Magistrate's Oath of Office

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

Basic School for Magistrates: Winter 2023 Civil Session

UNC School of Government

Janurary 23 – Janurary 27, 2023

Monday, January 23

9:00 a.m.	**Orientation** Melanie Crenshaw, School of Government
9:20 a.m.	**Introduction to the Law & Judicial Process** (50 min) Tom Thornburg, School of Government
10:10 a.m.	*Break*
10:20 a.m.	**Introduction to Law & Judicial Process** *(continued)* (55 min)
11:15 a.m.	*Break*
11:30 a.m.	**Marriage** (30 min) Cheryl Howell, School of Government
12:00 p.m.	*Lunch (provided at SOG)*
1:00 p.m.	**Involuntary Commitment** (60 min) Mark Botts, School of Government
2:00 p.m.	*Break*
2:15 p.m.	**Involuntary Commitment** *(continued)* (90 min)
3:45 p.m.	*Break*
4:00 p.m.	**Involuntary Commitment** *(continued)* (60 min)
5:00 p.m.	*Adjourn*

Tuesday, Janurary 24

9:00 a.m.	**Contracts** (60 min) Melanie Crenshaw, School of Government
10:00 a.m.	*Break*
10:10 a.m.	**Contracts** *(continued)* (50 min)
11:00 a.m.	*Break*
11:10 a.m.	**Contracts** *(continued)* (50 min)
12:00 p.m.	*Lunch (provided at SOG)*

12:55 p.m. **Ethics** (60 min, *ethics*)
Tom Thornburg, School of Government

1:55 p.m. *Break*

2:00 p.m. **Small Claims Procedure** (60 min)
Melanie Crenshaw, School of Government

3:00 p.m. *Break*

3:10 p.m. **Small Claims Procedure** *(continued)* (60 min)

4:10 p.m. *Break*

4:20 p.m. **Small Claims Procedure** *(continued)* (60 min)

5:20 p.m. *Adjourn*

Wednesday, Janurary 25

8:30 a.m. **Check-In: How's it Going?** *(attendance optional)*
Melanie Crenshaw, School of Government

9:00 a.m. **Small Claims Procedure** ***(continued)*** (60 min)

10:00 a.m. *Break*

10:10 a.m. **Landlord-Tenant Law** (50 min)
Melanie Crenshaw, School of Government

11:00 a.m. *Break*

11:10 a.m. **Landlord-Tenant Law** *(continued)* (60 min)

12:10 p.m. *Lunch (provided at SOG)*

1:00 p.m. **Landlord-Tenant Law** *(continued)* (60 min)

2:00 p.m. *Break*

2:10 p.m. **Landlord-Tenant Law** *(continued)* (50 min)

3:00 p.m. *Break*

3:10 p.m. **Landlord-Tenant Law** *(continued)* (60 min)

4:10 p.m. *Break*

4:25 p.m. **Landlord-Tenant Law** *(continued)* (60 min)

5:25 p.m. *Adjourn*

Thursday, Janurary 26

8:00 a.m. **Review for Exam** (*attendance optional*)
Melanie Crenshaw, School of Government

8:50 a.m. *Break*

9:00 a.m. **Actions to Recover Personal Property** (90 min)
Melanie Crenshaw, School of Government

10:30 a.m. *Break*

10:40 a.m. **Issuing Ex Parte DVPOs** (90 min)
Cheryl Howell, School of Government

12:10 p.m. *Lunch (provided at SOG)*

1:00 p.m. **Understanding Domestic Violence** (120 min)
Chief District Court Judge J. Corpening, New Hanover & Pender Counties

3:00 p.m. **Torts** (75 min)
Melanie Crenshaw, School of Government

4:15 p.m. *Break*

4:25 p.m. **NCAOC Language Access Services for Magistrates** (60 min)
Kara Mann, Office of Language Access Services Manager, North Carolina Administrative Office of the Courts

5:25 p.m. *Adjourn*

Friday, January 27

9:00 a.m. **Small Claims Procedure/Landlord-Tenant Law Review**
Melanie Crenshaw, School of Government

10:00 a.m. *Break*

9:55 a.m. **NCAOC: Handling Money** (60 min)
Amy Bartnett, Finacial Management Analyst, North Carolina Adminstrative Office of the Courts

11:00 a.m. *Break / Study*

11:30 a.m. *Lunch (provided at SOG)*

12:00 p.m. **Civil Session Exam** *(Room 2601)*

Sponsored by: North Carolina Administrative Office of the Courts and the UNC School of Government

General Information

UNC SCHOOL OF GOVERNMENT

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

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

- Nonpartisan
- Policy-neutral
- Responsive

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

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

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

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

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

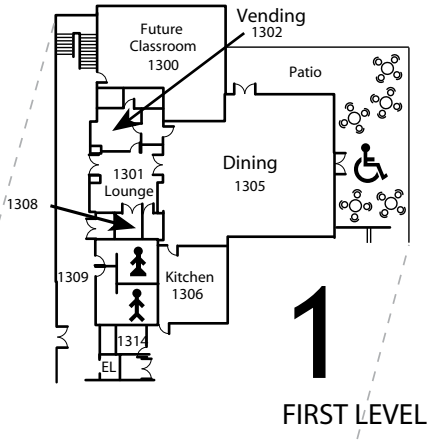
- Study to reorganize state government
- Study of the state's court system
- North Carolina Constitutional Commission
- Local Government Study Commission
- Open Meetings Study Commission
- NC Sentencing and Policy Advisory Commission
- Governor's Crime Commission on Juvenile Crime and Justice

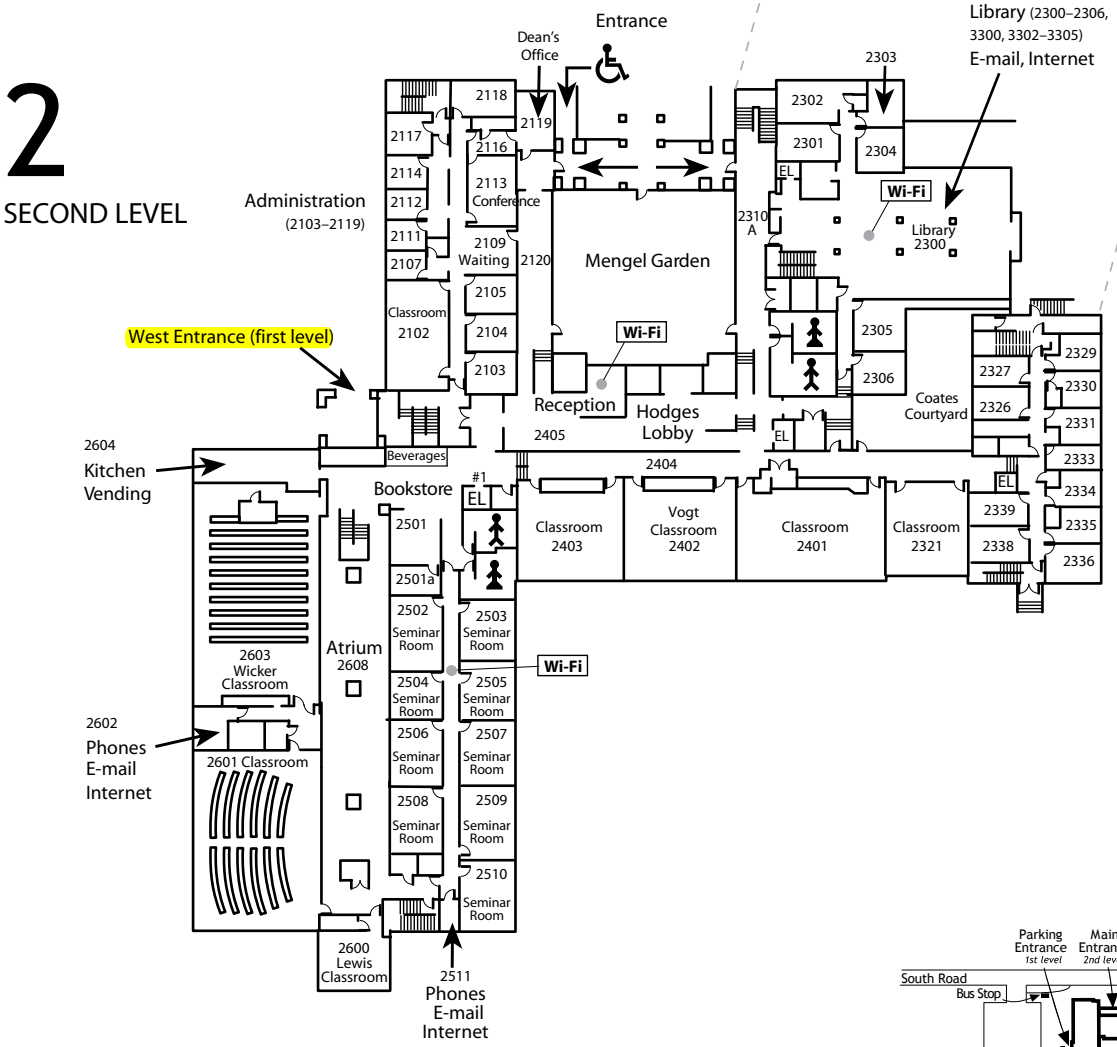
Support for the School of Government
Operating support for the School of Government's programs and activities comes from many sources, including state appropriations, local government membership dues, private contributions, publication sales, course fees, and service contracts. Visit www.sog.unc.edu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

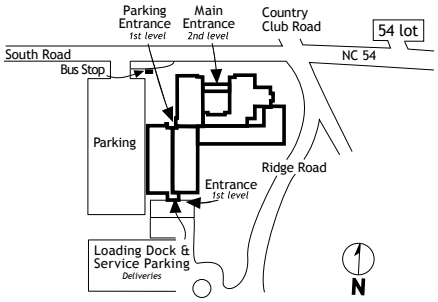
Knapp-Sanders Building

School of Government
UNC-Chapel Hill

May 2008
Guest Map







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

Areas of Interest: Confidentiality; governing boards; HIPPA privacy rule; involuntary commitment law and procedure; local management entities/managed care organizations; magistrates (involuntary commitment); mental health law; public health system; subpoenas (mental health records)

Melanie Crenshaw **mcrenshaw@sog.unc.edu / (919) 962-2761**

Melanie Crenshaw joined the School of Government in August 2022, working with magistrates in the area of civil law. Prior to joining the School, she worked as a magistrate in Cumberland County. Before serving as a magistrate, Crenshaw was in private practice in Greensboro, North Carolina, where she represented clients in a variety of matters related to family law. While in private practice, she also worked as an adjunct professor at the Elon University School of Law in the areas of family law and moot court. During law school, Crenshaw was the research clerk for the NC Pattern Jury Instruction Criminal Subcommittee and spent a summer as an intern in the Clerk's Office of the North Carolina Supreme Court. Prior to attending law school, she was a high school French teacher in Fayetteville, North Carolina.

Crenshaw received her JD summa cum laude from Elon University School of Law as a member of the charter class. She served on the Elon Moot Court Board and as symposium editor on the Elon Law Review. She earned her BA summa cum laude from Elon College where she studied French. She is a member of the North Carolina State Bar.

Cheryl Howell **howell@sog.unc.edu / (919) 966-4437**

Cheryl Howell joined the School of Government (then the Institute of Government) in 1992. Prior to that, she practiced law in Winston-Salem and Fayetteville and worked as a research assistant to Chief Judge R.A. Hedrick of the NC Court of Appeals. Currently, Howell teaches, consults, and writes about family law and other issues, and she works with the NC Association of District Court Judges and the North Carolina Judicial College in planning and coordinating judicial branch education programs. She is a member of the North Carolina Bar Association. She also has served as a member of the Family Court Advisory Committee, appointed by the Chief Justice of the NC Supreme Court, since its creation in 1998, and also serves as a member of the NC Child Custody and Visitation Mediation Advisory Committee, appointed by the director of the Administrative Office of the Courts. Her publications include articles and bulletins relating to family law and family court, as well as chapters created for the *Trial Judges' Bench Book, District Court Edition*. Howell earned a BA, magna cum laude, from Appalachian State University and a JD, with honors, Order of the Coif, from the University of North Carolina at Chapel Hill.

