Time	R			H				
						Total	$0.00	$0.00		$0.00
			P			B				
			A			L				
	Purpose of Trip:		B			D				
	Depart Time	Return Time	R			H				
						Total	$0.00	$0.00		$0.00
			P			B				
			A			L				
	Purpose of Trip:		B			D				
	Depart Time	Return Time	R			H				
						Total	$0.00	$0.00		$0.00
			P			B				
			A			L				
	Purpose of Trip:		B			D				
	Depart Time	Return Time	R			H				
						Total	$0.00	$0.00		$0.00
			P			B				
			A			L				
	Purpose of Trip:		B			D				
	Depart Time	Return Time	R			H				
						Total	$0.00	$0.00		$0.00
			P			B				
			A			L				
	Purpose of Trip:		B			D				
	Depart Time	Return Time	R			H				
						Total	$0.00	$0.00		$0.00
			P			B				
			A			L				
	Purpose of Trip:		B			D				
	Depart Time	Return Time	R			H				
						Total	$0.00	$0.00		$0.00
					Total Trans.		**Total Auth. Sub.**	**Total Auth. Sub.**		**Total Other Exp.**
					$0.00		$0.00	$0.00		$0.00

AOC-A-25, Side Two, Rev. 7/13

Payee's Name					SSN:					
Day	From	To	(1) Mode	Daily Private Car Mileage	Amount	(2) Type	In-State	Out-Of-State	Explanation	Amount
	TOTALS BROUGHT FORWARD				$0.00		$0.00	$0.00		$0.00
			P			B				
			A			L				
	Purpose of Trip:		B			D				
	Depart Time	Return Time	R			H				
						Total	$0.00	$0.00		$0.00
			P			B				
			A			L				
	Purpose of Trip:		B			D				
	Depart Time	Return Time	R			H				
						Total	$0.00	$0.00		$0.00
			P			B				
			S			L				
	Purpose of Trip:		B			D				
	Depart Time	Return Time	R			H				
						Total	$0.00	$0.00		$0.00
			P			B				
			A			L				
	Purpose of Trip:		B			D				
	Depart Time	Return Time	R			H				
						Total	$0.00	$0.00		$0.00
			P			B				
			A			L				
	Purpose of Trip:		B			D				
	Depart Time	Return Time	R			H				
						Total	$0.00	$0.00		$0.00
			P			B				
			A			L				
	Purpose of Trip:		B			D				
	Depart Time	Return Time	R			H				
						Total	$0.00	$0.00		$0.00
			P			B				
			A			L				
	Purpose of Trip:		B			D				
	Depart Time	Return Time	R			H				
						Total	$0.00	$0.00		$0.00
			P			B				
			A			L				
	Purpose of Trip:		B			D				
	Depart Time	Return Time	R			H				
						Total	$0.00	$0.00		$0.00
			P			B				
			A			L				
	Purpose of Trip:		B			D				
	Depart Time	Return Time	R			H				
						Total	$0.00	$0.00		$0.00
			P			B				
			A			L				
	Purpose of Trip:		B			D				
	Depart Time	Return Time	R			H				
						Total	$0.00	$0.00		$0.00
					Total Trans.		Total Auth. Sub.	Total Auth. Sub.		Total Other Exp.
					$0.00		$0.00	$0.00		$0.00

AOC-A-25, Page Two, Rev. 7/13

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:

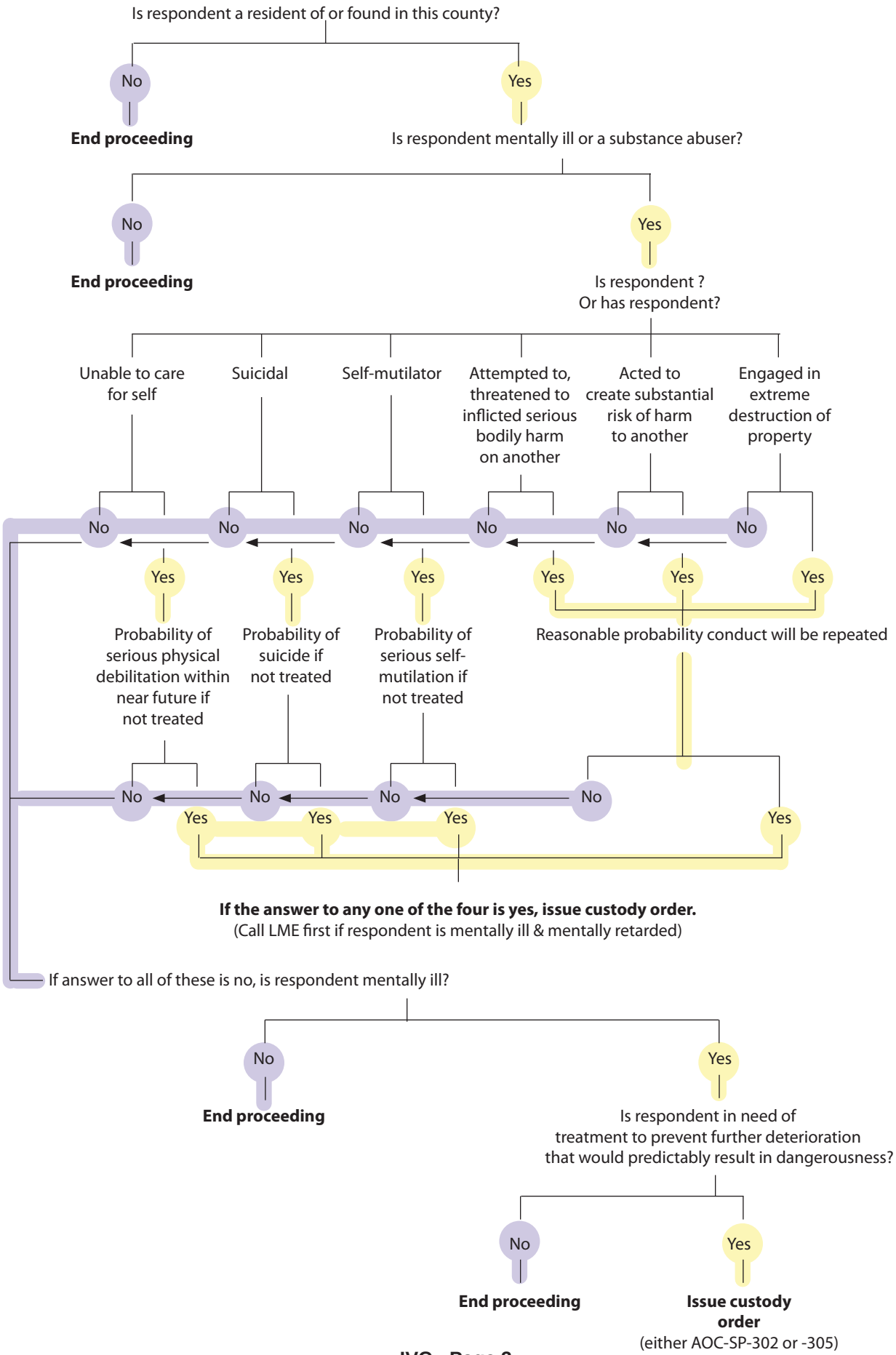
1. inflicted, attempted to inflict, or threatened to inflict serious bodily harm on another and there is a reasonable probability that this conduct will be repeated, or
2. acted in a way that created a substantial risk of serious bodily harm to another and there is a reasonable probability that this 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
January 2014

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?

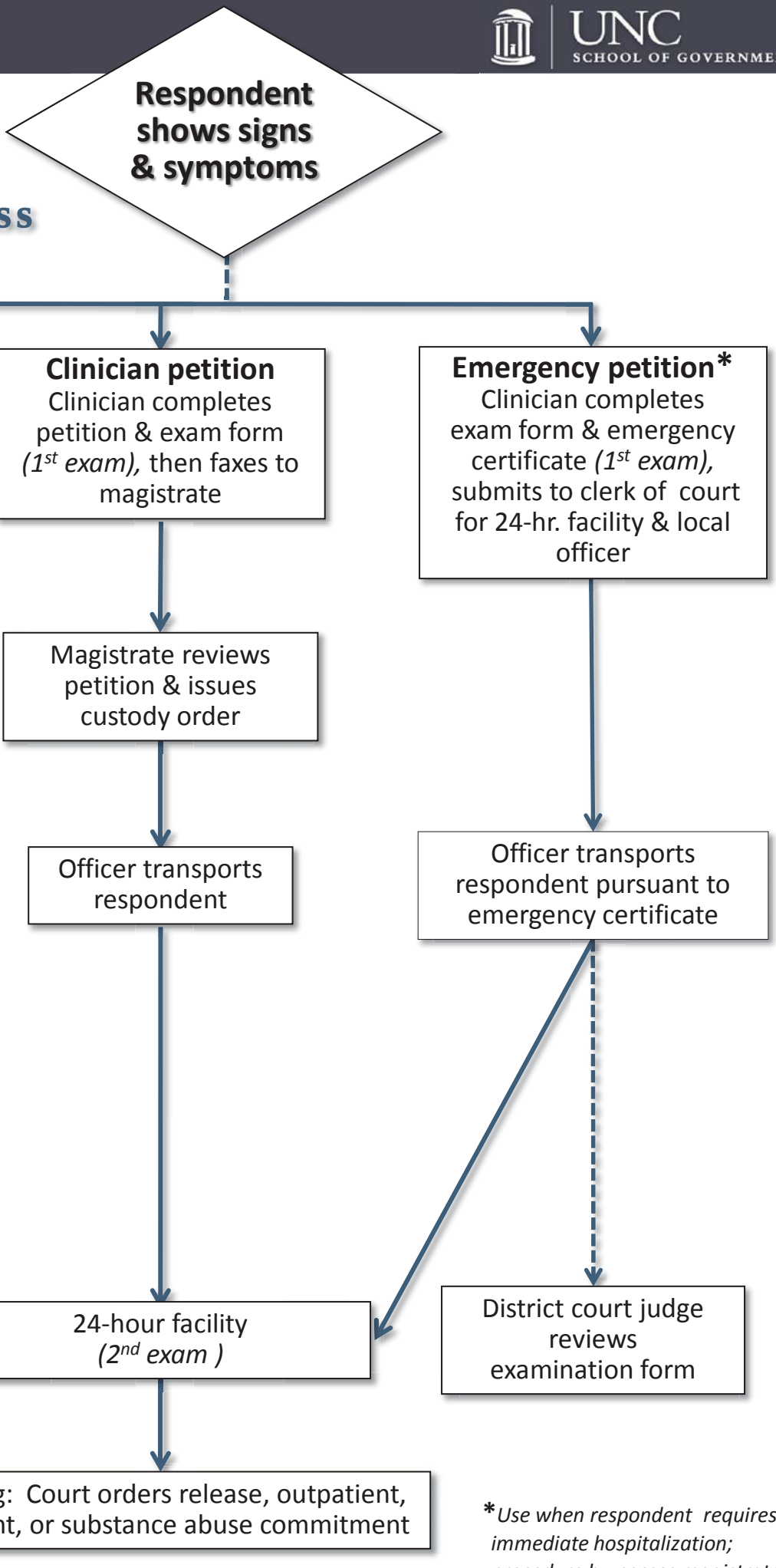
6. Mary has a hammer in the house, breaks everything she can find, and told her husband that if he went to sleep she would bash his brains out. She has threatened to kill her daughter, granddaughter and sister. The daughter says, "Upon coming home, I found the TV busted, the telephone had been cut away 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)

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.

Memorandum to Magistrates
2009 Change to Commitment Law and Magistrate Practice

The shortage of suitable 24-hour facilities for persons in need of mental health evaluation and treatment has received significant attention in the past year. The purpose of this memo is to inform magistrates about recent legislation enacted to address one aspect of this problem, and to caution magistrates to avoid a practice, currently relied upon in some parts of the State, that is not authorized by law.

New Law

Session Law 2009-340 (House Bill 243), effective October 1, 2009, is a legislative acknowledgement that many persons who are found mentally ill and dangerous to self or others at the first commitment examination are not proceeding to the next step in the commitment process in a timely manner. Statutory law requires that these persons (known as "respondents") be taken to a 24-hour psychiatric facility for a second examination and treatment pending a commitment hearing in district court. This hearing must take place within 10 days from the time the respondent was taken into law enforcement custody at the beginning of the commitment process. Because the state-operated psychiatric hospitals do not have sufficient bed space, many respondents are kept waiting in community hospital emergency rooms for several days. By the time some of these respondents arrive at a state hospital, the clerk of court does not even have time to calendar a hearing within the 10-day time frame.

This 10-day hearing requirement is one of North Carolina's statutory mechanisms for assuring that a respondent is not deprived of liberty without the due process guaranteed by the U.S. Constitution. The new law is a response to the concern that delays in transporting respondents to psychiatric inpatient facilities may deprive some respondents of statutory and constitutional due process. S.L. 2009-340 amends G.S. 122C-261(d) and -263(d) to provide that, with respect to respondents who have been found to meet the inpatient commitment criteria, if a 24-hour facility is not immediately available or medically appropriate seven days after issuance of the custody order, a physician or psychologist must report this fact to the clerk of superior court and the proceedings must be terminated. If this happens, a new commitment proceeding may be initiated by filing a petition for a new custody order, but affidavits filed and examinations conducted as part of the previous commitment proceeding may not be used to support a new commitment. Certainly, some of the facts considered by the magistrate in deciding to issue the first custody order may be relevant when deciding to issue another custody order—and for this reason a new petition may in some cases contain facts that were asserted on the previous petition—but any papers filed and examinations conducted in support of a new proceeding must be new.

In situations where a respondent is temporarily detained at the site of first examination because a 24-hour facility is not immediately available or medically appropriate, S.L. 2009-340 also permits a physician or psychologist to terminate the inpatient commitment proceeding and discharge the respondent (or recommend outpatient commitment), upon finding that the respondent's condition has improved to the point that he or she no longer meets the criteria

for inpatient commitment. Any such finding must be documented in writing and reported to the clerk of superior court.

A Practice to be Avoided

It is not at all surprising that legal and medical professionals confronted with the current crisis presented by a shortage of available 24-hour facilities craft creative responses in an effort to improve the way the system responds to citizens in need of help. One practice currently being employed by some magistrates, however, is inconsistent with the law and presents significant problems for other participants in the system. This practice consists of holding a commitment petition and not issuing a custody order until the availability of a particular 24-hour facility has been confirmed. The result is that the facility performing the first evaluation must hold a respondent for the period—sometimes days, as discussed above— without this hold being authorized by a custody order**.** Without a custody order, this hold is not authorized by the commitment statutes (subject to an exception not relevant to magistrates), raising serious issues about the due process rights of the respondent as well as questions about the potential liability of the facility exerting custodial control over the respondent without a custody order. Accordingly, magistrates should not engage in this modification of the statutory procedure. When a magistrate receives a petition and makes a determination that reasonable grounds exist to believe that an individual meets the statutory criteria for commitment, the law is clear that a magistrate must issue a custody and transportation order. The commitment statutes do not authorize a magistrate to delay issuance of a custody order pending the receipt of other information. Nor do the statutes permit a magistrate to make his or her decision subject to criteria not identified in the commitment statutes.

In the space on the custody order for designating a 24-hour facility, the magistrate should enter the name of the facility normally used by the jurisdiction, followed by the words "or any state-approved facility." This allows the commitment process to proceed without delay and permits the involuntary detention of the respondent throughout all phases of the commitment process, including during the time it takes following the first examination to identify an available 24-hour facility. Moreover, some 24-hour facilities may not agree to accept an involuntary patient until *after* a custody order has been issued. The magistrate's role in this process is critically important, and it is absolutely essential that magistrates follow the statutory procedure in carrying out their responsibilities.

If you have questions or concerns about any of the information in this memo, contact the School of Government faculty member specializing in mental health law, Mark Botts. Mark can be reached by telephone (919-962-8204) or email (botts@sog.unc.edu).

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

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.

☐ 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/AFFIRM 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*	
SEAL	*County Where Notarized*	*Relationship To Respondent*
		Home Telephone No. / *Business Telephone No.*

Original-File Copy-Hospital Copy-Special Counsel Copy-Attorney General

(Over)

AOC-SP-300, Rev. 7/11

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)*

MEMO:

To: Clerks of Superior Court and Magistrates
Date: November 28, 2012

Effective immediately, **AOC-SP-302A**: Findings And Custody Order Involuntary Commitment (Petitioner Appears Before Magistrate Or Clerk) or **AOC-SP-302B**: Findings And Custody Order Involuntary Commitment (Petitioner Is Clinician Who Has Examined Respondent) should be used instead of AOC-SP-302: Findings And Custody Order Involuntary Commitment. As noted in the titles, AOC-SP-302A should be completed when the petitioner appears before you; and AOC-SP-302B should be completed when the respondent has been examined by a clinician/doctor.

Our Technology Services Division is working diligently to make these forms available in NCAWARE. Until NCAWARE is updated with the new forms, please either save a copy of the attached forms to your desktop or retrieve them from www.nccourts.org . You will be notified when NCAWARE has been updated.

Please contact me or Mark Botts at the School of Government if you have any questions. I can be reached at 919.890.1305 or Jo.McCants@nccourts.org. Mark Botts can be reached at 919.962.8204 or Botts@sog.unc.edu.

Thanks.

Jo B. McCants
Associate Counsel
Legal & Legislative Services
North Carolina Administrative Office of the Courts

T 919 890-1305
F 919 890-1914

E Jo.McCants@nccourts.org
W www.nccourts.org

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*	*Signature*	
	☐ AM ☐ PM		☐ *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*		

STATE OF NORTH CAROLINA

_____ County

File No.

In The General Court Of Justice
District Court Division

IN THE MATTER OF:

Name, Address And Zip Code Of Respondent

AFFIDAVIT AND PETITION FOR INVOLUNTARY COMMITMENT

G.S. 122C-261, 122C-281

Social Security No. Of Respondent	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.

☐ 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, Address And Zip Code Of Nearest Relative Or Guardian		Name, Address And Zip Code Of Other Person Who May Testify To Facts	
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 AND SUBSCRIBED TO BEFORE ME

Signature Of Petitioner

Date

Name, Address And Zip Code Of Petitioner (Type Or Print)

Signature

☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court ☐ Magistrate
☐ Notary (use only with physician or psychologist petitioner)

Relationship To Respondent

Date Notary Commission Expires

SEAL

Home Telephone No.	Business Telephone No.

Original-File Copy-Hospital Copy-Special Counsel Copy-Attorney General
(Over)

AOC-SP-300, Rev. 9/03

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

AOC-SP-300, Side Two, Rev. 9/03

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).*

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:

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.

Were you appointed to
___ an empty position,
___ a newly-created position,
___ a vacancy (meaning the previous office-holder did not serve out the full-term)
When did your term of office begin? _____
When does your term of office end? _____
If you are reappointed, will your next term be for two years or for four years? _____

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 12 hours of continuing education credit.)

Judicial College Seminars
Consisting of 2-3 days of intensive small-group instruction, these seminars are offered annually on the topics of involuntary commitment, introduction to holding small claims court, and advanced small claims law. In addition, a Judicial College Seminar on a criminal law topic is offered each November, with the topics alternating between Advanced Criminal Procedure and DWI. (The November 2014 seminar will be the DWI seminar.) Course announcements and registration information are sent out to magistrates by email well in advance of each course.

One-Day Regional Civil Seminars
Conducted each fall in 4-5 locations throughout the state. These seminars focus exclusively on small claims law and provide 6 hours of continuing education credit.

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 NC Magistrates' Association summarizes the duties a magistrate may be authorized to perform as follows:

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
Serve as Child Support Hearing Officers
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

http://www.aoc.state.nc.us/magistrate/AboutUs/authority.htm

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:

Intro to Law & Judicial Process

INTRODUCTION TO LAW & JUDICIAL PROCESS

What is "the rule of law?"

_____

_____

_____

WHERE DOES LAW COME FROM?

STATUTES

§ 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.

CASES

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."

A NOTE ON FINDING LEGAL RESOURCES:

Every magistrate should be able to locate a state statute or appellate case, given the citation. **The statute above** is identified by the citation GS 42-46. Let's take a closer look.

G.S. is an abbreviation standing for _____.

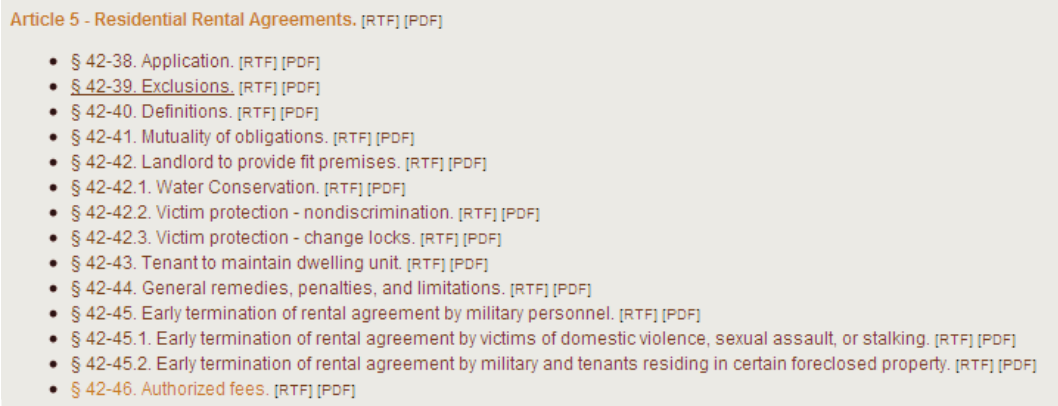
Can you guess what NCGS stands for? _____

What about N.C. Gen. Stat.? _____

In the citation GS 42-46, "42" is the chapter number in the General Statutes. An excerpt from the Table of Contents for the General Statutes shows you this chapter in context:

- Chapter 41 - Estates
- Chapter 41A - State Fair Housing Act.
- Chapter 42 - Landlord and Tenant.
- Chapter 42A - Vacation Rental Act.
- Chapter 43 - Land Registration.
- Chapter 44 - Liens.
- Chapter 44A - Statutory Liens and Charges.
- Chapter 45 - Mortgages and Deeds of Trust.
- Chapter 45A - Good Funds Settlement Act.
- Chapter 46 - Partition.
- Chapter 47 - Probate and Registration.

In the citation GS 42-46, "46" identifies the particular section of law within Chap. 42:

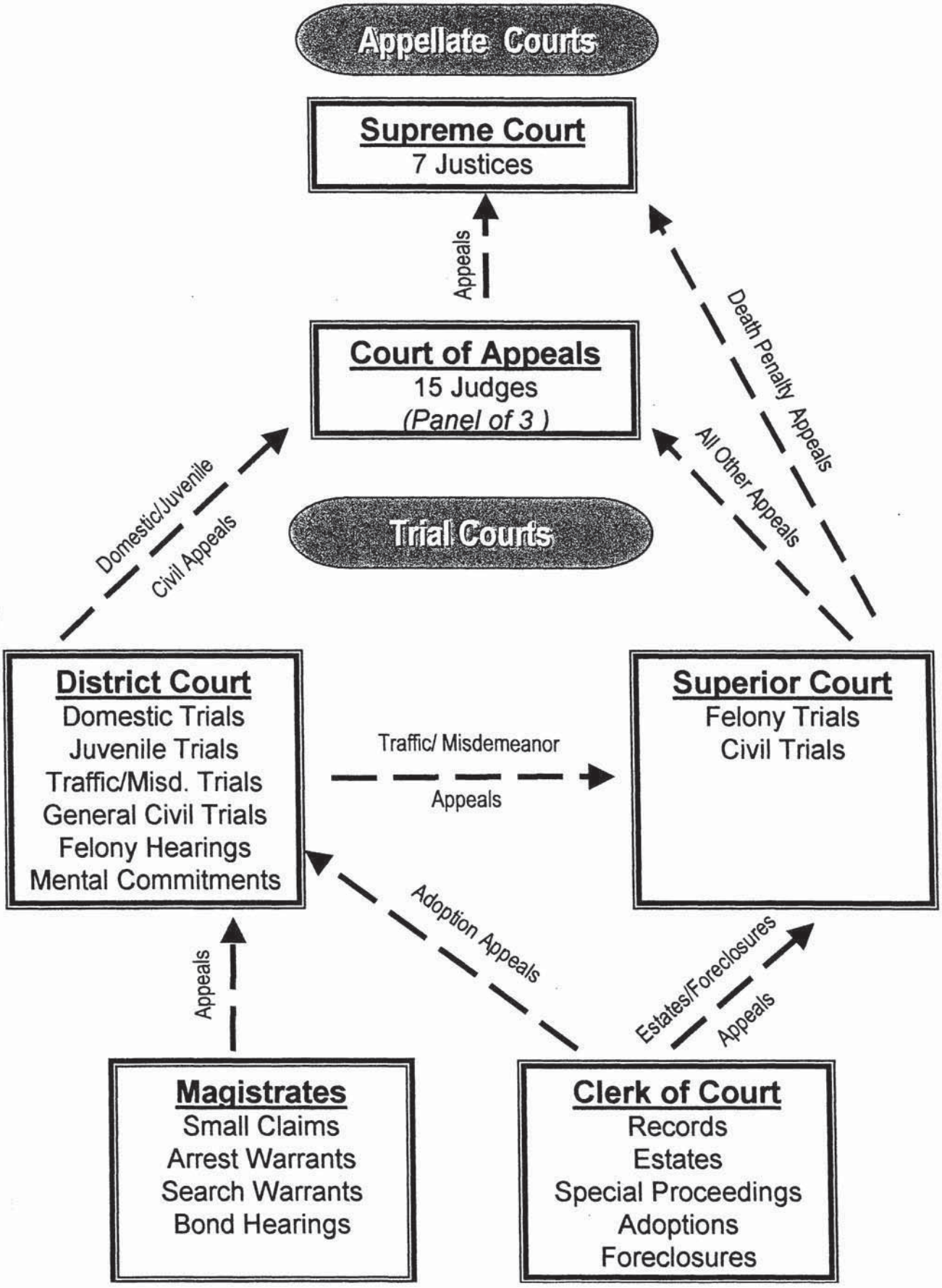


Article 5 - Residential Rental Agreements. [RTF] [PDF]

- § 42-38. Application. [RTF] [PDF]
- § 42-39. Exclusions. [RTF] [PDF]
- § 42-40. Definitions. [RTF] [PDF]
- § 42-41. Mutuality of obligations. [RTF] [PDF]
- § 42-42. Landlord to provide fit premises. [RTF] [PDF]
- § 42-42.1. Water Conservation. [RTF] [PDF]
- § 42-42.2. Victim protection - nondiscrimination. [RTF] [PDF]
- § 42-42.3. Victim protection - change locks. [RTF] [PDF]
- § 42-43. Tenant to maintain dwelling unit. [RTF] [PDF]
- § 42-44. General remedies, penalties, and limitations. [RTF] [PDF]
- § 42-45. Early termination of rental agreement by military personnel. [RTF] [PDF]
- § 42-45.1. Early termination of rental agreement by victims of domestic violence, sexual assault, or stalking. [RTF] [PDF]
- § 42-45.2. Early termination of rental agreement by military and tenants residing in certain foreclosed property. [RTF] [PDF]
- § 42-46. Authorized fees. [RTF] [PDF]

Statutes are easy to find online; just go to http://www.ncleg.net/gascripts/Statutes/Statutes.asp. Using the official website makes it more likely that you're reading the current version of the statute.

The North Carolina Court System



The citation for **the case shown above** is

FRIDAY V. UNITED DOMINION REALTY, INC., 155 N.C. APP. 671 (2003).

What does N.C. App. stand for?_____

What is the plaintiff's name? _____

What sort of entity is the defendant? _____

When was the case decided? _____

STATE V. KNOLL, 422 N.C. 535 (1988)

This citation has an important difference. What is it? _____

_____

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.

_____

_____

_____

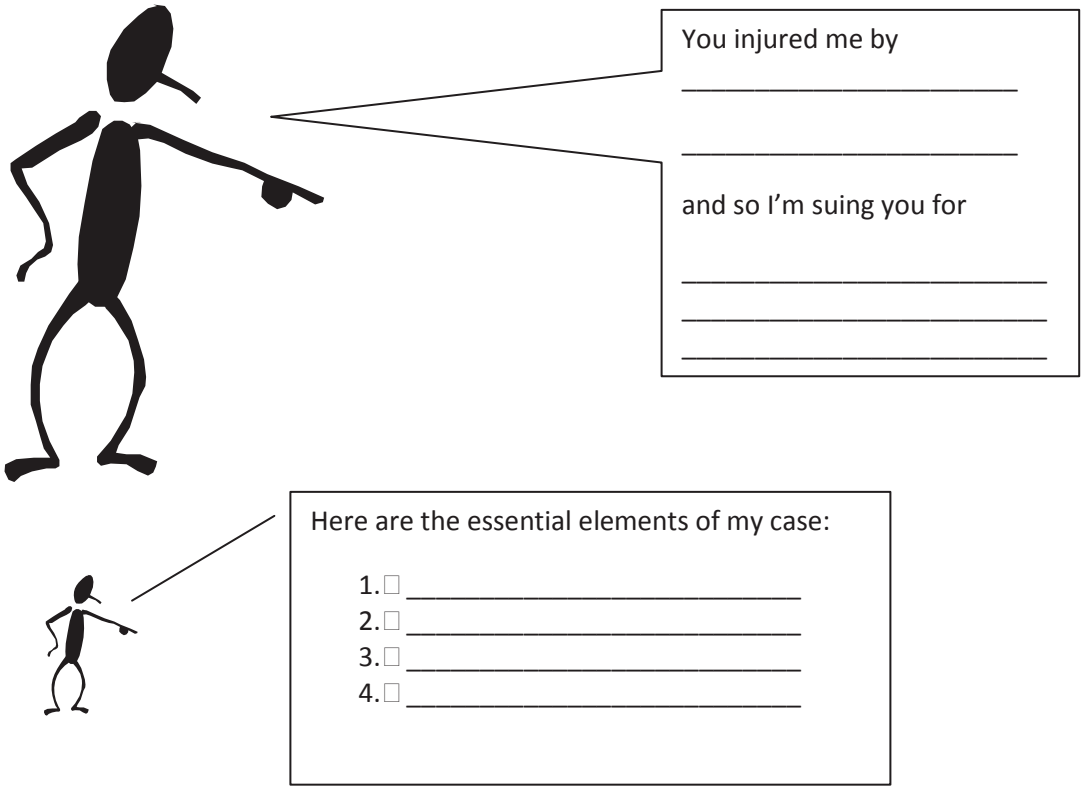
	Civil Law	Criminal Law
Who brings the action?		
What is the term for above?		
How does it begin?		
For what purpose?		
Does D have right to attorney?		
Can D refuse to testify?		
What are the consequences?		

	Civil Law	Criminal Law
Who brings the action?	**Private party**	**The State**
What is the term for above?	**Plaintiff**	**State, or Prosecution**
How does it begin?	**Files complaint**	**Criminal process**
For what purpose?	**Compensation for injury, to enforce civil right**	**Punishment, deterrence**
Does D have right to attorney?	**Not usually**	**Usually**
Can D refuse to testify?	**No**	**Yes**
What are the consequences?	**$$, sometimes coercive order**	**Jail, fine, or death**

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

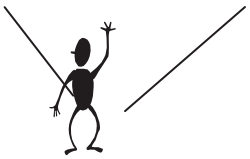
Essential Elements

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.



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

_____
_____
_____
_____



OR

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

_____
_____
_____
_____

DUE PROCESS: THE HEART OF YOUR JOB

No State shall . . . deprive any person of life, liberty, or property, without due process of law.

U.S. Constitution, 14th Amendment.

Put this in your own words: _____

_____

_____

Use this space to identify factors having the strongest influence on litigant satisfaction: _____

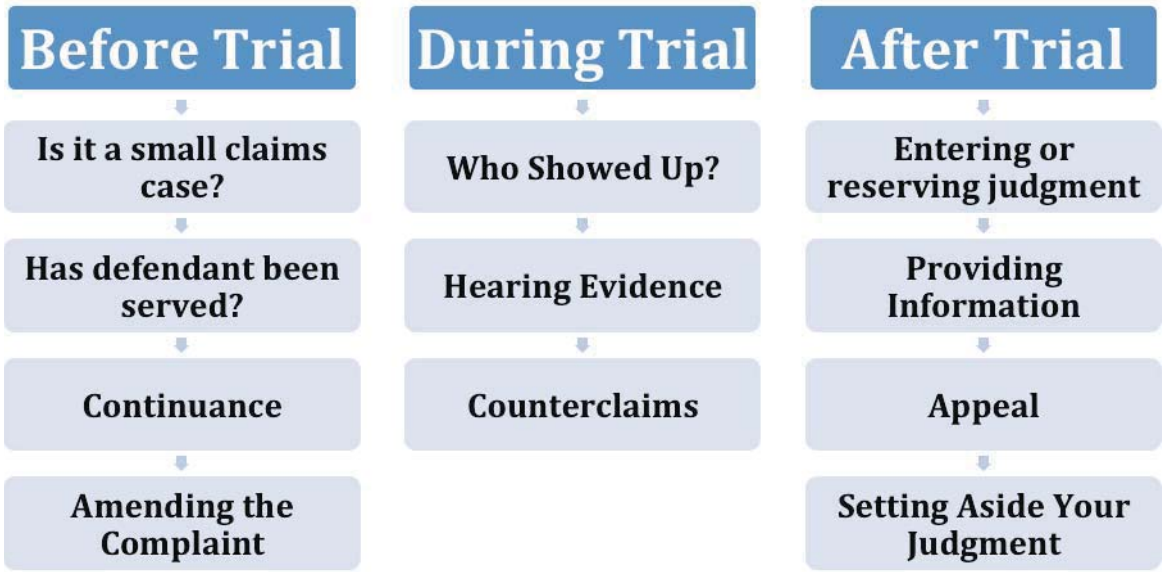
_____

_____

TAB:

Small Claims Procedure

SMALL CLAIMS PROCEDURE



IS IT A SMALL CLAIMS CASE?

The law authorizes **you** to decide

SMALL CLAIM CASES

Amount in controversy	Certain kinds of cases only

ASSIGNED BY YOUR DCJ

The law authorizes your chief district court judge to assign a case to small claims court if it otherwise meets the definition of a small claims case and if at least one defendant lives in the county.

AMOUNT IN CONTROVERSY RULES

1. If the plaintiff is asking for money, the amount must be $_____ or less.

2. The amount in controversy is determined as of the time _____.

3. The plaintiff must ask for _____ of the amount he's entitled to for this particular claim. In other words, _____.

4. If the plaintiff is asking for return of personal property, the amount in controversy is _____.

5. In summary ejectment actions in which the landlord is seeking only possession, the amount in controversy requirement _____.

CERTAIN KINDS OF CASES ONLY

What is the principal relief sought?

Summary Ejectment
Money Owed
Return of Personal Property

Not Coercive Judgment
Not Action to Recover Real Property

HAS DEFENDANT BEEN SERVED?

-Service (or a legal substitute) is required before a judge has authority to decide a case.

-If the summons indicates the defendant was served, the presumption is that service was accomplished.

-If defendant files an answer before trial challenging personal jurisdiction, a district court judge must rule on that motion before the magistrate may proceed with the case.

-**Service is not required if defendant makes a voluntary appearance, either by filing an answer or motion in the case, or if the defendant appears at trial.**

-Special rule for service in summary ejectment actions: service by posting is sufficient to accomplish service of process allowing entry of judgment awarding possession only. Service by posting is NOT sufficient for award of money damages.

Problem: When you call a case for trial, you notice that defendant has not been served. Plaintiff is present in court, but defendant is not present. What should you do?

Same facts, but defendant is present. What should you do?

CONTINUANCES

When a judge grants a continuance, s/he is agreeing that the trial will be delayed. There are four factors to consider: (1) Whether a continuance in the particular fact situation is governed by a specific legal provision; (2) whether the parties agree; (3) The reason for the continuance; (4) The overall fairness of the trial.

In 2009 the General Assembly enacted law establishing mandatory minimum notice requirements for small claims actions. . Because the amendment became effective after Brannon's book, Small Claims Law, was published, the book is not up-to-date in this one regard. In essence, the new law provides as follows: For summary ejectment actions, a defendant must be served at least two days prior to trial, excluding legal holidays. In all other actions, a defendant is entitled to five days notice. In actions in which a defendant did not receive sufficient advance notice of the action, the magistrate must order a continuance unless the defendant indicates a contrary preference. For a memo explaining the amendments and recommending specific applications of the new law depending upon various factual circumstances, see the Appendix section of this notebook.

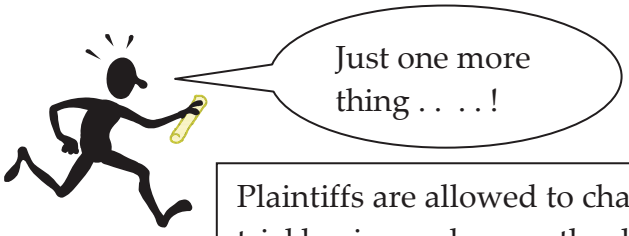
In 2013 the General Assembly again took up the subject of continuances in summary ejectment actions. The new law states:
If either party in a small claim action for summary ejectment moves for a continuance, the magistrate shall render a decision on the motion in accordance with Rule 40(b) of the Rules of Civil Procedure. The magistrate shall not continue a matter for more than five days or until the next session of small claims court, whichever is longer, without the consent of both parties.
Note particularly that this new provision applies only to actions for summary ejectment, and that a continuance for longer than five days is permissible if the parties agree.

Aside from these specific rules, the general guidelines for ruling on a request for a continuance are simply stated: In most cases, a continuance will be granted if both parties agree. If one party objects, a continuance should be granted only for "good cause shown." A primary determinant of whether good cause exists for a continuance is whether a delay is necessary in order to achieve a just and fair result.

Use AOC-CVM-108 to continue a case.

Your County's Continuance Policy:

AMENDING THE COMPLAINT



Plaintiffs are allowed to change – "amend"—their complaints even after trial begins, so long as the defendant has adequate notice and time to prepare a response. A small change—such as correcting the spelling of a name—requires little notice, while a significant change, such as asking for money instead of personal property, may require a continuance. Amendments are NOT allowed if they change the party being sued; in that case, the plaintiff must file another lawsuit and serve the proper defendant. An amendment can literally be handwritten on the complaint, and should be noted in the judgment.

WHO SHOWED UP

General Rule: A party may represent herself in small claims court, or she may be represented by an attorney.

General Rule #2: The plaintiff in a lawsuit must be the *real party in interest*—the person who has actually suffered injury.

EXERCISE: SHOULD YOU MAKE AN EXCEPTION?

1. Patsy Plaintiff is elderly and intimidated by the very thought of coming to court, so she brings her grandson Gary with her to present her evidence. Can Gary present the case, so long as Patsy is there to testify?

2. Patsy Plaintiff is still intimidated, so she brings her grandson with her, but this time she's prepared to prove that Gary has a power of attorney. Does a power of attorney authorize Gary to present her case in small claims court?

3. Larry Landlord lives in Louisiana, and he pays Michael Manger to act as his rental agent. Michael files a summary ejectment action against Tommy Tenant (Michael v. Tenant). Can Michael present the case? Can you enter judgment in favor of Michael?

HEARING EVIDENCE

 *No default judgment in small claims court.*
Plaintiff must introduce enough evidence to demonstrate that each essential element of the case is probably true.

- ❖ Plaintiff always testifies first.

- ❖ Defendant has a right to ask questions, but often will choose simply to tell his or her story instead.

- ❖ Defendant does not have to introduce evidence (and actually may not even be present) unless plaintiff has produced enough evidence to win, assuming you believe that evidence to be true. This is called establishing a *prima facie* case.

- ❖ If plaintiff establishes a *prima facie* case, defendant has an opportunity to produce evidence either contradicting an element of plaintiff's case or establishing some affirmative reason plaintiff should not win.

- ❖ Defendant has the burden of proof on affirmative defenses.

- ❖ Magistrate decides degree of formality in courtroom.

NOTES:

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.

- 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.

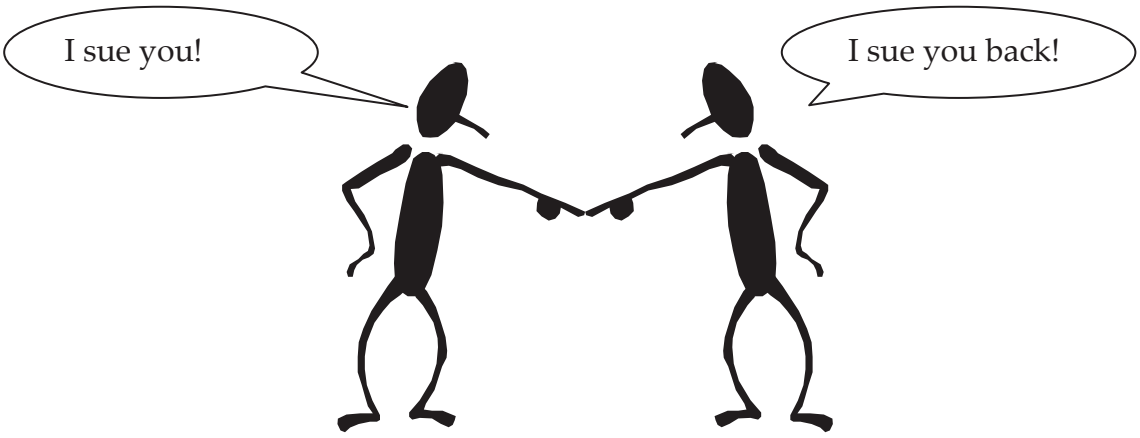
- When evidence is objected to, it is appropriate to rule on the objection by admitting the evidence but pointing out that its weight is to be determined.

- 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.

- 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).

Notes:

COUNTERCLAIM



Rules for Counterclaims

1. Must be filed in clerk's office before time the case is set for trial. (New law requires defendant to pay court costs.)

2. Plaintiff is entitled to continuance if necessary to prepare a defense.

3. May not exceed $5000.

4. Treated just as though you're hearing two cases back-to-back.

5. Requires modification of judgment form.

ENTERING JUDGMENT AND OTHER POST-TRIAL ISSUES

Steps in Entering Judgment:

Notice

Announcement of Decision

Explanation of Ruling

Responding to Questions & Informing Parties of Right to Appeal

Reserving Judgment: For up to 10 days. Magistrate is responsible for mailing parties a copy of the judgment. Should explain appeal procedure before adjourning.

Appealing from a Judgment: A party may give notice of appeal in either of 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 (10 days in summary ejectment actions), or else appeal is dismissed. A party who cannot afford to pay the costs of appeal may be excused by qualifying as indigent.

Effect of a Judgment Pending Appeal: A judgment for money is automatically stayed if party gives notice of appeal. A judgment awarding possession of real or personal property is not automatically stayed, but there is a procedure for posting a stay of execution bond in those cases that delays plaintiff's ability to enforce the judgment.

Enforcing a Judgment: A party who wishes to enforce a judgment is required to wait 10 days (the time allowed for giving notice of appeal) before initiating enforcement procedures. After 10 days, the party may begin enforcement 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. Some magistrates provide a copy of the handout titled "What Happens After Small Claims Court."

Clerical Errors in Judgment: May be corrected at any time, on the judge's own motion. Judge decides what notice to the parties is needed. See Small Claims Law p. 41 for details of procedure.

Motions to Set Aside Judgment under Rule 60(b): Magistrates who have been authorized by the CDCJ may set aside a judgment upon a finding that the judgment resulted from a party's excusable neglect, mistake, or surprise. This usually means the party failed to appear. A magistrate who receives a Rule 60(b) motion should determine a time to hear the motion and give notice to all parties. The moving party must show that he gave the case "such attention as a man of ordinary prudence usually gives to important business affairs." If the moving party is the defendant, she must also allege that she has a meritorious defense to plaintiff's claim. At the conclusion of the hearing, the magistrate should enter a written order setting forth her decision. If the magistrate grants the motion, she should set the case once again for trial.

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. <u>It is very important that you respond to that notice.</u> 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.

Service of Civil Process: 2009 Legislation

The 2009 General Assembly enacted into law two bills governing service of process in small claims cases, each of them in apparent response to the fact that defendants in these cases sometimes have little time to prepare for trial.

Service of Process in Summary Ejectment Actions

The first new law, SL 2009-246, amends GS 42-29, governing service of summons in summary ejectment actions. As many of you know, small claims procedure in these cases is geared toward minimizing the time a landlord must wait for trial on the landlord's claim for possession of rental property. Existing law requires a law enforcement officer who receives a summons for service to mail a copy of the summons and complaint to the tenant "no later than the end of the next business day or as soon as practicable." GS 42-29 goes on to state that the office may attempt to telephone the defendant within five days after summons is issued, to arrange for service. In cases in which tenants are not served in this manner, the law requires the officer—before the end of this five-day period-- to go to the defendant's home to attempt service. S.L. 2009-246 adds to this provision a requirement that the officer's visit occur at least two days prior to trial (excluding legal holidays). If service is not accomplished at the time the officer visits, existing law directs the officer to "affix copies to some conspicuous part of the premises claimed" (service by posting).

This law imposes a requirement on law enforcement officers charged with serving civil process, rather than on magistrates who hear small claims cases. Further, the new law does not address the consequences of non-compliance. As a result, questions have arisen about what *a magistrate* should do when a summary ejectment action appears on the small claims docket and the defendant was served less than two days before trial. The question may come up in any of several contexts. First, the magistrate may call the case and learn that both parties are present in court. Because the General Assembly's intention was to provide tenants with additional time to prepare for trial, it is clear that the magistrate must grant the defendant's request for a continuance, for at least as long as necessary to allow for two days notice. The law provides that in calculating time periods, the first day is not to be counted. Accordingly, if the defendant is served on Monday, the magistrate must grant a defendant's request for a continuance if the trial is held on Tuesday. The case may be heard, however, on Wednesday (two days after service), and a magistrate may choose to grant an even longer continuance if that seems appropriate.

A second question arises on these facts if the tenant does not request a continuance (which is likely to happen in cases in which the tenant is unaware of the new two-day rule). The answer to this question is not specified in the statute. In light of clearly expressed legislative intent, however, the magistrate should, at a minimum, inform the defendant that she or he is entitled to two days notice before being forced to appear in court and defend against the lawsuit. If the tenant expresses a clear affirmative desire to proceed with the hearing, a magistrate may consider that as a valid waiver of the tenant's rights and hear the case that day. In the absence of a knowing waiver, however, I do not believe the magistrate should hear the case, given clear legislative intent to the contrary. If a magistrate hears the case that day after finding waiver by the defendant, the best practice would be to note the waiver in the judgment. By doing this, the magistrate will preserve for the record the fact that the tenant's right to minimum notice was observed.

The next question arises when the plaintiff is present in court, but the defendant is not. If service was made sooner than two days prior to trial, my opinion is that the magistrate should continue

the case on the magistrate's own motion. Given that the purpose of the amendment is to allow adequate time for a defendant to receive notice of an upcoming trial, it is of particular concern that the defendant may not appear for trial *because* of inadequate notice. This is particularly true in cases in which service is accomplished in some substituted manner, such as by handing a copy to defendant's spouse or by posting. In these cases, there is a real possibility that defendant may be completely unaware that a trial is scheduled. Even when service is made directly on defendant, however, the notice may have been inadequate to permit the defendant to arrange to attend court the next morning. Magistrates may want to confer with their clerks about the mechanism for notifying both the clerk's office and the parties when a case is continued for this reason.

A harder question arises when neither party appears for trial. In the typical case, of course, a magistrate dismisses the plaintiff's lawsuit with prejudice for failure to prosecute. But what if the plaintiff has called to inquire about service and has been informed that service was accomplished later than was required by law? A plaintiff might decide that an appearance is unnecessary because the trial is certain to be postponed. One might argue that in this situation the plaintiff had no intention of "failing to prosecute." On the other hand, the justice system has long taken the position that when a case is scheduled for trial, a plaintiff must either appear for trial or seek a continuance. A plaintiff who does neither has no legal right to object if the case is dismissed. (And if a defendant does appear and waives the right to a continuance, a magistrate should strongly consider dismissing the action with prejudice, given the effort the defendant has made to comply with the demands of the summons.) Absent legislative or appellate court guidance, a magistrate is left to consult with colleagues and perhaps the chief district court judge about how such cases should be handled.

Service of Process in Non-Summary Ejectment Small Claims Cases

The second legislative amendment related to service of process in small claims cases also raises questions. S.L. 2009-629 amends GS 7A-214, the statue governing the time within which a small claims action must be heard. That statute provides that small claims actions are to be scheduled for trial no later than 30 days after the complaint is filed. The new law inserts a sentence stating that the magistrate "shall order a continuance" in small claims actions other than summary ejectment actions when service is accomplished less than five days before trial. GS 7A-214 goes on to say that the time set for trial may be changed if all parties agree. The statute concludes with the familiar sentence authorizing a magistrate to grant continuances "for good cause shown."

Again, legislative concern that defendants have adequate time in which to prepare for trial is apparent in this amendment. The law prior to amendment allowed a defendant to be served on Monday afternoon and the trial to be held at 9:00 AM on Tuesday. In this situation, the defendant was left to hope that the plaintiff would agree to a continuance or, failing that, that the magistrate might find such short notice "good cause" for a continuance. In fact, many magistrates might have reasoned that no good cause existed as a matter of law, given that all statutory time limits and procedural rules had been observed. With this background, the General Assembly's desire to guarantee defendants at least five days notice is certainly understandable. The new time limit is consistent with the existing rule applicable to motions filed in district and superior court: GS 1A-1, Rule 6(d) requires that in all such motions, the other party must be given at least 5 days notice before the matter is heard.

The questions that arise with this law relate to the mandatory aspect of the statutory language. When both parties appear for trial and the defendant seeks a continuance, the way is clear: a magistrate is required to grant a continuance. The same is true if the plaintiff appears and the defendant does not; again, the defendant's very absence tends to support the concern that she or he may not have received adequate notice that a trial date was looming. The mandatory language of the statute makes clear that the defendant is not required to ask for a continuance—the "default setting," so to speak, is a continuance whenever the defendant has not received the required notice. The statute does not

indicate how long the continuance should be, but the underlying legislative intent suggests that the continuance should be long enough to allow the defendant at least five days to prepare for trial.

As we discussed in reference to the new law applicable to summary ejectment actions, a more challenging legal question is presented by the situation in which the defendant appears and asks to waive his or her statutory right to a continuance. It is common for parties to a lawsuit to waive various rights in the course of trial, and there is generally no obstacle to them doing so, provided that the waiver is made knowingly. It is easy to imagine that many defendants, aware that they have no defense to the plaintiff's claims, might wish to dispose of the case quickly, rather than be forced to travel twice to the courthouse. Indeed, it is difficult to imagine a good reason for denying defendants the right to make this choice. This question is made difficult only by the mandatory language of the statute: "the magistrate shall order a continuance." When one considers the absurdity of ordering a continuance in the face of objections from--and to the detriment of--both parties, however, it seems reasonable to read this language as requiring a continuance unless waived by the defendant. The same reasoning arguably applies to the situation in which the plaintiff fails to appear and the defendant appears. Because the right to a continuance—and the ability to waive that right—belongs to the defendant, it seems entirely justified to expect plaintiffs to either attend court or risk losing their case in the event the defendant appears and waives continuance.

Once again, the most perplexing aspect of the new law is presented when neither party appears. Should the magistrate dismiss the action with prejudice based on plaintiff's failure to prosecute? On the one hand, it makes little sense to continue a case out of concern for a defendant having adequate time to prepare when the result without the protective amendment would be to dismiss the action entirely—a result likely to be welcomed even more enthusiastically by defendants. On the other hand, the statutory language is mandatory, and the defendant is not present to make a knowing waiver of his or her right to a continuance. It seems likely that different counties—and different magistrates—will adopt different policies about the proper way to handle this situation. Whatever the policy, though, it should be one that is applied consistently, so that all parties are able to make decisions about their actions based on legal consequences that are predictable.

Counting time

A final issue raised by both new laws concerns calculating time. GS 1A-1, Rule 6, sets out the general rule for calculating time in civil matters. That provision states that the first day of the time period is not included, and the last day is included (unless it is a Saturday, Sunday, or legal holiday, in which case the time period runs over to the next day when the courthouse is open and doing business). **In cases in which the time period is less than seven days,** however, Saturdays, Sundays, and legal holidays are not included. The result is that small claims actions, other than those for summary ejectment, may be heard no earlier than one week after service of process (i.e., if service is accomplished on Monday, the case may be heard no sooner than the following Monday). The new law applicable to summary ejectment actions specifically requires that service be accomplished "at least two days prior to the day the defendant is required to appear to answer the complaint, excluding legal holidays." Previous versions of the bill had excluded "weekends and legal holidays", but the reference to "weekends" was deleted from the final bill. The result is an exception to the general rule set out in GS 1A-1, Rule 6, with weekend days counted toward satisfaction of the two-day requirement. Consequently, service on Friday would allow a case to be heard on Monday, since Monday is the third day following service.

Lewandowski/SOG/2009

Caveat and Summary

As we have seen, the proper application of these two amendments is unclear in some situations and likely to remain so until further guidance is provided by the General Assembly and/or the appellate courts. This memo has attempted to set out a rationale in support of one possible resolution of these issues, but whether the appellate courts will answer the questions addressed in the manner as the author necessarily remains uncertain. For purposes of clarity and ease of reference, the author's recommendations are summarized below, but magistrates are as always reminded that the suggestions herein are just that—suggestions—and should not be regarded as dispositive of the questions addressed.

Obviously, the language of the two amendments is not identical, and thus the legal issues presented are somewhat different. Nevertheless, the author's suggestions about how to dispose of cases in which inadequate notice is present are the same, and are as follows:
If both parties appear, the magistrate should continue the case unless the defendant makes a knowing waiver.
If only the plaintiff appears, the magistrate should continue the case.
If only the defendant appears, the magistrate should continue the case unless the defendant makes a knowing waiver. If the defendant waives the right to a continuance, the case should be dismissed for failure to prosecute.
If neither party appears, the author makes no recommendation other than to suggest that the magistrates in each county discuss the question and adopt a consistent policy for responding to these cases.

If you have questions or concerns or would like to discuss the contents of this memo further, please don't hesitate to call or email me:
Dona Lewandowski
(919)966-7288
lewandowski@sog.unc.edu

Lewandowski/SOG/2009

STATE OF NORTH CAROLINA

File No.

_____ County

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

Plaintiff(s)

VERSUS

Defendant(s)

MAGISTRATE SUMMONS

☐ **ALIAS AND PLURIES SUMMONS (ASSESS FEE)**

G.S. 7A-217, -232; 1A-1, Rule 4

Date Original Summons Issued

Date(s) Subsequent Summons(es) Issued

TO:

Name And Address Of Defendant 1

TO:

Name And Address 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*

AOC-CVM-100, Rev. 6/11

(Over)

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*	*Name Of Defendant*
	☐ AM ☐ PM	

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

☐ By leaving a copy of 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*	*Name Of Defendant*
	☐ AM ☐ PM	

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

☐ By leaving a copy of 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 Sheriff (Type Or Print)*
Date Of Return	*County Of Sheriff*

AOC-CVM-100, Side Two, Rev. 6/11

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

STATE OF NORTH CAROLINA

_____ County

File No.	Abstract No.

Judgment Book And Page No.

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

Name Of Plaintiff
VERSUS
Name Of First Defendant
Name Of Second Defendant

NOTICE OF APPEAL TO DISTRICT COURT

G.S. 7A-228, 7A-230

TO THE CLERK OF SUPERIOR COURT:

As the ☐ plaintiff ☐ defendant in the above captioned action, I hereby give written Notice of Appeal on the judgment entered. This Notice is given within ten (10) days after the date the judgment in this action was entered.

☐ I certify that today I have served copies of this Notice to all parties involved in this action.

I understand that I must pay to the Clerk of Superior Court the court costs for appeal within twenty (20) days after the magistrate rendered judgment, unless I am authorized to appeal as an indigent, or my appeal will be dismissed.

If I am the defendant, I also understand that in certain cases if I wish to stay execution of the judgment, I may be required to sign a bond and that the plaintiff may have an execution issued after ten (10) days if I have not signed the required bond.

Also, I demand that this Appeal be tried before a ☐ judge. ☐ jury.

Date Of Entry Of Judgment	Date Of Appeal	Date Costs Paid	Amount Of Court Costs Paid
			$

Signature Of Appealing Party	Signature Of Appealing Party

NOTICE TO THE APPEALING PARTY

NOTICE OF APPEAL. If you did not give Notice of Appeal to the magistrate in open court at the time the judgment was rendered, you may file this written Notice of Appeal with the clerk within ten (10) days after the judgment is entered. You have a right to request a trial by jury. If you do not ask for a jury trial, you will be given a trial by a judge without a jury. You must mail or deliver copies of this form to all of the other parties. If you mail them before filing this form with the Clerk, check the block in the body of the form indicating you have served the parties and fill out the back of the original of this form. If you mail copies after filing this form with the Clerk, you must file a separate certification of service with the Clerk. You must file an answer to the allegation if the complaint is a violation of G.S. 42-63 (criminal activity).G.S. 42-68(3).

MANDATORY ARBITRATION. Many counties have mandatory arbitration programs in which appeals from small claims court are heard by an arbitrator before they go to a district court trial. You will be notified if your case is assigned for mandatory arbitration and, if so, what you must do.

COURT COSTS. Within twenty (20) days after the magistrate's judgment is entered, you MUST PAY to the clerk, in cash, the court costs for appealing the case, or your appeal will be dismissed. If you cannot afford to pay the appeal costs, you may ask the clerk for the form to appeal as an indigent (AOC-G-106). You must file the form to appeal as an indigent within ten (10) days after the judgment was entered.

STOPPING ENFORCEMENT OF JUDGMENT. Summary ejectment: If you are a tenant appealing from a summary ejectment judgment entered against you and you wish to stay on the premises until the appeal is heard, you must SIGN A BOND that you will pay your rent as it becomes due into the Clerk's office; you must PAY IN CASH the amount of rent in arrears as determined by the magistrate; and if the judgment was entered more than five (5) days before the next rental payment is due, you may also have to PAY IN CASH the prorated amount of rent due from the date the judgment was entered until the next rental payment is due. Ask the clerk for the bond form (AOC-CVM-304) to allow you to stay on the premises. If you have not signed this bond and paid the prorated amount of cash within ten (10) days after the judgment was entered, the landlord can ask to have the sheriff remove you from the premises even though the case is being appealed. **Possession of personal property:** If the magistrate's judgment ordered you to return specific personal property to the other party and you wish to continue to hold that property until the appeal is heard, you must sign a bond, signed by at least one surety, that you and the surety will pay any costs and damages if you do not comply with the judgment of the district court. Ask the clerk for the bond form (AOC-CVM-906M). If you have not signed this bond within ten (10) days after the judgment was entered, the other party can ask to have the sheriff take the property from you even though the case is being appealed. **Money judgment:** If a money judgment has been entered against you, you do not need to sign a bond to stop enforcement. The judgment is automatically stayed until the appeal is heard.

NOTICE TO PARTY NOT APPEALING

If the appealing party has not asked for a jury trial and you wish to have a jury rather than a judge without a jury try your case, you must file a written request for a trial by jury with the clerk within ten (10) days after receiving this Notice and, within the same amount of time, you must mail copies of your written request to the other parties. See section on Mandatory Arbitration above.

(Over)

CERTIFICATE OF SERVICE

I certify that a copy of this Notice of Appeal was served by

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Date Mailed/Delivered	*Signature Of Person Serving Notice Of Appeal*
Name And Address Of Person To Whom Mailed/Delivered	*Name Of Person Serving Notice Of Appeal (Type Or Print)*
	Title

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

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.

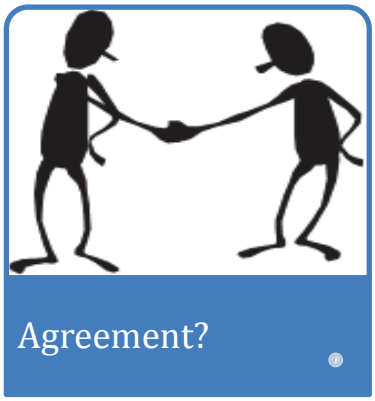
TAB:

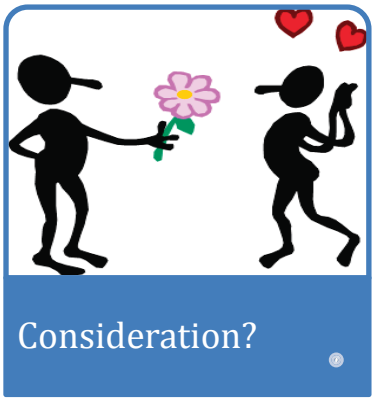
Contracts

HOW TO ANALYZE A CONTRACTS CASE

1. Is there a contract?
2. Who are the parties to the contract?
3. What kind of contract is it?
4. What are its terms?
5. Did defendant breach the contract?
6. What damages is plaintiff entitled to?

IS THERE A CONTRACT?

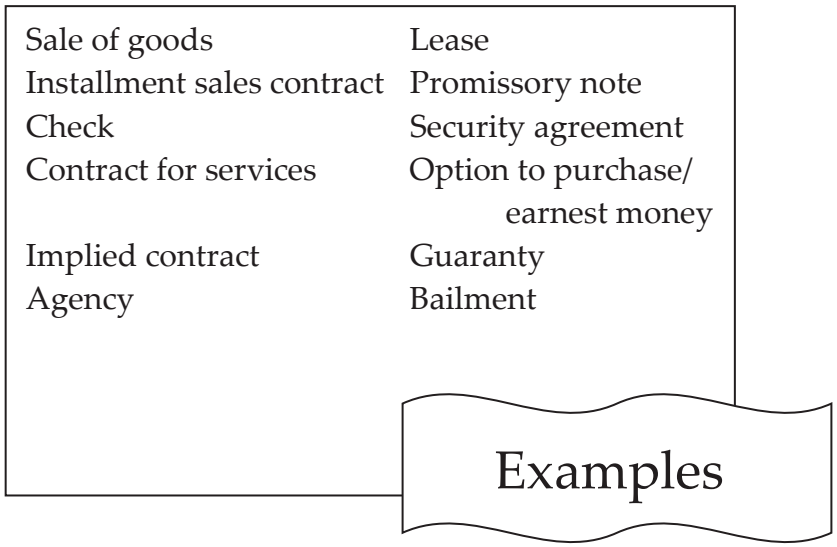




WHO ARE THE PARTIES TO THE CONTRACT?

Usually simple:	WHO agreed?
Complicating matters:	Agency Joint and several liability Corporations Vicarious liability

WHAT KIND OF CONTRACT IS IT?



Why does this matter? Because special rules may apply to particular kinds of contracts.

Example: The law establishes a maximum amount of interest that may be charged by certain kinds of finance companies in connection with loans of certain amounts of money.

WHAT ARE THE TERMS OF THE CONTRACT?

That starting place in any contract action is the agreement of the parties, so an essential first question is: *What exactly did the parties agree to?*

In other words,
what were the terms of the contract?

If the contract is written, determining the terms is generally straightforward.

There are two legal principles that are important to be aware of when a contract is in writing.

- *"The so-called "best evidence" rule . . . requires the exclusion of secondary evidence offered to prove the contents of a document whenever the document itself is available." U.S. Leasing Corp. v. Everett, 88 NC App. 418 (1988).*

- *"The parol evidence rule . . . prohibits the admission of parol evidence to vary, add to, or contradict a written instrument. . . . In substantive terms, the rule is stated as follows: 'Any or all parts of a transaction prior to or contemporaneous with a writing intended to record them finally are superseded and made legally ineffective by the writing.'" Van Harris Realty, Inc. v. Coffey, 41 NC App 112.*

If the contract is oral, the magistrate will need to ask more questions, and the questions must be open-ended (i.e., not hinting at the "right" answer).

It's easy to see that when the evidence in a case consists solely of the contradictory testimony of the plaintiff and defendant, the magistrate's findings of fact will depend on which party s/he finds to be credible. Contrary to what some magistrates think, a judgment for plaintiff is permissible—but not mandatory—even in a "he-said/she-said" if the magistrate determines the plaintiff to be a credible witness. Probably even less well-understood is the fact that a judgment for plaintiff is not required even when the evidence is uncontradicted and establishes a *prima facie* case. If the magistrate finds the plaintiff's credibility to be weak and simply is not persuaded that the facts are PROBABLY as plaintiff says, a judgment for the plaintiff is not appropriate.

Little-known fact

Assessing Credibility

The credibility of a witness or party . . . relates to the accuracy of his or her testimony as well as to its logic, truthfulness, and sincerity.*

In determining the credibility of information supplied by a witness, consider the following factors:

- Motive to lie
- Corroborating evidence
- Demeanor {Careful here!}
- Ability to testify to details
- Person's ability to supply additional details when questioned
- Which version seems more likely

Are there *missing terms*?
Missing terms are sometimes filled in when the context permits a conclusion about what would be reasonable, or customary.
Example: the price term in the implied contract created when you visit the doctor.

Watch Out for Quicksand!

Some types of contracts are subject to special rules, which almost always reflect a policy decision by lawmakers to protect consumers from common commercial practices judged to be unfair. Usually these rules add to, delete, or revise the terms of the parties' agreement. For example, a landlord who contracts for a late fee that exceeds the statutory maximum loses the right to collect the fee at all.

Some of the most frequent "quicksand contracts" are listed below; page numbers refer to Brannon's Small Claims Law.

Breach of warranty (pp. 61-65)
Installment sales contracts (pp. 81-84)
Loans (pp. 90-91, 96-97)
Worthless check (pp. 87-89)
Actions on security agreement (pp. 125-144)
Residential lease agreements (see numerous special provisions in Ch.VI, Landlord-Tenant Law)

WHAT ARE THE DAMAGES?