Areas of Interest: Child custody; child support; courts; domestic violence; equitable distribution; family law; judicial education

Thomas Thornburg **thornburg@sog.unc.edu / (919) 966-4377**

Tom Thornburg served as the School's senior associate dean from 2004 to 2020. He was also director of the North Carolina Judicial College from 2011 through 2015. He joined the School of Government (then the Institute of Government) in 1990 as an assistant professor. He was associate director, then associate dean, from 1996 until 2004. His faculty work focused primarily on criminal law and courts. Thornburg was chief legal counsel to the North Carolina Department of Correction in 1992–1993. He edited and revised *North Carolina Crimes: A Guidebook on the Elements of Crime (Fourth Edition, 1995)*; revised I*ntroduction to Law for North Carolinians (Second Edition, 2000)*; edited and revised *Notary Public Guidebook for North Carolina (Ninth Edition, 2004)*; and has published on the topic of juvenile curfews. Thornburg earned a BA from Earlham College and an MPP and JD from the University of Michigan.

Areas of Interest: Criminal law and procedure; courts

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Timothy E. Heinle 919.962.9594 • *heinle@sog.unc.edu*

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James Joyce 919.962.2764 • *jljoyce@sog.unc.edu*

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Evan Kirk 919.962.2789 • *emkirk@sog.unc.edu*

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School of Government Administration

Advancement	**919.843.2556**
Business and Finance	**919.966.4110**
Dean's Office	**919.966.4107**
Knapp Library	**919.962.2760**
Reception	**919.966.5381**
Registration	**919.966.4414**
Strategic Communications and Impact	**919.966.4178**

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

Upcoming School of Government Courses for Magistrates

2023

Basic School for Magistrates — **January 23-27 (Civil) & February 20-24 (Criminal)**
https://www.sog.unc.edu/courses/basic-school-magistrates **By invitation only** Chapel Hill, NC

NC Magistrates' Spring Conference — **March 13-17**
https://www.sog.unc.edu/courses/nc-magistrates-spring-conference Beaufort, NC

What Magistrates Need to Know About Domestic Violence — **April 24-26**
https://www.sog.unc.edu/courses/domestic-violence-magistrates Chapel Hill, NC

Introduction to Small Claims — **May 15-19**
https://www.sog.unc.edu/courses/introduction-holding-small-claims-court-magistrates-0 Chapel Hill, NC

Special Topic in Small Claims — **June 29-30**
https://www.sog.unc.edu/courses/special-topics-small-claims-magistrates Chapel Hill, NC

For more information about upcoming events, publications, and other resources for magistrates, please visit our webpage: https://www.sog.unc.edu/resources/microsites/nc-magistrates

On the Civil Side – A School of Government Blog: http://civil.sog.unc.edu/

Website Resources

School of Government Website
www.sog.unc.edu

School of Government's Magistrate Website
https://sog.unc.edu/resources/microsites/nc-magistrates

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

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

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

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

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

General Assembly's Website
(can download any bill or statute)
https://www.ncleg.gov

School of Government Blogs

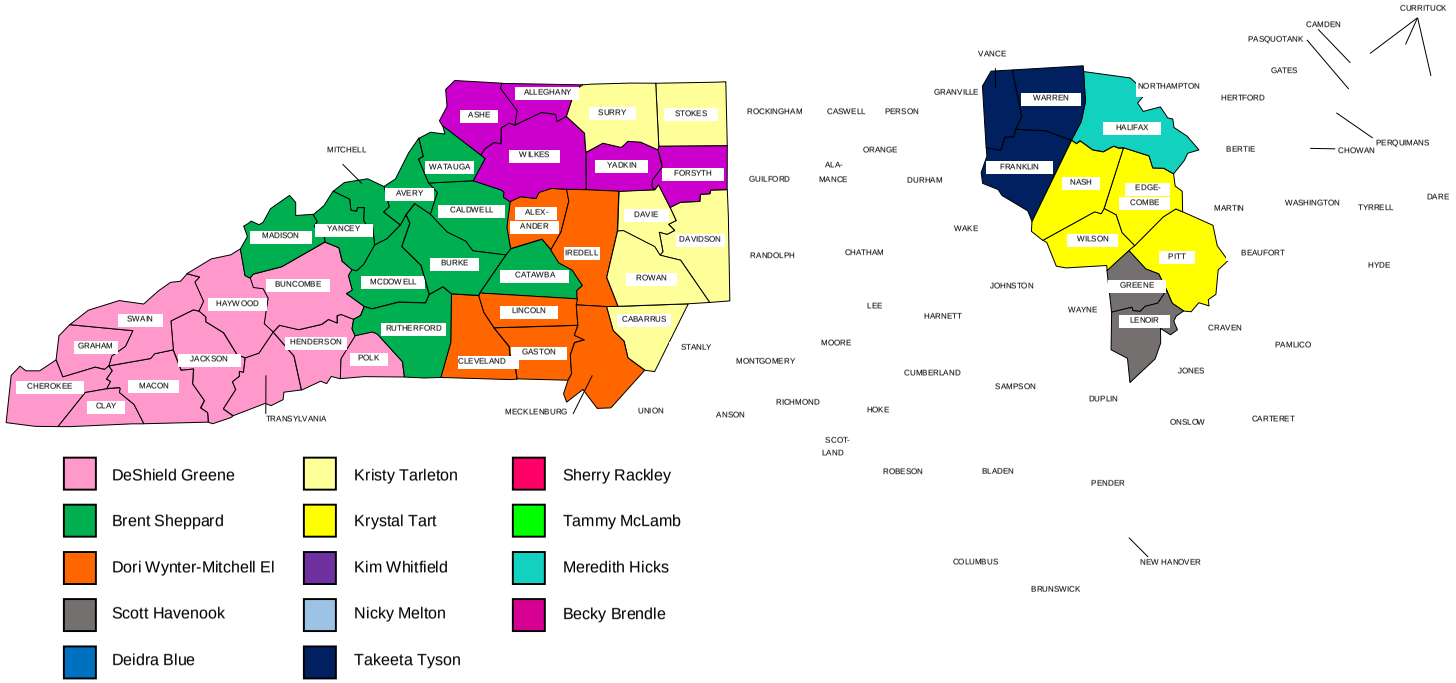
School of Government's Criminal Law Blog
https://nccriminallaw.sog.unc.edu/

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

SOG FACULTY CONTACT LIST FOR NEW MAGISTRATES

Involuntary Commitment Mark Botts	botts@sog.unc.edu (919) 962-8204
Small Claims, Landlord-Tenant Law, Torts, Action to Recover, Contracts, Small Claims Melanie Crenshaw	mcrenshaw@sog.unc.edu (919) 962-2761
Marriage, Ex Parte DVPOs Cheryl Howell	howell@sog.unc.edu (919) 966-4437
General Criminal Law & Procedure, Ethics Thomas Thornburg	thornburg@sog.unc.edu (919) 966-4377

Central Switchboard Number	(919) 966-5381
Address:	Knapp-Sanders Building, CB #3330 University of North Carolina at Chapel Hill Chapel Hill, NC 27599-3330 fax (919) 962-2706



For an up-to-date AOC contact directory , please refer to: https://juno.nccourts.org/resources/references/ncaoc-contact-directory

For current Training and Development resources and contacts, please refer to the online version of this map: https://juno.nccourts.org/resources/references/training-and-development-bsa-field-support-staff-assignments-map

REIMBURSEMENT FOR TRAVEL AND SUBSISTENCE

DUE TO THE CONSTANTLY CHANGING BUDGET POLICIES, please be aware there may be delays in processing your reimbursement, as well as the potential for changes in coverage. If you have any questions you should contact LaShonda Brown at the AOC at the number below.

LaShonda Brown
Accounting Specialist III
901 Corporate Center Dr
PO Box 2448
Raleigh, NC 27602
919.890.1007

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

Breakfast	$ 9 .00
Lunch	$ 11.80
Dinner	$ 20.50
Lodging (actual cost, up to)	$ 78.90
Total Daily Rate	$ 120.20
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 $9.00 for breakfast if you left before 6:00 a.m. and may claim $20.50 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 $78.90.**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 mustshow 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.

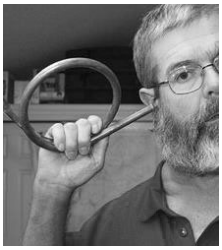
Welcome to the Job!

WELCOME TO BASIC SCHOOL FOR NEW MAGISTRATES CIVIL SESSION

Melanie Crenshaw
Winter 2023

ACCUMULATED WISDOM

What have you heard?



A magistrate is an independent judicial official holding Constitutional office who is nominated by the Clerk of Court, appointed by the Senior Resident Superior Court Judge, and supervised by the Chief District Court Judge.

RECENT LEGISLATIVE CHANGES AFFECT MAGISTRATES

- Qualifications: may be resident of county or a contiguous county
- Supervision: Makes chief district court judge's supervisory and disciplinary authority clear
- Annual Training Requirements Added
- Removal and Discipline: NC Rules of Conduct for Magistrates created

Welcome to the Job!

Revised by Melanie Crenshaw, SOG, 01/10/2023

The office of magistrate dates 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 bythe 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 either be a resident of the county for which the magistrate is seeking nomination or renomination or a resident of a county that is contiguous to that county.*** *[NC. G.S. 7A-171.2(a), as amended by Session Law 2022-47, effective June 30, 2022].*

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

Supervision

G.S. 7A-146 provides that 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 authorityis delegated shall make monthly reports to the chief district judge of the times and places actually served by each magistrate.

(13) Investigating written complaints against magistrates. Upon investigation and written findings of misconduct in violation of the Rules of Conduct for Magistrates, a chief district court judge may discipline a magistrate in accordance with the Rules of Conduct for Magistrates. Written complaints received by the chief district court judge and records of investigations into those complaints are to be treated as personnel records under Article 7 of Chapter 126 of the General Statutes. Notwithstanding Article 7 of Chapter 126 of the General Statutes, once a letter of caution, written reprimand, or suspension has been issued by the chief district court judge, the written complaints, and the record of the chief district court judge's action on that complaint, including any investigatory records, are no longer confidential personnel records." [G.S. 7A-146.
[New section added by Session Law 2022-47, effective October 1, 2022.]

The authority of chief district court judges to discipline magistrates is also made clear by the new Rules of Conduct.

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

Training & Education

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

In addition, except for the calendar year in which a magistrate completes the Basic School, each magistrate must annually satisfactorily complete at least 12 hours in the civil and criminal duties of a magistrate. G.S. 7A-177 (Effective January 1, 2022. As amended in Session Law 2021-146 and Session Law 2022-47.)

Further of the 12 hours required annually, the following subjects shall be annually and satisfactorily completed:

(1) Setting conditions of pretrial release.
(2) Impaired driving laws.
(3) Issuing criminal processes.
(4) Issuing search warrants.
(5) Technology.
(6) Orders of Protection.

(7) Summary ejectment laws **(effective January 1, 2023, added by Session Law 2022-47)**.

See also Magistrate Continuing Education Policy of the NC Judicial Branch Training and Services Division (effective January 1, 2022), for details about implementation of G.S. 7A-177. A copy is included immediately after this section.

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. The AOC has also established an online Learning Center which contains many online educational modules that magistrates can take to satisfy the requirements of G.S. 7A-177.

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 typically provides a minimum of 12 hours of continuing education credit. Beginning in 2022, the conference planners have also strived to make sure that all of the subjects required by the legislature are covered.

SOG Judicial College Seminars
Consisting of 2-3 days of intensive small-group instruction, these seminars are offered periodically:

- Involuntary Commitment
- Introduction to Holding Small Claims Court
- Special Topics in Small Claims Law
- Advanced Criminal Procedure
- DWI
- Domestic Violence
- Judicial Decision-Making for Magistrates

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

SOG Criminal and Civil Law Seminars
These seminars focus on criminal law, civil law, and other topics of particular interest to magistrates. Historically offered in the fall in different locations across the state, since the start of the COVID-19 pandemic these seminars have been offered live online, then segments posted online in the AOC's online Learning Center. A seminar typically provides 6 hours of continuing education credit.

Other Training Opportunities
Numerous other training opportunities for magistrates are 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 the AOC intranet, concerning

requirements for credit approval. For further detail, contact Felicia Kisselburg of the AOC at felicia.kisselburg@nccourts.org or 919-890-1284.

Duties of the Office

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

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

Removal from Office

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

The grounds for removing a judge from office are:
(1) willful misconduct in office,
(2) willful and persistent failure to perform the judge's duties,
(3) habitual intemperance,
(4) conviction of a crime involving moral turpitude,
(5) conduct prejudicial to the administration of justice that brings the judicial office into disrepute.
G.S. 7A-376(b).

The new *North Carolina Rules of Conduct for Magistrates*, first published by the AOC on October 1, 2021, provide that a violation of any of the rules it contains may be deemed conduct prejudicial to the administration of justice. A copy of these Rules can be found in the **Ethics** tab of the **Civil Basic School Notebook**.

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.

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.

Since the creation of the **NC Rules of Conduct for Magistrates** in 2021, **the Code of Judicial Conduct** itself has only indirect application as a source for determining whether particular conduct is "prejudicial to the administration of justice."

An Act to Make Various Changes Affecting the North Carolina Court System.

Session Law 2022-47 became law when signed by Governor Cooper on 7/7/2022.

Tom Thornburg, 7/27/2022

This law, which makes numerous changes to statutes affecting the court system, is only partially produced here. Note especially the following:

1. Page 2-3: Magistrate authority when clerk's office is closed.

2. Page 4: Authorizes appointment of magistrates who reside in county contiguous to the county of nomination.

3. **Page 6: Authorizing chief district court judge to investigate written complaints against magistrates.**

4. Page 9-10: First appearance changes. In 2021, magistrates were authorized to hold first appearance in some limited circumstances. Further refinement here.

5. Page 19: Adds summary ejectment to list of mandatory annual training topic for magistrates.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

SESSION LAW 2022-47
HOUSE BILL 607

AN ACT TO MAKE VARIOUS CHANGES AFFECTING THE NORTH CAROLINA COURT SYSTEM.

The General Assembly of North Carolina enacts:

EXPUNCTION CHANGES

SECTION 1.(a) Notwithstanding the provisions of G.S. 15A-146(a4), dismissed charges and not guilty verdicts shall not be expunged by operation of law and the Administrative Office of the Courts shall immediately cease all procedures related to the automatic expunction of dismissed charges, not guilty verdicts, and findings of not responsible. The Administrative Office of the Courts shall maintain a record of any dismissed charges, not guilty verdicts, and findings of not responsible that, except for the provisions of this section, would be automatically expunged pursuant to G.S. 15A-146(a4) in a manner that will allow those cases to be automatically expunged when this section expires.

SECTION 1.(b) This section becomes effective August 1, 2022, and expires August 1, 2023.

SECTION 2.(a) The Administrative Office of the Courts shall convene a group of stakeholders, including representatives from the Conference of District Attorneys, the State Bureau of Investigation, the NC Justice Center, attorneys who represent clients seeking expunctions, clerks and other court personnel, sheriffs, the Division of Motor Vehicles, and individuals with criminal records who are members of the NC Second Chance Alliance to examine and make recommendations to resolve the issues that have arisen with the implementation of G.S. 15A-146(a4), including issues related to notice to all relevant agencies and file retention. The stakeholder group may consider and recommend solutions for issues related to the expunction of records that do not require the total destruction of all court files and that would allow access to these particular expunction records by additional parties.

The Administrative Office of the Courts shall report its findings and recommendations and any action it has taken to make files confidential to the chairs of the House and Senate Appropriations Committees on Justice and Public Safety no later than March 1, 2023.

SECTION 2.(b) If the Administrative Office of the Courts and stakeholder group established in subsection (a) of this section determine an appropriate method to make court files for dismissed charges, not guilty verdicts, and findings of not responsible that are eligible for automatic expunction pursuant to G.S. 15A-146(a4) confidential from the public record without destruction of court files, while allowing access to necessary parties, the Administrative Office of the Courts is authorized to make those files confidential from the public record while Section 1 of this act remains law. If the Administrative Office of the Courts makes files confidential from the public record pursuant to this section, it shall do so for all files suspended from expunction by Section 1 of this act. This authorization is not an authorization to expunge any records described by G.S. 15A-146(a4) while Section 1 of this act remains law.

SECTION 2.(c) When Section 1 of this act expires or is repealed, whichever occurs first, the Administrative Office of the Courts shall, within 180 days, expunge all dismissed charges, not guilty verdicts, and findings of not responsible that occurred during the period of

time that Section 1 of this act was in effect and are eligible for automatic expunction pursuant to G.S. 15A-146(a4).

SECTION 3.(a) G.S. 15A-145.5 reads as rewritten:

"**§ 15A-145.5. Expunction of certain misdemeanors and felonies; no age limitation.**

...

(c2) The court, after hearing a petition for expunction of one or more nonviolent misdemeanors, shall order that the petitioner be restored, in the contemplation of the law, to the status the petitioner occupied before the arrest or indictment or information, except as provided in G.S. 15A-151.5, if the court finds all of the following:

(1) One of the following:
   a. The petitioner has not previously been granted an expunction under this section for one or more nonviolent misdemeanors.
   b. Any previous expunction granted to the petitioner under this section for one or more nonviolent misdemeanors was granted pursuant to a petition filed prior to December 1, 2021.

(2) The petitioner is of good moral character.

(3) The petitioner has no outstanding warrants or pending criminal cases.

(4) The petitioner has no other felony or misdemeanor convictions, other than a traffic violation not listed in the petition for expunction, during the applicable five-year or seven-year waiting period set forth in subsection (c) of this section.

(5) The petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner.

(6) The petitioner ~~meets one of the following criteria:~~
   ~~a. For a petition for expunction of one nonviolent misdemeanor, the petitioner has no convictions for any other felony or misdemeanor, other than a traffic offense.~~
   ~~b. For a petition for expunction of more than one nonviolent misdemeanor, the petitioner~~ has no convictions for a misdemeanor or felony that is listed as an exception to the terms "nonviolent misdemeanor" or "nonviolent felony" as provided in subsection (a) of this section.

(7) The petitioner was convicted of an offense or offenses eligible for expunction under this section.

(8) The petitioner has completed the applicable five-year or seven-year waiting period set forth in subsection (c) of this section.

If the court denies the petition, the order shall include a finding as to the reason for the denial.

...

(c4) A person petitioning for expunction of multiple convictions pursuant to sub-subdivision b. of subdivision (1) of subsection (c) of this section or sub-subdivision b. of subdivision (2) of subsection (c) of this section, where the convictions were obtained in more than one county, shall file a petition in each county of conviction. All petitions shall be filed within a ~~30-day~~ 120-day period. The granting of one petition shall not preclude the granting of any other petition filed within the same ~~30-day~~ 120-day period. Notwithstanding the provisions of this subsection, upon good cause shown for the failure to file a petition within the 120-day period, the court may grant a petition for expunction filed outside the 120-day period.

...."

SECTION 3.(b) This section becomes effective August 1, 2022, and applies to petitions filed on or after that date.

MAGISTRATE AUTHORITY WHEN CLERK'S OFFICE IS CLOSED

SECTION 4.(a) G.S. 50B-2(c1) reads as rewritten:

"(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. When the office of the clerk is closed and a magistrate has been authorized under this section to hear a motion for emergency relief ex parte, an authorized magistrate shall accept for filing a complaint alleging domestic violence and motion for emergency relief ex parte, note thereon the filing date, and the magistrate shall issue a summons. Any endorsement or alias and pluries summons pursuant to G.S. 1A-1, Rule 4(d) shall be issued by the clerk, assistant clerk, or deputy clerk of the court in the county in which the action is commenced. Any complaint and motion for emergency relief ex parte and any other documents accepted for filing under this section and any order entered by the magistrate shall be delivered to the clerk's office for processing as soon as that office is open for business. 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."

SECTION 4.(b) G.S. 50C-6(d) reads as rewritten:

"(d) When the court is not in session, the complainant may file for a temporary order before any judge or magistrate designated to grant relief under this Chapter. If the judge or magistrate finds that there is an immediate and present danger of harm to the victim and that the requirements of subsection (a) of this section have been met, the judge or magistrate may issue a temporary civil no-contact order. The chief district court judge may designate for each county at least one judge or magistrate to be reasonably available to issue temporary civil no-contact orders when the court is not in session. When the office of the clerk is closed and a magistrate has been authorized under this section to grant relief, an authorized magistrate shall accept for filing a complaint for a civil no-contact order and motion for temporary civil no-contact order, note thereon the filing date, and the magistrate shall issue a summons. Any endorsement or alias and pluries summons pursuant to G.S. 1A-1, Rule 4(d) shall be issued by the clerk, assistant clerk, or deputy clerk of the court in the county in which the action is commenced. Any complaint and motion for temporary civil no-contact order and any other documents accepted for filing under

this section and any order entered by the magistrate shall be delivered to the clerk's office for processing as soon as that office is open for business."

SECTION 4.(c) This section becomes effective December 1, 2022.

MAGISTRATE RESIDENCY

SECTION 5.(a) G.S. 7A-171.2(a) reads as rewritten:

"(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.~~North Carolina, and the individual shall either be a resident of the county for which the magistrate is seeking nomination or renomination or a resident of a county that is contiguous to that county."

SECTION 5.(b) G.S. 7A-146(9) reads as rewritten:

"(9) Assigning magistrates when exigent circumstances exist to temporary duty outside the county of their ~~residence~~ appointment but within that district pursuant to the policies and procedures prescribed under G.S. 7A-343(11); and, upon the request of a chief district judge of another district and upon the approval of the Administrative Officer of the Courts, to temporary duty in the district of the requesting chief district judge pursuant to the policies and procedures prescribed under G.S. 7A-343(11)."

SECTION 5.(c) G.S. 7A-171(a) reads as rewritten:

"(a) The General Assembly shall establish a minimum quota of magistrates ~~for~~ appointed in each county. In no county shall the minimum quota be less than one. The number of magistrates appointed in a county, above the minimum quota set by the General Assembly, is determined by the Administrative Office of the Courts after consultation with the chief district court judge for the district in which the county is located."

SECTION 5.(d) G.S. 7A-171.1(b) reads as rewritten:

"(b) Notwithstanding G.S. 138-6, a magistrate may not be reimbursed by the State for travel expenses incurred on official business within the county in which the magistrate ~~resides.~~resides or is appointed."

SECTION 5.(e) G.S. 7A-173 reads as rewritten:

"**§ 7A-173. Suspension; removal; reinstatement.**

(a) A magistrate may be suspended from performing the duties of ~~his~~ the magistrate's office by the chief district judge of the district court district in which ~~his~~ the magistrate's county of appointment is ~~located, or removed from office~~ located. A magistrate may be removed from office by the senior regular resident superior court judge of, or any regular superior court judge holding court in, the district or set of districts as defined in G.S. 7A-41.1(a) in which the magistrate's county of appointment is located. Grounds for suspension or removal are the same as for a judge of the General Court of Justice.

(b) Suspension from performing the duties of the office may be ordered upon filing of sworn written charges in the office of clerk of superior court for the county in which the magistrate ~~resides.~~ was appointed. If the chief district judge, upon examination of the sworn charges, finds that the charges, if true, constitute grounds for removal, ~~he~~ the chief district judge may enter an order suspending the magistrate from performing the duties of ~~his~~ the magistrate's office until a final determination of the charges on the merits. During suspension the salary of the magistrate continues.