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 (aka *recission*): putting everything back the way it was

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

Liquidated damages: "a sum which a party to a contract agrees to pay or deposit which he agrees to forfeit if he breaks some promise . . . arrived at by a good-faith effort to estimate in advance the actual damage which would probably ensue from the breach."

Penalty: "a sum which a party similarly agrees to pay or forfeit, . . . but which is fixed, not as a pre-estimate or probable actual damages, but as a punishment, the threat of which is designed to prevent the breach."

McCormick, *Damages* §146 (1935)

A liquidated damages provision is enforceable under North Carolina law when:

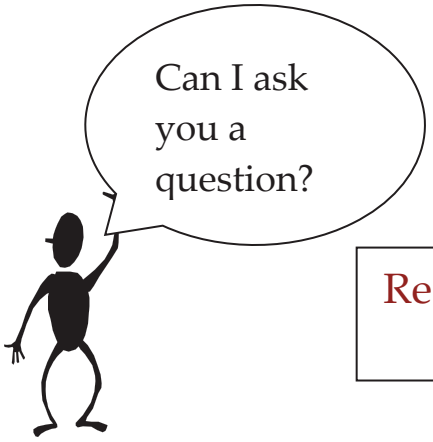
1. damages are speculative or difficult to ascertain, and
2. the amount stipulated is a reasonable estimate of probable damages, OR the amount stipulated is reasonably proportionate to the damages actually caused by the breach.

The party challenging the validity of the provision has the burden of demonstrating that it does not satisfy the requirements for enforceability.

SUMMING UP

Plaintiff in breach of contract case must prove each of the following essential elements by the greater weight of the evidence:

___ There was a contract (aka agreement, bargain, bargained-for exchange)
___ The defendant and I were the parties to the contract.
___ The terms of the contract were A, B, C, and D.
___ Defendant breached term A as follows: . . . .
___ The breach by defendant resulted in the my being damaged in this particular way.
___ The monetary amount of my damages is X, and here's how I calculated X



Responding to Questions about Small Claims and Contracts

Always, always, always be careful to distinguish between providing information and providing advice. Most people agree that interacting with the public and providing information is an important part of your job. Giving legal advice is NEVER part of your job. That being said, here's the scoop on questions often asked, and some suggested answers:

"So-and-so broke his contract with me—can I sue him for that?" Or the flip side: *"So-and-so says I broke our contract—can he sue me for that?"*

_____
_____
_____
_____
___

"Does a contract have to be in writing to be enforceable?"

_____
_____
_____
_____
___

"I sold my neighbor my bike, but he never paid me for it. Can I just go get my bike back?

_____
_____
_____
_____
___

"So-and-so's threatening to sue me for money we owe, but I didn't sign the contract—my wife did. He can't sue me, can he?"

_____
_____
_____
_____
___

"I bought a used car from this guy, and it broke going out the parking lot. He says he doesn't have to give me my money back because he sold it "as-is." Is that right?"

_____
_____
_____
_____
___

"I sold a kid a car. He said he was 19, but it turns out he was just 17. He wrecked the car, and now he says he wants his money back. Can he do that?"

_____
_____
_____
_____
___

"My ex-husband and I borrowed some money to buy some furniture. I paid off my half, but he didn't pay anything, and the furniture company's after me to pay his part, too. I told 'em where to find him, but they just keep coming after me. How can I make them stop bothering me and go after him?"

_____
_____
_____
_____
___

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.

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 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)

TAB:

Torts

A tort is a civil wrong.

Intentional

_____

_____

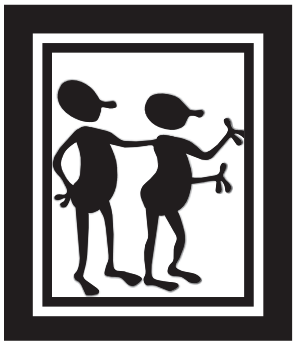
_____

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.

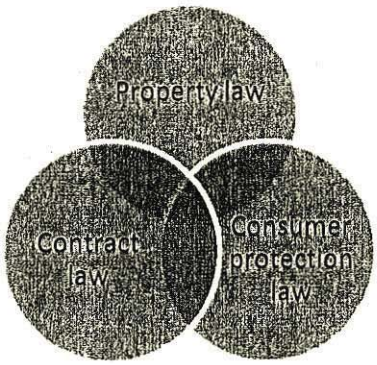
TAB:

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.



Different rules apply (sometimes) to commercial leases and residential leases.

NOTES

Differences Between Commercial and Residential Leases

Issue	Residential Lease	Commercial Lease
Self-help eviction		
Late fee		
Administrative fee		
Security deposit		
Duty to provide fit and habitable premises		
Duty to repair		
Tenant's property left on premises after eviction		
Retaliatory eviction		

Exercise: Pretend you're a landlord.

You rented the garage apartment at your home to Tammy Tenant using a lease you downloaded off the internet. Tammy is supposed to pay $750/month, due on the first of each month. She didn't pay on January 1, and she's told you that she lost her job and isn't going to have the money for February either. You feel sorry for her, but your mortgage payment depends on her rent payment, so if she can't pay, she's going to have to leave. When you told her this, she said she has nowhere to go, so you've decided to take her to court to get her out and to get your rent.

The first step is to fill out the complaint form. The clerk gave you the right form, but says she can't answer any questions about how to fill it out. Do the best you can.

NOTES

The unique remedy of summary ejectment is available only for four specific breaches

- Failure to pay rent
- Holding over
- Breach of a lease condition for which re-entry is specified.
- Criminal activity

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).**

Exercise: Find the forfeiture clause.

_____

_____

_____

Next, find the trigger.

_____

_____

_____

Finally, find provisions addressing required procedure for termination of lease.

_____

_____

_____

The landlord must demonstrate that the tenant's breach triggered the forfeiture clause, and that the landlord (strictly) followed the procedure for termination set out in the lease.

What if there is no forfeiture clause? If the breach is failure to pay rent, the landlord may be able to rely on that ground to regain possession. This ground is only available if there is no forfeiture clause in the lease. Because the purpose of the law is to avoid a situation in which a tenant is able to occupy rental property for a prolonged period without paying rent, the landlord must meet an additional requirement: 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.

Holding over ("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.

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.

Steps in Resolving Summary Ejectment Cases:

Step 1: Check for service.

No service: Is defendant present?

Service by posting: tell LL only judgment available is possession (unless defendant has made voluntary appearance). If complaint contains request for $$, ask if LL prefers to continue case to try for personal service.

Step 2: Ask for copy of lease.

Step 3: Establish existence of LL-T relationship between the parties.

Step 4 (could also reverse, do step 5 next, depending on information obtained thus far):

Is there a forfeiture clause in the lease? If so,

Identify the conduct that allegedly triggered the forfeiture clause (this will often be either failure to pay rent or criminal activity);

Identify any lease provision that controls conduct required by LL (for example, written notice to tenant of intent to enforce forfeiture clause);

Consider possible defenses: Waiver? Unconscionability?

Step 5: Determine what kind of lease it is.

Lease for definite time: determine date it ended. Does the lease contain rules about what should happen when lease ends? Possible defense: new lease created by conduct.

Lease for repeating period (example: month-to-month lease): Terminated by notice of intent to terminate. Questions: What does lease say about how termination must occur? If lease is silent, what evidence is there that LL gave statutory notice of intent to terminate?

Step 6: If termination is not available on above grounds, consider whether LL is entitled to prevail based on failure to pay rent. This is available only in cases in which the lease does not contain an applicable forfeiture clause. What evidence is there that LL demanded rent and waited 10 days before filing complaint? Note defense: tender.

Step 7: If LL is seeking money damages, calculate rent up to date of judgment. Be sure to note undisputed amount of rent on judgment form. Consider other amounts if sought: damage to property, late fees, administrative fees, attorney fees. Remember these have legal restrictions.

Step 8: Hand parties handout describing what happens next. If LL won, give both parties handout about tenant's rights with regard to property. Tell LL no writ of possession is available until 10-day appeal period has expired. Tell tenant that stay of execution is available in case of appeal, and that clerk can supply details about what the requirements are for obtaining a stay.

ACTIVITY: LISTENING FOR ESSENTIAL ELEMENTS IN A SUMMARY EJECTMENT ACTION

FAILURE TO PAY RENT

Plaintiff/LL must prove:

___ existence of a landlord-tenant relationship;
___ terms of the lease related to obligation to pay rent;
___ lease does NOT contain forfeiture clause;
___ LL demanded that tenant pay rent on certain date;
___ LL waited at least 10 days after demand to file this action;
___ tenant has not yet paid the full amount due.

Most common defenses: failure to make proper demand and wait ten days, tender

HOLDING OVER

Plaintiff/LL must prove:

___ existence of a landlord-tenant relationship;
___ terms of lease related to duration;
___ if lease is not for a fixed term, that proper notice was given of intent to terminate.

Most common defenses: waiver, improper notice.

BREACH OF A LEASE CONDITION

Plaintiff/LL must prove:

___ existence of a landlord-tenant relationship;
___ lease contains a forfeiture clause;
___ tenant breached lease condition for which forfeiture is specified;
___ LL followed procedure set out in lease for declaring forfeiture and terminating the lease.

Most common defenses: failure to follow proper procedure, waiver

CRIMINAL ACTIVITY

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;
- Tenant, member of household, or guest engaged in criminal activity on the premises or in immediate vicinity;
- The tenant gave permission for a barred person to return to property;
- Where person barred from unit re-entered unit, tenant failed to notify LEO or LL.

Defense: T did not know or have reason to know of #1, #2, or #3.
T took all reasonable steps to prevent criminal activity.
Eviction would create serious injustice.*

Questions

"My tenant moved out and left a bunch of stuff—looks like garbage mostly. Can I go in and clean it out?"
Answer: _____

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"My tenant maybe moved out—I haven't seen them around for a while. Can I just go in and look around to be sure they didn't leave the stove on or nothing like that?"
Answer: _____

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"My landlord turned off the power. Can he do that?"
Answer: _____

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"I rent some property to this guy. The lease says he's not allowed to sub-lease, but he's moved out, and the people in it now say they leased it from him. Can I just tell them they're trespassing?"
Answer: _____

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"I let this woman move a mobile home onto some land I have—I let her rent the space. She's long gone, but I still have this crappy trailer sitting on my property. How can I get rid of it?
Answer: _____

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"My landlord is refusing to fix anything—the air conditioning's broken, and the washing machine doesn't work. Can I just stop paying rent until he fixes things? If I go ahead and pay to have them fixed, does he have to reimburse me? Could I take it out of my rent money?"

Answer: _____

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"I let a family member move in with me for a while, but we're not getting along and I'd like him to move on. He's refusing to move out—how I can I make him leave?"
Answer: _____

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"My tenant is driving me and all my neighbors crazy. He plays loud music all night long, and has these parties with people staggering around drunk and peeing in the bushes. Can I evict him?"
Answer: _____

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"I have a rent-to-own contract with this guy, and he's stopped paying rent. Should I go criminal, or is that a civil kind of thing?"
Answer: _____

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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, re-wrote the common law to provide that landlords must maintain residential rental premises to be fit to live in, and to make clear that a tenant's right to such housing cannot be waived. Prior law had followed the rule of *caveat emptor* ("let the buyer beware").

What Does the Law Provide?

The law imposes 8 distinct obligations on a landlord:

1. He must comply with building and housing codes.
2. He must keep premises in a fit and habitable condition.
3. He must keep common areas in safe condition
4. He must maintain and promptly repair electrical, plumbing, heating, and other supplied facilities and appliances.
5. He must install a smoke detector and keep it in good repair.
6. He must install a carbon monoxide detector and keep it in good repair.
7. He must notify the tenant if water the landlord charges to provide exceeds a certain contaminant level.
8. He 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.

There is something a little confusing about this: some of these overlap. Rental premises might, for example, have a broken furnace that violates obligation #4 above, but the fact that it's below-freezing in the house also means the premises are not habitable. The reason it matters is that different rules apply as far as the notice that's required. Let's look at that more closely.

Notice Requirements

Only one of the obligations has a notice requirement written specifically into the statute: a landlord's obligations with regard to electrical, plumbing, and other "facilities and appliances" arise only if he has written notice that repair or maintenance is necessary. After receiving notice, the landlord is entitled to a "reasonable time" to make repairs. The exception to this requirement is when there is an emergency. If the shower handle breaks off and water is pouring out of the tub onto the floor, the law will not require the tenant to notify the landlord in writing and then wait a few days before imposing an obligation on the landlord to make a repair.

A common-sense rule applies to the other obligations: the tenant must give whatever notice is necessary to reasonably permit the landlord to fulfill his obligations. If there's a leak in the roof, for example, the tenant must notify the landlord before it's reasonable to expect the landlord to repair it. In that case, however, oral notice is acceptable. It may be that in some cases, no notice at all is required, when the evidence demonstrates that the landlord actually knew of the problem (for example, there were holes in the floor before the tenant moved in).

Waiver

The RRAA is a consumer-protection statute. Like other consumer protection legislation, the rights of the parties are not created by contract—or agreement—in these cases. Instead, the obligations of the landlord are imposed by law—even if the contract says nothing about them, **or even if the lease says the tenant waives those rights.** The statute is clear that a tenant doesn't waive his rights by signing a lease providing for waiver; nor does a tenant waive his rights to fit and habitable housing by agreeing to rent a place with obvious defects, even if the landlord specifically tells him about them. If a tenant rents a house without air conditioning, that's fine. But if a tenant rents a house with air conditioning and then the air conditioning tears up, the landlord has a statutory obligation to repair the air conditioning, even if the lease says otherwise.

Sometimes a landlord will say, "I know the house wasn't up to code, but that's why the rent was so low. I agreed to let him live in the house for low rent, and he agreed that he would do some work on the house for me." The RRAA anticipated this, and sets out the following rule: An agreement between the landlord and tenant that the tenant will work on the house and be paid by the landlord is fine, so long as

the agreement is entered into AFTER the lease agreement is complete, and the arrangement for payment by the landlord for the tenant's work is separate from the rent payment.

Sometimes a landlord will say, "The reason the house isn't up to code is that the tenant himself keeps damaging it." This allegation, if true, is a valid defense to the landlord's violation of the Act. The tenant also has obligations under the Act, including refraining from deliberately or negligently damaging any part of the premises.

Procedure:

The Act states that a tenant may enforce his rights under the Act 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. If he lived in the property and paid no rent, for example, he is not entitled to also recover money damages.

How are damages proven? No expert testimony is required. Witnesses may offer their opinon about the FRV of property, and the magistrate may also rely on his own experience in determining reasonable damages.

Are punitive damages allowed? No, punitive damages are not authorized in actions for breach of contract. Treble damages under G.S. 75-1.1 (prohibiting unfair or deceptive acts or practices affecting commerce) are available, however, if the tenant is able to demonstrate the essential elements of that claim.

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Retaliatory Eviction

G.S. 42-37.1 to 42-37.3: North Carolina has a strong public policy protecting tenants who exercise their rights to safe housing. When a landlord files an action for summary ejectment, a tenant may *defend* against ejectment by proving by the *greater weight of the evidence* that the landlord's action is *substantially in response* to one of several listed events that has occurred within the last 12 months.

What are those events?

1. Asking landlord to make repairs;
2. Complaining to government agency about violation of law;
3. Formal complaint lodged against landlord by government agency;
4. Attempting to exercise legal rights under law or as provided in lease;
5. Organizing or participating in tenants' rights organization.

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Remedy

If a tenant successfully demonstrates retaliatory eviction, the magistrate must deny the landlord's request for possession (although the landlord is entitled to back rent in any case). Furthermore, a tenant may have an independent action for an unfair or deceptive act or practice (with treble damages) under G.S. 75-1.1.

Note that this law is based on public policy. It won't surprise you, then, to learn that the statute specifically provides that any attempted waiver by the tenant of his rights under this law is void. What's the obvious concern here? That a tenant will seek the protection of this law without really deserving it—in bad faith. If my lease has a forfeiture clause related to keep pets, and I get caught with my dog when the landlord drops by, I might quickly begin to organize a tenant's rights organization.

That way, I think, if the landlord tries to evict me, I'll be able to claim it was because of my organizational efforts, and not the real reason—that I have a dog.

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Rebuttal by the Landlord

When a tenant defends in an action for summary ejectment by asserting that the landlord is actually retaliating against him or her for an action protected under the statute, the landlord may rebut that argument by showing one of the following things:

1. Tenant failed to pay rent or otherwise broke the lease in a manner that allows eviction, and the violation of the lease is the reason for the eviction.
2. Tenant is holding over after termination of lease for definite period with no option to renew.
3. The violations the tenant complained about were caused by willful or negligent act of tenant.
4. Displacement of tenant is required in order to comply with housing code.
5. Landlord had given tenant a good-faith notice of termination before protected conduct occurred
6. Landlord plans in good faith to do one of the following after terminating tenancy:
    1) Live there himself;
    2) Demolish the premises, or make major alterations;
    3) Terminate use of premises as a dwelling for at least 6 months.

Self-Help Eviction

Back in the old days, a landlord who wished to evict a tenant simply changed the locks, or put their property out on the sidewalk. In 1981 the North Carolina General Assembly put G.S. 42-25.6 on the statute books:

> "It is the public policy of the State of North Carolina, in order to maintain the public peace, that a residential tenant shall be evicted, dispossessed, or otherwise constructively or actually removed from his dwelling unit only in accordance with the procedure prescribed in [the remaining provisions of the statute]."

--Note: This rule applies only to *residential tenancies*. Self-help eviction is perfectly permissible in commercial lease situations.
--Note also the reference to "constructively . . . removed." The law applies not only to actual removal of a tenant from rental premises, but also to actions taken by a landlord to make continued occupancy unpleasant: turning off utilities would be the most common example.

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The General Assembly took aim at another common practice in 1981:

> "It is the public policy of the State of North Carolina that distress and distraint are prohibited, and that landlords of residential rental property shall have rights concerning the personal property of their residential tenants only in accordance with [other provisions of the statute]."

This law put an end to the practice of some landlords of either seizing property owned by the tenant to compensate for unpaid rent or refusing to release a tenant's property until that tenant paid past-due rent. As you well know (since you get hundreds of questions a year about it), landlords are now required to comply with specific legal requirements in dealing with property left behind by tenants.

As is typical of laws based on public policy, the statute provides that any attempted waiver of the legal prohibition against self-help eviction is void.

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Tenant's Remedies

What remedies does a tenant have when a landlord violates the prohibition against self-help eviction? The law provides that a tenant in this circumstance is

> "entitled to recover possession or to terminate his lease and the . . . landlord. . . . shall be liable to the tenant for damages caused by the tenant's removal or attempted removal."

Further, if a landlord takes possession of a tenant's personal property, or interferes with a tenant's access to his personal property, the statute provides that a tenant is entitled to recover possession of the property, or compensation for its value (as in an action for conversion). In addition, a landlord is liable for actual damages caused by his wrongful interference.

In addition to the actions authorized by this statute, our courts have held that a tenant may bring an action for unfair or deceptive acts or practices when a landlord violates these provisions.

Other Tenants' Rights Statutes

Security deposit (pp. 189-190): In residential leases, maximum security deposit established by statute (month-to-month maximum is 1 ½ months rent). Specifies permitted uses of security deposit, requires

accounting by landlord with 30 (extension to 60 possible) days. Failure to do so, if willful, results in loss of deposit altogether in addition to responsibility for tenant's attorney fees.

Late fees (pp. 169-170): In residential leases, maximum established by statute (GS 42-46). Fee must be contained in written contract, payable only if rent is more than 5 days late. Violation of statute results in loss of fee.

Administrative fees (Small Claims Law is out-of-date on this point): GS 42-46 provides for specific fees for various stages of litigation, which will be an issue before a magistrate infrequently. Any fees associated with litigation not in compliance with statute are void as against public policy.

North Carolina Residential Lease Agreement

THIS LEASE AGREEMENT (hereinafter referred to as the "Agreement") made and entered into this 1st day of Jan, 2011, by and between Steve Earl Properties Inc. (hereinafter referred to as "Landlord") and Townie Van Zandt (hereinafter referred to as "Tenant").

W I T N E S S E T H :

WHEREAS, Landlord is the fee owner of certain real property being, lying and situated in Apple County, North Carolina, such real property having a street address of 4107 Mockingbird Lane, Granny Smith, NC (hereinafter referred to as the "Premises").

WHEREAS, Landlord desires to lease the Premises to Tenant upon the terms and conditions as contained herein; and

WHEREAS, Tenant desires to lease the Premises from Landlord on the terms and conditions as contained herein;

NOW, THEREFORE, for and in consideration of the covenants and obligations contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. **TERM.** Landlord leases to Tenant and Tenant leases from Landlord the above described Premises together with any and all appurtenances thereto, for a term of 1 year, such term beginning on Jan. 1, 2011 and ending at 11:59 PM on December, 31, 2011.

2. **RENT.** The total rent for the term hereof is the sum of $8,640 DOLLARS payable on the 1st day of each month of the term, in equal installments of $720 DOLLARS, first and last installments to be paid upon the due execution of this Agreement, the second installment to be paid on Feb. 1, 2011. All such payments shall be made to Landlord at Landlord's address as set forth in the preamble to this Agreement on or before the due date and without demand.

3. **DAMAGE DEPOSIT.** Upon the due execution of this Agreement, Tenant shall deposit with Landlord the sum of $1000 DOLLARS receipt of which is hereby acknowledged by Landlord, as security for any damage caused to the Premises during the term hereof. Such deposit shall be returned to Tenant, without interest, and less any set off for damages to the Premises upon the termination of this Agreement.

4. **USE OF PREMISES.** The Premises shall be used and occupied by Tenant and Tenant's immediate family, exclusively, as a private single family dwelling, and no part of the Premises shall be used at any time during the term of this Agreement by Tenant for the purpose of carrying on any business, profession, or trade of any kind, or for any purpose other than as a private single family dwelling. Tenant shall not allow any other person, other than Tenant's immediate family or transient relatives and friends who are guests of Tenant, to

use or occupy the Premises without first obtaining Landlord's written consent to such use. Tenant shall comply with any and all laws, ordinances, rules and orders of any and all governmental or quasi-governmental authorities affecting the cleanliness, use, occupancy and preservation of the Premises.

5. **CONDITION OF PREMISES.** Tenant stipulates, represents and warrants that Tenant has examined the Premises, and that they are at the time of this Lease in good order, repair, and in a safe, clean and tenantable condition.

6. **ASSIGNMENT AND SUB-LETTING.** Tenant shall not assign this Agreement, or sub-let or grant any license to use the Premises or any part thereof without the prior written consent of Landlord. A consent by Landlord to one such assignment, sub-letting or license shall not be deemed to be a consent to any subsequent assignment, sub-letting or license. An assignment, sub-letting or license without the prior written consent of Landlord or an assignment or sub-letting by operation of law shall be absolutely null and void and shall, at Landlord's option, terminate this Agreement.

7. **ALTERATIONS AND IMPROVEMENTS.** Tenant shall make no alterations to the buildings or improvements on the Premises or construct any building or make any other improvements on the Premises without the prior written consent of Landlord. Any and all alterations, changes, and/or improvements built, constructed or placed on the Premises by Tenant shall, unless otherwise provided by written agreement between Landlord and Tenant, be and become the property of Landlord and remain on the Premises at the expiration or earlier termination of this Agreement.

8. **NON-DELIVERY OF POSSESSION.** In the event Landlord cannot deliver possession of the Premises to Tenant upon the commencement of the Lease term, through no fault of Landlord or its agents, then Landlord or its agents shall have no liability, but the rental herein provided shall abate until possession is given. Landlord or its agents shall have thirty (30) days in which to give possession, and if possession is tendered within such time, Tenant agrees to accept the demised Premises and pay the rental herein provided from that date. In the event possession cannot be delivered within such time, through no fault of Landlord or its agents, then this Agreement and all rights hereunder shall terminate.

9. **HAZARDOUS MATERIALS.** Tenant shall not keep on the Premises any item of a dangerous, flammable or explosive character that might unreasonably increase the danger of fire or explosion on the Premises or that might be considered hazardous or extra hazardous by any responsible insurance company.

10. **UTILITIES.** Tenant shall be responsible for arranging for and paying for all utility services required on the Premises.

11. **MAINTENANCE AND REPAIR; RULES.** Tenant will, at its sole expense, keep and maintain the Premises and appurtenances in good and sanitary condition and repair during the term of this Agreement and any renewal thereof. Without limiting the generality of the foregoing, Tenant shall:

(a) Not obstruct the driveways, sidewalks, courts, entry ways, stairs and/or halls, which shall be used for the purposes of ingress and egress only;

(b) Keep all windows, glass, window coverings, doors, locks and hardware in good, clean order and repair;

(c) Not obstruct or cover the windows or doors;

(d) Not leave windows or doors in an open position during any inclement weather;

(e) Not hang any laundry, clothing, sheets, etc. from any window, rail, porch or balcony nor air or dry any of same within any yard area or space;

(f) Not cause or permit any locks or hooks to be placed upon any door or window without the prior written consent of Landlord;

(g) Keep all air conditioning filters clean and free from dirt;

(h) Keep all lavatories, sinks, toilets, and all other water and plumbing apparatus in good order and repair and shall use same only for the purposes for which they were constructed. Tenant shall not allow any sweepings, rubbish, sand, rags, ashes or other substances to be thrown or deposited therein. Any damage to any such apparatus and the cost of clearing stopped plumbing resulting from misuse shall be borne by Tenant;

(i) And Tenant's family and guests shall at all times maintain order in the Premises and at all places on the Premises, and shall not make or permit any loud or improper noises, or otherwise disturb other residents;

(j) Keep all radios, television sets, stereos, phonographs, etc., turned down to a level of sound that does not annoy or interfere with other residents;

(k) Deposit all trash, garbage, rubbish or refuse in the locations provided therefor and shall not allow any trash, garbage, rubbish or refuse to be deposited or permitted to stand on the exterior of any building or within the common elements;

(l) Abide by and be bound by any and all rules and regulations affecting the Premises or the common area appurtenant thereto which may be adopted or promulgated by the Condominium or Homeowners' Association having control over them.

12. **DAMAGE TO PREMISES.** In the event the Premises are destroyed or rendered wholly uninhabitable by fire, storm, earthquake, or other casualty not caused by the negligence of Tenant, this Agreement shall terminate from such time except for the purpose of enforcing rights that may have then accrued hereunder. The rental provided for herein shall then be accounted for by and between Landlord and Tenant up to the time of such injury or destruction of the Premises, Tenant paying rentals up to such date and Landlord refunding rentals collected beyond such date. Should a portion of the Premises thereby be rendered uninhabitable, the Landlord shall have the option of either repairing such injured or damaged portion or terminating this Lease. In the event that Landlord exercises its right to repair such uninhabitable portion, the rental shall abate in the proportion that the injured parts bears to the whole Premises, and such part so injured shall be restored by Landlord as speedily as practicable, after which the full rent shall recommence and the Agreement continue according to its terms.

13. **INSPECTION OF PREMISES.** Landlord and Landlord's agents shall have the right at all reasonable times during the term of this Agreement and any renewal thereof to enter the

Premises for the purpose of inspecting the Premises and all buildings and improvements thereon. And for the purposes of making any repairs, additions or alterations as may be deemed appropriate by Landlord for the preservation of the Premises or the building. Landlord and its agents shall further have the right to exhibit the Premises and to display the usual "for sale", "for rent" or "vacancy" signs on the Premises at any time within forty-five (45) days before the expiration of this Lease. The right of entry shall likewise exist for the purpose of removing placards, signs, fixtures, alterations or additions, that do not conform to this Agreement or to any restrictions, rules or regulations affecting the Premises.

14. **SUBORDINATION OF LEASE.** This Agreement and Tenant's interest hereunder are and shall be subordinate, junior and inferior to any and all mortgages, liens or encumbrances now or hereafter placed on the Premises by Landlord, all advances made under any such mortgages, liens or encumbrances (including, but not limited to, future advances), the interest payable on such mortgages, liens or encumbrances and any and all renewals, extensions or modifications of such mortgages, liens or encumbrances.

15. **TENANT'S HOLD OVER.** If Tenant remains in possession of the Premises with the consent of Landlord after the natural expiration of this Agreement, a new tenancy from month-to-month shall be created between Landlord and Tenant which shall be subject to all of the terms and conditions hereof except that rent shall then be due and owing at whatever amount is established at the sole discretion of the landlord upon written notice to the tenant and except that such tenancy shall be terminable upon thirty (30) days written notice served by either party

16. **SURRENDER OF PREMISES.** Upon the expiration of the term hereof, Tenant shall surrender the Premises in as good a state and condition as they were at the commencement of this Agreement, reasonable use and wear and tear thereof and damages by the elements excepted.

17. **ANIMALS.** Tenant shall be entitled to keep no more than two (2) domestic dogs, cats or birds; however, at such time as Tenant shall actually keep any such animal on the Premises, Tenant shall pay to Landlord a pet deposit of $150 DOLLARS which shall be non-refundable and shall be used upon the termination or expiration of this Agreement for the purposes of cleaning the carpets of the building.

18. **QUIET ENJOYMENT.** Tenant, upon payment of all of the sums referred to herein as being payable by Tenant and Tenant's performance of all Tenant's agreements contained herein and Tenant's observance of all rules and regulations, shall and may peacefully and quietly have, hold and enjoy said Premises for the term hereof.

19. **INDEMNIFICATION.** Landlord shall not be liable for any damage or injury of or to the Tenant, Tenant's family, guests, invitees, agents or employees or to any person entering the Premises or the building of which the Premises are a part or to goods or equipment, or in the structure or equipment of the structure of which the Premises are a part, and Tenant

hereby agrees to indemnify, defend and hold Landlord harmless from any and all claims or assertions of every kind and nature.

22. **LATE CHARGE.** In the event that any payment required to be paid by Tenant hereunder is not made within five (5) calendar days of when due, Tenant shall pay to Landlord, in addition to such payment or other charges due hereunder, a "late fee" in the amount of $108 DOLLARS.

24. **ABANDONMENT.** If at any time during the term of this Agreement Tenant abandons the Premises or any part thereof, Landlord may, at Landlord's option, obtain possession of the Premises in the manner provided by law, and without becoming liable to Tenant for damages or for any payment of any kind whatever. Landlord may, at Landlord's discretion, as agent for Tenant, relet the Premises, or any part thereof, for the whole or any part thereof, for the whole or any part of the then unexpired term, and may receive and collect all rent payable by virtue of such reletting, and, at Landlord's option, hold Tenant liable for any difference between the rent that would have been payable under this Agreement during the balance of the unexpired term, if this Agreement had continued in force, and the net rent for such period realized by Landlord by means of such reletting. If Landlord's right of reentry is exercised following abandonment of the Premises by Tenant, then Landlord shall consider any personal property belonging to Tenant and left on the Premises to also have been abandoned, in which case Landlord may dispose of all such personal property in any manner Landlord shall deem proper and Landlord is hereby relieved of all liability for doing so.
25. **ATTORNEYS' FEES.** Should it become necessary for Landlord to employ an attorney to enforce any of the conditions or covenants hereof, including the collection of rentals or gaining possession of the Premises, Tenant agrees to pay all expenses so incurred, including a reasonable attorneys' fee.
26. **RECORDING OF AGREEMENT.** Tenant shall not record this Agreement on the Public Records of any public office. In the event that Tenant shall record this Agreement, this Agreement shall, at Landlord's option, terminate immediately and Landlord shall be entitled to all rights and remedies that it has at law or in equity.

25. **GOVERNING LAW.** This Agreement shall be governed, construed and interpreted by, through and under the Laws of the State of North Carolina.

26. **SEVERABILITY.** If any provision of this Agreement or the application thereof shall, for any reason and to any extent, be invalid or unenforceable, neither the remainder of this Agreement nor the application of the provision to other persons, entities or circumstances shall be affected thereby, but instead shall be enforced to the maximum extent permitted by law.

27. **BINDING EFFECT.** The covenants, obligations and conditions herein contained shall be binding on and inure to the benefit of the heirs, legal representatives, and assigns of the parties hereto.

28. **DESCRIPTIVE HEADINGS.** The descriptive headings used herein are for convenience of reference only and they are not intended to have any effect whatsoever in determining the rights or obligations of the Landlord or Tenant.

29. **CONSTRUCTION.** The pronouns used herein shall include, where appropriate, either gender or both, singular and plural.

30. **NON-WAIVER.** No indulgence, waiver, election or non-election by Landlord under this Agreement shall affect Tenant's duties and liabilities hereunder.

MODIFICATION. The parties hereby agree that this document contains the entire agreement between the parties and this Agreement shall not be modified, changed, altered or amended in any way except through a written amendment signed by all of the parties hereto.

LANDLORD: Sign: [signature]

Print: [illegible] Date: [illegible]

TENANT: Sign: Townes Van Zandt

Print: TOWNES VAN ZANDT Date: 1/1/2011

File No.

COMPLAINT IN SUMMARY EJECTMENT

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

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 Or Agent

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 entered into possession of premises described below as a lessee of plaintiff.