(c) If a hearing, with or without suspension, is ordered, the magistrate against whom the charges have been made shall be given immediate written notice of the proceedings and a true copy of the charges, and the matter shall be set by the chief district judge for hearing before the senior regular resident superior court judge or a regular superior court judge holding court in the district or set of districts as defined in G.S. 7A-41.1(a) in which the magistrate's county of appointment is located. The hearing shall be held in a county within the district or set of districts not less than 10 days nor more than 30 days after the magistrate has received a copy of the

charges. The hearing shall be open to the public. All testimony offered shall be recorded. At the hearing the superior court judge shall receive evidence, and make findings of fact and conclusions of law. If ~~he~~ the judge finds that grounds for removal exist, ~~he~~ the judge shall enter an order permanently removing the magistrate from office, and terminating ~~his~~ the magistrate's salary. If ~~he~~ the judge finds that no such grounds exist, he shall terminate the suspension, if any.

(d) A magistrate may appeal from an order of removal to the Court of Appeals on the basis of error of law by the superior court judge. Pending decision of the case on appeal, the magistrate shall not perform any of the duties of ~~his~~ the magistrate's office. If, upon final determination, ~~he~~ the magistrate is ordered reinstated, either by the appellate division or by the superior court on remand, ~~his~~ the magistrate's salary shall be restored from the date of the original order of removal."

SECTION 5.(f) G.S. 7A-293 reads as rewritten:

"**§ 7A-293. Special authority of a magistrate assigned to a municipality located in more than one county of a district court district.**

A magistrate assigned to an incorporated municipality, the boundaries of which lie in more than one county of a district court district, may, in criminal matters, exercise the powers granted by G.S. 7A-273 as if the corporate limits plus the territory embraced within a distance of one mile in all directions therefrom were located wholly within the magistrate's county of ~~residence.~~ appointment. Appeals from a magistrate exercising the authority granted by this section shall be taken in the district court in the county in which the offense was committed. A magistrate exercising the special authority granted by this section shall transmit all records, reports, and monies collected to the clerk of the superior court of the county in which the offense was committed. In addition, if a magistrate is assigned to an incorporated municipality, the boundaries of which lie in two or more district court districts, the magistrate may exercise the powers described in this section as if the counties were in the same district court district, if the clerks of superior court and the chief district court judges serving the districts in which the municipality is located agree in writing that the exercise of this special authority would promote the administration of justice in the municipality and in the districts. However, if a magistrate is assigned to an incorporated municipality, the boundaries of which lie in four or more counties, each of which is in a separate district court district, the magistrate may exercise the powers described in this section as if all the counties were in the same district court district, without the necessity of such an agreement between the clerks and judges of the affected counties, and the records, reports, and monies collected in connection with the exercise of that authority shall be transmitted to the clerk of the superior court district for the county in which the offense was committed."

SECTION 5.(g) G.S. 7A-211 reads as rewritten:

"**§ 7A-211. Small claim actions assignable to magistrates.**

In the interest of speedy and convenient determination, the chief district judge may, in his or her discretion, by specific order or general rule, assign to any magistrate of ~~his~~ the district any small claim action pending in ~~his~~ the district if the defendant is a resident of the county in which the magistrate ~~resides.~~ was appointed. If there is more than one defendant, at least one of them must be a bona fide resident of the county in which the magistrate ~~resides.~~ was appointed."

SECTION 5.(h) G.S. 7A-211.1 reads as rewritten:

"**§ 7A-211.1. Actions to enforce motor vehicle mechanic and storage liens.**

Notwithstanding the provisions of G.S. 7A-210(2) and 7A-211, the chief district judge may in ~~his~~ the chief district judge's discretion, by specific order or general rule, assign to any magistrate of ~~his~~ the district actions to enforce motor vehicle mechanic and storage liens arising under G.S. 44A-2(d) or 20-77(d) when the claim arose in the county in which the magistrate ~~resides.~~ was appointed. The defendant may be subjected to the jurisdiction of the court over his or her person by the methods provided in G.S. 7A-217 or 1A-1, Rules 4(j) and 4(j1), Rules of Civil Procedure."

SECTION 5.(i) G.S. 7A-343(11) reads as rewritten:

"(11) Prescribe policies and procedures for the assignment and compensation of magistrates performing temporary duty outside their county of ~~residence~~ appointment when exigent circumstances exist, as provided for in G.S. 7A-146(9)."

SECTION 5.(j) This section becomes effective October 1, 2022.

MAGISTRATE DISCIPLINE IN ACCORDANCE WITH RULES OF CONDUCT

SECTION 6.(a) G.S. 7A-146 reads as rewritten:

"**§ 7A-146. Administrative authority and duties of chief district judge.**

The chief district judge, subject to the general supervision of the Chief Justice of the Supreme Court, has administrative supervision and authority over the operation of the district courts and magistrates in ~~his~~ the chief district judge's district. These powers and duties include, but are not limited to, the following:

...

(13) Investigating written complaints against magistrates. Upon investigation and written findings of misconduct in violation of the Rules of Conduct for Magistrates, a chief district court judge may discipline a magistrate in accordance with the Rules of Conduct for Magistrates. Written complaints received by the chief district court judge and records of investigations into those complaints are to be treated as personnel records under Article 7 of Chapter 126 of the General Statutes. Notwithstanding Article 7 of Chapter 126 of the General Statutes, once a letter of caution, written reprimand, or suspension has been issued by the chief district court judge, the written complaint, and the record of the chief district court judge's action on that complaint, including any investigatory records, are no longer confidential personnel records."

SECTION 6.(b) This section becomes effective October 1, 2022, and applies to any letter of caution, written reprimand, or suspension issued on or after that date.

APPOINTMENT OF VICE-CHAIR TO JUDICIAL STANDARDS COMMISSION

SECTION 7. G.S. 7A-375 reads as rewritten:

"**§ 7A-375. Judicial Standards Commission.**

(a) Composition. – The Judicial Standards Commission shall consist of the following residents of North Carolina: ~~one~~ two Court of Appeals ~~judge,~~ judges, two superior court judges, and two district court judges, each appointed by the Chief Justice of the Supreme Court; four members of the State Bar who have actively practiced in the courts of the State for at least 10 years, elected by the State Bar Council; and four citizens who are not judges, active or retired, nor members of the State Bar, two appointed by the Governor, and two appointed by the General Assembly in accordance with G.S. 120-121, one upon recommendation of the President Pro Tempore of the Senate and one upon recommendation of the Speaker of the House of Representatives. The General Assembly shall also appoint alternate Commission members for the Commission members the General Assembly has appointed to serve in the event of scheduling conflicts, conflicts of interest, disability, or other disqualification arising in a particular case. The alternate members shall have the same qualifications for appointment as the original members.

(a1) Terms. – The Court of Appeals ~~judge~~ judges shall ~~act as chair~~ be designated by the Chief Justice as chair and vice-chair of the Commission and shall serve at the pleasure of the Chief Justice. Terms of other Commission members shall be for six years. No member who has served a full six-year term is eligible for reappointment. Members who are not judges are entitled to per diem, and all members are entitled to reimbursement for travel and subsistence expenses

SATELLITE-BASED MONITORING CONFORMING CHANGE

SECTION 13. Section 18(o) of S.L. 2021-138 reads as rewritten:

"**SECTION 18.(o)** The Division of Adult Correction and Juvenile Justice shall provide each elected District Attorney a list of the individuals that reside in a county in that District Attorney's district that is subject to State v. Grady, 831 S.E. 2d 542 (NC 2019), decided August 16, 2019, namely all individuals in the same category as the defendant, Mr. Grady: individuals subject to mandatory lifetime satellite-based monitoring based solely on their status as a statutorily defined "recidivist" who have completed their prison sentences and are no longer supervised by the State through probation, parole, or post-release supervision. An elected District Attorney must decide to handle each case or have the Attorney General handle the case. If requested by an elected District Attorney, the Attorney General shall make a preliminary determination whether the recidivist subject to State v. Grady, may meet any requirement to enroll in a satellite-based monitoring program other than being a recidivist, and represent the State in any proceedings created by this section. Each District Attorney or Attorney General shall review the determination for every one of the class members. If the District Attorney or Attorney General makes a preliminary determination that the individual may meet any requirement to enroll in a satellite-based monitoring program other than being a recidivist, they shall notify the person and the sheriff in the county where the individual resides. The District Attorney or Attorney General may petition the court in that county for a hearing to have a judge determine if an individual subject to State v. Grady, 831 S.E. 2d 542 (NC 2019), meets the criteria for satellite-based monitoring consistent with G.S. 14-208.40A, as amended by this ~~act.~~act and S.L. 2021-182."

CORRECT GENERAL COURT OF JUSTICE FEE REFERENCE

SECTION 14. G.S. 20-135.2A(e), as amended by S.L. 2022-6, reads as rewritten:

"(e) Any driver or front seat passenger who fails to wear a seat belt as required by this section shall have committed an infraction and shall pay a penalty of twenty-five dollars and fifty cents ($25.50) plus the following court costs:

(1) The General Court of Justice fee provided for in G.S. 7A-304(a)(4).

(2) The fee provided for in G.S. 7A-304(a)(2a).

(3) One dollar and fifty cents ($1.50) to be remitted to the county wherein the infraction was issued, except in those cases in which the infraction was issued by a law enforcement officer employed by a municipality, the fee shall be paid to the municipality employing the officer.

(4) One dollar and fifty cents ($1.50) for the supplemental pension benefits of sheriffs to be remitted to the Department of Justice and administered under the provisions of Article 12H of Chapter 143 of the General Statutes.

Any rear seat occupant of a vehicle who fails to wear a seat belt as required by this section shall have committed an infraction and shall pay a penalty of ten dollars ($10.00) and no court costs. ~~Court costs assessed under this section are for the support of the General Court of Justice and shall be remitted to the State Treasurer.~~ Conviction of an infraction under this section has no other consequence."

FIRST APPEARANCE CHANGES

SECTION 15.(a) G.S. 15A-601(e), as amended by S.L. 2022-6, reads as rewritten:

"(e) The clerk of the superior court in the county in which the defendant is taken into custody may conduct a first appearance as provided in this Article if a district court judge is not available in the county within 72 hours after the defendant is taken into custody, or 96 hours after the defendant is taken into custody if the courthouse is closed for transactions for a period longer than 72 hours. A magistrate may conduct the first appearance if the clerk is not available. ~~The~~ For the limited purpose of conducting a first appearance and notwithstanding any other provision

of law, the clerk or ~~magistrate, in conducting a first appearance,~~ magistrate shall proceed under this Article as ~~would~~ a district court ~~judge~~ judge would and shall have the same authority that a district court judge would have at a first appearance."

SECTION 15.(b) G.S. 15A-604 reads as rewritten:

"**§ 15A-604. Determination of sufficiency of charge.**

(a) The judge must examine each criminal process or magistrate's order and determine whether each charge against the defendant charges ~~a~~ either:

(1) A criminal offense within the original jurisdiction of the superior court.

(2) A misdemeanor offense within the original jurisdiction of the district court.

(b) If the judge determines that the process or order fails to charge a criminal offense within the original jurisdiction of the superior ~~court, he~~ court or a misdemeanor within the original jurisdiction of the district court, the judge must notify the prosecutor and take further appropriate action, including one or more of the following:

...

(4) ~~With~~ For a pleading that purported to allege a criminal offense within the original jurisdiction of the superior court, with the consent of the prosecutor, set the case for trial in the district court if the charge is found to be within the original jurisdiction of the district court."

SECTION 15.(c) G.S. 15A-606(a) reads as rewritten:

"(a) ~~The~~ If a defendant is charged with a criminal offense within the original jurisdiction of the superior court, the judge must schedule a probable-cause hearing unless the defendant waives in writing ~~his~~ the defendant's right to such hearing. A defendant represented by counsel, or who desires to be represented by counsel, may not before the date of the scheduled hearing waive ~~his~~ the defendant's right to a probable-cause hearing without the written consent of the defendant and ~~his~~ the defendant's counsel."

SECTION 15.(d) This section is effective when it becomes law and applies to first appearances conducted on or after that date.

CRIMINAL PROCEDURE CONFORMANCE FOR ELECTRONIC COURTS

SECTION 16.(a) G.S. 7A-49.5 is amended by adding a new subsection to read:

"(e) The Supreme Court may require that in all cases in which the seal of any court or judicial office is required by law to be affixed to any paper issuing from a court or office, the word "seal" shall be construed to include an impression of the official seal, made upon the paper alone, an impression made by means of a wafer or of wax affixed thereto, or an electronic image adopted as the official seal affixed thereto."

SECTION 16.(b) G.S. 15-189 reads as rewritten:

"**§ 15-189. Sentence of death; prisoner taken to penitentiary.**

Upon the sentence of death being pronounced against any person in the State of North Carolina convicted of a crime punishable by death, it shall be the duty of the judge pronouncing such death sentence to make the same in writing, which shall be filed in the ~~papers in~~ record of the case against ~~such~~ the convicted person. The clerk of the superior court in which ~~such~~ the death sentence is pronounced shall prepare a certified copy of ~~said~~ the judgment or sentence of death, ~~including therewith~~ which shall include a copy of any notice or entries of appeal made in ~~such~~ the case; if no entries or notice of appeal have been made or given in ~~such~~ the case, a statement to the effect shall be included in the certificate of the clerk; it shall also be the duty of the district attorney, assistant district attorney, or attorney prosecuting ~~in~~ on behalf of the State in the absence of the district attorney, to prepare and sign a certificate stating in substance that ~~he~~ the attorney prosecuted ~~said~~ the case ~~in~~ on behalf of the State and that notice or entries of appeal have or have not been made or given in ~~said~~ the case, and further that ~~he~~ the attorney has examined a copy of ~~said~~ the judgment or sentence of death certified by the clerk, including the copy of the notice or entries of appeal or statement to the effect that no appeal has been given,

and to the best of ~~his~~ the attorney's knowledge the same is correct; the certificate of ~~said~~ the district attorney, or other prosecuting officer above named, shall be attached to the certified copy of ~~said~~ the sentence of death, as prepared and certified by the clerk, and both certificates shall be transmitted by the clerk of the superior court in which ~~said~~ the sentence of death is pronounced to the warden of the State penitentiary at Raleigh, North Carolina; at the same time and in the same manner, a duplicate original of ~~said~~ the certificates shall be prepared by the clerk of the superior court and the district attorney, or other prosecuting officer above named, and the ~~said~~ duplicate original or ~~said~~ certificates shall be transmitted to the Attorney General of North Carolina. If notice of appeal is given or entries of appeal are made after the expiration of the term of superior court in which ~~said~~ the sentence of death is pronounced, ~~said~~ the certificates shall be prepared by the clerk of the superior court in which ~~said~~ the sentence is pronounced and by the district attorney, or other prosecuting officer above named, prosecuting ~~in~~ on behalf of the State, in the same manner and shall be transmitted as soon as possible to the warden of the State penitentiary at Raleigh, North Carolina, and to the Attorney General of North Carolina. The above certificates so prepared by the clerk of the superior court in which ~~such~~ the sentence of death is pronounced and by the district attorney, or other prosecuting officer above named, shall be transmitted by the clerk of the superior court ~~in which such~~ of the county where the sentence is pronounced to the warden of the State penitentiary at Raleigh, North Carolina, and to the Attorney General of North Carolina, not more than 20 or less than 10 days before the time fixed in the judgment of the court for the execution of the sentence; and in all cases where there is no appeal, ~~said~~ the sentence of death shall not be carried out by the warden of the State penitentiary or by any of his deputies or agents until ~~said~~ the certificates ~~so~~ prepared and transmitted by the clerk of the superior court ~~in which said~~ of the county where the sentence of death is pronounced, and by the district attorney, or the prosecuting officer above named, have been received in the office of the warden of the State penitentiary at Raleigh, North Carolina. In all cases where there is no appeal from the sentence of death and in all cases where the sentence is pronounced against a prisoner convicted of the crime of rape it shall be the duty of the sheriff, together with at least one deputy, to convey to the penitentiary, at Raleigh, North Carolina, ~~such~~ the condemned felon or convict forthwith upon the adjournment of the court in which the felon was tried, and deliver the convict or felon to the warden of the penitentiary."

SECTION 16.(c) G.S. 15-192 reads as rewritten:

"**§ 15-192. Certificate filed with clerk.**

The warden, together with the licensed physician who was present on the premises to pronounce death as required by G.S. 15-190, shall certify the fact of the execution of the condemned person, convict or felon to the clerk of the superior court in which ~~such~~ the sentence was pronounced, and the clerk shall file ~~such~~ the certificate with the ~~papers~~ record of the case and enter the same upon the records thereof."

SECTION 16.(d) G.S. 15A-101.1 reads as rewritten:

"**§ 15A-101.1. Electronic technology in criminal process and procedure.**

As used in this Chapter, in Chapter 7A of the General Statutes, in Chapter 15 of the General Statutes, and in all other provisions of the General Statutes that deal with criminal process or procedure:

(1) "Copy" means all identical versions of a document created or existing in paper or electronic form, including the original and all other identical versions of the ~~document in paper form.~~document. Except where otherwise expressly provided by law or when authority is vested only in a certified copy, a copy of a document is equally authoritative as the original.

...

~~(5) "Electronic signature" means any electronic method of signing a document that meets each of the following requirements:~~

a. ~~Identifies and authenticates a particular person as the signer of the document, is unique to the person using it, is capable of certification, and is under the sole control of the person using it.~~

b. ~~Is attached to or logically associated with the document in such a manner that if the document is altered in any way without authorization of the signer, the signature is invalidated.~~

c. ~~Indicates that person's intent to issue, enter or otherwise authenticate the document.~~

...

(7) "Filing" or "filed" means:

...

b. When the document is in electronic form, creating and saving the document, or transmitting it, in such a way that it is unalterably retained in the electronic records of the office where the document is to be filed. A document is "unalterably retained" in an electronic record when it may not be edited or otherwise altered except by a person with authorization to do so. ~~Filing is complete when the document has first been unalterably retained in the electronic records of the office where the document is to be filed.~~

(8) "Issued" applies to documents in either paper form or electronic form. A document that is first created in paper form is issued when it is signed. A document that is first created in electronic form is issued when it is ~~signed,~~ signed and filed in the office of the clerk of superior court of the county for which it is to be ~~issued, and retained in the Electronic Repository.~~issued.

...

(10) "Signature" means any symbol, including, but not limited to, the name of an individual, which is executed by that individual, personally or through an authorized agent, with the intent to authenticate or to effect the issuance or entry of a document. ~~The term includes an electronic signature.~~ A document may be signed by the use of any manual, mechanical or electronic means that causes the individual's signature to appear in or on the document. Any party challenging the validity of a signature shall have the burden of pleading, producing evidence, and proving ~~the following:~~

a. ~~The~~ that the signature was not the act of the person whose signature it appears to be.

b. ~~If the signature is an electronic signature, the requirements of subdivision (5) of this section have not been met.~~

(11) "Attach" or "attached" means, when referring to documents existing in paper form, physical attachment by staples, clips, or other mechanical means, or managed such that neither document is stored or delivered without the other. When referring to documents stored in electronic form, the term means either storage as a single digital file or storage in a manner that a user interface for access to the documents displays clearly the logical association between them, to the exclusion of other, unassociated documents displayed with them. When referring to documents delivered in electronic form, the term means documents delivered simultaneously and via the same mechanism or medium, including, but not limited to, any of the following: (i) delivery via a single email message, (ii) delivery on a single unit of removable electronic media, or (iii) delivery in immediate, contemporaneous sequence with one another from the same source to the same recipient. It is not necessary that the relationship

between documents appear on the face of the documents in order to be deemed attached."

SECTION 16.(e) G.S. 15A-131(f) reads as rewritten:

"(f) For the purposes of this Article, pretrial proceedings are proceedings occurring after the initial appearance ~~before the magistrate~~ and prior to arraignment."

SECTION 16.(f) G.S. 15A-301 reads as rewritten:

"**§ 15A-301. Criminal process generally.**

(a) Formal Requirements. –

...

(2) Criminal process, other than a citation, must be signed and dated by the ~~justice, judge, magistrate, or clerk~~ judicial official who issues it. The citation must be signed and dated by the law-enforcement officer who issues it.

...

(b1) Approval by District Attorney; school personnel. – Notwithstanding any other provision of law, no warrant for arrest, order for arrest, criminal summons, or other criminal process shall be issued by a magistrate against a school employee, as defined in G.S. 14-33(c)(6), for an offense that occurred while the school employee was in the process of discharging his or her duties of employment, without the prior written approval of the district attorney or the district attorney's designee. For purposes of this subsection, the term "district attorney" means the person elected to the office of district attorney. This subsection does not apply if the offense is a traffic offense or if the offense occurred in the presence of a sworn law enforcement officer. The district attorney may decline to accept the authority set forth in this subsection; in such case, the procedure and review authority shall be as set forth in subsection (b2) of this section.

(b2) Magistrate review; school personnel. – A district attorney may decline the authority provided under subsection (b1) of this section by ~~transmitting~~ filing a letter so indicating with the clerk of superior court. The district attorney shall provide a copy of the filed letter to the chief district court judge. Upon receipt of ~~a~~ the letter from the district ~~attorney declining the authority provided in subsection (b1) of this section,~~ attorney, the chief district court judge shall appoint a magistrate or magistrates to review any application for a warrant for arrest, order for arrest, criminal summons, or other criminal process against a school employee, as defined in G.S. 14-33(c)(6), where the allegation is that the school employee committed a misdemeanor offense while discharging his or her duties of employment. The failure to comply with any of the requirements in this subsection shall not affect the validity of any warrant, order, summons, or other criminal process. The following exceptions apply to the requirements in this subsection:

...."

SECTION 16.(g) G.S. 15A-301.1 reads as rewritten:

"**§ 15A-301.1. Electronic Repository.**

(a) The Administrative Office of the Courts shall ~~create and~~ maintain, in cooperation with State and local law enforcement agencies, an automated electronic repository or repositories for criminal process (hereinafter referred to collectively as the Electronic Repository), which shall comprise a secure system of electronic data entry, storage, and retrieval that provides for creating, signing, issuing, entering, filing, and retaining criminal process in electronic form, and that provides for the following with regard to criminal process in electronic form:

...

~~The Administrative Office of the Courts shall assure that all electronic signatures effected through use of the system meet the requirements of G.S. 15A-101.1(5).~~

...

(k) Service Requirements for Process Entered in the Electronic Repository. – The copy of ~~the~~ a process printed for the purpose of service shall be served not later than 24 hours after it has been printed. The date, time, and place of service shall promptly be recorded in the Electronic Repository and shall be part of the official records of the court. If the process is not served within

entries made as a result of the charge or conviction ordered expunged, except as provided in G.S. 15A-151. The list of agencies is as follows:

...

(4) The Department of ~~Public Safety,~~ Adult Correction, Combined Records Section.

...."

SECTION 18.(b) This section becomes effective January 1, 2023.

TRANSFER OF FUNDS PERMANENT

SECTION 19. G.S. 7A-413 is amended by adding a new subsection to read:

"(c) The Conference shall approve all transfers of funds appropriated by the General Assembly for the offices of district attorneys prior to the Administrative Office of the Courts completing the transfer."

SUMMARY EJECTMENT TRAINING MANDATORY FOR MAGISTRATES

SECTION 20.(a) G.S. 7A-177(b1) reads as rewritten:

"(b1) Except for the calendar year in which a magistrate completes the course of basic training referenced in subsection (a) of this section, every magistrate shall annually and satisfactorily complete a course of in-service training consisting of at least 12 hours in the civil and criminal duties of a magistrate, including, but not limited to, the following subjects:

(1) Setting conditions of pretrial release.
(2) Impaired driving laws.
(3) Issuing criminal processes.
(4) Issuing search warrants.
(5) Technology.
(6) Orders of protection.
(7) Summary ejectment laws.

The Administrative Office of the Courts is authorized to conduct the training required by this subsection or contract with the School of Government at the University of North Carolina at Chapel Hill or with any other qualified educational organization to conduct this training. The training may be conducted in person or online. The Administrative Office of the Courts shall adopt policies for the implementation of this subsection."

SECTION 20.(b) This section becomes effective January 1, 2023.