Description Of Premises (Include Location)			☐ Conventional ☐ Public Housing ☐ Section 8
Rate Of Rent $ per ☐ Month ☐ Week	Date Rent Due	Date Lease Ended	Type Of Lease ☐ 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.

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

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:

Description Of Any Property Damage

Amount Of Damage (If Known)	Amount Of Rent Past Due	Total Amount Due
$	$	$

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.

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.

Date	Name Of Agent (Type Or Print)	Signature Of Agent

AOC-CVM-201, Rev. 9/13

(Over)

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 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 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 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.
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 PLAINTIFF must appear before the magistrate to prove his/her claim.
8. 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 appear before the magistrate to assert the defendant’s defense.
9. 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.
10. 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.
11. 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 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.
12. 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.
13. 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. After seven (7) days, the landlord may sell, throw away or dispose of said property. 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.
14. This form is supplied in order to expedite the handling of small claims. It is designed to cover the most common claims.
15. **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-201, Side Two, Rev. 9/13

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

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.

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

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	*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 $ 0.00	*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. 2/06

OUTLINE ON RIGHTS REGARDING TENANT'S PROPERTY

RESIDENTIAL LEASES: PROPERTY OTHER THAN MOBILE HOME AND CONTENTS.

A landlord has no authority to do anything with a tenant's property until the landlord has brought a summary ejectment action, won a judgment for possession, and had the sheriff execute a writ of possession to enforce the judgment. In 2013 the General Assembly changed the law to require the sheriff to execute a writ of possession within five days of receiving it.

- The need for the landlord to deal with property remaining will arise only if the landlord selects the padlocking method of execution.

After the sheriff padlocks the premises under a writ of possession, the landlord must hold property for seven days and then may dispose of any items of personal property remaining on the premises.

- During the seven-day period the landlord may remove the property and store it or may leave the property on the premises.

- If the tenant requests the property during that seven-day period, the landlord must release the property to the tenant during regular business hours at an agreed upon time.

If the landlord decides to sell the property, the landlord must give written notice to the tenant by first-class mail to the tenant's last known address at least seven days before the date of the sale.

- The notice must indicate when and where the sale will occur and how surplus can be claimed by tenant and what happens to it if not claimed.

- The tenant is entitled to return of the property, upon request, any time before the day of the sale.

- The statute does not set out any procedure for how the landlord must sell the property or what kind, if any, advertising is required. (It is unclear whether

the court would impose some reasonableness standard on the manner of sale.)

- The landlord may apply the proceeds of sale to unpaid rent, other damages, storage fees, and sale costs.

- Any surplus must be disbursed to the tenant, upon request, within seven days of the sale.

- If not requested by the tenant within seven days of the sale, the landlord must give the surplus proceeds to the county government of the county in which the real property is located.

If the total value all of the personal property left on the premises *is less than $500* (increased from $100 by the General Assembly in 2012), the property is considered abandoned five days after execution of a writ of possession. At that time the landlord may throw away or dispose of the property.

- If the tenant requests the property before the expiration of the five-day period, the landlord must release possession to the tenant during regular business hours or at a time agreed upon.

If a tenant abandons personal property with a total *value of $750 or less* (increased from $500 by the General Assembly in 2012), or fails to remove such property at the time of execution of a writ of possession, the landlord may immediately remove the property and deliver it to a nonprofit organization that regularly provides free or at a nominal cost clothing and household furnishings to people in need.

- The nonprofit organization must agree to identify and separately store the tenant's property for thirty days.

- It must release the property to the tenant at no charge if the tenant requests release during the thirty-day period.

- Landlord must give notice to tenant of name and address of organization to which the tenant's property was delivered by
  - posting notice at the rented premises
  - posting notice at the place where the rent is received, and
  - mailing copy of notice by first-class mail to the tenant's last known address.

If the tenant rents a mobile home space so that the tenant brings a mobile home on the landlord's lot, separate rules apply.

If the mobile home has a fair market value *of $500 or less,* the landlord may dispose of the mobile home and its contents as specified in section I above.

- The landlord determines the value of the mobile home.

Because a mobile home is a motor vehicle, the landlord must notify DMV if the landlord wishes to sell the mobile home.

The landlord must get permission of the local tax collectors before moving the mobile home.

If the mobile home has a fair market value of *more than $500,* the landlord must dispose of the mobile home and contents as provided in G.S. 42-2(e2).

- The mobile home must be titled in the name of the tenant. If owned by someone else, the landlord cannot acquire a landlord's lien in the mobile home.

- The landlord must get a judgment for possession and must have a writ of possession issued to enforce the judgment.

- After the writ has been executed, the landlord may immediately remove the property from the land and store it.

- The landlord must release the mobile home and contents to the tenant during regular business hours or at a time mutually agreed upon for 21 days after the writ has been executed.

- Twenty-one days after writ has been executed, whether the property remains on the premises or whether the landlord has removed and stored it, landlord has a lien on the property for the amount of rent due at the time the tenant vacated the premises; for the time up to 60 days from vacating the premises to the date of sale; for physical damages to the property beyond normal wear and tear; and for reasonable expenses costs and expenses of the sale.

    - The landlord must dispose of the property by selling it at a public auction pursuant to G.S. 44A-4.
    - The statute requires the landlord to post the notice of sale at the courthouse and to advertise in a newspaper in certain instances.
    - The landlord must give notice of the sale to the tenant.
    - Because the mobile home is a motor vehicle, the landlord may not sell the mobile home without notifying DMV and getting permission to sell the vehicle.

- The purchaser may not move the mobile home without first getting permission from the local tax collector.

COMMERCIAL LEASES.

The old landlord's possessory lien statute, G.S. 44A-2(e), continues to apply to commercial leases.

Landlord may sell property.

- Under G.S. 44A-2(e) if property has been left on premises for at least 21 days after tenant vacated premises and landlord has a lawful claim for damages against tenant, may sell property.

- Lien is for amount of rent due at time tenant vacated and for the time, up to 60 days, from the vacating of the premises to the date of sale; for any sums necessary to repair damages to the premises caused by the tenant, except for normal wear and tear; and for the reasonable costs and expenses of selling the personal property.

- Notice must be given and property must be sold at public sale under provisions of G.S. 44A-4.

- If at any time before the expiration of the 21-day period tenant requests his property, landlord must turn it over to tenant.

- Lien does not have priority over any prior perfected security interests.

Landlord may store property.

- Under G.S. 44A-4(e) landlord may remove tenant's property and store it if left on the premises at least 21 days after the tenant vacates the premises or at least 10 days after the landlord has received a judgment for possession.

- Property placed in storage belongs to the tenant, who is entitled to recover it from storage.

- If property stored with person who in ordinary course of business stores property, that person will have a storage lien under G.S. 44A-2(a) and may require the tenant to pay the storage costs before releasing the property to him. (If property stored in self-storage facility, owner is entitled to a lien under G.S. 44A-41.)

Landlord may donate property to charity.

- Under G.S. 44A-2(e) if the total value of all property remaining is less than $100, then any time more than 5 days after tenant has vacated or sheriff has padlocked the

premises, landlord may remove the property and donate it to any charitable organization.

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

Authorized for written leases 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

Authorized for written leases, equal to 10% of monthly rent if
---tenant was in default
---LL won a SE action
---neither party appealed.

Second Trial Fee

Authorized for written leases in event of new trial following appeal from small claims judgment. Not to exceed 12% of monthly rent. 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.

SUBSIDIZED HOUSING CASES:

GETTING THE RIGHT ANSWER

HOUSING AUTHORITY OF DURHAM V. THORPE

SUBSIDIZED HOUSING IS DIFFERENT

- Purpose
- Stakes
- Beauracratic
- Government involvement

→ due process requirements

↓ different rules

PRACTICAL DIFFERENCES

Always written.

Always a forfeiture clause.

Breach of lease condition (almost) always basis for eviction.

Everything you need to know is in the lease.

RULE #1:

THE RULES DEPEND ON THE TYPE OF SUBSIDY

FOUR MOST FREQUENT TYPES OF SUBSIDY:

- **Public Housing**
- **Tenant-Based (aka Housing Choice/Voucher)**
- **Project-Based**
- **Miscellaneous Rural Development**

PUBLIC HOUSING

Lease termination at any point only for good cause (defined in regulations).

Procedural requirements include

(1) notice of lease termination with contents specified, including specific factual grounds, and

(2) notice term depends on ground for eviction (14 days for nonpayment of rent).

TENANT-BASED

Termination at end of lease term does not require good cause.

Good cause definition differs from public housing definition.

No state action involved in eviction by private landlord.

Procedure requires written notice specifying grounds (which may be satisfied by complaint if sufficiently detailed) AND notice to PHA. Regulations do not specify notice period.

PROJECT-BASED

Lease may not be terminated (at any point) unless one of statutory grounds exist.

Most frequent ground is "material non-compliance."

"Other good cause" requires prior notice that violation is basis for termination and terminates only at end of lease term.

Law specifies content of notice of termination, including right to meet with landlord, and imposes additional requirements in terms of timing of and service of notice.

RURAL DEVELOPMENT SUBSIDIES

Similar to (but slightly different from) other three types.

Review Questions on Summary Ejectment

IMPORTANT: In every case, first determine the grounds for SE.

1. T signed a lease for one year. Lease says nothing about notice required to terminate. When the year ended, T continued to occupy the property. LL files for summary ejectment. T defends on ground that LL failed to give notice of termination. Who wins? What legal principle explains your answer?

   What are the grounds for SE? Holding over.
   LL wins. A lease for one year ends when it says it ends – at the end of the year. Because it ends when the time runs out, no notice is required unless the parties have provided otherwise in the lease.

2. T had a lease for one year, with rent payable at the first of each month. At the end of the year he remained on the property and continued to pay rent. Six months later, LL filed a summary ejectment action on the ground that T held over after the one-year lease. (He's decided he could get more money if he rented to a new T.) Who wins? What legal principle explains your answer?

   What are the grounds for SE? Holding over.
   T wins. After the one-year lease term expired, the parties renewed the lease by their conduct: the tenant remained on the property and continued to pay rent, and the landlord continued to accept rent. While there may be some uncertainty in a future case about whether the term of the renewed lease is month-to-month or for an additional year, there's no uncertainty about the outcome in THIS case: the landlord cannot rely on the lease expiration six months ago as a basis for finding T is holding over at this point.

3. LL and T have an oral lease agreement to rent an apartment on a month-to-month basis for $250/month. T agreed to pay $250 and move in on July 1. He paid for July and August, but on Sept. 1 he failed to pay. On Sept. 2 LL demanded the rent. On Sept. 5 LL filed a summary ejectment lawsuit. Trial was held on Sept 30. LL proved that the Sept rent was due Sept. 1, that he demanded it on Sept. 2, and that it remained unpaid at the time of trial. T offers a check for $250 in court, but LL insists on a judgment. Who wins? What legal principle explains your answer?

   What are the grounds for SE? Failure to pay rent. (It's an oral lease, and nothing in the problem suggests the existence of a forfeiture clause, ruling out "breach of a lease condition.")
   T wins. The LL proved (1) failure to pay, and (2) demand, but the LL failed to allow the T ten days to come up with the rent before filing the complaint. By filing on Sept. 5, rather than waiting until Sept. 13, the LL lost the right to regain possession based on T's failure to pay for September. (If T fails to make another rent payment, that's a separate breach, and the LL may try again to regain possession.)

What about T's defense of tender? The court never reaches the question, because of LL's failure to establish a prima facie case.

4. LL and T have an oral lease providing for month-to-month tenancy, with rent due the first day of the month. T failed to pay rent on Jan. 1. On Jan. 10, LL gives T notice that he wants to end the lease at the end of the month, telling T she'll have to be out of the rental property by that day. When T remained on the property on Feb. 1 LL filed this action. At trial, T offers a cash payment for the Jan. and Feb. rent and court costs. LL insists on a judgment. Who wins? What legal principle explains your answer?

   What are the grounds for SE? Holding over.
   LL wins. The notice required to terminate a month-to-month lease, absent the parties' agreement to the contrary, is a seven-day notice. The LL gave plenty of notice and thus is entitled to repossess the property.
   What about T's failure to pay rent? LL is entitled to a money judgment for the past-due rent, but this (smart) LL avoided the potential defense of tender by basing the action on holding over, rather than failure to pay rent. (Tender is a defense ONLY to SE based on failure to pay rent.)

5. LL and T have a written one-year lease requiring payment of $400/month due on the first. The lease contains a forfeiture clause for failure to pay rent. T failed to pay rent on May 1, and LL filed an action seeking possession on May 3, seeking possession and back rent. At trial on May 25 T asks you to dismiss the case because LL did not offer any evidence that he demanded the rent and waited ten days before filing the action. Who wins? What legal principle explains your answer?

   What are the grounds for SE? Breach of a lease condition.
   LL wins. Where the parties have agreed that failure to pay rent will terminate the lease and trigger the LL's right to possession, the LL need only prove (1) that was the agreement, and (2) the triggering event. The demand/wait 10 days requirements do not apply to SE based on a breach of a lease condition (regardless of whether the breach in question is owning a dog, failing to pay rent, or some other triggering condition).

6. Same facts, except that T is not present at trial and LL asks for judgment on the pleadings. Do you grant his request? What legal principle explains your answer?

   See Small Claims Law p. 30 for the 5 requirements for entering judgment on the pleadings. Assuming all 5 requirements are satisfied, judgment on the pleadings would be appropriate.

7. LL has filed a summary ejectment action based on holding over at the end of a lease for six months. The lease ended on May 31, and you hear the case on June

15. The monthly rent was $250. At trial LL offers evidence that she has entered into a lease with a new tenant, who was to move in on June 1, at an increased rental rate of $300/month. LL also seeks damages for injury to property: she found nicks in the living room wall and the clothesline in the backyard on the ground. She says it will cost $75 to paint the living room and $25 to put up a new clothesline. LL is seeking $300 (rent for June) plus $100 damage to property. T says he moved out on the 10th, and so should have to pay only $83.33 (10 days, based on his rent of $250). He also says the clothesline was at least 10 years old and fell down because the metal rusted through. What damages do you award? State your reasons.

What are the grounds for SE? Holding over.
What amount of past due rent do you award? The T is obligated to pay the fair rental value of the property for the period between the time the lease ended (May 31) and the time the magistrate hears the case and awards possession to the LL. Thus the LL is entitled to collect the fair rental value (which in this case is different from the contract rent) for the period between June 1 and June 15: $150.
What about the damage to property? The LL is entitled to recover for damages to the property inflicted by the T in excess of normal wear and tear. The property damage described above is an example of normal wear and tear, and thus the LL would not be entitled to collect damages for those items.

8. LL filed a summary ejectment action on May 31 after T failed to pay rent for May. Trial is held on June 15. LL proves that rent was $350 a month, T failed to pay, and that LL demanded the rent on May 10. Assuming you rule in LL's favor, what is the amount of your judgment? If T came to court and offered tender as a defense, what amount would be required for an effective tender?

What are the grounds for SE? Failure to pay rent.
The magistrate would award rent for May and 15 days in June: $525 plus costs.
The T is required to tender rent for both May and June -- $700—plus costs.

9. T rents a mobile home space from LL. She failed to pay rent on May 1. On May 2 LL demanded the rent, and filed this action on May 15. At trial on June 10, LL proves the terms of the lease, that rent has not been paid, and that he made demand on the 2nd. T defends based on the special law requiring 60 days notice in cases involving rental of mobile home spaces. Who wins? Why?

What are the grounds for SE? Failure to pay rent.
LL wins, because LL proves (1) failure to pay rent, (2) demand, and (3) that ten days elapsed between demand and filing the action. Why doesn't T's defense work? Because the 60-day notice requirement applies to the notice required to terminate the lease for a mobile home space, and is thus relevant only to evictions based on holding over.

10. LL brings an action for summary ejectment based on failure to pay rent. At trial LL proves that the lease provided for a monthly rental of $550, that she made demand, and waited 10 days before filing this action. She seeks possession, $825 for 1 ½ months rent, a late fee of $60 (for 2 months at $30/month), and an administrative fee of $150 for her inconvenience in having to come to court. Assume that the written lease has a late fee and administrative fee provision consistent with the amounts she seeks. What damages do you award?

What are the grounds for SE? Failure to pay rent.
LL wins possession and a money judgment for $825. LL is not entitled to a late fee because $30 exceeds the 5% limit. LL would not be entitled to an administrative fee at this point in any event, because the amount of the fee would vary based on whether the case goes on to district court. However, because the maximum allowable fee in any event is 12% of the monthly rent ($66), the lease provision for $150 is void as against public policy [GS 42-46 (h)(3) & (4)], and the judgment should specifically deny the request on this ground.

11. LL has filed a SE action against T based on breach of a lease condition (specifically, a clause stating that having a pet on the premises results in an automatic forfeiture of the lease). The one-year lease provides for monthly rent of $450. LL testifies that he has seen a cat in T's apartment. He also states that T did not pay rent for this month (having been served with the complaint and summons on the first of the month), and so asks for two weeks back rent. T defends, saying (1) he has no proof she had a cat, (2) she certainly doesn't have a cat now, and (3) she's prepared to tender rent for the entire month in addition to court costs. How do you rule?

What are the grounds for SE? Breach of a lease condition.
LL wins if you are persuaded by his testimony. T wins if you aren't.
What about T's failure to pay rent? That evidence supports a money judgment for the back rent, but does not support termination of the lease absent a forfeiture clause providing that failure to pay rent authorizes termination of the lease.
What about T's defense of tender? Tender is not a defense to breach of a lease condition.

TAB:

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.

PRACTICE EXERCISE

Work with your tablemates to complete the ex parte DVPO supplied to you, based on the allegations in the complaint you'll be given. Assume that you believe all the information in plaintiff's complaint is probably true.

Were there parts of the order you weren't certain about? What questions came up as you worked through this assignment?

_____

_____

_____

_____

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_____

_____

_____

_____

Selections from 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.

§ 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. No court costs shall be assessed for the filing, issuance, registration,

or service of a protective order or petition for a protective order or witness subpoena in compliance with the Violence Against Women Act, 42 U.S.C. § 3796gg- 5.

(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.

. . . . .

(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.

§ 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.

. . . . .

(c) A copy of any order entered and filed under this Article shall be issued to each party. 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.

§ 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.

. . . .

§ 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.

(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.

§ 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 a person who is charged with or convicted of a Class A or B1 felony or to a person charged under 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.)

§ 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.)

STATE OF NORTH CAROLINA

Jake County

File No.

In The General Court Of Justice
District Court Division

Name Of Plaintiff (Person Filing Complaint)
June April Fulbright

VERSUS

Name And Address Of Defendant (Person Accused Of Abuse)
Stanley Uptight Fulbright

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 Jake 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.)* Last Wednesday he lost his temper and threw a wineglass down on the patio, yelling profanities and saying "Bitch, I've had it with you. You're gone. You and that snot-nosed kid. You're going to wish you'd never been born." Since that time he has taken all our money out of joint accounts, carried a gun in my presence, and slapped our daughter in the face. He told me I should think* twice before eating anything at the house. He cut out a newspaper article about a man who killed his wife and left it on my pillow.

☑ 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.)* See above — he slapped my daughter in the face so hard she fell down.

☑ 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
Stacy Delight	F	3-3-93			

(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.)*

see response to #5

☑ 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.)*

A pearl-handled 22. Used to be kept in gun-safe, but now he keeps in his waistband.

☐ 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
3190 Pig Farm Lane, Little Creek, NC

☑ 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: Stanley Uptight Fullbright

☐ 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 Little Creek Country Club

The child(ren) currently attend: *(name school)* Little Creek Academy

☑ 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: 2011 Cooper

☑ 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)
6-25-12	June Abil Fullbright

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: 6-25-12
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	

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- ☐ 27.2 (1st deg. rape) ☐ 27.3 (2nd deg. rape) ☐ 27.4 (1st deg. sexual off.) ☐ 27.5 (2nd deg. sexual off.) ☐ 27.5A (sexual battery) ☐ 27.7 (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 The Status Of The 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 30 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 30 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 - defendant is spouse, former spouse, or person of the oppsite sex with whom you live or have lived as if married.
   (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. An Ex Parte Order will be heard very soon 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 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 in remainder of form.

III. Ex Parte Domestic Violence Protective Order (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
   (d) **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".
   (e) **DO NOT** fill out the remainder of this form.

V. Identifying Information About Defendant/Domestic Violence Actions (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 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.

(Over)

VI. Affidavit As To The Status Of The 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 only 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)

AOC-CV-317, Rev. 12/09

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*

LEGAL ISSUES IN DOMESTIC VIOLENCE

ENFORCEMENT OF DVPO'S

Research has demonstrated repeatedly that DVPOs can be a powerful tool in reducing domestic violence when they are consistently enforced. In NC, violation of a DVPO is both a crime, punishable under criminal law statutes, and a violation of a court order, punishable by the contempt power of the court. In the majority of cases, violation of a DVPO is treated as a criminal offense, which may come before a magistrate either before or after an arrest is made. The elements of the offense are:

1) Knowingly
2) Violates
3) A valid protective order entered pursuant to
   a) N.C. Gen. Stat. Ch. 50B, or
   b) A court of another state, or
   c) A court of an Indian tribe.

KEY POINTS ABOUT ENFORCEMENT

1. Immediate arrest is mandatory if an officer has probable cause to believe that the defendant knowingly has violated a valid protective order
   a) excluding the defendant from the residence or household occupied by a victim of domestic violence or
   b) directing the defendant to refrain from threatening, abusing, or following the plaintiff, harassing the plaintiff, including by telephone, visiting the home or workplace, or other means, or otherwise interfering with plaintiff.

2. Arrest without a warrant is discretionary for any other violation of G.S. 50B-4.1.

_____

_____

_____

_____

_____

3. An officer, who has probable cause, may arrest even though the defendant has left the premises by the time the officer arrives. The officer need not actually see the violation himself or herself if the officer has probable cause to believe that the defendant violated the provisions of a domestic violence protective order. However, the officer may not enter defendant's home without consent to arrest unless officer gets arrest warrant and may not enter the home of another person to arrest defendant without consent unless the officer gets an arrest warrant for the defendant and a search warrant for the premises.

4. In determining the validity of an out-of-state order, a law enforcement officer may rely upon a copy of the protective order issued by another state that is provided to the officer and on the statement of the person protected by the order that to the best of that person's knowledge the order is presently in effect as written. [G.S. 50B-4(d)] The officer can also rely on any other information in determining that the defendant has violated a valid protective order.

_____

_____

_____

_____

_____

MAGISTRATE'S DUTY WHEN DEFENDANT IS ARRESTED FOR A VIOLATION OF G.S. 50B-4.1.

If defendant is arrested by an officer **without** a warrant:
determine whether there is probable cause to believe person violated order.

- If magistrate does not find probable cause, defendant is released.
- If magistrate finds probable cause, issues a magistrate's order.

If defendant is arrested **with or without a warrant**, conduct initial appearance (i.e., notify defendant of rights and charges against him or her).

Do not set conditions of pretrial release for defendant. G.S. 15A-534.1 provides that only a judge may determine conditions of pretrial release.

Fill in the following portions of the Release Order (AOC-CV-200):

- Name and address of the defendant
- Offense—"Violation of a civil domestic violence protective order, G.S. 50B-4.1"
- Order of Commitment– Check block that says "produce him/her at the first session of district or superior court held in this county after the entry of this Order or, if no session is held before (*enter date and time 48 hours after arrest)* _____, produce

him/her before a magistrate of this county at that time to determine conditions of pretrial release."

If defendant has been arrested on other crimes in addition to G.S. 50B-4.1, determine whether the additional charges are subject to the special 48-hour pretrial release rules:

- If they are, do not set bond for any of the offenses.
- If they are not, the magistrate may set bond for those offenses not covered by the special pre-trial release provisions or may choose to not set bond for any of the offenses since he or she can not set bond for the G.S. 50B-4.1 offense.

_____

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MAGISTRATE'S DUTIES IF NO JUDGE ACTS AND A DEFENDANT IS BROUGHT BEFORE MAGISTRATE AFTER BEING HELD FOR 48 HOURS:

If judge hasn't set bond with 48 hours, defendant must be brought back before magistrate on duty. Cannot wait until next morning or day.[1]

Magistrate determines conditions of pretrial release.
Sometimes, the magistrate on duty at time for pretrial release is not the same one who held initial appearance or who issued the arrest warrant. Therefore, magistrate who determines pretrial release may not have knowledge of the facts of case unless other the magistrate left notes.

NOTE: GS 15A-534.1 (which provides that defendant may be retained in custody for reasonable period of time while determining conditions of pretrial release if the immediate release will pose a danger of injury to the alleged victim or to any other person or is likely to result in intimidation of the alleged victim and if execution of an appearance bond will not reasonably insure that such injury or intimidation will not occur) usually will not be an available option because the defendant has already been held 48 hours. However, the statute can be used in usual situations where it is clear that immediate release will pose a danger of injury to the victim. Example: when determining conditions of pretrial release the defendant says to the magistrate "when I get home my wife is going to regret ever calling the police."

_____

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WHAT CONSTITUTES DOMESTIC VIOLENCE FOR PURPOSES OF SPECIAL 48-HOUR PRETRIAL RELEASE PROVISIONS (G.S. 15A-534.1)

- Defendant is charged with assault on a spouse or former spouse or on a person with whom the defendant lives or has lived as if married (opposite sex).

[1] *State v. Thompson*, 349 N.C. 483, 508 S.E.2d 277 (1998) (upheld constitutionality of statute but said unconstitutional as applied to defendant who was not taken before a judge at 9:30 in the morning when court opened but was held until 2:30 that afternoon).

- Defendant is charged with communicating a threat (G.S. 14-277.1) to a spouse or former spouse or on a person with whom the defendant lives or has lived as if married.

- Defendant is charged with domestic criminal trespass. Domestic criminal trespass is entering after having been forbidden to enter the premises occupied by defendant's present or former spouse or person with whom the defendant has lived as if married at a time when the complainant and defendant are living apart. Evidence of living apart includes a court order directing the defendant to stay away from the premises occupied by the complainant. [GS 14 -134.3]

- Defendant is charged with the crime of willful violation of a valid domestic violence protective order under GS 50B-4.1. This offense applies if the relationship between the defendant and victim is a "personal relationship." but the magistrate does not even need to inquire because that must be the relationship for the protective order to have been issued in the first place.

- Defendant is charged with any felony under Art. 7A of Chapter 14—rape or sexual offense—on a spouse or former spouse or on a person with whom the defendant lives or has lived as if married.

- Defendant is charged with any felony under Art. 8 of Chapter 14—assaults, which were already covered, castration, maiming, throwing of corrosive acid—on a spouse or former spouse or on a person with whom the defendant lives or has lived as if married.

- Defendant is charged with any felony under Art. 10 of Chapter 14—kidnapping, abduction of children, felonious restraint—on a spouse or former spouse or on a person with whom the defendant lives or has lived as if married.

- Defendant is charged with any felony under Art. 15 of Chapter 14—arson and other burnings—on a spouse or former spouse or on a person with whom the defendant lives or has lived as if married.

_____

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ISSUES THAT ARISE IN ENFORCING VIOLATIONS

Q: *What if officer with probable cause will not arrest without a warrant for the crime of violating a domestic violence protective order by returning to the residence or by harassing, following or otherwise interfering with the plaintiff?*

A: Magistrate should issue criminal process for crime of violating protective order and for any other crime that the conduct constituted.

Q: *Is an order issued by a district court judge in one judicial district valid in another district?*

A: Yes. A domestic violence order issued by a North Carolina judge or magistrate is effective and enforceable anywhere in North Carolina. If the plaintiff wishes to enforce a violation through a motion and show cause for contempt, that motion and hearing must be filed and set in the county where the protective order was issued. However, the defendant may be charged with the crime of violating a protective order either in the county where the violation occurred or in the county where the order was issued since an element of the crime took place in each county.

Example: Susie is assaulted by her husband, Sam. She files a domestic violence action in Forsyth County where they live and the judge enters an order against Sam, which orders him not to assault, harass, follow, etc. Susie. Susie is afraid of Sam and decides to leave. She goes to her friend's home in Davie County. Sam finds out she is there and goes to Davie County where he hits her again. An officer arrests Sam and takes him before a magistrate in Davie County who charges him with assault and violating a protective order. Both charges will be set in Davie County (the charge of violating the protective order could be tried in either Davie or Forsyth because an element of the offense occurred in both counties, but would normally be tried in the county where the violation occurred.) If Susie had sought to enforce the order by filing a motion to show cause, she would have to file that motion with the Forsyth County clerk's office.

Q: *Is a domestic violence order effective if the parties have reconciled or the plaintiff has invited the defendant to return to the premises?*

A: Yes. A domestic violence protective order is a court order, which means that it remains effective until the date set in the order or until a judge sets it aside, even though the parties may reconcile. [*State v. Dejarlais*, 969 P.2d 90 (Wash. 1998), *aff'g* 944 P.2d 1110 (1997) (plaintiff's consent is not a defense to a charge of violating a protection order).]

Q: *Is a domestic violence protective order issued in another state enforceable in North Carolina?*

A: Yes. G.S. 50B-4(d) provides that valid protective orders 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 as if they were orders issued by North Carolina courts. It does not matter whether the order is registered in North Carolina. It is enforced like any NC issued protective order-by charging a person who violates the out-of-state issued order in North Carolina with the crime of violating the protective order or by the victim filing a motion for the clerk to issue a show cause order for contempt.

The victim may register the order in NC by filing a copy with the clerk along with an affidavit that to the best of the victim's knowledge the order is presently in effect as written. No notice of the registration is given to the defendant. If the victim does not register the order, it is still enforceable in NC.

_____

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CONDITIONS ON PRETRIAL RELEASE/VIOLATIONS

G.S. 15A-534.1 authorizes magistrates to impose the following conditions on pretrial release for crimes of domestic violence:

- That defendant stay away from the home, school, business or place of employment of the alleged victim.
- That the defendant refrain from assaulting, beating, molesting, or wounding the alleged victim.
- That the defendant refrain from removing, damaging, or injuring specifically identified property.

G.S. 15A-534(a)(4) authorizes a magistrate to place restrictions on travel, associations, conduct or place of abode of any defendant, not just for domestic violence crimes, as conditions of pretrial release.

In 2004 the General Assembly amended G.S. 15A-401(b)(2)f. to provide that if a defendant violates a pretrial release order entered under subsection A. above (domestic violence crimes), a law enforcement officer may arrest the defendant without a warrant.

If an officer has arrested a defendant for violating a condition of pretrial release for a domestic violence crime, the magistrate should try to get direction from the chief district court judge how to handle the matter. If there is no direction from the judge, the magistrate should reconsider the bond and set new conditions of pretrial release.

If a defendant violates a condition of pretrial release for a domestic violence crime, but is not arrested by an officer, the magistrate can issue an order for arrest to bring the defendant in to modify the pretrial release order only if the first appearance before the district court judge has not been held. If a first appearance has been held, the magistrate should consult the chief district court judge about what practice the magistrate should follow.

WHAT CONSTITUTES DOMESTIC VIOLENCE FOR CRIME VICTIM'S RIGHTS LAW

Crime Victim's Rights Act [G.S. 15A-830 to –841] provides that victims of certain crimes must be given notice about the services available, time of trial and release from custody of defendant and that victims are eligible for crime victim's compensation funds.

For the most part, victims are persons against whom violent felonies were committed, but the law also applies to the following misdemeanors when the victim and defendant have a personal relationship as defined by the G.S. 50B-1.

Assault inflicting serious injury. [G.S. 14-33(c)(1)]
Assault with a deadly weapon [G.S. 14-33(c)(1)]
Assault on a female [G.S. 14-33(c)(2)]
Simple assault [G.S. 14-33(a)]
Assault by pointing a gun [G.S. 14-34]
Domestic criminal trespass [G.S. 14-134.3]
Stalking [G.S. 14-277.3]

The category of domestic violence victims covered by the Crime Victim's Rights Act is broader than the category of those covered by the special pretrial release rules.
A magistrate issuing an arrest warrant in one of these covered misdemeanors must note on the process that it is a Crime Victim's Rights Act crime and record the victim's name, address, and telephone number electronically or on a form separate from the warrant and send to the clerk. The automated system has pop up questions if one of these offenses is charged and will electronically send required information. Magistrates not using automated system must mark on the process that the case is Crime Victim's Rights case and must note information about victim on form separate from the criminal process.

STATE OF NORTH CAROLINA

File No.

_____ County

In The General Court Of Justice
District Court Division

Name Of Plaintiff	**MOTION FOR ORDER TO SHOW CAUSE DOMESTIC VIOLENCE PROTECTIVE ORDER**
VERSUS	
Name Of Defendant	G.S. 50B-4; 5A-15, -23

The Court issued a Domestic Violence Protective Order in this case on *(Give date of Order.)* _____ .
The defendant has willfully violated that Order by *(Tell what the defendant did that violated the Order.):*

I am informed and believe that the defendant has the means to comply with the Order.

I want the Court to issue an Order which requires the defendant to appear and to show cause, if any, why the defendant should not be held in contempt for the defendant's failure to comply with the Court's Order.

SWORN AND SUBSCRIBED TO BEFORE ME		Date
Date	Signature	Signature Of Person Making Motion
Title Of Person Authorized To Administer Oaths		Name Of Person Making Motion (Type Or Print)
Date Commission Expires		

SEAL

AOC-CV-307, Rev. 3/98

(Over)

INSTRUCTIONS ON HOW TO FILL OUT THIS FORM

1. Use this form only if a judge has already signed a Domestic Violence Protective Order or an Ex Parte Order. Do not use this form to start a domestic violence proceeding.

2. Use this form when the defendant has done something which was forbidden by the Order, or has failed to do something which was required by the Order.

3. THE PEOPLE IN THE CLERK'S OFFICE CANNOT HELP YOU FILL OUT THIS FORM OR TELL YOU WHAT TO SAY. The law forbids them from doing that.

4. Use the space on the front of this form to tell which item or items in the Order have not been complied with. Then, tell how the defendant failed to comply with those items. Tell what happened in your own words. Tell what the defendant did and said. Tell when and where the defendant did it or said it. Or, tell what the defendant has not done. Finally, tell what shows that the defendant acted **willfully.** Willfully means that the defendant knew that something was forbidden and **did it on purpose.** Willfully also means that the defendant knew that something was required, and **was able to do it,** and still did not do it.

5. Date and sign the form. Then take it to a notary public or the clerk. Tell the notary or the clerk that you want to notarize a show cause order in a domestic violence proceeding. The notary or clerk will have you take an oath or affirmation. Then you will date and sign the form a second time, and the notary or clerk will "notarize" it.

6. Now this form is ready to be "filed" with the clerk. There will be no cost in the clerk's office, but there may be a charge for having the sheriff give papers to the defendant.

7. After this form is filed, the clerk will fill out an "Order to Appear And Show Cause For Failure To Comply With Domestic Violence Protective Order," form AOC-CV-308, commonly called a "Show Cause Order." The Show Cause Order will tell the defendant to appear before a judge at the date, time and place shown on the form. A hearing will be held at that time. The defendant must show cause, if any, why the defendant should not be found in contempt. You will receive a copy of the Show Cause Order and must also attend the hearing. If the judge finds the defendant in criminal contempt, the defendant can be sentenced to serve up to thirty (30) days in jail and fined up to $500 or both. If the judge finds the defendant in civil contempt, the defendant can be kept in jail until what has been ordered has been done.

AOC-CV-307, Side Two, Rev. 3/98

STATE OF NORTH CAROLINA

File No.

_____ County

In The General Court Of Justice
District Court Division

Name Of Plaintiff	ORDER TO APPEAR AND SHOW CAUSE FOR FAILURE TO COMPLY WITH DOMESTIC VIOLENCE PROTECTIVE ORDER
VERSUS	
Name And Address Of Defendant	G.S. 50B-4; 5A-15, -23

To The Defendant Named Above:

I find that there is probable cause to believe that you are in contempt for willfully violating the Domestic Violence Protective Order issued in this case on *(give date of order)* _____ , as alleged in the attached Motion.

You are ORDERED to appear in person at the date, time and place indicated below to show cause why you should not be held in contempt of court for violating the lawful orders of this Court. If the Court finds you in civil contempt, you may be committed to jail for as long as such civil contempt continues. If the Court finds you in criminal contempt, you may be fined up to $500, imprisoned for up to thirty (30) days, or both.

Date To Appear	Time To Appear ☐ AM ☐ PM	Date Of Order
Place To Appear		Signature
		☐ Assistant CSC ☐ Clerk Of Superior Court ☐ District Court Judge ☐ Designated Magistrate

RETURN OF SERVICE

I certify that this Order was received and served as follows:

Date Served	Name Of Defendant

☐ By personally serving the defendant named above.

☐ Defendant was not served for the following reason:

Date Received	Date Of Return	Name Of Sheriff
County		Deputy Sheriff Making Return

AOC-CV-308, Rev. 4/10

Jeff Welty
School of Government
March 2012

DOMESTIC VIOLENCE CRIMES[1]

Crime Charged	Relationship Between Defendant and Victim	Only Judge May Set Bond for First 48 Hours After Arrest	Crime Victims' Rights Act (VRA) Applies
Simple assault [G.S 14-33(a)]	• Current or former spouses. •Persons who live or have lived together as if married. • Child in common. • Persons of the opposite sex in a dating relationship. • Parent and child or grandparent and grandchild. • Current or former household members.	Yes No	Yes [Magistrate must indicate VRA Case on the criminal process]
Assault on a female [G.S. 14-33(c)(2)]	• Current or former spouses. • Persons who live or have lived together as if married. • Child in common. • Persons of the opposite sex in a dating relationship. • Parent and child or grandparent and grandchild. • Current or former household members.	Yes No	Yes [Magistrate must indicate VRA Case on the criminal process]
Assault with a deadly weapon [G.S. 14-33(c)(1)]	• Current or former spouses. •Persons who live or have lived together as if married. • Child in common. • Persons of the opposite sex in a dating relationship. • Parent and child or grandparent and grandchild. • Current or former household members.	Yes No	Yes [Magistrate must indicate VRA Case on the criminal process]

[1] This chart lists the most common offenses to which the special 48-hour pretrial release rule applies, but it does not list every felony to which it applies. The rule covers any felony in Articles 7A (Rape and Sexual Offenses), 8 (Assaults), 10 (Kidnapping and Abduction), or 15 (Arson and Other Burnings) of the General Statutes if the relationship between the defendant and the victim is current or former spouse or persons who are living together or have lived together as if married.

Crime Charged	Relationship Between Defendant and Victim	Only Judge May Set Bond for First 48 Hours After Arrest	Crime Victims' Rights Act (VRA) Applies
Assault inflicting serious injury [G.S.14-33(c)(1)]	• Current or former spouses. •Persons who live or have lived together as if married. • Child in common. • Persons of the opposite sex in a dating relationship. • Parent and child or grandparent and grandchild. • Current or former household members.	Yes No	Yes [Magistrate must indicate VRA Case on the criminal process]
Assault by pointing a gun [G.S. 14-34]	• Current or former spouses. •Persons who live or have lived together as if married. • Child in common. • Persons of the opposite sex in a dating relationship. • Parent and child or grandparent and grandchild. • Current or former household members.	Yes No	Yes [Magistrate must indicate VRA Case on the criminal process]
Assault with a deadly weapon with intent to kill [G.S. 14-32(c)]	• Current or former spouses. •Persons who live or have lived together as if married. • Child in common. • Persons of the opposite sex in a dating relationship. • Parent and child or grandparent and grandchild. • Current or former household members.	Yes No	Yes; because VRA felony no matter what relationship.
Assault with a deadly weapon inflicting serious injury [G.S. 14-32(b)]	• Current or former spouses. •Persons who live or have lived together as if married. • Child in common. • Persons of the opposite sex in a dating relationship. • Parent and child or grandparent and grandchild. • Current or former household members.	Yes No	Yes; because VRA felony no matter what relationship.

Crime Charged	Relationship Between Defendant and Victim	Only Judge May Set Bond for First 48 Hours After Arrest	Crime Victims' Rights Act (VRA) Applies
Assault with a deadly weapon with intent to kill inflicting serious injury [GS 14-32(a)]	• Current or former spouses. •Persons who live or have lived together as if married. _____ • Child in common. • Persons of the opposite sex in a dating relationship. • Parent and child or grandparent and grandchild. • Current or former household members..	Yes _____ No	Yes; because VRA felony no matter what relationship.
Assault inflicting serious bodily injury [G.S. 14-32.4(a)]	• Current or former spouses. •Persons who live or have lived together as if married. _____ • Child in common. • Persons of the opposite sex in a dating relationship. • Parent and child or grandparent and grandchild. • Current or former household members.	Yes _____ No	Yes; because VRA felony no matter what relationship.
Assault by strangulation [G.S. 14-32.4(b)]	• Current or former spouses. •Persons who live or have lived together as if married. _____ • Child in common. • Persons of the opposite sex in a dating relationship. • Parent and child or grandparent and grandchild. • Current or former household members.	Yes _____ No	No
Habitual misdemeanor assault [G.S. 14-33.2]	• Current or former spouses. •Persons who live or have lived together as if married. _____ • Child in common. • Persons of the opposite sex in a dating relationship. • Parent and child or grandparent and grandchild. • Current or former household members.	Yes _____ No	Yes; because VRA felony no matter what relationship.
Communicating a threat [G.S. 14-277.1]	• Current or former spouses. •Persons who live or have lived together as if married. _____ • Child in common. • Persons of the opposite sex in a dating relationship. • Parent and child or grandparent and grandchild. • Current or former household members.	Yes _____ No	No

Crime Charged	**Relationship Between Defendant and Victim**	**Only Judge May Set Bond for First 48 Hours After Arrest**	**Crime Victims' Rights Act (VRA) Applies**
Domestic criminal trespass [G.S. 14-134.3]	• Current or former spouses. • Persons who live or have lived together as if married. (having one of these relationships is an element of this offense)	Yes	Yes [Magistrate must indicate VRA Case on the criminal process]
Violating a protective order [G.S. 50B-4.1]	• Current or former spouses. •Persons who live or have lived together as if married. _____ • Child in common. • Persons of the opposite sex in a dating relationship. • Parent and child or grandparent and grandchild. • Current or former household members.	Yes	Yes [Magistrate must indicate VRA Case on the criminal process]
Stalking [G.S. 14-277.3A]	• Current or former spouses. •Persons who live or have lived together as if married. _____ • Child in common. • Persons of the opposite sex in a dating relationship. • Parent and child or grandparent and grandchild. • Current or former household members.	Yes _____ No	Yes [Magistrate must indicate VRA Case on the criminal process]
Rape or sexual offense [G.S. 14-27.2 to –27.8]	• Current or former spouses. •Persons who live or have lived together as if married. _____ • Child in common. • Persons of the opposite sex in a dating relationship. • Parent and child or grandparent and grandchild. • Current or former household members.	Yes _____ No	Yes; because VRA felony no matter what relationship.

Crime Charged	Relationship Between Defendant and Victim	Only Judge May Set Bond for First 48 Hours After Arrest	Crime Victims' Rights Act (VRA) Applies
Kidnapping [GS. 14-39]	• Current or former spouses. •Persons who live or have lived together as if married. _____ • Child in common. • Persons of the opposite sex in a dating relationship. • Parent and child or grandparent and grandchild. • Current or former household members.	Yes _____ No	Yes because VRA felony no matter what relationship.
Harassing telephone calls [G.S. 14-196]	• Current or former spouses. •Persons who live or have lived together as if married. _____ • Child in common. • Persons of the opposite sex in a dating relationship. • Parent and child or grandparent and grandchild. • Current or former household members.	No	No
Arson	• Current or former spouses. • Persons who live or have lived together as if married. _____ • Child in common. • Persons of the opposite sex in a dating relationship. • Parent and child or grandparent and grandchild. • Current or former household members.	Yes _____ No	Yes because VRA felony no matter what relationship.

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:

Recovering Personal Property

ACTIONS TO RECOVER 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.

SECURED TRANSACTIONS: LEARNING THE LINGO

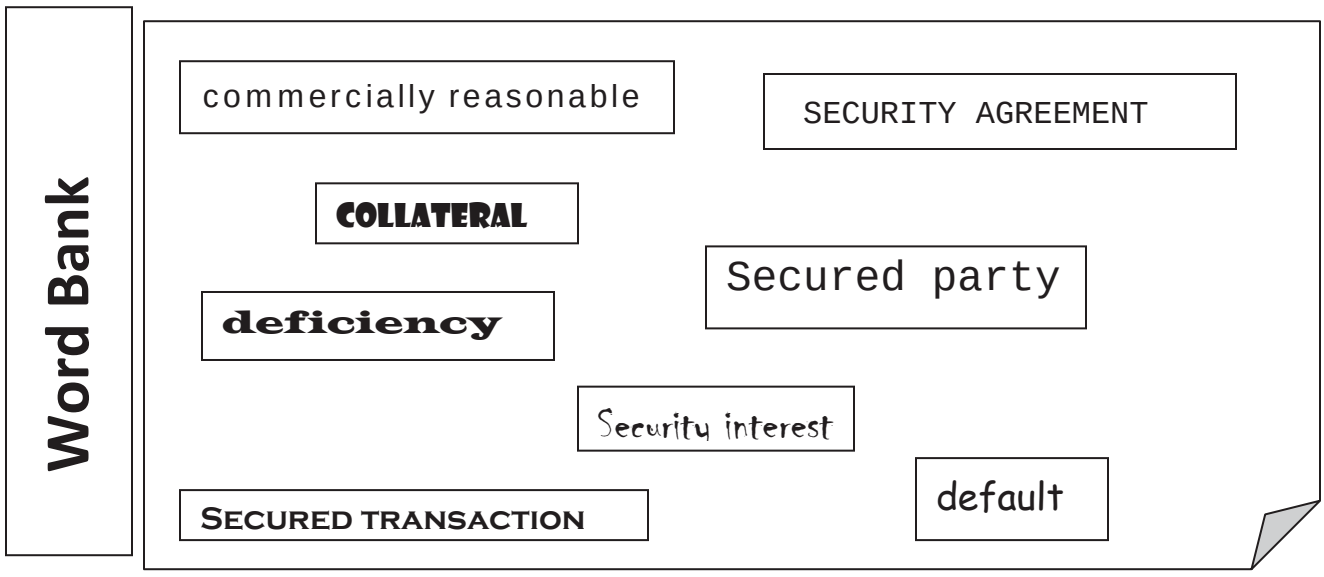
Friendly Furniture sells bedroom furniture, and Connie Consumer would like to purchase some. Connie doesn't have the money to pay the entire purchase price, though. So FF offers to sell her the furniture on an installment plan—in other words, to "finance" her purchase. Of course, there's a possibility 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.

Imagine that Connie defaults, having paid $400 toward the total purchase price of $1000 for the furniture. (She's also made interest payments, but we can ignore those for the moment.) FF repossesses the furniture and sells it, for $250. FF next files an action for money owed against Connie, seeking $350.

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 term for the property that secures the transaction is _____. 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*.



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

Name And Address Of Plaintiff

Social Security No./Taxpayer ID No.

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

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

Recovering Pers Prop - Page 5

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

(Over)

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 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 judgement 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.

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-202, 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

FAQ'S: HE TOOK MY DOG:

1. *"Should I file a lawsuit or take out a warrant for stealing my dog?"*

2. *"We're getting a divorce, and I'm just trying to get my property back. Can I file a small claims lawsuit, so I don't have to get a lawyer?"*

3. *"Can I sue for money, or just to get my dog back? What if he doesn't still have my dog?"*

4. *"He borrowed my lawnmower and didn't give it back, and now it's torn up, and I don't want it back. Do I have to take it back?"*

FAQ'S: WE WANT TO REPO THE COLLATERAL

1. *"He's missed several payments. Is it legal for us to go tow his car out of his driveway?"*

_____

_____

_____

2. *"What do you mean by 'breach of the peace'?*

_____

_____

_____

3. *"I only owe $50 on it—I've paid off all the rest. Can they still repo my car?"*

_____

_____

_____

4. *"I got a judgment ordering the defendant to turn over the diamond ring, but when the sheriff went out to get it, the guy said he didn't have it anymore. How am I going to get my money if I can't find the ring?"*

_____

_____

_____

Joan G. Brannon
Institute of Government
January 2006

OUTLINE ON ACTIONS TO RECOVER POSSESSION OF PERSONAL PROPERTY AND CONVERSION

I. Conversion

A. May be brought when personal property is wrongfully taken or retained.

B. Remedy is monetary award of value of property when wrongfully taken plus 8% interest from date of unlawful taking.

C. Forced sale.

D. Plaintiff must prove that
   1. He is the owner of property or bailee.
   2. That the property was wrongfully taken or wrongfully detained from him.
   3. Defendant is person who wrongfully took or retained.
   4. Fair market value of the property at the time it was wrongfully taken or detained.

E. Statute of limitations is 3 years.

II. Action To Recover Possession of Personal Property When Plaintiff is Not a Secured Party

A. May be brought when personal property is wrongfully taken or retained.

B. Alternative remedy to conversion; plaintiff elects to sue for conversion or to recover possession of personal property.

C. Remedy is return of property taken plus a monetary amount for damage to the property and loss of use of the property while it was in defendant's possession.

D. Plaintiff must prove that
   1. He is the owner of property or bailee.
   2. That the property was wrongfully taken from him or wrongfully detained.
   3. That defendant is the person in possession of the property.

E. Statute of limitations is 3 years.

III. Action To Recover Possession When Plaintiff is a Secured Party.

A. Seller who sells goods on credit or lender who lends money may have buyer or borrower sign a written contract called a "security agreement" whereby seller or lender, who is called the "secured party" takes a "security interest" in buyer's or borrower's (referred to as debtor) personal property.

B. "Security interest" means the secured party may take possession of the secured goods upon debtor's default.

C. Secured party may repossess goods without a court proceeding if he can do so without breach of peace or he may file action to recover possession as a secured

party. Secured party may without removal, render equipment inoperable. [G.S. 25-9-609]

D. Security agreement must
   1. Be in writing,
   2. Include a description of the property,
      a) Description of property sufficient if it reasonably identifies what is described.
      b) For consumer transactions in security agreements created on or after July 1, 2001 insufficient to describe by type only. [G.S. 25-9-108(e)]
   3. Be authenticated [signed] by the debtor, and
   4. If seller-buyer contract, be dated.

E. Plaintiff must prove
   1. Existence of valid security agreement;
   2. Security interest was taken in property sought to be recovered; and
   3. Default in payment by debtor.

F. Amount of money owed on debt is not in issue and need not be proved.

G. Remedy sought is possession of secured property; no money damages are sought.

H. Statute of limitations is usually ten years because it is on a sealed instrument; if the security agreement or underlying note is not under seal, the statute of limitations is three years.

I. Once secured party has repossessed goods (either on own or through court proceeding), secured party must follow UCC (G.S. Ch. 25, Article 9) in disposing of property.
   1. If less than 60% of debt has been paid, secured party may keep goods in full satisfaction of debt (but he must notify debtor who must consent to the proposal either by response or by failing to respond to secured party within 20 days afer notification sent) or he may sell goods and then seek a deficiency.
   2. If 60% or more of cash price or loan has been paid, secured party must sell consumer goods within 90 days unless debtor authenticates a written statement after default allowing secured party to keep goods in satisfaction of debt. [G.S. 25-9-620 and 25-9-624]
   3. Sale may be at either public or private sale but must proceed in commercially reasonable manner with regard to method, manner, time, place, and other terms.[G.S. 25-9-610]
      a) Secured party may purchase at public sale.
      b) Secured party may purchase at private sale only if collateral is of kind that is customarily sold on recognized market or subject of widely distributed standard price quotations.
      c) Fact that a greater amount could have been obtained by a sale at a different time or by a different method is not of itself sufficient to preclude the secured party from establishing that the sale was made in a commercially reasonable manner. [G.S. 25-9-627]
      d) Disposition is commercially reasonable if made in the usual manner on any recognized market; at the price current in any recognized market; or otherwise in conformity with reasonable

commercial practices among dealers in the type of property that was the subject of the disposition.

4. Secured party must send to debtor a reasonable authenticated notice of the time and place of any public sale and reasonable notice of the time after which the property will be sold at a private sale. [G.S. 25-9-611]
   a) For consumer goods, magistrate must find that notice is sent within a reasonable time. No statutory time is provided. [G.S. 25-9-612]
   b) The statute sets out requirements for the notice and a statutory form notice. [G.S. 25-9-614] The notice must:
      (1) Describe the debtor and secured party.
      (2) Describe the collateral that is the subject of the disposition.
      (3) State the method of intended disposition.
      (4) State that the debtor is entitled to an accounting of the unpaid indebtedness and state the charge, if any, for the the accounting.
      (5) State the time and place of a public sale or the time after which any other disposition is to be made.
      (6) A description of any liability for a deficiency.
      (7) Telephone number from which amount that must be paid to redeem the collateral is available.
      (8) Telephone number or mailing address from which additional information about the disposition and obligation secured is available.
   c) Provides that a particular phrasing is not required.
5. Debtor may redeem goods at any time before sale by paying full amount of debt owed on goods (not just payments missed) plus expenses reasonably incurred in repossessing, holding and preparing goods for disposal. [G.S. 25-9-623]

J. Secured party disperses proceeds of the sale as follows:
   1. Keeps reasonable expenses of retaking and selling goods;
   2. Applies proceeds to satisfaction of debt due to secured party.
   3. Applies proceeds to satisfaction of subordinate security agreements if receive authenticated demand.
   4. If any proceeds remaining, gives surplus to debtor.

K. Amount of surplus or deficiency is calculated based on the amount of proceeds that would have been realized in a disposition complying with statute to a transferee other than the secured party, a person related to the secured party, or a secondary obligor if one of those persons is the purchaser or if the price paid is significantly below the range of proceeds that a complying disposition to a person other than the secured party, relative, or secondary obligor would have brought.
   1. Essentially, the magistrate should give greater scrutiny to cases when the secured party purchased the property.
   2. Notice of surplus or deficiency.
      a) When debtor is entitled to surplus or is liable for deficiency, secured party must send an explanation to debtor after disposition of collateral and before paying any surplus or making a demand for payment of a deficiency.
      b) Explanation must

(1) State the amount of the surplus or deficiency.
(2) Provide an explanation of how secured party calculated the surplus or deficiency.
(3) State that future debits may affect amount of surplus or deficiency.
(4) Provide a telephone number or mailing address fromw hich additional information is available.

c) G.S. 25-9-616(c) specifies how the secured party must explain the calculation.
(1) Aggregate amount of obligations secured by security interest under which property sold.
(2) Amount of proceeds of disposition.
(3) Aggregate amount of obligations after deducting amount of proceeds.
(4) Amount and types of expenses..
(5) Amount pf credits including rebates on interest or credit service charges.
(6) Amount of surplus or deficiency.

L. If debt not fully satisfied by sale, secured party may file for the deficiency (amount still owed after applying sale proceeds to debt).
1. This is done by a separate lawsuit for money owed.
2. See subsection K. above for calculation of deficiency if secured party or relative is purchaser.
3. In action to recover deficiency secured party has burden of proving that sale was conducted in commercially reasonable manner; if not held in commercially reasonable manner, presumed secured property worth amount of debt owed. [*ITT-Industrial Credit Co. v. Milo-Concrete Co.*, 31 N.C. App. 450 (1976)]

M. Damages to debtor for seller's failure to dispose of property properly:
1. If secured party fails to comply with statute, debtor has right to recover greater of actual damages proved or without proving any actual damages may recover the finance charge imposed plus 10% of the principal amount of the debt. [G.S. 25-9-625(c)]
2. G.S. 25-9-210 requires a secured party to respond to a request for an accounting or list of collateral from debtor and debtor may recover damages and $500 from secured party that, without reasonable cause, fails to comply with a request. [G.S. 25-9-625(f)]

[Name and address of secured party]
[Date]

NOTICE OF OUR PLAN TO SELL PROPERTY

[Name and address of any obligor who is also a debtor]
Subject: [Identification of Transaction]

We have your [describe collateral], because you broke promises in our agreement.

[For a public disposition:]
We will sell [describe collateral] _ at public sale. A sale could include a lease or license. The sale will be held as follows:

Date: _____
Time: _____
Place: _____
You may attend the sale and bring bidders if you want.

[For a private disposition:]
We will sell [describe collateral] at private sale sometime after [date]. A sale could include a lease or license.

The money that we get from the sale (after paying our costs) will reduce the amount you owe. If we get less money than you owe, you [will or will not, as applicable] still owe us the difference. If we get more money than you owe, you will get the extra money, unless we must pay it to someone else.

You can get the property back at any time before we sell it by paying us the full amount you owe (not just the past due payments), including our expenses. To learn the exact amount you must pay, call us at [telephone number].

If you want us to explain to you in writing how we have figured the amount that you owe us, you may call us at [telephone number] or write us at [secured party's address] and request a written explanation. [We will charge you $_____ for the explanation if we sent you another written explanation of the amount you owe us within the last six months.]

If you need more information about the sale call us at [telephone number] or write us at [secured party's address].

We are sending this notice to the following other people who have an interest in [describe collateral] or who owe money under your agreement:
[Names of all other debtors and obligors, if any]

* A notification in the form of the above language, is sufficient even if additional information appears at the end of the form and even if it includes errors in information not required by law, unless the error is misleading with respect to rights arising under Article 9 of the U.C.C.

Joan G. Brannon
Institute of Government
January 2006

OUTLINE OF RETAIL INSTALLMENT SALES ACT AND NONPURCHASE MONEY SECURITY INTERESTS IN HOUSEHOLD GOODS

I. Retail Installment Sales Act G.S. Ch. 25A.

A. Scope of act— applies to all consumer credit sales. Does <u>not</u> apply to bona fide direct loan in which lender makes direct loan to borrower and lender not regularly engaged in sale of goods or services (e.g., buyer borrows $500 from Financial Credit and uses money to buy TV from Acme Appliance Co.). Does not apply to sale in which buyer purchases goods or services by a credit card issued by someone other than seller (e.g., purchaser using Master Charge card).

B. Definitions

1. Consumer credit sale.
   a) Sale of goods or services in which
      (1) seller who in ordinary course of business regularly extends or arranges for extension of credit;
      (2) buyer is a natural person;
      (3) goods or services purchased primarily for personal, family, household or agricultural purpose;
      (4) debt representing the price is payable in four or more installments or a finance charge is imposed; and
      (5) amount financed not more than $75,000.
   b) Sale includes some lease for sale contracts.
2. Finance charge.
   a) Sum of all charges payable directly or indirectly by buyer and imposed by seller as incident to extension of credit.
   b) Includes interest, time-price differential, service or carrying charge, loan fee, fee for credit report.
   c) Does not including some insurance charges.

C. Terms of Consumer Credit Contracts

1. Maximum finance charge rates.
   a) 24% per annum where amount financed less than $1,500;
   b) 22% where amount financed $1,500 to $1,999;
   c) 20% where amount financed $2,000 to $2,999;
   d) 18% where amount financed $3,000 to $25,000;
   e) 1 1/2% per month for revolving charge accounts.
2. Consumer credit installment sale contract must be in writing, dated and signed by buyer.
3. **Seller may take security interest (collateral) only in following:**
   a) **Property sold**;
   b) **Property previously sold by seller to buyer <u>and</u> in which seller still has security interest**;
   c) Personal property to which property sold is installed if amount financed more than $300;

d) Real property to which property sold affixed, if amount financed more than $1,000;
e) Motor vehicle to which repairs made, if amount financed more than $100.
f) Any property used for agricultural purposes, if the property sold is to be used in the operation of an agricultural business.

4. **Security interest taken in other property void and not enforceable**.
5. Application of payments when seller makes a subsequent sale to buyer and takes a security agreements in goods previously sold or consolidates two or more consumer credit contracts--payments made after second or subsequent purchase applied first to finance charges, then to oldest item purchased; when that item is paid for payments applied to next oldest item purchased and so forth. (Called first-in, first-out method).
6. Default charges—if installment past due for at least 10 days default charge of not more than 5% of payment due or $6 whichever is less may be imposed. Can be imposed only one time for each default. Waived unless within 45 days of default, charge collected or written notice of charge sent buyer.
7. Contract must provide for complete payment within 42 months if amount financed less than $1,500 or 64 months if amount financed $1,500 to $2,499.
8. Referral sales of any kind are void. (E.g., where price or rebate conditional on procurement of prospective customers or of additional sales.)

D. Remedies and penalties
1. If contract requires payment of finance charge not more than two times in excess of permissible charge, seller not permitted to recover any finance charge and seller liable to buyer in amount twice that of finance charge actually received by seller and reasonably attorney's fees incurred by buyer. However, if excess charge results from accidental or good faith error, seller liable only for amount by which finance charge exceeds permissible rate.
2. If contract requires payment of finance charge more than two times that permitted, contract is void. Buyer may retain goods without any liability and seller not entitled to recover anything under contract.

II. Nonpurchase Money Security Interest in Household Goods (16 CFR § 444.1 to 444.5--federal law)

A. The Federal Trade Commission has adopted a regulation that governs taking nonpurchase money security interests in household goods. The regulation states that it is an unfair trade practice for a lender or retail installment seller to take from consumer an obligation that contains a nonpossessory security interest in household goods other than a purchase money security interest.

B. Household goods.
1. Defined as the following items of the consumer and his or her dependents:
a) clothing,
b) furniture,
c) appliances,
d) one radio and one television,
e) linens,
f) china,
g) crockery,

h) kitchenware, and
i) personal effects (including wedding rings).

2. The following are not included as household goods:
   a) works of art,
   b) electronic entertainment equipment (except one radio and one television),
   c) items acquired as antiques (over 100 years of age), and
   d) jewelry (except wedding rings).

C. The regulation applies to contracts entered into on or after March 1, 1985. [*Ken Mar Finance v. Harvey*, 90 N.C. App. 362 (1988)]

D. The North Carolina Consumer Finance Act, which regulates finance companies, provides as follows:
   1. G.S. 53-180(g)--no licensee shall engage in any unfair or deceptive trade practice.
   2. G.S. 53-166(d)--any contract that violates a provision of this Article (the law governing finance companies) is void and the licensee shall have no right to collect, receive or retain any principal or charges whatsoever with respect to such loan.

TAB:

Contempt

ESSENTIALS OF CONTEMPT FOR MAGISTRATES

Michael Crowell
UNC School of Government
October 2013

Different kinds of contempt

There are two kinds of contempt: criminal contempt and civil contempt.

Criminal contempt is used to punish for acts that disrupt a court proceeding or show disrespect, and also can be used for violation of court orders. Criminal contempt can be direct or indirect. Direct criminal contempt occurs in the court's presence; indirect does not. Criminal contempt can be punished by imprisonment and/or a fine.

Civil contempt is used to get someone to comply with a court order. There is no distinction between direct and indirect civil contempt; in any event, virtually all civil contempt takes place outside the court's presence. The only means of enforcing civil contempt is to imprison the person until the person complies with the court order.

Magistrate's authority

A magistrate's authority to use contempt is stated in G.S. 7A-292(2). A magistrate may punish only for direct criminal contempt. That is, a magistrate may punish only for criminal contempt that takes place in the magistrate's presence. Any other kind of contempt must be referred to a district court judge.

Meaning of criminal contempt

Criminal contempt is defined in G.S. 5A-11. Only the acts listed in the statute may be punished by criminal contempt.

The contemptuous acts listed in G.S. 5A-11 most likely to be committed directly before a magistrate are:

- "Willful behavior committed during the sitting of a court and directly tending to interrupt its proceedings."
- "Willful behavior committed during the sitting of a court in its immediate view and presence and directly tending to impair the respect due its authority."

It is also possible, though less likely, that this form of criminal contempt will be committed directly before a magistrate:

- "Willful refusal to be sworn or affirmed as a witness, or, when so sworn or affirmed, willful refusal to answer any legal and proper question when the refusal is not legally justified."

One can also think of unusual situations in which the following forms of criminal contempt could occur directly before a magistrate, but most often they would not be direct contempt because the magistrate would not have actually observed the violation:

- "Willful disobedience of, resistance to, or interference with a court's lawful process, order, directive, or instruction or its execution."
- "Willful or grossly negligent failure to comply with schedules and practices of the court resulting in substantial interference with the business of the court."

Meaning of direct contempt

G.S. 5A-13 says that an act is direct criminal contempt only when the act:

> "(1) Is committed within the sight and hearing or a presiding judicial official; and
> (2) Is committed in, or in immediate proximity to, the room where proceedings are being held before the court; and
> (3) Is likely to interrupt or interfere with matters then before the court."

Summary or plenary proceeding

Contempt may be dealt with in a summary proceeding or a plenary proceeding. A summary proceeding means that the magistrate deals with the contempt right then and there as it occurs. That choice is always available for direct contempt. If for whatever reason the magistrate does not wish to deal with the contempt immediately, the magistrate may issue a show cause order for the defendant to appear before a district judge at a later time for a plenary proceeding. A summary proceeding is an on-the-spot quick determination of contempt; a plenary proceeding is more like a regularly-scheduled trial.

The summary proceeding

At a summary proceeding for direct criminal contempt the magistrate must tell the person that the magistrate is considering holding the person in contempt; describe what the person did that was contemptuous; and give the person a chance to respond why it is not contempt. Even if the conduct which is the basis for contempt is obvious to everyone, and it is clear that the defendant has no good excuse, the magistrate still must explain the basis for the contempt and still must give the defendant an opportunity to respond. The magistrate should also inform the person that contempt can be punished by imprisonment for up to 30 days and a fine of up to $500.

The summary proceeding must be held "substantially contemporaneously" with the contempt. As a practical matter that means just as soon as the contempt occurs or within a few minutes thereafter. There can be situations in which it is permissible to delay the summary proceeding for a day or so, but a magistrate should not attempt to do that. If the contempt proceeding is not going to be held right away the magistrate should issue a show cause order for the defendant to appear before a district judge at a later time.