ELIMINATE STATE JUDICIAL COUNCIL

SECTION 21.(a) Article 31A of Chapter 7A of the General Statutes is repealed.

SECTION 21.(b) G.S. 7A-300 reads as rewritten:

"**§ 7A-300. Expenses paid from State funds.**

(a) The operating expenses of the Judicial Department shall be paid from State funds, out of appropriations for this purpose made by the General Assembly, or from funds provided by local governments pursuant to G.S. 7A-300.1, 153A-212.1, or 160A-289.1. The Administrative Office of the Courts shall prepare budget estimates to cover ~~these~~ the following expenses, including therein the following items and such other items as are deemed necessary for the proper functioning of the Judicial Department:

(1) Salaries, departmental expense, printing and other costs of the appellate ~~division;~~division.
(2) Salaries and expenses of superior court judges, district attorneys, assistant district attorneys, public defenders, and assistant public defenders, and fees and expenses of counsel assigned to represent indigents under the provisions of Subchapter IX of this ~~Chapter;~~Chapter.

EFFECTIVE DATE

SECTION 23. Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of June, 2022.

s/ Phil Berger
President Pro Tempore of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Roy Cooper
Governor

Approved 3:59 p.m. this 7th day of July, 2022

27 N.C.A.C. CHAPTER 1D - SECTION .1500

.1517 EXEMPTIONS

(c) Judiciary and Clerks. Members of the state judiciary who are required by virtue of their judicial offices to take an average of twelve (12) or more hours of continuing judicial or other legal education annually and all members of the federal judiciary are exempt from the requirements of these rules for any calendar year in which they serve some portion thereof in such judicial capacities.

Magistrate Annual Continuing Education (CE) Training

NCAOC Policy — Effective January 1, 2023

Purpose	The purpose of this policy is to set forth administrative guidelines for the implementation of annual continuing education (CE) training for magistrates pursuant to G.S. 7A-177(b1).
Overview	Within six months of taking the oath of office for the first time, a magistrate must complete "a course of basic training of at least 40 hours in the civil and criminal duties of a magistrate." G.S. 7A-177(a). As of January 1, 2023, except for the calendar year in which a magistrate completes the course of basic training referenced in G.S. 7A-177(a), every magistrate shall annually and satisfactorily complete a course of in-service training consisting of at least 12 hours in the civil and criminal duties of a magistrate. G.S. 7A-177(b1).
Authority	The Administrative Office of the Courts is authorized to conduct the training required by G.S. 7A-177(b1) or contract with the School of Government at the University of North Carolina at Chapel Hill (UNC) or with any other qualified educational organization to conduct this training.
Applicability	This policy applies to all magistrates authorized under G.S. Chapter 7A, Article 16.
Definitions	**A course of in-service training:** A CE course, or courses, approved by the Director of the Administrative Office of the Courts, or his designee, that satisfies a magistrate's obligation under G.S. 7A-177(b1). **Annually:** The period of 365 days (or 366 days in leap years) starting on January 1 and ending on December 31.
Carryover	Magistrates may not carry over any CE credit earned in one calendar year to the next calendar year.

Noncompletion	Any magistrate that does not annually and satisfactorily complete a course of CE training consisting of at least 12 hours in the civil and criminal duties of a magistrate, including completing courses containing the subjects listed in G.S. 7A-177(b1), will not be eligible for renomination. G.S. 7A-171.2(c). Magistrates should plan to complete any required CE training by December 1 during years when a magistrate is eligible for renomination. G.S. 7A-171(b).
Records	The Administrative Office of the Courts shall maintain magistrate CE course records in the magistrate's Learning Center transcript. CE courses taken through the Learning Center will be automatically reported and added to the magistrate's transcript. CE courses taken through the UNC School of Government will be reported to The Administrative Office of the Courts. The UNC School of Government will send AOC the name of the magistrate, course(s) completed, and CE hours that the magistrate completes while taking courses at the UNC School of Government. AOC will add those courses and credits to the magistrate's Learning Center transcript.
Trainings	The Administrative Office of the Courts or the UNC School of Government will conduct all CE trainings necessary to satisfy the requirements of G.S.7A-177(b1). The trainings completed pursuant to G.S. 7A-177(b1) may be conducted in-person or online. Each year, the Administrative Office of the Courts will provide on-demand CE trainings sufficient to satisfy all G.S. 7A-177(b1) requirements. On-demand training will be available in the Learning Center. The course description will state whether the Director has approved the course for satisfying the G.S. 7A-177(b1) requirements. In addition, the Administrative Office of the Courts, either directly or through the UNC School of Government, will offer live in-person or online CE trainings and will inform magistrates when live training satisfies the G.S. 7A-177(b1) requirements. The requirement for CE training begins the year following the calendar year in which basic training is completed. Magistrates who completed basic training in 2022 or in prior years will be required to complete CE training in 2023 and each calendar year thereafter. Magistrates who complete basic training for the first time in 2023 will be required to complete CE training in 2024 and each calendar year thereafter.

Each magistrate subject to these rules shall complete 12 hours of Director-approved CE courses during each calendar year. Of the 12 hours, a minimum of thirty (30) minutes of training in the following subjects must be completed:

(1) Setting conditions of pretrial release.
(2) Impaired driving laws.
(3) Issuing criminal processes.
(4) Issuing search warrants.
(5) Technology.
(6) Orders of Protection.
(7) Summary ejectment laws.

Once the 30 minutes of training has been completed in the above subjects, a magistrate may satisfy the remaining required CE credit hours by attending any Director-approved CE of choice. The Administrative Office of the Courts recognizes that the duties of magistrates may be greater in scope than these seven listed topics, and that training in other topics, including ethics and other civil and criminal matters, is appropriate for satisfying the twelve (12) hour annual CE training requirement.

For on-demand courses offered through the Learning Center, a certificate of completion in the Learning Center will indicate that a CE course is satisfactorily completed. Some Learning Center courses will require successful completion of a quiz/test to ensure competency in a subject prior to earning a certificate of completion. For live training offered by the Administrative Office of the Courts or the UNC School of Government, a CE course is considered satisfactorily completed when recorded in the Learning Center.

Magistrates may, and are encouraged to, track their own CE credit hours through the Learning Center.

Intro to Law & Judicial Process

Introduction to Law & Judicial Process

Tom Thornburg
January 2023

Part I

WHERE DOES LAW COME FROM?

Law you see in your work comes mostly from two sources.

Statutes are laws enacted by the legislature.

Case law comes from the decisions of appellate courts in specific lawsuits.

Imagine a lawyer hands you this . . .

§ 42-46. Authorized late fees and eviction 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.

(2) Is due in weekly installments, a landlord may charge a late fee not to exceed four dollars ($4.00) or five percent (5%) of the weekly rent, whichever is greater.

(3) Repealed by Session Laws 2009-279, s. 4, effective October 1, 2009, and applicable to leases entered into on or after that date.

(b) A late fee under subsection (a) of this section may be imposed only one time for each late rental payment. A late fee for a specific late rental payment may not be deducted from a subsequent rental payment so as to cause the subsequent rental payment to be in

Is this from a statute or a case?

G.S. 42-37.3	§ 42-37.3. Waiver.	
Article 5 - Residential Rental Agreements.		
G.S. 42-38	§ 42-38. Application.	
G.S. 42-39	§ 42-39. Exclusions.	
G.S. 42-40	§ 42-40. Definitions.	
G.S. 42-41	§ 42-41. Mutuality of obligations.	
G.S. 42-42	§ 42-42. Landlord to provide fit premises.	
G.S. 42-42.1	§ 42-42.1. Water, electricity, and natural gas conservation.	
G.S. 42-42.2	§ 42-42.2. Victim protection - nondiscrimination.	
G.S. 42-42.3	§ 42-42.3. Victim protection - change locks.	
G.S. 42-43	§ 42-43. Tenant to maintain dwelling unit.	
G.S. 42-44	§ 42-44. General remedies, penalties, and limitations.	
G.S. 42-45	§ 42-45. Early termination of rental agreement by military personnel, surviving family members, or lawful representative.	Modified by: SL 2019-161 (S420)
G.S. 42-45.1	§ 42-45.1. Early termination of rental agreement by victims of domestic violence, sexual assault, or stalking.	
G.S. 42-45.2	§ 42-45.2. Early termination of rental agreement by tenants residing in certain foreclosed property.	
G.S. 42-46	§ 42-46. Authorized late fees and eviction fees.	
G.S. 42-47 through 42-49	§§ 42-47 through 42-49: Reserved for future codification purposes.	
Article 6 - Tenant Security Deposit Act.		
G.S. 42-50	§ 42-50. Deposits from the tenant.	
G.S. 42-51	§ 42-51. Permitted uses of the deposit.	

Case law

Comes from written opinions in specific cases decided by appellate courts.

Imagine a lawyer hands you this . . .

purpose doctrine our Supreme Court has explained that,

> [while] performance remains possible, [it] is excused whenever a fortuitous event supervenes to cause a failure of the consideration or a practically total destruction of [**284] the expected value of the performance. The doctrine of commercial frustration is based upon the fundamental premise of giving relief in a situation where the parties could not reasonably have protected themselves by the terms of the contract against contingencies which later arose.

Brenner v. Little Red School House, Ltd., 302 N.C. 207, 211, 274 S.E.2d 206, 209 (1981). However, the doctrine is inapplicable where the frustrating event is reasonably foreseeable. *Id.* Additionally, "if [*79] the parties have contracted in reference to the allocation of the risk involved in the frustrating event, they may not invoke the doctrine of frustration to escape their obligations." *Id.* Essentially the doctrine of frustration of purpose requires proof that: (1) there was an implied condition in the contract that a changed condition would excuse performance; (2) the changed condition results in a failure of consideration or the expected value of the performance; and (3) the changed condition was not reasonably foreseeable. *Faulconer v. Wysong and Miles Co.*, 155 N.C.App. 598, 602, 574 S.E.2d 688, 691 (2002).

Is this from a statute or a case?

Brenner v. Little Red School House, Ltd., 302 N.C. 207, 211, 274 S.E.2d 206, 209 (1981). However, the doctrine is inapplicable where the frustrating event is reasonably foreseeable. *Id.* Additionally, "if

[Plaintiff] v. [Defendant], [Vol #] [Court] [Page #] [Year]

[Brenner] v. [Little Red School House, Ltd.], [302] [NC Supreme Court] [207] [quoted language appears on p. 211] [alternative publication citation] [1981]

---

the changed condition was not reasonably foreseeable. *Faulconer v. Wysong and Miles Co.*, 155 N.C.App. 598, 602, 574 S.E.2d 688, 691 (2002).

Plaintiff?

Defendant?

What court?

Change to Universal Citation as of 1/1/2021

- Example citations
  - Supreme Court of North Carolina

(official citation) *(parallel citation)*
State v. Smith, 375 N.C. 152, 2020-NCSC-45, ¶ 16.

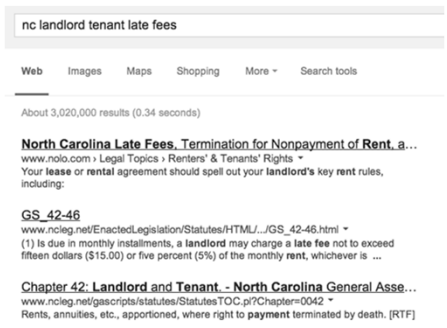
Case Name
Year of Decision
Court Abbreviation
Opinion Number
Pinpoint Paragraph Number

  - North Carolina Court of Appeals

(official citation) *(parallel citation)*
State v. Smith, 255 N.C. App. 43, 2020-NCCOA-118, ¶ 23.

Part 2

HOW DO STATUTES AND CASES WORK TOGETHER?



§ 42-46. Authorized late fees and eviction 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.

(2) Is due in weekly installments, a landlord may charge a late fee not to exceed four dollars ($4.00) or five percent (5%) of the weekly 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.

*For illustration only. This statute has been amended.

Friday v. United Dominion

- Landlord used computer program to generate individualized leases, including 5% late fee clause.
- Lease called for monthly rent of $610, and late fee of $31 (rounded up from actual calculation of $30.50).
- In actual practice, LL charged $30 late fee.