G.S. 15A-511(a)(3) says that if a defendant at an initial appearance is so unruly or is unconscious or so intoxicated as to be unable to understand what is going on the magistrate can order the person held for a short time before conducting the initial appearance. If the defendant's unruliness includes contemptuous behavior, the magistrate may wait on the summary proceeding until the defendant is brought back for the initial appearance. If the defendant acts contemptuously but is too intoxicated for the initial appearance or for an orderly summary proceeding, the defendant probably is not capable of acting willfully (see below) and contempt is not appropriate.

G.S. 5A-16(a) authorizes a magistrate to order a person being charged with direct criminal contempt to be held and restrained "to the extent necessary to assure his presence for summary proceedings . . . ." That statute should be used only when necessary to keep the person from fleeing.

A magistrate conducting a summary proceeding should use form AOC-CR-390. The form should describe in detail the behavior that was contemptuous, including direct quotation of words that were spoken.

Show-cause order for a plenary proceeding

Although direct criminal contempt always may be punished summarily, it does not have to be done summarily. The magistrate may choose to issue a show cause order and direct the person to appear before a district court judge in a plenary proceeding. The plenary proceeding should be used when the person is so belligerent or disruptive that it is not possible to conduct a summary proceeding; when the office is too busy to stop for a summary proceeding; or when the magistrate has become too personally involved to decide the contempt.

The form a magistrate should use for a show-cause order for contempt is AOC-CR-219, but the form is not designed for the most common kind of direct criminal contempt. The simplest way to use the form usually will be to check box IV for "Failure To Obey Other Order Of the Court" but strike through that heading and substitute "Interruption of Court Proceeding" or "Disrespect to Court" and then describe the behavior which is contemptuous.

Willfulness and warning

G.S. 5A-12(b) provides that a person may be punished for criminal contempt only if the person's actions are "willfully contemptuous" or the person was given "a clear warning by the court that the conduct is improper." Willfulness has been defined by appellate court opinions to mean "more than deliberation or conscious choice; it also imports a bad faith disregard for authority

and the law." Some acts such as spitting at a magistrate or yelling profanity or kicking a table are willfully contemptuous by their nature and so inherently disruptive and disrespectful that no warning is needed. However, when the defendant is doing something less disrespectful and disruptive, such as talking so much that no one else can speak or refusing to sit down and await one's turn to be heard, the magistrate must warn the person that the behavior is unacceptable before using contempt.

To avoid later questions about whether the contempt was "willfully contemptuous," it is better for the magistrate to always give a warning before holding a person in contempt. The willfully contemptuous defendant is not likely to stop just because of the warning.

Right to counsel

If a lawyer is present with a person charged with direct contempt, of course the lawyer may represent the defendant in the summary contempt proceeding. It is not necessary to delay the summary hearing to allow the defendant to get a lawyer, however. And it is not necessary to appoint a lawyer to represent an indigent defendant in a summary contempt proceeding. If the contempt is not addressed summarily by the magistrate and instead proceeds to a plenary hearing before a judge, the indigent defendant is entitled to have counsel appointed.

Recusal

Contemptuous conduct often can be very personal. A defendant may use degrading terms to speak to the magistrate and may be openly hostile in close quarters. In those circumstances the magistrate may feel personally insulted and want to get back at the defendant. If anything about the contemptuous behavior causes a magistrate to feel that way, the magistrate should not conduct a summary proceeding for contempt but instead should issue a show-cause order and allow the contempt charge to be heard by a judge at a later time.

Proof beyond a reasonable doubt

The standard for criminal contempt is the same as for conviction of a crime: A person may not be held in criminal contempt unless the contempt is proved beyond a reasonable doubt. Because direct contempt occurs in the presence of the magistrate, the magistrate's own view of the defendant's conduct will establish the proof.

Punishment

G.S. 5A-12 sets out the punishment for criminal contempt. The possible punishments include censure, imprisonment for up to 30 days, a fine of not more than $500, or any combination of those three options. A magistrate will not use censure, leaving imprisonment and a fine as the choices. Before sentencing a defendant to jail for contempt, or imposing a fine, the magistrate should consider how the penalty will compare with the punishment a defendant likely would

receive for conviction of a crime. If a fine is being imposed, the magistrate needs to consider the person's ability to pay.

Although it will not be appropriate in most instances when a magistrate holds a person in contempt, the sentence for criminal contempt may be suspended with conditions, just as for other criminal offenses.

If a magistrate sentences a defendant to jail for criminal contempt, the magistrate may go back and reduce or terminate the sentence at any time. For example, if a magistrate sentenced a person to jail for two days for contempt, the magistrate could terminate the sentence after one day. Likewise, if a magistrate imposes a fine the magistrate may later reduce or eliminate the fine.

Appeal

Appeal for criminal contempt is from the magistrate to superior court. The appeal is for a hearing *de novo*.

G.S. 5A-17 provides that an appeal from criminal contempt is the same as an appeal in a criminal action. The statute on criminal appeals generally, G.S. 15A-1451, provides that the payment of a fine and costs is stayed upon the defendant's giving notice of appeal, but confinement is stayed only when the defendant is released pursuant to the bail statutes. Thus, if the defendant gives notice of appeal from a sanction of criminal contempt the payment of any fine is stayed automatically but the defendant starts serving the jail time until released on bail. Starting December 1, 2013, G.S. 5A-17 will require that the bail hearing be held by a district judge when a magistrate orders someone to jail for criminal contempt and that the hearing has to be within 24 hours. If a district judge has not held the bail hearing within 24 hours, any other judicial official may do so.

Chapter 5A.
Contempt.
Article 1.
Criminal Contempt.

§§ 5A-1 through 5A-10. Reserved for future codification purposes.

§ 5A-11. Criminal contempt.

(a) Except as provided in subsection (b), each of the following is criminal contempt:

(1) Willful behavior committed during the sitting of a court and directly tending to interrupt its proceedings.

(2) Willful behavior committed during the sitting of a court in its immediate view and presence and directly tending to impair the respect due its authority.

(3) Willful disobedience of, resistance to, or interference with a court's lawful process, order, directive, or instruction or its execution.

(4) Willful refusal to be sworn or affirmed as a witness, or, when so sworn or affirmed, willful refusal to answer any legal and proper question when the refusal is not legally justified.

(5) Willful publication of a report of the proceedings in a court that is grossly inaccurate and presents a clear and present danger of imminent and serious threat to the administration of justice, made with knowledge that it was false or with reckless disregard of whether it was false. No person, however, may be punished for publishing a truthful report of proceedings in a court.

(6) Willful or grossly negligent failure by an officer of the court to perform his duties in an official transaction.

(7) Willful or grossly negligent failure to comply with schedules and practices of the court resulting in substantial interference with the business of the court.

(8) Willful refusal to testify or produce other information upon the order of a judge acting pursuant to Article 61 of Chapter 15A, Granting of Immunity to Witnesses.

(9) Willful communication with a juror in an improper attempt to influence his deliberations.

(9a) Willful refusal by a defendant to comply with a condition of probation.

(10) Any other act or omission specified elsewhere in the General Statutes of North Carolina as grounds for criminal contempt.

The grounds for criminal contempt specified here are exclusive, regardless of any other grounds for criminal contempt which existed at common law.

(b) No person may be held in contempt under this section on the basis of the content of any broadcast, publication, or other communication unless it presents a clear and present danger of an imminent and serious threat to the administration of criminal justice.

(c) This section is subject to the provisions of G.S. 7A-276.1, Court orders prohibiting publication or broadcast of reports of open court proceedings or reports of public records banned. (1977, c. 711, s. 3; 1994, Ex. Sess., c. 19, s. 1.)

§ 5A-12. Punishment; circumstances for fine or imprisonment; reduction of punishment; other measures.

(a) A person who commits criminal contempt, whether direct or indirect, is subject to censure, imprisonment up to 30 days, fine not to exceed five hundred dollars ($500.00), or any combination of the three, except that:

(1) A person who commits a contempt described in G.S. 5A-11(8) is subject to censure, imprisonment not to exceed 6 months, fine not to exceed five hundred dollars ($500.00), or any combination of the three;

(2) A person who has not been arrested who fails to comply with a nontestimonial identification order, issued pursuant to Article 14 of Chapter 15A of the General Statutes is subject to censure, imprisonment not to exceed 90 days, fine not to exceed five hundred dollars ($500.00), or any combination of the three; and

(3) A person who commits criminal contempt by failing to comply with an order to pay child support is subject to censure, imprisonment up to 30 days, fine not to exceed five hundred dollars ($500.00), or any combination of the three. However, a sentence of imprisonment up to 120 days may be imposed for a single act of criminal contempt resulting from the failure to pay child support, provided the sentence is suspended upon conditions reasonably related to the contemnor's payment of child support.

(b) Except for contempt under G.S. 5A-11(5) or 5A-11(9), fine or imprisonment may not be imposed for criminal contempt, whether direct or indirect, unless:

(1) The act or omission was willfully contemptuous; or

(2) The act or omission was preceded by a clear warning by the court that the conduct is improper.

(c) The judicial official who finds a person in contempt may at any time withdraw a censure, terminate or reduce a sentence of imprisonment, or remit or reduce a fine imposed as punishment for contempt if warranted by the conduct of the contemnor and the ends of justice.

(d) A person held in criminal contempt under this Article shall not, for the same conduct, be found in civil contempt under Article 2 of this Chapter, Civil Contempt.

(e) A person held in criminal contempt under G.S. 5A-11(9) may nevertheless, for the same conduct, be found guilty of a violation of G.S. 14-225.1, but he must be given credit for any imprisonment resulting from the contempt. (1977, c. 711, s. 3; 1985 (Reg. Sess., 1986), c. 843, s. 1; 1987 (Reg. Sess., 1988), c. 1040, ss. 2, 4; 1989 (Reg. Sess., 1990), c. 1039, s. 4; 1991, c. 686, s. 3; 1999-361, s. 3; 2009-335, s. 1.)

§ 5A-13. Direct and indirect criminal contempt; proceedings required.

(a) Criminal contempt is direct criminal contempt when the act:

(1) Is committed within the sight or hearing of a presiding judicial official; and

(2) Is committed in, or in immediate proximity to, the room where proceedings are being held before the court; and

(3) Is likely to interrupt or interfere with matters then before the court.

The presiding judicial official may punish summarily for direct criminal contempt according to the requirements of G.S. 5A-14 or may defer adjudication and sentencing as provided in G.S. 5A-15. If proceedings for direct criminal contempt are deferred, the judicial official must, immediately following the conduct, inform the person of his intention to institute contempt proceedings.

(b) Any criminal contempt other than direct criminal contempt is indirect criminal contempt and is punishable only after proceedings in accordance with the procedure required by G.S. 5A-15. (1977, c. 711, s. 3.)

§ 5A-14. Summary proceedings for contempt.

(a) The presiding judicial official may summarily impose measures in response to direct criminal contempt when necessary to restore order or maintain the dignity and authority of the court and when the measures are imposed substantially contemporaneously with the contempt.

(b) Before imposing measures under this section, the judicial official must give the person charged with contempt summary notice of the charges and a summary opportunity to respond and must find facts supporting the summary imposition of measures in response to contempt. The facts must be established beyond a reasonable doubt. (1977, c. 711, s. 3.)

§ 5A-15. Plenary proceedings for contempt.

(a) When a judicial official chooses not to proceed summarily against a person charged with direct criminal contempt or when he may not proceed summarily, he may proceed by an order directing the person to appear before a judge at a reasonable time specified in the order and show cause why he should not be held in contempt of court. A copy of the order must be furnished to the person charged. If the criminal contempt is based upon acts before a judge which so involve him that his objectivity may reasonably be questioned, the order must be returned before a different judge.

(b) Proceedings under this section are before a district court judge unless a court superior to the district court issued the order, in which case the proceedings are before that court. Venue lies throughout the district court district as defined in G.S. 7A-133 or superior court district or set of districts as defined in G.S. 7A-41.1, as the case may be, where the order was issued.

(c) The person ordered to show cause may move to dismiss the order.

(d) The judge is the trier of facts at the show cause hearing.

(e) The person charged with contempt may not be compelled to be a witness against himself in the hearing.

(f) At the conclusion of the hearing, the judge must enter a finding of guilty or not guilty. If the person is found to be in contempt, the judge must make findings of fact and enter judgment. The facts must be established beyond a reasonable doubt.

(g) The judge presiding over the hearing may appoint a prosecutor or, in the event of an apparent conflict of interest, some other member of the bar to represent the court in hearings for criminal contempt. (1977, c. 711, s. 3; 1987 (Reg. Sess., 1988), c. 1037, s. 44.)

§ 5A-16. Custody of person charged with criminal contempt.

(a) A judicial official may orally order that a person he is charging with direct criminal contempt be taken into custody and restrained to the extent necessary to assure his presence for summary proceedings or notice of plenary proceedings.

(b) If a judicial official who initiates plenary proceedings for contempt under G.S. 5A-15 finds, based on sworn statement or affidavit, probable cause to believe the person ordered to appear will not appear in response to the order, he may issue an order for arrest of the person, pursuant to G.S. 15A-305. A person arrested under this subsection is entitled to release under the provisions of Article 26, Bail, of Chapter 15A of the General Statutes. (1977, c. 711, s. 3.)

§ 5A-17. Appeals.

A person found in criminal contempt may appeal in the manner provided for appeals in criminal actions, except appeal from a finding of contempt by a judicial official inferior to a superior court judge is by hearing de novo before a superior court judge. (1977, c. 711, s. 3.)

§ 5A-18. Reserved for future codification purposes.

§ 5A-19. Reserved for future codification purposes.

§ 5A-20. Reserved for future codification purposes.

STATE OF NORTH CAROLINA

File No.

_____ County

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

IN THE MATTER OF

Name And Address Of Contemnor

DIRECT CRIMINAL CONTEMPT/ SUMMARY PROCEEDINGS/ FINDINGS AND ORDER

G.S. 5A-11, -12, -13, -14

Race	*Sex*	*Date of Birth*	*Age*

Date	*Time*	*Place*
	☐ AM ☐ PM	

On the date, time and place of hearing as stated above, the undersigned judicial official conducted:

☐ an initial appearance
☐ a first appearance
☐ a pre-trial motion hearing
☐ a probable cause hearing
☐ an estates proceeding
☐ a special proceeding
☐ a trial
☐ other _____

The court finds beyond a reasonable doubt that during the proceeding the above contemnor willfully behaved in a contemptuous manner, in that the above named contemnor did

The undersigned gave a clear warning that the contemnor's conduct was improper. In addition, the contemnor was given summary notice of the charges and summary opportunity to respond.

(**NOTE:** *The contemnor should be given an opportunity to explain his/her behavior, however the contemnor is not entitled to counsel, if court promptly punishes act of contempt.*)

The contemnor's conduct interrupted the proceedings of the court and impaired the respect due its authority.

Therefore, it is adjudged that the above named contemnor is in contempt of court. It is ordered that the contemnor

NOTE TO COURT: *If suspending a sentence for contempt, impose judgment on form AOC-CR-604.*

☐ be censured for contempt.
☐ shall pay a fine of $ _____ *(max $500.00).* ☐ shall pay the costs of court.
☐ be imprisoned for a term of _____ ☐ hours ☐ days in the custody of the ☐ Sheriff ☐ Misdemeanant Confinement Program.
The contemnor shall be given credit for _____ days' pretrial confinement. ☐ Work release is recommended.

Date	*Name Of Judicial Official (Type Or Print)*	*Signature Of Judicial Official*

ORDER OF COMMITMENT/APPEAL ENTRIES

☐ It is ORDERED that the Clerk deliver **two** certified copies of this Findings and Order to the sheriff or other qualified officer and that the officer cause the contemnor to be delivered with these copies to the custody of the sheriff of the county named above to serve the sentence imposed or until the contemnor shall have complied with the conditions of release pending appeal.

☐ The contemnor gives notice of appeal from this Findings and Order to the Superior Court.

☐ The contemnor gives notice of appeal from this Findings and Order in the Superior Court to the appellate division. Appeal entries and any conditions of post conviction release are set forth on form AOC-CR-350.

NOTE TO COURT: *If finding of contempt was made by a judicial official inferior to a Superior Court Judge, the appeal is to Superior Court. G.S. 5A-17. On appeal from criminal contempt imposing confinement, there must be a bail hearing "within a reasonable time period" after confinement is imposed. The contemnor may not be confined more than 24 hours without a bail hearing. See G.S. 5A-17(b) for officials who may conduct the hearing.*

Date	*Name Of Judicial Official (Type Or Print)*	*Signature Of Judicial Official*

CERTIFICATION

I certify that this Findings and Order is a true and complete copy of the original which is on file in this case.

Date	*Signature*
	SEAL
Date Certified Copies Delivered To Sheriff	☐ *Deputy CSC* ☐ *Assistant CSC* ☐ *Clerk Of Superior Court*

Original-File Copy-Sheriff

AOC-CR-390, Rev. 12/13

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.

_____

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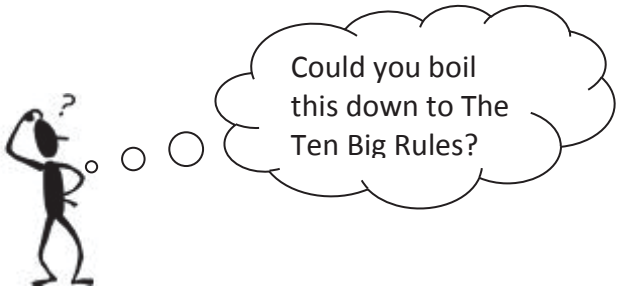

THE TEN BIG RULES[1]

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.

_____

_____

_____

_____

[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.

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.

10. A magistrate should not endorse, or contribute to the campaign of, any particular candidate for office.

_____

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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: _____

_____

_____

_____

_____

"A judge should (1) hear courteously (2) answer wisely (3) consider soberly (4) decide impartially. "

American Judicature Society, HANDBOOK FOR JUDGES (1961).

Magistrates and the Code of Judicial Conduct

G.S. 7A-173(a): magistrate may be suspended or removed based on grounds that are the same as for any judge of the General Court of Justice.
G.S. 7A-173(c): if grounds for removal are found to exist, the superior court judge shall enter an order permanently removing the magistrate.

Grounds for Removal (G.S. 7A-376):

1. Willful misconduct in office,
2. willful and persistent failure to perform his 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.

The Code of Judicial Conduct provides a guide to the meaning of these grounds for removal. Some provisions do not apply to magistrates, since some of its provisions make no sense in that context (e.g., requirement that judge make annual report of name and source of income in excess of $2,000.) But much of Code DOES apply to determining whether a magistrate's actions require removal, and it is important that every magistrate be thoroughly familiar with it.

In the majority of cases, magistrates who are removed from office are found to have behaved in ways clearly amounting to grounds for removal; examples include consistently failing to show up for work (or showing up drunk), embezzling money, extorting sexual favors, or being arrested for molesting a child. In cases such as these, there is little need to scrutinize the Code of Judicial Conduct for guidance in determining whether grounds exist for removal. Specific Code provisions become far more significant when the issue is whether objectionable behavior amounts to "conduct prejudicial to the administration of

justice bringing the judicial office into disrepute." While North Carolina is one of very few states to have deleted references to "the appearance of impropriety" from the ethical code applicable to judges, some commentators have noted that a concern with how behavior appears to others is arguably inherent in Code language addressing the effect of behavior on the overall reputation of the court system. In any event, the Code of Judicial Conduct remains a starting point in evaluating complaints against magistrates.

The Code of Judicial Conduct would not be described by most people as "an easy read" because of the complexity and level of abstraction of its language. Every student of the law knows that any attempt to simplify or paraphrase statutory language is a dangerous endeavor; for anyone attempting to answer any particular question, a fundamental tenet of legal research is that each word has been carefully chosen and must be assumed to have meaning. Nevertheless, a new magistrate seeking to understand the ethical guidelines and prohibitions which have suddenly become authoritative determinants of that magistrate's behavior must start somewhere. Here, then, is a basic primer of ethics for the new magistrate.

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 a inexperienced magistrate in approaching the duties of this new office:

To avoid the appearance of **bia**s:

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.

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

Michael Crowell
UNC School of Government
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

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.

Joan Brannon
Institute of Government
January 2005

ETHICS CASE STUDIES FOR MAGISTRATES

1. Magistrate Busy works on call. Frequently, when called to come to the office in the evening he indicates that he cannot get to the office until 9:00 a.m. the next morning. If he does come to the office when called late in the evening, he hurries the persons appearing before him and doesn't let them finish telling him the problem before he rules. Is this a problem? Would it make any difference if Magistrate Busy is called to come to the office on a weekend when he is working at his second job as a store clerk?

2. Magistrate Tycoon operates an office supply store in his home community as well as being a magistrate. Ms. Wasteful purchases a case of paper from Magistrate Tycoon and pays for it by check. The check is returned for insufficient funds. Tycoon wants to have a warrant issued. Are there any problems? What if Tycoon chose to file a small claims case to recover the money owed?

3. Magistrate Stumper has been an active member of the Agricultural Union Party for many years and is known for her campaign skills. (She believes she got her appointment as a magistrate by virtue of her active participation in politics.) One of Magistrate Stumper's closest political allies, Farmer John, is running for the state senate. Stumper wants to contribute money to his campaign. Should she give the money?

4. What if her husband donates money to the campaign and then decides to put a poster in their front yard? What if Stumper's husband puts a bumper sticker on the family car, which happens to be the car she drives to the office?

5. What if the clerk of court who nominated Magistrate Stumper asks her to help in his campaign by contributing money or working in election headquarters after hours?

6. One of the local professional bondsmen gives each magistrate and employees of the clerk's office a $50 gift certificate to the local Belks. Is that a problem? What about a box of candy?

7. Magistrate Money takes a $500 cash bond in the office on Friday night. When he works on weekends, he keeps the money he collects in his pocket and turns it in on Monday morning. On

Saturday, Money goes to the grocery store and discovers he doesn't have enough money for the groceries. He takes $50 from the cash bond money to pay the grocery bill. On Monday he goes to the bank and gets $50 and then takes the $500 to the clerk. Are there any problems for Magistrate Money?

8. Magistrate Loyal's best friend is a policeman in the town where he holds court. The two played on the same high school football team. Before he became a magistrate, Loyal maintained social contacts with the policeman, and after he was appointed a magistrate, the relationship continued. Both regularly entertained each other's families. Loyal and the policeman frequently go on fishing trips together, using the policeman's boat and staying at his lake cabin. The policeman appears before Loyal at least once a week to seek an arrest or search warrant. Are there ethical problems? What should Magistrate Loyal do?

9. Magistrate Samaritan is magistrate in a rural county. He knows almost everybody in town. When he was appointed, the clerk who nominated him said his job was to help the citizens of the county with their problems. One day Mr. Trouble came to Magistrate Samaritan with a problem. He told Samaritan about a dispute he was having with his neighbor because his neighbor's dog was running loose and tearing up Trouble's garden. Samaritan advised Trouble that he could file a small claims action against his neighbor for damages done by the dog. Three weeks later, Mr. Trouble and his neighbor appear before Magistrate Samaritan for the trial of the civil case. Does this raise any problems for Samaritan? What should he do?

10. Magistrate Loyal, a resident of Red, has been an active member of the local American Party for many years and upon becoming a magistrate continued his interest in the party. The local party wants him to be party chairman. What should he do? Can Magistrate Loyal attend the American Party annual meeting? Contribute to the American Party?

11. What if Magistrate Loyal is asked to run as mayor of Red? for the school board?

12. Magistrate Goodbody is on the Board of Deacons of his church. His church undertakes a major fundraising program and all of the Board of Deacons are requested to solicit funds. Does this create any problem for Goodbody?

13. The local Kiwanis asks Magistrate Goodbody to speak at their meeting on how small claims court works. Does this create any problem for Goodbody?

TAB:

Avoiding Bias

STRUGGLING TOWARD FAIRNESS

MOST OF US SHARE TWO ASSUMPTIONS:

1) That we accurately perceive the world around us; and
2) That we are consciously aware—and thus in control—of internal influences on our behavior. That is, we know why we think what we think, and do what we do.

_____
_____
_____
_____

EXERCISE:

How many passes did you count? _____

_____
_____
_____
_____

EXERCISE: INTERVIEW A STRANGER

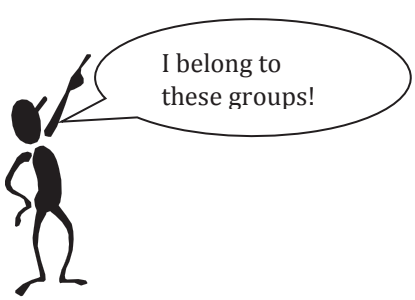
Notes: _____
_____
_____
_____

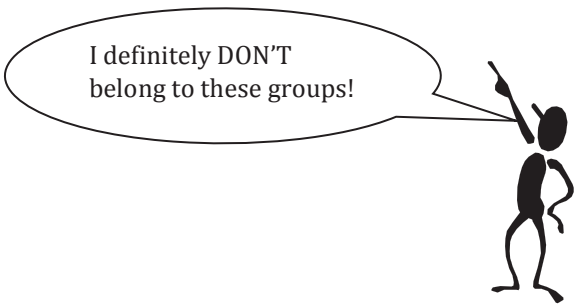
Talking About Groups

_____ _____

_____ _____

_____ _____





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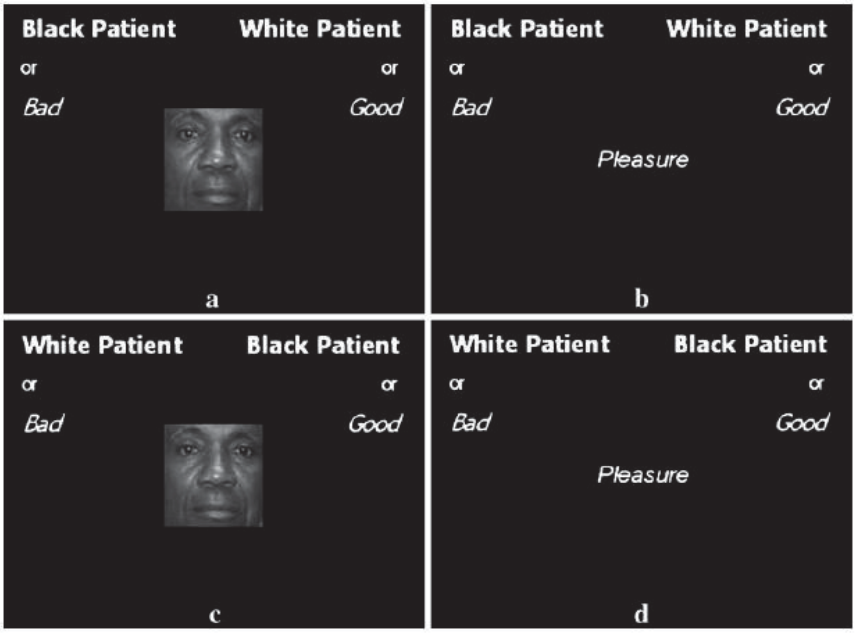
IMPLICIT ASSOCIATION TEST



https://implicit.harvard.edu/implicit/

WHAT FIRES TOGETHER. . .

. . . WIRES TOGETHER.

"When I think of marshmallows, I also think of _____, and

_____, and

_____.

Why is she blindfolded?

WHAT YOU NEED TO KNOW TO MINIMIZE THE IMPACT OF IMPLICIT BIAS ON YOUR DECISIONS AS A MAGISTRATE

1) Heighten awareness of differences, and remind yourself that differences increase the risk of out-group bias.

2) Remember that the brain relies on automatic processing when you are

    a. In a hurry
    b. Tired
    c. Upset
    d. Stressed
    e. Angry

    Slowing down and recognizing how you feel makes a big difference in what you think and do.

3) Think about your thinking. Specifically identify categories that you have negative associations to. Be alert to circumstances in which those associations may be triggered. Combat them by pausing to consciously break the associational link.

4) Keep learning. Take the IAT. Check out the resources listed in the Appendix. Invite a colleague to watch and discuss one of the online videos with you.

Decision-making and Fairness References

Drennan/School of Government, UNC

October 2013

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2. *Project Implicit® Web site*: **http://projectimplicit.net/**
3. *Implicit bias/neuroscience video*: **http://www2.courtinfo.ca.gov/comet/html/broadcasts/6433_video.htm** (produced by National Center for State Courts and California Administrative Office of the Courts)

Books

1. *Thinking Fast and Slow,* Khaneman: Farrar, Straus, and Giroux (2011)
2. *Decisive,* Heath and Heath; Crown Business (2013)
3. *Mistakes Were Made (But Not by Me),* Tarvis and Aranson; Harcourt (2007)
4. *The Invisible Gorilla,* Chabris and Simon; Crown Publishing (2009)
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2. *Does Unconscious Racial Bias Affect Trial Judges?* Johnson, Guthrie, Rachlinski and Wistrich, 84 Notre Dame Law Review No.3 (2009)
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4. *Forgotten Racial Equality: Implicit Bias, Decision-making, and Misremembering,* Levinson, 57 Duke Law Journal 345 (2007)
5. *Symposium on Behavioral Realism,* Greenwald and Krieger, 94 California Law Review 945 (2006)
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August 17, 2011

Do You Suffer From Decision Fatigue?

By JOHN TIERNEY

Three men doing time in Israeli prisons recently appeared before a parole board consisting of a judge, a criminologist and a social worker. The three prisoners had completed at least two-thirds of their sentences, but the parole board granted freedom to only one of them. Guess which one:

Case 1 (heard at 8:50 a.m.): An Arab Israeli serving a 30-month sentence for fraud.

Case 2 (heard at 3:10 p.m.): A Jewish Israeli serving a 16-month sentence for assault.

Case 3 (heard at 4:25 p.m.): An Arab Israeli serving a 30-month sentence for fraud.

There was a pattern to the parole board's decisions, but it wasn't related to the men's ethnic backgrounds, crimes or sentences. It was all about timing, as researchers discovered by analyzing more than 1,100 decisions over the course of a year. Judges, who would hear the prisoners' appeals and then get advice from the other members of the board, approved parole in about a third of the cases, but the probability of being paroled fluctuated wildly throughout the day. Prisoners who appeared early in the morning received parole about 70 percent of the time, while those who appeared late in the day were paroled less than 10 percent of the time.

The odds favored the prisoner who appeared at 8:50 a.m. — and he did in fact receive parole. But even though the other Arab Israeli prisoner was serving the same sentence for the same crime — fraud — the odds were against him when he appeared (on a different day) at 4:25 in the afternoon. He was denied parole, as was the Jewish Israeli prisoner at 3:10 p.m, whose sentence was shorter than that of the man who was released. They were just asking for parole at the wrong time of day.

There was nothing malicious or even unusual about the judges' behavior, which was reported earlier this year by Jonathan Levav of Stanford and Shai Danziger of Ben-Gurion University. The judges' erratic judgment was due to the occupational hazard of being, as George W. Bush once put it, "the decider." The mental work of ruling on case after case, whatever the individual merits, wore them down. This sort of decision fatigue can make quarterbacks prone to dubious choices late in the game and C.F.O.'s prone to disastrous dalliances late in the evening. It routinely warps the judgment of everyone, executive and nonexecutive, rich and poor — in fact, it can take a special toll on the poor. Yet few people are even aware of it, and researchers are only beginning to understand why it happens and how to counteract it.

Decision fatigue helps explain why ordinarily sensible people get angry at colleagues and families, splurge on clothes, buy junk food at the supermarket and can't resist the dealer's offer to rustproof their new car. No matter how rational and high-minded you try to be, you can't make decision after decision without paying a biological price. It's different from ordinary physical fatigue — you're not consciously aware of being tired — but you're low on mental energy. The more choices you make throughout the day, the harder each one becomes for your brain, and eventually it looks for shortcuts, usually in either of two very different ways. One shortcut is to become reckless: to act impulsively instead of expending the energy to first think through the consequences. (Sure, tweet that photo! What could go wrong?) The other shortcut is the ultimate energy saver: do nothing. Instead of agonizing over decisions, avoid any choice. Ducking a decision often creates bigger problems in the long run, but for the moment, it eases the mental strain. You start to resist any change, any potentially risky move — like releasing a prisoner who might commit a crime. So the fatigued judge on a parole board takes the easy way out, and the prisoner keeps doing time.

Decision fatigue is the newest discovery involving a phenomenon called ego depletion, a term coined by the social psychologist Roy F. Baumeister in homage to a Freudian hypothesis. Freud speculated that the self, or ego, depended on mental activities involving the transfer of energy. He was vague about the details, though, and quite wrong about some of them (like his idea that artists "sublimate" sexual energy into their work, which would imply that adultery should be especially rare at artists' colonies). Freud's energy model of the self was generally ignored until the end of the century, when Baumeister began studying mental discipline in a series of experiments, first at Case Western and then at Florida State University.

These experiments demonstrated that there is a finite store of mental energy for exerting self-control. When people fended off the temptation to scarf down M&M's or freshly baked chocolate-chip cookies, they were then less able to resist other temptations. When they forced themselves to remain stoic during a tearjerker movie, afterward they gave up more quickly on lab tasks requiring self-discipline, like working on a geometry puzzle or squeezing a hand-grip exerciser. Willpower turned out to be more than a folk concept or a metaphor. It really was a form of mental energy that could be exhausted. The experiments confirmed the 19th-century notion of willpower being like a muscle that was fatigued with use, a force that could be conserved by avoiding temptation. To study the process of ego depletion, researchers concentrated initially on acts involving self-control — the kind of self-discipline popularly associated with willpower, like resisting a bowl of ice cream. They weren't concerned with routine decision-making, like choosing between chocolate and vanilla, a mental process that they assumed was quite distinct and much less strenuous. Intuitively, the chocolate-vanilla choice didn't appear to require willpower.

But then a postdoctoral fellow, Jean Twenge, started working at Baumeister's laboratory right after planning her wedding. As Twenge studied the results of the lab's ego-depletion experiments, she remembered how exhausted she felt the evening she and her fiancé went through the ritual of registering for gifts. Did they want plain white china or something with a pattern? Which brand of knives? How many towels? What kind of sheets? Precisely how many threads per square inch?

"By the end, you could have talked me into anything," Twenge told her new colleagues. The symptoms sounded familiar to them too, and gave them an idea. A nearby department store was holding a going-out-

of-business sale, so researchers from the lab went off to fill their car trunks with simple products — not exactly wedding-quality gifts, but sufficiently appealing to interest college students. When they came to the lab, the students were told they would get to keep one item at the end of the experiment, but first they had to make a series of choices. Would they prefer a pen or a candle? A vanilla-scented candle or an almond-scented one? A candle or a T-shirt? A black T-shirt or a red T-shirt? A control group, meanwhile — let's call them the nondeciders — spent an equally long period contemplating all these same products without having to make any choices. They were asked just to give their opinion of each product and report how often they had used such a product in the last six months.

Afterward, all the participants were given one of the classic tests of self-control: holding your hand in ice water for as long as you can. The impulse is to pull your hand out, so self-discipline is needed to keep the hand underwater. The deciders gave up much faster; they lasted 28 seconds, less than half the 67-second average of the nondeciders. Making all those choices had apparently sapped their willpower, and it wasn't an isolated effect. It was confirmed in other experiments testing students after they went through exercises like choosing courses from the college catalog.

For a real-world test of their theory, the lab's researchers went into that great modern arena of decision making: the suburban mall. They interviewed shoppers about their experiences in the stores that day and then asked them to solve some simple arithmetic problems. The researchers politely asked them to do as many as possible but said they could quit at any time. Sure enough, the shoppers who had already made the most decisions in the stores gave up the quickest on the math problems. When you shop till you drop, your willpower drops, too.

Any decision, whether it's what pants to buy or whether to start a war, can be broken down into what psychologists call the Rubicon model of action phases, in honor of the river that separated Italy from the Roman province of Gaul. When Caesar reached it in 49 B.C., on his way home after conquering the Gauls, he knew that a general returning to Rome was forbidden to take his legions across the river with him, lest it be considered an invasion of Rome. Waiting on the Gaul side of the river, he was in the "predecisional phase" as he contemplated the risks and benefits of starting a civil war. Then he stopped calculating and crossed the Rubicon, reaching the "postdecisional phase," which Caesar defined much more felicitously: "The die is cast."

The whole process could deplete anyone's willpower, but which phase of the decision-making process was most fatiguing? To find out, Kathleen Vohs, a former colleague of Baumeister's now at the University of Minnesota, performed an experiment using the self-service Web site of Dell Computers. One group in the experiment carefully studied the advantages and disadvantages of various features available for a computer — the type of screen, the size of the hard drive, etc. — without actually making a final decision on which ones to choose. A second group was given a list of predetermined specifications and told to configure a computer by going through the laborious, step-by-step process of locating the specified features among the arrays of options and then clicking on the right ones. The purpose of this was to duplicate everything that happens in the postdecisional phase, when the choice is implemented. The third group had to figure out for themselves which features they wanted on their computers and go through the process of choosing them;

they didn't simply ponder options (like the first group) or implement others' choices (like the second group). They had to cast the die, and that turned out to be the most fatiguing task of all. When self-control was measured, they were the one who were most depleted, by far.

The experiment showed that crossing the Rubicon is more tiring than anything that happens on either bank — more mentally fatiguing than sitting on the Gaul side contemplating your options or marching on Rome once you've crossed. As a result, someone without Caesar's willpower is liable to stay put. To a fatigued judge, denying parole seems like the easier call not only because it preserves the status quo and eliminates the risk of a parolee going on a crime spree but also because it leaves more options open: the judge retains the option of paroling the prisoner at a future date without sacrificing the option of keeping him securely in prison right now. Part of the resistance against making decisions comes from our fear of giving up options. The word "decide" shares an etymological root with "homicide," the Latin word "caedere," meaning "to cut down" or "to kill," and that loss looms especially large when decision fatigue sets in.

Once you're mentally depleted, you become reluctant to make trade-offs, which involve a particularly advanced and taxing form of decision making. In the rest of the animal kingdom, there aren't a lot of protracted negotiations between predators and prey. To compromise is a complex human ability and therefore one of the first to decline when willpower is depleted. You become what researchers call a cognitive miser, hoarding your energy. If you're shopping, you're liable to look at only one dimension, like price: just give me the cheapest. Or you indulge yourself by looking at quality: I want the very best (an especially easy strategy if someone else is paying). Decision fatigue leaves you vulnerable to marketers who know how to time their sales, as Jonathan Levav, the Stanford professor, demonstrated in experiments involving tailored suits and new cars.

The idea for these experiments also happened to come in the preparations for a wedding, a ritual that seems to be the decision-fatigue equivalent of Hell Week. At his fiancée's suggestion, Levav visited a tailor to have a bespoke suit made and began going through the choices of fabric, type of lining and style of buttons, lapels, cuffs and so forth.

"By the time I got through the third pile of fabric swatches, I wanted to kill myself," Levav recalls. "I couldn't tell the choices apart anymore. After a while my only response to the tailor became 'What do you recommend?' I just couldn't take it."

Levav ended up not buying any kind of bespoke suit (the $2,000 price made that decision easy enough), but he put the experience to use in a pair of experiments conducted with Mark Heitmann, then at Christian-Albrechts University in Germany; Andreas Herrmann, at the University of St. Gallen in Switzerland; and Sheena Iyengar, of Columbia. One involved asking M.B.A. students in Switzerland to choose a bespoke suit; the other was conducted at German car dealerships, where customers ordered options for their new sedans. The car buyers — and these were real customers spending their own money — had to choose, for instance, among 4 styles of gearshift knobs, 13 kinds of wheel rims, 25 configurations of the engine and gearbox and a palette of 56 colors for the interior.

As they started picking features, customers would carefully weigh the choices, but as decision fatigue set in, they would start settling for whatever the default option was. And the more tough choices they encountered early in the process — like going through those 56 colors to choose the precise shade of gray or brown — the quicker people became fatigued and settled for the path of least resistance by taking the default option. By manipulating the order of the car buyers' choices, the researchers found that the customers would end up settling for different kinds of options, and the average difference totaled more than 1,500 euros per car (about $2,000 at the time). Whether the customers paid a little extra for fancy wheel rims or a lot extra for a more powerful engine depended on when the choice was offered and how much willpower was left in the customer.

Similar results were found in the experiment with custom-made suits: once decision fatigue set in, people tended to settle for the recommended option. When they were confronted early on with the toughest decisions — the ones with the most options, like the 100 fabrics for the suit — they became fatigued more quickly and also reported enjoying the shopping experience less.

Shopping can be especially tiring for the poor, who have to struggle continually with trade-offs. Most of us in America won't spend a lot of time agonizing over whether we can afford to buy soap, but it can be a depleting choice in rural India. Dean Spears, an economist at Princeton, offered people in 20 villages in Rajasthan in northwestern India the chance to buy a couple of bars of brand-name soap for the equivalent of less than 20 cents. It was a steep discount off the regular price, yet even that sum was a strain for the people in the 10 poorest villages. Whether or not they bought the soap, the act of making the decision left them with less willpower, as measured afterward in a test of how long they could squeeze a hand grip. In the slightly more affluent villages, people's willpower wasn't affected significantly. Because they had more money, they didn't have to spend as much effort weighing the merits of the soap versus, say, food or medicine.

Spears and other researchers argue that this sort of decision fatigue is a major — and hitherto ignored — factor in trapping people in poverty. Because their financial situation forces them to make so many trade-offs, they have less willpower to devote to school, work and other activities that might get them into the middle class. It's hard to know exactly how important this factor is, but there's no doubt that willpower is a special problem for poor people. Study after study has shown that low self-control correlates with low income as well as with a host of other problems, including poor achievement in school, divorce, crime, alcoholism and poor health. Lapses in self-control have led to the notion of the "undeserving poor" — epitomized by the image of the welfare mom using food stamps to buy junk food — but Spears urges sympathy for someone who makes decisions all day on a tight budget. In one study, he found that when the poor and the rich go shopping, the poor are much more likely to eat during the shopping trip. This might seem like confirmation of their weak character — after all, they could presumably save money and improve their nutrition by eating meals at home instead of buying ready-to-eat snacks like Cinnabons, which contribute to the higher rate of obesity among the poor. But if a trip to the supermarket induces more decision fatigue in the poor than in the rich — because each purchase requires more mental trade-offs — by the time they reach the cash register, they'll have less willpower left to resist the Mars bars and Skittles.

Not for nothing are these items called impulse purchases.

And this isn't the only reason that sweet snacks are featured prominently at the cash register, just when shoppers are depleted after all their decisions in the aisles. With their willpower reduced, they're more likely to yield to any kind of temptation, but they're especially vulnerable to candy and soda and anything else offering a quick hit of sugar. While supermarkets figured this out a long time ago, only recently did researchers discover why.

The discovery was an accident resulting from a failed experiment at Baumeister's lab. The researchers set out to test something called the Mardi Gras theory — the notion that you could build up willpower by first indulging yourself in pleasure, the way Mardi Gras feasters do just before the rigors of Lent. In place of a Fat Tuesday breakfast, the chefs in the lab at Florida State whipped up lusciously thick milkshakes for a group of subjects who were resting in between two laboratory tasks requiring willpower. Sure enough, the delicious shakes seemed to strengthen willpower by helping people perform better than expected on the next task. So far, so good. But the experiment also included a control group of people who were fed a tasteless concoction of low-fat dairy glop. It provided them with no pleasure, yet it produced similar improvements in self-control. The Mardi Gras theory looked wrong. Besides tragically removing an excuse for romping down the streets of New Orleans, the result was embarrassing for the researchers. Matthew Gailliot, the graduate student who ran the study, stood looking down at his shoes as he told Baumeister about the fiasco.

Baumeister tried to be optimistic. Maybe the study wasn't a failure. Something had happened, after all. Even the tasteless glop had done the job, but how? If it wasn't the pleasure, could it be the calories? At first the idea seemed a bit daft. For decades, psychologists had been studying performance on mental tasks without worrying much about the results being affected by dairy-product consumption. They liked to envision the human mind as a computer, focusing on the way it processed information. In their eagerness to chart the human equivalent of the computer's chips and circuits, most psychologists neglected one mundane but essential part of the machine: the power supply. The brain, like the rest of the body, derived energy from glucose, the simple sugar manufactured from all kinds of foods. To establish cause and effect, researchers at Baumeister's lab tried refueling the brain in a series of experiments involving lemonade mixed either with sugar or with a diet sweetener. The sugary lemonade provided a burst of glucose, the effects of which could be observed right away in the lab; the sugarless variety tasted quite similar without providing the same burst of glucose. Again and again, the sugar restored willpower, but the artificial sweetener had no effect. The glucose would at least mitigate the ego depletion and sometimes completely reverse it. The restored willpower improved people's self-control as well as the quality of their decisions: they resisted irrational bias when making choices, and when asked to make financial decisions, they were more likely to choose the better long-term strategy instead of going for a quick payoff. The ego-depletion effect was even demonstrated with dogs in two studies by Holly Miller and Nathan DeWall at the University of Kentucky. After obeying sit and stay commands for 10 minutes, the dogs performed worse on self-control tests and were also more likely to make the dangerous decision to challenge another dog's turf. But a dose of glucose restored their willpower.

Despite this series of findings, brain researchers still had some reservations about the glucose connection. Skeptics pointed out that the brain's overall use of energy remains about the same regardless of what a person is doing, which doesn't square easily with the notion of depleted energy affecting willpower. Among the skeptics was Todd Heatherton, who worked with Baumeister early in his career and eventually wound up at Dartmouth, where he became a pioneer of what is called social neuroscience: the study of links between brain processes and social behavior. He believed in ego depletion, but he didn't see how this neural process could be caused simply by variations in glucose levels. To observe the process — and to see if it could be reversed by glucose — he and his colleagues recruited 45 female dieters and recorded images of their brains as they reacted to pictures of food. Next the dieters watched a comedy video while forcing themselves to suppress their laughter — a standard if cruel way to drain mental energy and induce ego depletion. Then they were again shown pictures of food, and the new round of brain scans revealed the effects of ego depletion: more activity in the nucleus accumbens, the brain's reward center, and a corresponding decrease in the amygdala, which ordinarily helps control impulses. The food's appeal registered more strongly while impulse control weakened — not a good combination for anyone on a diet. But suppose people in this ego-depleted state got a quick dose of glucose? What would a scan of their brains reveal?

The results of the experiment were announced in January, during Heatherton's speech accepting the leadership of the Society for Personality and Social Psychology, the world's largest group of social psychologists. In his presidential address at the annual meeting in San Antonio, Heatherton reported that administering glucose completely reversed the brain changes wrought by depletion — a finding, he said, that thoroughly surprised him. Heatherton's results did much more than provide additional confirmation that glucose is a vital part of willpower; they helped solve the puzzle over how glucose could work without global changes in the brain's total energy use. Apparently ego depletion causes activity to rise in some parts of the brain and to decline in others. Your brain does not stop working when glucose is low. It stops doing some things and starts doing others. It responds more strongly to immediate rewards and pays less attention to long-term prospects.

The discoveries about glucose help explain why dieting is a uniquely difficult test of self-control — and why even people with phenomenally strong willpower in the rest of their lives can have such a hard time losing weight. They start out the day with virtuous intentions, resisting croissants at breakfast and dessert at lunch, but each act of resistance further lowers their willpower. As their willpower weakens late in the day, they need to replenish it. But to resupply that energy, they need to give the body glucose. They're trapped in a nutritional catch-22:

1. In order not to eat, a dieter needs willpower.

2. In order to have willpower, a dieter needs to eat.

As the body uses up glucose, it looks for a quick way to replenish the fuel, leading to a craving for sugar. After performing a lab task requiring self-control, people tend to eat more candy but not other kinds of snacks, like salty, fatty potato chips. The mere expectation of having to exert self-control makes people

hunger for sweets. A similar effect helps explain why many women yearn for chocolate and other sugary treats just before menstruation: their bodies are seeking a quick replacement as glucose levels fluctuate. A sugar-filled snack or drink will provide a quick improvement in self-control (that's why it's convenient to use in experiments), but it's just a temporary solution. The problem is that what we identify as sugar doesn't help as much over the course of the day as the steadier supply of glucose we would get from eating proteins and other more nutritious foods.

The benefits of glucose were unmistakable in the study of the Israeli parole board. In midmorning, usually a little before 10:30, the parole board would take a break, and the judges would be served a sandwich and a piece of fruit. The prisoners who appeared just before the break had only about a 20 percent chance of getting parole, but the ones appearing right after had around a 65 percent chance. The odds dropped again as the morning wore on, and prisoners really didn't want to appear just before lunch: the chance of getting parole at that time was only 10 percent. After lunch it soared up to 60 percent, but only briefly. Remember that Jewish Israeli prisoner who appeared at 3:10 p.m. and was denied parole from his sentence for assault? He had the misfortune of being the sixth case heard after lunch. But another Jewish Israeli prisoner serving the same sentence for the same crime was lucky enough to appear at 1:27 p.m., the first case after lunch, and he was rewarded with parole. It must have seemed to him like a fine example of the justice system at work, but it probably had more to do with the judge's glucose levels.

It's simple enough to imagine reforms for the parole board in Israel — like, say, restricting each judge's shift to half a day, preferably in the morning, interspersed with frequent breaks for food and rest. But it's not so obvious what to do with the decision fatigue affecting the rest of society. Even if we could all afford to work half-days, we would still end up depleting our willpower all day long, as Baumeister and his colleagues found when they went into the field in Würzburg in central Germany. The psychologists gave preprogrammed BlackBerrys to more than 200 people going about their daily routines for a week. The phones went off at random intervals, prompting the people to report whether they were currently experiencing some sort of desire or had recently felt a desire. The painstaking study, led by Wilhelm Hofmann, then at the University of Würzburg, collected more than 10,000 momentary reports from morning until midnight.

Desire turned out to be the norm, not the exception. Half the people were feeling some desire when their phones went off — to snack, to goof off, to express their true feelings to their bosses — and another quarter said they had felt a desire in the past half-hour. Many of these desires were ones that the men and women were trying to resist, and the more willpower people expended, the more likely they became to yield to the next temptation that came along. When faced with a new desire that produced some I-want-to-but-I-really-shouldn't sort of inner conflict, they gave in more readily if they had already fended off earlier temptations, particularly if the new temptation came soon after a previously reported one.

The results suggested that people spend between three and four hours a day resisting desire. Put another way, if you tapped four or five people at any random moment of the day, one of them would be using willpower to resist a desire. The most commonly resisted desires in the phone study were the urges to eat and sleep, followed by the urge for leisure, like taking a break from work by doing a puzzle or playing a

game instead of writing a memo. Sexual urges were next on the list of most-resisted desires, a little ahead of urges for other kinds of interactions, like checking Facebook. To ward off temptation, people reported using various strategies. The most popular was to look for a distraction or to undertake a new activity, although sometimes they tried suppressing it directly or simply toughing their way through it. Their success was decidedly mixed. They were pretty good at avoiding sleep, sex and the urge to spend money, but not so good at resisting the lure of television or the Web or the general temptation to relax instead of work.

We have no way of knowing how much our ancestors exercised self-control in the days before BlackBerrys and social psychologists, but it seems likely that many of them were under less ego-depleting strain. When there were fewer decisions, there was less decision fatigue. Today we feel overwhelmed because there are so many choices. Your body may have dutifully reported to work on time, but your mind can escape at any instant. A typical computer user looks at more than three dozen Web sites a day and gets fatigued by the continual decision making — whether to keep working on a project, check out TMZ, follow a link to YouTube or buy something on Amazon. You can do enough damage in a 10-minute online shopping spree to wreck your budget for the rest of the year.

The cumulative effect of these temptations and decisions isn't intuitively obvious. Virtually no one has a gut-level sense of just how tiring it is to decide. Big decisions, small decisions, they all add up. Choosing what to have for breakfast, where to go on vacation, whom to hire, how much to spend — these all deplete willpower, and there's no telltale symptom of when that willpower is low. It's not like getting winded or hitting the wall during a marathon. Ego depletion manifests itself not as one feeling but rather as a propensity to experience everything more intensely. When the brain's regulatory powers weaken, frustrations seem more irritating than usual. Impulses to eat, drink, spend and say stupid things feel more powerful (and alcohol causes self-control to decline further). Like those dogs in the experiment, ego-depleted humans become more likely to get into needless fights over turf. In making decisions, they take illogical shortcuts and tend to favor short-term gains and delayed costs. Like the depleted parole judges, they become inclined to take the safer, easier option even when that option hurts someone else.

"Good decision making is not a trait of the person, in the sense that it's always there," Baumeister says. "It's a state that fluctuates." His studies show that people with the best self-control are the ones who structure their lives so as to conserve willpower. They don't schedule endless back-to-back meetings. They avoid temptations like all-you-can-eat buffets, and they establish habits that eliminate the mental effort of making choices. Instead of deciding every morning whether or not to force themselves to exercise, they set up regular appointments to work out with a friend. Instead of counting on willpower to remain robust all day, they conserve it so that it's available for emergencies and important decisions.

"Even the wisest people won't make good choices when they're not rested and their glucose is low," Baumeister points out. That's why the truly wise don't restructure the company at 4 p.m. They don't make major commitments during the cocktail hour. And if a decision must be made late in the day, they know not to do it on an empty stomach. "The best decision makers," Baumeister says, "are the ones who know when *not* to trust themselves."

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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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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

NORTH CAROLINA ADMINISTRATIVE OFFICE of the COURTS

Office of Language Access Services (OLAS)

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 11 counties (Buncombe, Chatham, Durham, Forsyth, Guilford, Harnett, Johnston, Lee, Mecklenburg, Orange, and Wake), contract court interpreters, telephone interpreting, remote interpreting, and translation and transcription / translation services. Learn more at http://www.nccourts.org/LanguageAccess.

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 30 – 45 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

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NORTH CAROLINA ADMINISTRATIVE OFFICE of the COURTS

Office of Language Access Services (OLAS)

Quick Reference for North Carolina Magistrates

OLAS@nccourts.org | 919 890-1407

Telephone Interpreting Service – UTT, Inc.

1. The telephone interpreting service may be used by magistrates for
   - ***All criminal court proceedings*** where the defendant, victim, or witnesses for either the defendant or the State are limited English proficient (LEP) – this includes first appearances before the magistrate; the magistrate should *not* use law enforcement officers, or friends or family of the LEP individual to interpret during court proceedings
   - Assisting magistrates in ***responding to public inquiries*** and assisting the public with general informational questions of a short duration
   - ***Brief matters in Small Claims Court***, such as notifying parties that a case is continued or that they should hire an OLAS qualified court interpreter; a telephone interpreter should not be used for trials or any hearing in small claims court.
2. To access the service, you need the following:
   - Guide to Using the Telephone Interpreting Service
   - Confidential access code specific to your county's office
   - ***I Speak*** card
   - Language List
3. To use the service
   - Follow the instructions in the Guide to Using the Telephone Interpreting Service
   - Enter the four-digit Master Account Code and then at the prompt, enter the county magistrate's office confidential six-digit access code
   - Option 1 (LET Spanish Interpreter): General questions / public access
   - Option 2 (certified Spanish; LOTS): First appearances / court proceedings
4. Problems with the service
   - For technical difficulties with the service such as delays getting an interpreter on the line – call a UTT, Inc. supervisor for technical support at 800 428-6149
   - For difficulties with your telephone equipment – call the NCAOC Help Desk at 919 890-2407
5. If you use any interpreting services and issue a process (criminal summons, warrant for arrest, release order, appearance bond), indicate in NCAWARE that an interpreter is needed on the court information screen.

Small Claims Court

1. **Evaluate the need for a court interpreter**

   To help determine whether to appoint a court interpreter, the court should ask open-ended questions that can't be answered with a simple yes or no. For example:

   "Please tell us your birthday, how old you are, and where you were born."

   "What kind of work do you do?"

   "Tell us about your family."

2. **Appoint a court interpreter**

   Until NCAOC's expansion plan is extended by the director to small claims matters, parties in small claims cases must bear the cost of spoken foreign language court interpreters for court proceedings at their own expense. If the court determines that the party has limited English proficiency (LEP), the court should:

   - Appoint an interpreter and require the parties to bear the cost of that interpreter in whatever proportion the court deems appropriate, OR
   - Require that the LEP party hire a qualified court interpreter
     - Refer parties to NCAOC's Registry of Spoken Foreign Language Court Interpreters (on the North Carolina Court System website: www.nccourts.org) as a source of available Spanish interpreters and to the Office of Language Access Services for LOTS interpreters
     - Parties must make private arrangements with the interpreter for payment of services

   The court should only allow an interpreter to provide services in North Carolina courts if OLAS has evaluated and confirmed the interpreter's qualifications. The court should *never* allow family or friends to interpret in court.

3. **Administer interpreter oath from the bench**

   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?

4. **Clarify 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?

NORTH CAROLINA ADMINISTRATIVE OFFICE of the COURTS

Office of Language Access Services (OLAS)

How to Schedule an Interpreter for a Court Proceeding – Courts

This chart applies ONLY to proceedings in which the North Carolina Judicial Department currently provides an interpreter at state expense:
Criminal court proceedings; Chapter 50B court proceedings; Chapter 50C court proceedings; child custody mediation; juvenile proceedings; incompetency proceedings; Chapter 122C civil commitment proceedings; custody proceedings for LEP parties who require interpreting services in any language in districts where NCAOC staff court interpreters are stationed; custody proceedings for LEP parties who require interpreting services for languages other than Spanish (LOTS) statewide .

	Staff Interpreter District Buncombe, Chatham, Durham, Forsyth, Guilford, Harnett, Johnston, Lee, Mecklenburg, Orange, Wake	**Non-Staff Interpreter District** All other counties
Spanish Court Interpreter	Contact the staff court interpreter in your district as soon as a request is received. Submit a *Request for Spoken Foreign Language Court Interpreter - Staff Districts ONLY* to the staff court interpreter for proceedings expected to last longer than one hour.	The court should access the Office of Language Access Services (OLAS) *Registry of Spoken Foreign Language Court Interpreters* at www.nccourts.org to schedule a Spanish interpreter from the Registry prior to the scheduled court proceeding.
Language Other Than Spanish (LOTS) Court Interpreter	Submit a *Request for Spoken Foreign Language Court Interpreter - Staff Districts ONLY* form to your district's staff court interpreter. Go to www.nccourts.org for the form.	For Language Other Than Spanish (LOTS), submit a *Request for Non-Spanish Interpreter* form to OLAS at least five business days prior to the scheduled court appearance. Go to www.nccourts.org for the form.
Court Interpreter on Short Notice	The court should contact the staff court interpreter. If a qualified interpreter cannot be located with such short notice, the court should continue the proceeding to a date on which an interpreter can be scheduled and the requisite forms can be submitted.	The court should access the OLAS *Registry of Spoken Foreign Language Court Interpreters* at www.nccourts.org and try to schedule a Spanish interpreter from the Registry. OLAS should be contacted for languages other than Spanish. If a qualified interpreter cannot be located with such short notice, the court should continue the proceeding to a date on which an interpreter can be scheduled and the requisite forms can be submitted.
Telephone Interpreting Service	The telephone interpreting service may be used for brief matters in district court, such as continuances, and for first appearances. However, a telephone interpreter should *not* be used for trials or any hearing in district court expected to last longer than 30 minutes. Telephone interpreting services are not available for superior court matters.	

NOTE: In order to ensure accuracy of the interpreting services provided, a team of two interpreters must be scheduled for any proceeding lasting two hours or more.

REPLACE WITH UPDATED

NORTH CAROLINA ADMINISTRATIVE OFFICE of the COURTS

Office of Language Access Services (OLAS)

How to Schedule an Interpreter for a Court Proceeding – Courts

Is this a proceeding in which the Judicial Department currently provides an interpreter at state expense?

Criminal court proceedings; Chapter 50B court proceedings; Chapter 50C court proceedings; child custody mediation; juvenile proceedings; incompetency proceedings; Chapter 122C civil commitment proceedings; custody proceedings for LEP parties who require interpreting services in any language in districts where NCAOC staff court interpreters are stationed; custody proceedings for LEP parties who require interpreting services for languages other than Spanish (LOTS) statewide .

YES

Request forms and the *Registry* can be found at: http://www.nccourts.org/LanguageAccess

Staff Interpreter District

Buncombe, Chatham, Durham, Forsyth, Guilford, Harnett, Johnston, Lee, Mecklenburg, Orange, Wake

Spanish Interpreter

Notify the staff interpreter as soon as request is received. Submit a *Request for Spoken Foreign Language Court Interpreter - Staff Districts ONLY* to the staff court interpreter for proceedings expected to last longer than one hour.

Language Other Than Spanish (LOTS) Interpreter

Submit a *Request for Spoken Foreign Language Court Interpreter - Staff Districts ONLY* form to your district's staff interpreter as soon as request is received.

Non-Staff Interpreter District

All other counties

Spanish Interpreter

The court should access the OLAS *Registry of Spoken Foreign Language Court Interpreters* to schedule a Spanish interpreter from the Registry prior to the scheduled court proceeding.

Language Other Than Spanish (LOTS) Interpreter

Submit a *Request for Non-Spanish Interpreter* form to OLAS at least five business days prior to the scheduled court proceeding.

NO

The parties are responsible for hiring a qualified court interpreter. If the parties fail to hire a qualified interpreter, the court may appoint a court interpreter if necessary and apportion the costs to the parties as the court deems appropriate.

Spanish Interpreter

Parties should contact directly a contract interpreter to privately retain the services of an AOC-registered and qualified court interpreter from the *Registry of Spoken Foreign Language Court Interpreters*.

Language Other Than Spanish (LOTS) Interpreter

Parties should contact OLAS for the contact information of a qualified LOTS court interpreter prior to the scheduled court proceeding. (919) 890-1407 OLAS@nccourts.org

For further assistance, please contact the NCAOC Office of Language Access Services at (919) 890-1407 or OLAS@nccourts.org

Version 5/2013

2004 Census Test

United States Census 2010

LANGUAGE IDENTIFICATION FLASHCARD

☐ ضع علامة في هذا المربع إذا كنت تقرأ أو تتحدث العربية.	1. Arabic
☐ Խնդրում ենք նշում կատարեք այս քառակուսում, եթե խոսում կամ կարդում եք հայերեն:	2. Armenian
☐ যদি আপনি বাংলা পড়েন বা বলেন তা হলে এই বাক্সে দাগ দিন।	3. Bengali
☐ ឈូមបញ្ជាក់ក្នុងប្រអប់នេះ បើអ្នកអាន ឬនិយាយភាសា ខ្មែរ ។	4. Cambodian
☐ Motka i kahhon ya yangin ûntûngnu' manaitai pat ûntûngnu' kumentos Chamorro.	5. Chamorro
☐ 如果你能读中文或讲中文，请选择此框。	6. Simplified Chinese
☐ 如果你能讀中文或講中文，請選擇此框。	7. Traditional Chinese
☐ Označite ovaj kvadratić ako čitate ili govorite hrvatski jezik.	8.Croatian
☐ Zaškrtněte tuto kolonku, pokud čtete a hovoříte česky.	9. Czech
☐ Kruis dit vakje aan als u Nederlands kunt lezen of spreken.	10. Dutch
☐ Mark this box if you read or speak English.	11. English
☐ اگر خواندن و نوشتن فارسي بلد هستيد، اين مربع را علامت بزنيد.	12. Farsi

☐ Cocher ici si vous lisez ou parlez le français.	13. French
☐ Kreuzen Sie dieses Kästchen an, wenn Sie Deutsch lesen oder sprechen.	14. German
☐ Σημειώστε αυτό το πλαίσιο αν διαβάζετε ή μιλάτε Ελληνικά.	15. Greek
☐ Make kazye sa a si ou li oswa ou pale kreyòl ayisyen.	16. Haitian Creole
☐ अगर आप हिन्दी बोलते या पढ़ सकते हों तो इस बक्स पर चिह्न लगाएँ।	17. Hindi
☐ Kos lub voj no yog koj paub twm thiab hais lus Hmoob.	18. Hmong
☐ Jelölje meg ezt a kockát, ha megérti vagy beszéli a magyar nyelvet.	19. Hungarian
☐ Markaam daytoy nga kahon no makabasa wenno makasaoka iti Ilocano.	20. Ilocano
☐ Marchi questa casella se legge o parla italiano.	21. Italian
☐ 日本語を読んだり、話せる場合はここに印を付けてください。	22. Japanese
☐ 한국어를 읽거나 말할 수 있으면 이 칸에 표시하십시오.	23. Korean
☐ ໃຫ້ໝາຍໃສ່ຊ່ອງນີ້ ຖ້າທ່ານອ່ານຫຼືປາກພາສາລາວ.	24. Laotian
☐ Prosimy o zaznaczenie tego kwadratu, jeżeli posługuje się Pan/Pani językiem polskim.	25. Polish

☐ Assinale este quadrado se você lê ou fala português.	26. Portuguese
☐ Însemnaţi această căsuţă dacă citiţi sau vorbiţi româneşte.	27. Romanian
☐ Пометьте этот квадратик, если вы читаете или говорите по-русски.	28. Russian
☐ Обележите овај квадратић уколико читате или говорите српски језик.	29. Serbian
☐ Označte tento štvorček, ak viete čítať alebo hovoriť po slovensky.	30. Slovak
☐ Marque esta casilla si lee o habla español.	31. Spanish
☐ Markahan itong kuwadrado kung kayo ay marunong magbasa o magsalita ng Tagalog.	32. Tagalog
☐ ให้กาเครื่องหมายลงในช่องถ้าท่านอ่านหรือพูดภาษาไทย.	33. Thai
☐ Maaka 'i he puha ni kapau 'oku ke lau pe lea fakatonga.	34. Tongan
☐ Відмітьте цю клітинку, якщо ви читаєте або говорите українською мовою.	35. Ukranian
☐ اگر آپ اردو پڑھتے یا بولتے ہیں تو اس خانے میں نشان لگائیں۔	36. Urdu
☐ Xin đánh dấu vào ô này nếu quý vị biết đọc và nói được Việt Ngữ.	37. Vietnamese
☐ באצייכנט דעם קעסטל אויב איר לייענט אדער רעדט אידיש.	38. Yiddish

Guide to Using the Telephone Interpreting Service

- To reach an interpreter, dial **800-319-1352** from any phone.
- When prompted, enter the **four-digit Master Account number (6063)** for the North Carolina Administrative Office of the Courts.
- You will then be prompted to enter the **six-digit Access Code specific to your magistrate's office.**
- At the last prompt, **Press 1** for a Legal Environment Trained Spanish interpreter, or **Press 2** for any other language, or for a certified Spanish court interpreter.
- Give the interpreter your name and the limited English proficient (LEP) speaker's name. The interpreter is only allowed to give you their first name and ID number.
- Speak in the first person and directly to the LEP party, just as you would an English speaker.
- Speak clearly in short phrases, pausing to allow for the interpretation.
- Ask one question at a time.
- Allow the interpreter to interpret the LEP person's answer completely before asking your next question.
- Use simple language to express your meaning.
- Explain any terms you believe may be unclear.
- Allow the interpreter to stop you and seek an explanation when necessary and to repeat back to you any critical information that requires clarification.
- Don't say anything that you do not want interpreted.
- If for any reason you get disconnected during a call, please hang up and call again. You may or may not be connected to the same interpreter.
- All language interpretation sessions are strictly confidential.