Who wins?

??

Landlord entitled to late fees of $30/month.

??

Tenant, because landlord has forfeited right to charge late fees.

Friday Court held:

- "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."

Part 3

WHAT'S YOUR ROLE IN ALL THIS?

About the Magistrate

A magistrate is an independent judicial official, recognized by the North Carolina Constitution as an officer of the district court. Magistrates take the same oath as judges. They are subject to the NC Rules of Conduct for Magistrates (October 1, 2021). NC Const. Art IV, Sec. 10; and General Statutes 7A-170 and 7A-171.3.

Magistrates should strive for values like those listed on the next slide.

Neutral

Detached

Objective

Impartial

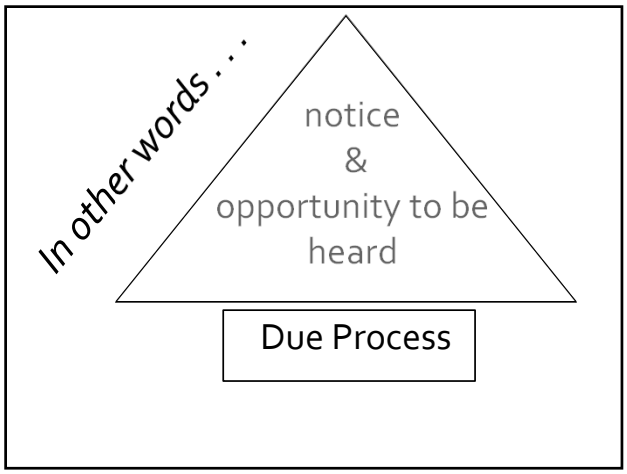
What is "the rule of law?"

Involves 4 basic ideas:

- Applies to everyone equally
- Is determined by a fair process
- Is administered by competent, impartial individuals
- Rules are clear, public, stable, & just, applied evenly, and protect fundamental rights

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

U.S. Constitution, 14th Amendment



"Important as it is that people should get justice, it is ever more important that they be made to feel and see that they are getting it."

Lord Chancellor Farrer Herschell

Discussion

What does a magistrate do that advances our system toward these 4 "Rule of Law" goals?

What common errors by a magistrate have you observed that cause us to be further away?

Reminder: The goals are that the law

1. will apply to everyone equally;
2. is determined by a fair process;
3. is administered by competent, impartial individuals; and
4. consists of rules that are clear, public, stable, and just, applied evenly, and protect fundamental rights.

HOW JUDICIAL OFFICIALS MAKE DECISIONS

The Judicial Process

Crime?

- Is there evidence sufficient to establish PC on each essential element of offense?

Cause of Action?

- Is there prima facie evidence on each essential element of claim?
- Does defendant's evidence successfully weaken an essential element

OR

- Establish an affirmative defense?

Defendant's behavior has caused me damage:

- ☐ D broke an agreement with me.
- ☐ D behaved negligently toward me.
- ☐ D deliberately injured me.
- ☐ D has my property and won't give it back.

Action for conversion

"My neighbor took my lawnmower without my permission and junked it!"

Action for conversion

Essential elements:

- ☐ I own the property.
- ☐ D wrongfully took or retained the property.
- ☐ I suffered damages as a result.

"I came home and my lawnmower was gone. When I asked D if she'd seen anyone around my house, she told me she'd borrowed it. I told her I wanted it back, and she said it was broken, and she'd taken it to the dump for me. I told her I'd see her in court."

Step 1:

Has π introduced credible evidence on every essential element?

Essential elements:

- ☐ I own the property.
- ☐ D wrongfully took or retained the property.
- ☐ I suffered damages as a result.

"I came home and my lawnmower was gone. When I asked D if she'd seen anyone around my house, she told me she'd borrowed it. I told her I wanted it back, and she said it was broken, and she'd taken it to the dump for me. I told her I'd see her in court."

That mower was old, but they don't make them like that anymore. I could have gotten at least $300 for it. Also, I had to pay a lawn guy $50 3 times before I finally found a new mower. So I'm asking for $450.

Step 1: Has π introduced credible evidence on every essential element?

Step 2: Does Δ's evidence challenge an essential element?

"The mower actually belongs to plaintiff's mom, and she gave me permission to use it."

Action for conversion

Essential elements:

- ~~☐ I own the property.~~
- ☐ D wrongfully took or retained the property.
- ☐ I suffered damages as a result.

Action for conversion

Essential elements:

- ~~☐ I own the property.~~
- ~~☐ D wrongfully took or retained the property~~.
- ☐ I suffered damages as a result.

Step 1: Has π introduced credible evidence on every essential element?

Step 2: Does Δ's evidence challenge an essential element?

Step 3: Does Δ's evidence raise new material in defense?

"This all happened 8 years ago."

What Did We Learn?

Legislatures make law by enacting statutes, and appellate courts interpret (and sometimes make) law by writing opinions explaining their decisions in specific cases.

NC has two appellate courts: The NC Court of Appeals (identified as *N.C. App.*) and the NC Supreme Court (identified as *N.C.).*

A magistrate is an independent judicial official holding office under the NC Constitution.

Fundamental due process = notice + opportunity to be heard.

Judicial officials make decisions using a specific analysis. In civil cases, that begins with whether the plaintiff has offered evidence related to each essential element and (sometimes proceeding to whether) the defendant has offered evidence establishing a defense.

Content Outline: Module 1/Intro to Law & Judicial Process

Part 1: Where does law come from?

Statutes/ordinances enacted by local, state, and & federal legislative bodies
Opinions written by federal and state appellate courts in individual cases.

Statutes enacted by the NC General Assembly are cited in the following format:
NC/NCGS/NC Gen Stat/ [Chapter #] – [Section #] Example: *GS 42-46.*

Cases decided by the NC appellate courts are cited in the following format:
[Plaintiff's name] v. [Defendant's name], [volume #] [N.C. *or* N.C. App] [page #] [year]
Example: *Friday v. United Dominion Realty, Inc., 155 NC App 671 (2003)*

Part 2: What's your role in all of this?

A magistrate is a judicial official holding constitutional office.

The *rule of law* has 4 components:
- The law applies equally to everyone.
- The law is determined by a fair process.
- The law is administered by competent, impartial individuals.
- Rules are clear, public, stable, & just, applied evenly, and protect fundamental rights

14th Amendment: *No State shall deprive any person of life, liberty, or property, without due process of law.*

Fundamental due process involves notice + an opportunity to be heard.

What duties of a magistrate, properly carried out, bring us closer to achieving the goals associated with the rule of law? What common errors by a magistrate have you observed that cause us to be further away?

_____

_____

_____

_____

Part 3: How Judicial Officials Make Decisions

Every crime – and every civil cause of action – has *essential elements* that must be established by the plaintiff to a specific degree of certainty called the *burden of proof* before the government, in the form of the court system, will take action detrimental to the defendant.

In a civil case, the plaintiff is asserting that the defendant is legally responsible for an injury suffered by plaintiff. A *cause of action* is the legal rule imposing such responsibility.

Example: Plaintiff's car was damaged when a large overhanging tree limb located on defendant's property fell on plaintiff's car, which was parked in plaintiff's driveway.

> *"[W]here a landowner knows that he has a tree on his property which is in a dangerous condition and which is likely to fall and injure the property of an adjoining landowner, he has a duty to eliminate such danger."*
> Rowe v. McGee, 5 N.C. App. 60, 66, 168 S.E.2d 77, 81 (1969).

In a criminal case, a magistrate is typically asked to determine whether there is *probable cause* to believe that a crime has been committed and the defendant committed the crime.

In a small claims case, a magistrate is asked to determine whether plaintiff has established each essential element of the cause of action *by the greater weight of the evidence.*

In a small claims case, the presiding magistrate must also consider possible defenses. Defenses may be of two types:

- Evidence that challenges or contradicts one of the essential elements;
- Evidence establishing an *affirmative defense*: "Even if everything the plaintiff says is true, I am still entitled to win because of this additional information."

Some new magistrates begin their job knowing a great deal about the law and the courts, and others know nothing more than they've learned from watching "Law and Order." Understanding some basic information and vocabulary will not only help you do your job, but it will also help you understand what people are talking about at the water fountain. (It helps to know ACC basketball really well, too.)

WHERE DOES LAW COME FROM?

The "bedrock" of the law is found in the *U.S.* and *N.C. Constitutions*. For example, the principle that citizens are protected from the government performing unreasonable searches comes from the U.S. Constitution. Constitutional law often seems vague, because it states a general principle that will apply in many different circumstances. HOW a constitutional principle should be applied in any particular case is a question for a court to decide.

When certain higher-level courts (called *appellate* courts) consider legal questions in the context of the particular facts of individual cases, their written decisions (*opinions*) are published and their decisions become law (called *case law*).

Example: the U.S. Supreme Court was faced with a case in which a police officer searched a suspect's house for evidence of a crime. He had no warrant for the search, but he DID have a good reason to think he would find the evidence there. Based on these facts, was the search "unreasonable" under the Constitution? The Court said that it was, explaining in its opinion some of the rules for deciding whether a warrant is required before a search is conducted. The Court's decision, applying the Constitution to those particular facts, became law that would be applied to all similar cases in the future.

But what if the facts were only somewhat similar? What if another policeman performed a warrantless search in similar circumstances, but this time the suspect's spouse consented to the search? In that case, the Court found that a different rule applied, yielding a different result, and thus different law: a spouse who resides at the home may consent to the search of the premises, and that search is not "unreasonable."

Another important source of law is legislation passed by the General Assembly (or, in laws that apply to the entire country, by Congress). These laws (called *statutes)* are (usually) clear statements of rules and consequences. For example, magistrates have authority to punish people for direct criminal

contempt because the General Assembly enacted a statute in 1965 giving them that authority. (N.C.G.S. 7A-292)

Like the case involving unreasonable searches under the Constitution, sometimes the application of a statute to particular facts is not clear. In deciding on the language to use in a statute, the General Assembly can't possibly imagine all the situations in which its words might be applied. In those cases, as above, a court may have to *interpret* the statute in order to decide a case. For example, if a city ordinance prohibits walking on the grass in a particular area, and a person runs through the grass, has that person violated the law? While the statute seems clear, it may be necessary to ask a court to decide what "walking" means.

Summing up: There are three sources of law: Constitutional law, case law, and statutory law.

KINDS OF CASES

(Almost) all cases that come before a court are either criminal or civil. This is a very important distinction, because a lot depends on whether a case is one or the other.

In a *civil* case, one person has a complaint about the actions of another. In essence, s/he is saying, "I have been harmed by the actions of this person." The person doing the complaining is called the *plaintiff* and the person being complained about is called the *defendant*. With only a few exceptions, the plaintiff is asking the court to order the defendant to pay money as compensation for the injury.

Example: Kendra hits Kyle during an argument in a bar. Kyle may bring a civil lawsuit (*Kyle vs. Kendra*), in which he will try to prove (1) Kendra hit me, and (2) she should pay me $500 for my medical bills and pain and suffering. If Kendra responds by saying, "I had a right to hit him, because he hit me first," she has presented a *defense* to Kyle's claim.

In a civil case, the plaintiff must prove the case by *the greater weight of the evidence*. This means Kyle does not have to show enough proof to make the judge *positive* that what he says is right; he only needs enough proof to convince the judge that what he says is *most likely* right. In a civil case, the defendant usually has to pay money if she loses, but sometimes she will be ordered to do something instead, such as move out of her apartment or hand over her refrigerator to Sears after she misses a payment. Some examples of typical civil cases are breach of contract cases, cases arising out of automobile accidents, medical malpractice cases, cases involving divorce or other family law questions, and landlord-tenant cases.