To reach a supervisor for technical support dial 800-428-6149.

Language and Litigation

What judges and attorneys need to know about interpreters in the legal process

Judith Kenigson Kristy

1. **Use credentialed, preferably certified, court interpreters for in-court and out-of-court events. Verify the interpreter's credentials. If it is an in-court proceeding, make sure the interpreter is sworn in before the proceeding begins.**
   - Verify credentials by consulting your state or federal court roster, or by calling your local court (clerk's office or interpreter's office). Judges should conduct a *voir dire* of the interpreter and ask for credentials to be stated on the record.
   - Do not use untrained bilinguals. It is inappropriate to use family members, children, foreign language students or teachers, court staff, or law enforcement officers as interpreters.
   - Don't allow defendants to bring their own interpreters — not only does this practice create potential conflicts of interest, but the ad hoc person acting as "interpreter" may not be trained or competent.
   - Don't ask for a translator when you need an interpreter — they are not interchangeable. Translators work with written communication. Interpreters work with oral communication.

2. **Be aware that an interpreter creates an even playing field for limited-English speakers; an interpreter provides no advantage or disadvantage.**
   - Interpreters should never interject their own knowledge, comments, or opinions into the interpretation. Interpreters are prohibited from advocating for any party.
   - Don't ask interpreters what they think a defendant or witness might or might not have understood; it is not their area of expertise.

3. **Use the interpreter to facilitate direct communication with limited-English proficient parties, not as a "go-between."**
   - Address the client directly in English, as if he understood everything you are saying. The interpreter will then repeat what you have said in the required language. This avoids the use of indirect speech (e.g., "Ask him if..." or "He says that..."), which can create confusion and a flawed record.

4. **Check to make sure that all speech, by all parties, is being interpreted.**
   - If someone is speaking and the interpreter's mouth is not moving, there is a problem. If someone makes a lengthy statement and the interpretation is a few words, or vice versa, there is a problem. The interpreter's job is to interpret ***everything*** that is being said— no omissions, modifications, or additions.
   - In court, an interpreter should be interpreting simultaneously for a defendant. If a non-English speaking witness testifies, an interpreter should interpret the questions and answers consecutively so that a clear record may be made.

5. **To be understood, speak clearly at a moderate speed and an audible volume.**
   - Unclear speech cannot be accurately interpreted. Avoid interruptions and overlapping voices. Avoid long, convoluted questions. Unfamiliar jargon or acronyms may cause a problem for the interpreter.
   - Although reluctant to interrupt the give-and-take of courtroom exchanges, interpreters have an ethical obligation to ask for a repetition if speech is too low, too fast, too lengthy or incomprehensible (due to the use of unknown references, heavy accent, jargon, abbreviations, or acronyms). Very long or complex questions and answers can result in interruptions or incomplete rendering by the interpreter, causing confusion.

6. **The interpreter's only task is to interpret. In order to conserve impartiality and confidentiality, the interpreter should not be asked to be alone with a defendant. Whenever possible, the interpreter will exit the room when the attorney exits the room.**
   - Interpreters may not reveal information they have interpreted, but no privilege protects them if communication occurs when the attorney is not present. Any explanations that need to be made should be made by the attorney and then interpreted. The interpreter may, however, note and report to the attorney any confusion due to culture or vocabulary, and make an appropriate request for clarification.

7. **Provide interpreters with the information and support needed to get the job done.**
   - The more information an interpreter has about a case, the better he or she can interpret. Arrange for interpreters to receive or have access to documents related to the assignment: complaints and indictments with supporting documents, investigative reports, motions and responses, witness and exhibit lists, bank and telephone records, PSRs, etc. Whenever possible, try to use the same interpreter for both in-court and out-of-court events in a given case.

> continues on next page

LANGUAGE AND LITIGATION *continued from page 3*

- Whenever possible, inform defendants, court participants, and jurors about the interpreter's role.

8. **In order to ensure an accurate record, provide a team of two interpreters for any lengthy or complex proceeding.**
   - Studies have shown that interpreters, no matter how experienced or competent, suffer mental fatigue after about 30 minutes of continuous interpreting. The use of a team prevents interpreter fatigue and ensures accuracy. Teams act as a safety net, so that any errors may be corrected and terminology queries answered. When a large number of defendants will be present at a proceeding, it may be necessary to hire more interpreters to facilitate attorney-client consultations.

9. **A conflict of interest is not the same for an interpreter as for an attorney. An interpreter can work for either side or both sides of a case. The only prohibition is that an interpreter cannot be a witness in the same case in which he is acting as a proceedings interpreter.**
   - Interpreters cannot be advocates or take sides. They are neutral officers of the court and thus may work for either side, or both sides, of a dispute. A proceedings interpreter should reveal to the judge and parties any prior contacts with the case. However, a conflict does arise if an interpreter may be called by one of the parties as a witness. An interpreter cannot testify as an expert witness and also work as a proceedings interpreter in the same case.

10. **Foreign-language evidence should be handled appropriately. The party offering the evidence should obtain prior transcription and translation of any tape recordings. Foreign-language documents introduced into evidence should be accompanied by a translation. (The translation may be stipulated, or authenticated through testimony.) A sound file or tape recording should never be translated "on the spot" in court.**
    - Just as there are experts in fingerprint identification, there are experts in transcribing and translating recorded material for evidentiary purposes. Find and use an expert for this kind of work. Never ask an interpreter to render a simultaneous interpretation of recorded material in court — at best, the results will be approximate and guesswork, not evidence.

Interpreters are support staff for your court: please help promote an atmosphere of consideration, respect, and cooperation among those who work with them. When interpreters work in the judicial system, they need a table in the courtroom for notebooks or laptops, a cup of water, a place to store their belongings, and a place to rest when off duty. Your kindness is much appreciated.

TAB:

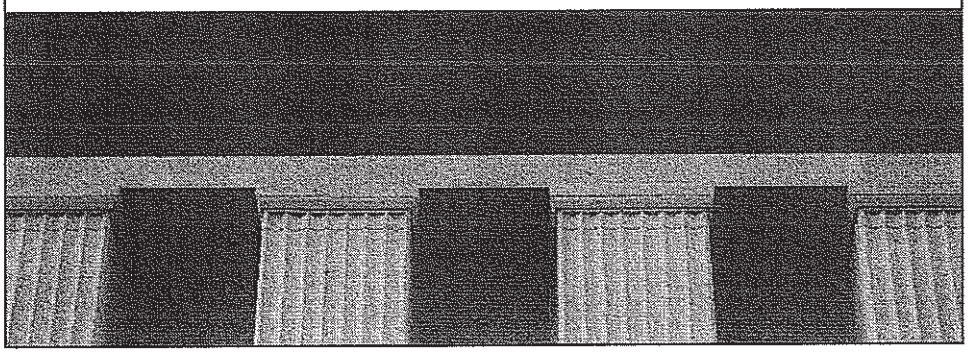
Handling Money

NORTH CAROLINA
ADMINISTRATIVE OFFICE
of the COURTS

Basic School for Magistrates

Handling and Accounting for Money

2012
Prepared by NCAOC Financial Services Division



Objectives

- Money handling policy
- Supplies and forms
- Cash holding security
- Collection and receipting procedures
- Submission of funds to CSC
- IRS form 8300

Money Handling Policy

Magistrates are responsible for the funds they receipt until both

1. the funds are transferred to the Clerk of Superior Court (CSC) office

   AND

2. applicable receipts are in-hand to document the transfer

Money Handling Policy

- Magistrate shortages are not repaid by AOC
- The CSC cashier cannot accept any amount other than what is showing on the receipt.
- Funds collected by magistrates should never ever be "co-mingled" with personal funds. Such action is reportable to the State Bureau of Investigation (SBI)

Money Handling Policy

Tips for collecting money:

- Always count money at least twice
- Don't let customer impatience distract you
- Use a counterfeit detection pen, available through the AOC warehouse, to test all bills of $10 or more
- Do not put cash away until transaction is complete and payor is satisfied with change received

Money Handling Policy

Money collected (collections) must be accounted for at all times.

Collections are subject to review by:

- NC State Auditors
- NCAOC Internal Auditors
- NCAOC Financial Management Analysts
- Clerks of Superior Court

Supplies and Forms

- Manual Receipt Book (AOC-A2)
- Offsite Daily Cash Report (AOC-A-102)
- Physically secure location for holding funds receipted

Manual Receipt Book

- Each receipt consists of an original and three copies.
- The copies are distributed as follows:

Original (white)	CSC Cashier/Bookkeeping
Payor copy (green)	Given to payor
CSC copy (pink)	Placed in case file at CSC office
Audit copy (yellow)	Always stays in receipt book

Manual Receipt Book

- Write "Void" on all copies of unused receipts.
- Immediately notify CSC office of any 'lost' receipts.
- Only write receipts from a receipt book issued to you.
- Do not share receipt books.
- Keep receipt books in a secure place at all times.
  - Receipts can be negotiated as payment tendered or "cash."

Off Site Daily Cash Report

Information to Capture:

- Magistrate name
- Date
- Itemize funds collected
- Record of each receipt issued
- Total collected by tender type
- Itemized funds to be distributed to corresponding municipalities
- Attached copies of receipts

Recommended Cash Holding Locations

- Locking bank bag
- Locking cash box
- Safe
- Locking file cabinet
- Locking desk drawer

Note: Contact your bank to request a locking bank bag.

Collection/Receipting Procedures

- Complete receipts in numerical order
- A complete receipt includes all of the following:
  - Date
  - Name
  - Amounts in the correct accounts
  - Address when applicable

Note: Penmanship counts. Always write as legibly as possible.

Collection/Receipting Procedures

- ALWAYS account for all receipts
- NEVER throw away a receipt or any part of a receipt
- NEVER remove the yellow audit copy

Required Clerk Logs

- Manual Receipt Book Log
  - Magistrates are required to sign for all receipt books issued and returned
  - Magistrates should have no more than two receipt books at any given time
- Manual Receipt Log
  - Tracks all receipts
  - Tracks timeliness of receipts

Collection/Receipting Procedures – Cash Bonds

- The 'Received of' line should include:
  - name of the person paying or posting the bond
  - payor's address
- The 'For' line should include the name of the defendant if the person paying the bond is anyone other than the defendant

Notes on Cash Bonds

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	Signature of Custodian	☐ Sheriff ☐ Deputy Sheriff ☐ Other _____

NOTES ON CASH BONDS:

(1) ***To Official Taking The Bond.*** *Use this form for all cash bonds. Only magistrate or clerk may take cash bond. Jailer may not take cash bond. 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 SS# at the top of Side One. Check "Cash Appearance Bond." 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 SS# at the top of Side One. Check "Surety Appearance Bond." Also check "Cash Deposited By Surety." Have defendant sign. Enter name, address and SS# of person depositing cash under "Accommodation Bondsman." Have that person sign under "Signature of Surety." Complete information 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.*** *When cash is posted, disburse cash as follows: (1) If "Cash Appearance Bond" checked on Side One, disburse to Defendant or apply to defendant's obligations if court so orders; (2) If "Surety Appearance Bond" and "Cash Deposited by Surety" are checked on Side One, disburse only to person named under "Accommodation Bondsman."*

(3) ***Bond With Insurance Company As Surety Same As Cash Except In Child Support.*** *G.S. 15A-531(4) provides that an appearance bond executed by a bail agent acting on behalf of an insurance company is the same as a cash bond, except in child support contempt proceedings where only cash may satisfy a cash bond requirement.*

AOC-CR-201, Side Two, Rev. 3/09
© 2008 Administrative Office of the Courts.

Appearance Bond Form

STATE OF NORTH CAROLINA

YOUR County

File No. 10CR 101

In The General Court Of Justice

☒ District ☐ Superior Court Division

Name And Mailing Address Of Defendant

TEW MANNY BILLS

101 MAIN ST

RALEIGH, NC 27602

APPEARANCE BOND FOR PRETRIAL RELEASE

Social Security No. XXX-XX-XXXX

Telephone No. Of Defendant

Total Bond Required $ 1,000.00

Amount Of This Bond $ 1,000.00

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** *(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.

☐ *(Professional bondsman, Bail Agent and Runners)* - The "Affidavit" on the reverse side of this Bond is complete and true.

☐ **Cash Deposited By Surety** *(See note on reverse side.)* - We have deposited the cash identified below to secure our obligations as sureties on this bond with the understanding that the deposit will be returned to us upon the Court's determination that the conditions of pretrial release have been performed, and that it will NOT be available to satisfy defendant's obligations.

Date Of Execution Of Bond

Signature Of Defendant

NORTH CAROLINA ADMINISTRATIVE OFFICE of the COURTS

Handling and Accounting for Money August 2013 17

Cash Deposited By Defendant

AOC-A2 REV. 11/06

10/3/10

CLERK OF SUPERIOR COURT

YOUR (COUNTY)

RECEIPT NO. I-150252

Received of TEW MANNY BILLS 101 MAIN ST

For RALEIGH, NC 27602 Cash ☒ Check ☐ M.O. ☐

File # 10 CR 101 VS.

General Court Fee:		Facility Fee-Co	$	Partial Pay	$
Superior Court		Facility Fee-Mun	$	Judgment	$
Criminal	$	Officer Fee-Co	$	Cash Bond	$ 1,000.00
Civil	$	Officer Fee-Mun	$	Trust	$
Spec Proc	$	Jail Fee-Co	$	Alim & Supp	$
Estates	$	Jail Fee-Mun	$		
District Court		LEOB & RF	$		
Criminal	$	Fine	$	Total Received	$ 1,000.00
Civil	$	Other $	Des		
Magistrate-S.F.	$				
Misc-Fees & Comm	$				

PAYOR

By CLERK OF SUPERIOR COURT/MAGISTRATE

NORTH CAROLINA ADMINISTRATIVE OFFICE of the COURTS

Handling and Accounting for Money August 2013 18

Appearance Bond Form

STATE OF NORTH CAROLINA

File No. 10CR 101

YOUR County

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

Name And Mailing Address Of Defendant
HUGH BADMAN
101 MAIN ST
RALEIGH, NC 27602

APPEARANCE BOND
FOR
PRETRIAL RELEASE

Social Security No. XXX-XX-XXXX

Telephone No. Of Defendant

Total Bond Required $ 1,000.00

Amount Of This Bond $ 1,000.00

G.S. 15A-531, 15A-534, 15A-544.2

Charges 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** *(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.

☐ *(Professional bondsman, Bail Agent and Runners)* - The "Affidavit" on the reverse side of this Bond is complete and true.

☒ **Cash Deposited By Surety** *(See note on reverse side.)* - We have deposited the cash identified below to secure our obligations as sureties on this bond with the understanding that the deposit will be returned to us upon the Court's determination that the conditions of pretrial release have been performed, and that it will NOT be available to satisfy defendant's obligations.

Date Of Execution Of Bond

Signature Of Defendant

ACCOMMODATION BONDSMAN

☐ See Page Two for additional accommodation bondsman executing this bond.

Name And Address Of Accommodation Bondsman
RAISA BADMAN
201 MAIN ST
RALEIGH, NC 27602

Name And Address Of Accommodation Bondsman

Social Security No. XXX-XX-XXXX

Telephone No.

Social Security No.

Telephone No.

NORTH CAROLINA ADMINISTRATIVE OFFICE of the COURTS

Handling and Accounting for Money August 2013 19

Cash Deposited By Surety

AOC-G-47 Rev. 11/05

CLERK OF SUPERIOR COURT

10/3/10

Yours (County)

RECEIPT NO. I- 150252

Received of RAISA BADMAN 201 MAIN ST Cash ☒ Check ☐ M.O. ☐

For HUGH BADMAN RALEIGH, NC 27602

File # 10 CR 101 vs.

General Court Fee:		Facility Fee-Co	$	Partial Pay	$
Superior Court		Facility Fee-Mun	$	Judgment	$
Criminal	$	Officer Fee-Co	$	Cash Bond	$ 1,000.00
Civil	$	Officer Fee-Mun	$	Trust	$
Spec Proc	$	Jail Fee-Co	$	Alim & Supp	$
Estates	$	Jail Fee-Mun	$		
District Court		LEOB & RF	$	Total Received	$1,000.00
Criminal	$	Fine	$		
Civil	$	Other $	Des		
Magistrate-S.F.	$				
Misc-Fees & Comm	$				

PAYOR

By

CLERK OF SUPERIOR COURT/MAGISTRATE

NORTH CAROLINA ADMINISTRATIVE OFFICE of the COURTS

Handling and Accounting for Money August 2013 20

Appearance Bond Form

STATE OF NORTH CAROLINA
ANOTHER County

File No. 10CR 301
In The General Court Of Justice
☑ District ☐ Superior Court Division

Name And Mailing Address Of Defendant
HUGH BADMAN
101 MAIN ST
RALEIGH, NC 27602

APPEARANCE BOND
FOR
PRETRIAL RELEASE

Social Security No.	Defendant's No. Or Identification
XXX-XX-XXXX	
Total Bond Required	Amount Of This Bond
$ 1,000.00	$ 1,000.00

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** *(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 conferred 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.
(Professional bondsman, Bail Agent and Runners) - The "Affidavit" on the reverse side of this Bond is complete and true.

☐ **Cash Deposited By Surety** *(See note on reverse side)* - We have deposited the cash identified below to secure our obligations as sureties on this bond with the understanding that the deposit will be returned to us upon the Court's determination that the conditions of pretrial release have been performed, and that it will NOT be available to satisfy defendant's obligations.

Date Of Execution Of Bond | Signature Of Defendant

Bond for Another County

AOC-G-2 REV. 10/09

CLERK OF SUPERIOR COURT
ANOTHER (COUNTY)
RECEIPT NO. I-150251

10/3/10
Received of HUGH BADMAN 100 Main St Cash ☒ Check ☐ M.O. ☐
For RALEIGH, NC 27602

File # 10 CR 301 vs.

General Court Fee:
Superior Court
Criminal $
Civil $
Spec Proc $
Estates $
District Court
Criminal $
Civil $
~~Magistrate-S.F.~~ $
Misc-Fees & Comm $
PAYOR

Facility Fee-Co $
Facility Fee-Mun $
Officer Fee-Co $
Officer Fee-Mun $
Jail Fee-Co $
Jail Fee-Mun $
LEOS & RF $
Fine $
Other $ 1,000.00 Des Bond For ANOTHER County

Partial Pay $
Judgment $
Cash Bond $
Trust $
Alim & Supp $

Total Received $ 1,000.00

By
CLERK OF SUPERIOR COURT/MAGISTRATE

Collection/Receipting Procedures – Cash Bonds

Typical Complaints

- "The magistrate said I could get my cash back the day I appeared in court."
- "I'm Johnny's mother and I gave him MY money to post the bond. I should get the bond, not Johnny."
- "Why do I have to get a check back from the CSC? I had to pay cold, hard cash to the magistrate."

Collecting/Receipting Procedures – Court Costs

Items Requiring Special Attention

- Officer Fees
  - Highway Patrol, Sheriff, DMV are all considered as 'County' Officers
  - City Officers have different receipt codes specific to each municipality
- Facility Fees
  - County seat and other county owned facilities
  - Magistrate offices in a city owned facility have different receipt codes specific to each municipality

Court Cost – County

AOC-42 Rev. 11/99

10/3/10

CLERK OF SUPERIOR COURT

YOUR (COUNTY)

RECEIPT NO. I-150251

Received of HENRE FOOTE — Cash ☒ Check ☐ M.O. ☐

For 123 MAIN ST RALEIGH, NC 27602 — 20-55

File # C 1234567-0 vs.

General Court Fee:		Facility Fee-Co	$ 12.00	Partial Pay	$
Superior Court		Facility Fee-Mun	$	Judgment	$
Criminal	$	Officer Fee-Co	$ 5.00	Cash Bond	$
Civil	$	Officer Fee-Mun	$	Trust	$
Spec Proc	$	Jail Fee-Co	$	Alim & Supp	$
Estates	$	Jail Fee-Mun	$		
District Court		LEOB & RF	$ 7.50	Total Received	$ 171.00
Criminal	$ 97.50	Fine	$ 30.00		
Civil	$	Other $	Des		
Magistrate-S.F.	$				
Misc-Fees & Comm	$				

PAYOR — By ______ CLERK OF SUPERIOR COURT/MAGISTRATE

Court Cost – Municipality

CLERK OF SUPERIOR COURT

10/3/10

YOUR

RECEIPT NO. I-150252

Received of HENRE FOOTE — Cash ☒ Check ☐ M.O. ☐

For 123 MAIN ST RALEIGH, NC 27602

File # C 12345 vs.

General Court Fee:		Facility Fee-Co	$	Partial Pay	$
Superior Court		Facility Fee-Mun	$	Judgment	$
Criminal	$	Officer Fee-Co	$	Cash Bond	$
Civil	$	Officer Fee-Mun	$	Trust	$
Spec Proc	$	Jail Fee-Co	$	Alim & Supp	$
Estates	$	Jail Fee-Mun	$		
District Court		LEOB & RF	$ 7.50	Total Received	$ 171.00
Criminal	$ 97.50	Fine	$ 30.00		
Civil	$	Other $	Des		
Magistrate-S.F.	$				
Misc-Fees & Comm	$				

PAYOR — By ______

Submitting Funds to CSC

- What to submit
  - Funds with receipt copies
  - Off-site report
  - Paperwork
- When to submit
  - End of business day but no later than the close of the next business day

Submitting funds to CSC office

- The recommended procedures for submitting funds to the CSC are detailed in the Financial Policies and Procedures manual, Magistrates chapter.
- Head cashier or cashier should verify the funds in the presence of the magistrate
- Magistrate should receive a receipt from the CSC for the exact amount of funds submitted

Submitting funds to CSC office

- If you do not submit your receipts in numerical order, the CSC's office will contact you to determine the status of the 'missing' receipt.
- Missing receipts are considered missing state funds until located and subject to review by NCAOC and the NC State Bureau of Investigation (SBI).

United States Internal Revenue Code

Section 6050I (26 United States Code) and 31 U.S.C. 5331 states "Any person in a trade or business who receives more than $10,000 in cash in a single transaction or in related transactions must file Form 8300."

It further states "Any clerk of a Federal or State court who receives more than $10,000 in cash as bail" for specific criminal offenses must use Form 8300.

The IRS has conducted reviews of these forms and procedures in the Clerk of Court offices.

What payments must be reported?

You must complete Form 8300 to report cash payments if:

- The payment is received as either
  a) a lump sum of over $10,000 or
  b) a smaller payments that cause the total cash received within a 12-month period for that case to total more than $10,000
- Received in a single transaction or in related transactions from the same individual.

Who completes Form 8300?

- The person receipting the money should complete the Form 8300.
- Example:
  - The magistrate would complete the form when receipting cash bonds that exceed $10,000
  - The completed form is then submitted to the CSC office along with the Daily Deposit.
  - The CSC office is responsible for filing the Form 8300 with the IRS

What is considered cash?

- Coins and Currency of the United States more than $10,000.
- Cashier's check; bank draft; bank check; traveler's check; or money order with a face value of **less** than $10,000 when used to make a payment that exceeds $10,000 and you suspect the payer may be trying to avoid the reporting.
- Example:
  - Payor presents three cashiers checks each in the amount of $4,000 to pay a $12,000 cash bond

What is NOT considered cash?

- Cashier's checks; bank drafts; bank checks; traveler's checks, or money orders with a face value of more than $10,000 are **not** considered cash because they were originally purchases at a financial institution with currency.
- The bank or financial institution where these items were purchased is responsible for reporting the purchase to the IRS.

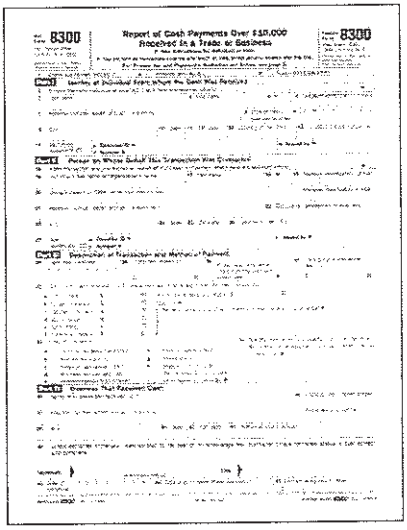
Offenses that require a Form 8300

Regardless whether the monetary conditions are met, a Form 8300 must be completed and filed if the charges meet the "specific criminal offense" portion of the IRS code.

These offenses are:

- Any Federal offense involving a controlled substance
- Racketeering
- Money laundering
- Any State offense substantially similar to the above

Form 8300


Form 8300 Report of Cash Payments Over $10,000 Received in a Trade or Business

What information is required for Form 8300?

- Part I – Identity of Individual From Whom the Cash was Received
  - Name, address, taxpayer ID of the defendant
  - Name, address, taxpayer ID of the person(s) paying the bond
  - Date of birth of person paying the bond
  - Occupation of defendant and the person(s) paying the bond

What information is required for Form 8300?

Identifying the payor:

You must:

1. Describe the type of ID used, e.g. drivers license
2. Record the issuing agency of the ID, e.g. State of North Carolina
3. Record the number of the identification, e.g. drivers license number

What information is required for Form 8300?

- Part II – Person on Whose Behalf This Transaction was Conducted
  - Name
  - DBA
  - Address
  - Identification
- Part III – Description of Transaction and Method of Payment
  - Amount of cash received
  - Date cash received
- Business that Received Cash
  - Name and address
  - Signature

Financial Management Analysts (FMAs)

▪	Joe Plemmons	Joe.Plemmons@nccourts.org 919-218-3242
▪	Tony McKinney	Tony.A.McKinney@nccourt.org 828-385-3599
▪	Lynn Medlin	Lynn.W.Medlin@nccourts.org 252-331-3093
▪	Rodney Strickland	Rodney.P.Strickland@nccourts.org 910-216-0853
▪	Michael Jackson	Michael.A.Jackson@nccourts.org 919-414-3809
▪	Deanna Hughes	Deanna.Hughes@nccourts.org 336-310-6890

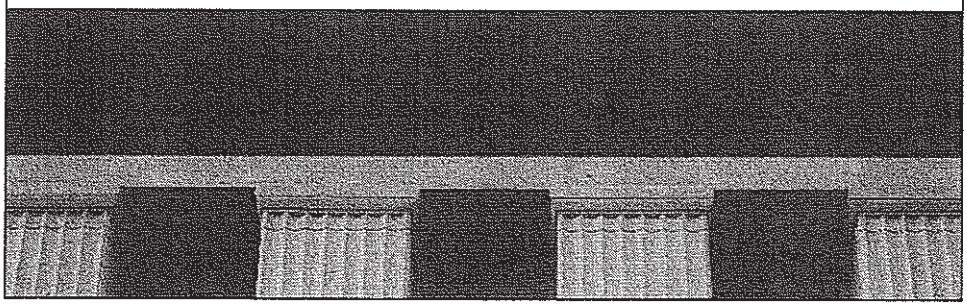
NCAOC Financial Services Division (FSD)

- Bud Jennings — Acting Chief Financial Officer
  919-890-1017 — Bud.Jennings@nccourts.org
- George Dennis — Internal Audit Director
  919-890-1019 — George.Dennis@nccourts.org
- Larry Crawford — Field Accounting Services Manager
  919-890-1060 — Larry.L.Crawford@nccourts.org

North Carolina
Administrative Office
of the Courts

Prepared by:
NCAOC Financial Services Division

www.nccourts.org



CSC/Magistrate Receipt

Total Received _____ **Receipt #** I -

Date _____ **County** _____

For County _____ **Cash** ☐ **Check** ☐ **MO** ☐

File # _____ **For** _____

Received of _____ **Received by** _____

Criminal Cost	**Amount**
IFC	
IFDA	
IFTA	
IFTC	
CRDC	
CRTC	
CRDA	
CRTA	
CRDS	
CRSC	
MMV	
SB	
FOR ALL CRIMINAL COSTS INDICATE:	
OFFICER	
FACILITY	
(If municipal facility)	
Miscecllaneous Receipts	
AAF	
BC	
OSA	
Copies	
Record Check	
Civil Revocation	
Bad Ck Restitution	

Magistrates		**Amount**
CRMC		
CTWM		
IFMC		
IFWM		
MMVM		
SBM		
Marriage	21330	
FOR ALL MAGISTRATE COSTS INDICATE:		
OFFICER		
FACILITY		
(If municipal facility)		
Magistrates/Clerks		
Cash Bond	26210	
Cash Bond-Other Cnty	292XX	
Purge Pymt	26410	
Purge Pymt-Other Cnty	298XX	
Partial Pay	20100	
Restutitution	26110	
Fines	22700	
Jail Fees	22600	
Other Officer Fees		
FTA Fee	21211	
FTC Fee	21213	
EXP Community Svc	24202	
Other-		

Estate/Special Proceeding		**Amount**
ESTC		
Other Estate Cost	21140	
Trust	26310	
SPSC		
Foreclosure	21445	
Surplus Funds	26600	
Widows Allowance	21140	
Upset Bid	26700	
Civil Cost		
CVMC		
CDDC		
CVDC		
CVSC		
CVBC		
Judgment	26115	
Rent Bond	26220	
Alimony	26420	
Civil Officer Fee	22515	
Child Support	26410	
Other		
Other-		
Other-		
Other-		
Other-		
Other-		

TAB:

Marriage

Joan Brannon
Institute of Government
January 2006

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.

1. 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. Customarily man and woman stand facing magistrate with man to the woman's right, but no statutorily required positions.

B. Couple must orally consent to take each other as husband and wife, freely, seriously and plainly.

C. Must be in the presence of each other and authorized ordained minister or a magistrate.

D. Officer must declare such persons as husband and wife.

E. 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.

V. Miscellaneous Issues

A. Do you have to perform marriages?

1. It is a duty of your office and you can't refuse to marry a couple for a reason personal to you. For example, a magistrate who has very strong religious beliefs cannot refuse to marry a couple who want a purely civil ceremony with no reference to God. Nor may a magistrate refuse to perform a marriage because the magistrate doesn't like the looks of the couple or doesn't think the marriage will last.
2. However, because the couple must be able to consent freely, seriously and plainly to the marriage, magistrate may ask couple to come back later if intoxicated to point that cannot give valid consent.

B. Where **must** you perform marriages? If a couple comes to you with a valid license and wants to be married in your office while you are on duty.

C. Where **may** you perform marriages? You have the authority to perform a marriage ceremony anywhere in the State of North Carolina.

1. You may go anywhere in your county to perform the ceremony, but usually that means you have to be off-duty (unless you don't have to be physically in the office while on duty). You don't have to go out of the office to perform a ceremony; the choice is yours. However, the chief district judge, who has the authority to set times and places at which you perform your duties, may direct you to perform ceremonies out of the office as part of your obligations while on duty.
2. You may conduct a marriage ceremony in any other county in North Carolina.
    a) It is always best practice to notify your chief district judge before you perform an out-of-county marriage.
    b) Return license to Register of Deeds in county where issued. However, turn the $20 into your clerk and indicate on the receipt the county in which the marriage was performed.

Marriage Problems—January 2014

1. John and Mary come to your office and give you a copy of the ceremony they'd like you to use, which includes an opportunity for them to recite their own vows. You look over the ceremony and confirm that it looks fairly standard, but note that it contains numerous references to "God." Is there a legal problem with using the ceremony they provide? Can you refuse?

2. John and Mary have Mary's children with them to serve as witnesses. Jamie is 13, and Joanie is 6. Is there a legal problem with using the kids as witnesses?

3. Jake is stationed in Iraq, and his fiancée, Julie, will give birth any day now. The two desperately want to get married before the baby is born. Jake's unit has the technical capability of establishing a video real-time link, so that he could participate in the wedding from Iraq. Julie asks you what she needs to do to work this out. What do you say?

4. Your best friend Glen lives in the same county as you, but wants to get married in Cherokee. He asks you to perform the ceremony. Can you? Must you? What do you do with the money? With the license? Glen is reserving rooms at a resort hotel for the few members of his family and friends who will be attending. Can you accept a room? Reimbursement for mileage? An iPod given as a gift to all members of the wedding party?