In a *criminal case*, the party doing the complaining is the State of North Carolina. You might have expected the complainant to be the victim of the crime, and in fact a victim might sue a defendant in a civil lawsuit for the same behavior that the State is arguing is a crime. For example, if your bank teller puts your deposit in his pocket, he has committed a crime and the State may bring a criminal action against him. At the same time, you may bring a civil action, arguing (quite correctly) that his improper behavior caused you to suffer a loss for which he should be obligated to compensate you.. The State's interest is not so personal, however—the State is concerned with more than your individual loss. The State is concerned that this is a person breaking very important rules designed to

protect the public in general. By bringing criminal charges, the State is seeking to PUNISH the defendant, as well as to let other bank tellers know that they better not do the same thing.

If the State decided to proceed criminally against Kendra in the example above, that case would be called *State vs. Kendra*, and Kyle, while an important witness, would not be a party to the case. While people often think it is necessary to choose whether to proceed against a defendant criminally or civilly, that is not true. Because the interest of the victim is not at all the same as that of the State, a defendant may be called to account for her actions in both kinds of actions. O.J. Simpson, a famous example, was found not guilty of murder (a criminal charge), but was later found in a civil lawsuit to be responsible for the wrongful deaths of the two homicide victims.

There are several important differences between civil and criminal cases, in addition to their different names. Most importantly, a defendant in a criminal case faces more than a loss of money: she may end up in jail. Because we believe that loss of freedom is much more serious than loss of money, special rules apply. For one thing, the burden of proof is much higher. To send Kendra to jail for hitting Kyle, the State will have to prove its case *beyond a reasonable doubt.* For another thing, the U.S. Constitution gives criminal defendants some special protections: A criminal defendant is entitled to an attorney even if unable to pay for one. A criminal defendant has a legal right to refuse to answer questions that might reveal incriminating evidence. In criminal cases, a jury trial is available upon request. Finally, the defendant is entitled to face and question the witnesses at trial. These special protections are designed to make it hard for an innocent man or woman to be sent to jail; it is sometimes said that it is better for 100 guilty people to go free than for one innocent person to be imprisoned.

There are three kinds of offenses against the State (or The People) in North Carolina. Most serious are *felonies*, involving crimes such as rape, murder, and theft of valuable property. Less serious are *misdemeanors*, involving crimes such as shoplifting, worthless checks, and simple assault. Least serious—and technically not crimes at all—are **i***nfractions*, involving offenses such as speeding and failure to have your vehicle inspected.

THE COURT SYSTEM

The court system is somewhat like a factory, in that it has many different parts, working together but each responsible for doing a particular job.

ADMINISTRATION AND RECORD-KEEPING.

The Clerk of Superior Court is the business office of the court system, charged with keeping accurate records and handling money.
The Administrative Office of the Courts (AOC) is management: it administers the business of the courts, including personnel matters and a host of other responsibilities required to keep the courts operational, efficient, fair, and effective.

TRIAL COURTS

The trial courts are divided into the district court division and the superior court division.

Cases handled in the *district court division* may be heard by a magistrate or by a district court judge, depending on the type of case.
Magistrates have a number of duties, including issuing search warrants, setting conditions of pretrial release, and taking guilty pleas in certain small criminal cases. Magistrates also hear civil cases involving less than $10,000 in small claims court.
District court judges hear appeals from small claims court. The district court is also the proper court for civil cases involving less than $25,000, misdemeanor criminal cases, family law and juvenile cases, and involuntary commitments.

Cases handled in the *superior court division* may be heard by a superior court clerk or a superior court judge, depending on the type of case.
The clerk of superior court is responsible for hearing cases involving probate, adoptions, foreclosures, and guardianship, among others.
Superior court judges are responsible for trying felony criminal cases, misdemeanor criminal cases appealed from district court, civil cases involving more than $25,000, and appeals from cases decided by the clerk.

Both *district attorneys* (also called *prosecutors*) and *public defenders* work only on criminal cases. The DA represents the State, while the PD represents criminal defendants who cannot afford to hire a private attorney.

The district and superior courts together make up the *trial divisions* of North Carolina's judicial system. These courts conduct *trials,* meaning they hear witnesses, determine important facts, and hand down legally binding decisions called *judgments*. But what happens if a judge makes a mistake?

Appellate Courts

Appellate courts have one purpose, and one purpose only: to determine whether the trial judge in a particular case has done his or her job correctly. An appellate court does not hear witnesses, and it does not decide the facts of a case. Instead, it examines the official record of the case for legal errors. For example, a landlord-tenant case might involve a tenant who asks that the landlord be ordered to reimburse him for padlocking the rental property in which he lives without first going through the eviction procedure. If a trial judge dismissed this case, based on a ruling that a landlord is entitled to terminate a residential tenancy by merely locking the premises, the tenant might appeal the case. If he did, the appellate court would almost certainly say that the trial judge made an error in law: in fact, *self-help eviction* such as this is prohibited in residential rentals. The appellate court would write an opinion explaining the law so that other judges could avoid making the same mistake in other

cases in the future, and it would direct the trial judge to correct the error in the particular case that had been appealed.

In North Carolina, there are two appellate courts: the *North Carolina Court of Appeals* (fifteen judges who consider cases in a "panel" of three judges for each case) and the *North Carolina Supreme Court* (seven "justices" who all consider and vote on each case). In cases in which the Court of Appeals cannot agree on the law, and in some other cases of great importance (for example, death penalty cases), the North Carolina Supreme Court makes the final decision.

THE COURT SYSTEM'S PUBLIC FACE: THE MAGISTRATE

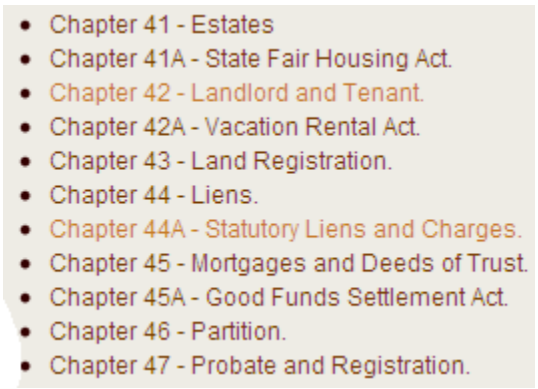
For most citizens, the first member of the court system they encounter is a magistrate, and in many cases, the magistrate is the ONLY court official they interact with. North Carolina's more than 600 magistrates hold an office that dates back to 1195, when King Richard the Lionhearted appointed certain knights to serve as "Keepers of the Peace," the forerunner of the Justice of the Peace. In 1970, North Carolina modified its court system and moved from *justices of the peace* to *magistrates*, but the office remained in many ways the same. Nominated by the Clerk of Superior Court, appointed by the Resident Superior Court Judge, and supervised by the Chief District Court Judge, it is somewhat ironic that the magistrate—with so many conceivable bosses—is actually an independent judicial official, removable from office only for serious reasons found to exist in an official removal procedure established by statute.

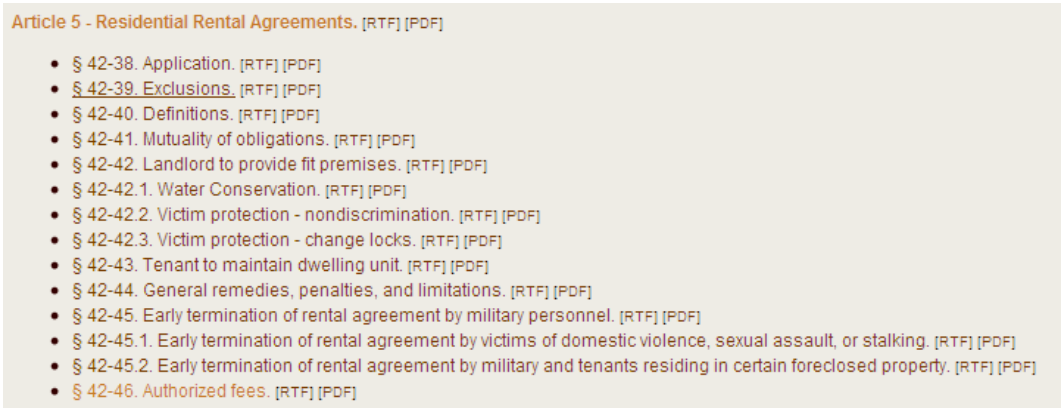
Introduction to Law & Judicial Process

Where does law come from?

Statutes

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





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

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

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

- Statutes are available online at https://www.ncleg.gov/Laws/GeneralStatutes. If you search for North Carolina statutes via a search engine, make sure you choose pages that are created by the NC General Assembly. Many online sources from other websites are not reliable, mostly because they are not regularly updated when the legislature makes changes.

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

Appellate Court Opinions (aka *Case Law*)

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

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

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

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

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

Example:

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

Statute:

§ 42-46. Authorized fees.

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

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

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

Case

IN THE COURT OF APPEALS 671

FRIDAY v. UNITED DOMINION REALTY TR., INC.

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

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

No. COA02-283

(Filed 21 January 2003)

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

What is the rule of law?

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

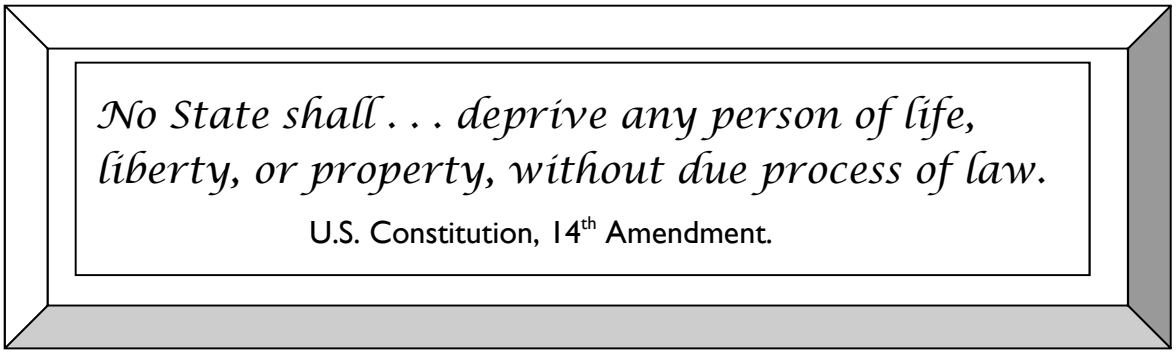
tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him. —U.S. Supreme Court Justice Hugo Black (1963)

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

Some people have said it boils down to four components:

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

Due Process: The Heart of Your Job



Put this in your own words:

_____

_____

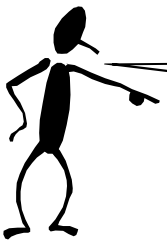
_____

How Judicial Officials Make Decisions

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

Essential Elements

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

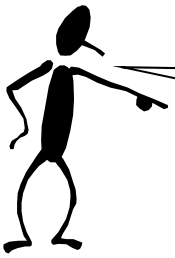


You injured me by

_____,

so I'm suing you for

_____.



Here are the essential elements of my case:

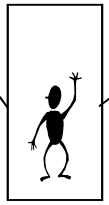
1. _____
2. _____
3. _____
4. _____

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

_____

_____

_____



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

_____

_____

_____

DGL/SOG/2018

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How to Read a Legal Opinion

A Guide for New Law Students

Orin S. Kerr

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How to Read a Legal Opinion

A Guide for New Law Students

Orin S. Kerr

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

I. What's in a Legal Opinion?

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

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

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

The Caption

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

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

The Case Citation

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

The Author of the Opinion

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

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

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

The Facts of the Case

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

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

The Law of the Case

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

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

Concurring and/or Dissenting Opinions

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

II. Common Legal Terms Found in Opinions

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

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

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

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

Types of Disputes and the Names of Participants

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

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

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

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

Terms in Appellate Litigation

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

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

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

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

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

III. What You Need to Learn from Reading a Case

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

Know the Facts

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

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

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

Know the Specific Legal Arguments Made by the Parties

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

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

Know the Disposition

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

Understand the Reasoning of the Majority Opinion

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

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

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

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

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

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

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

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

Understand the Significance of the Majority Opinion

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

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

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

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

Understand Any Concurring and/or Dissenting Opinions

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

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

IV. WHY DO LAW PROFESSORS USE THE CASE METHOD?

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

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

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

The Historical Reason

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

The Practical Reason

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

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

Good luck!

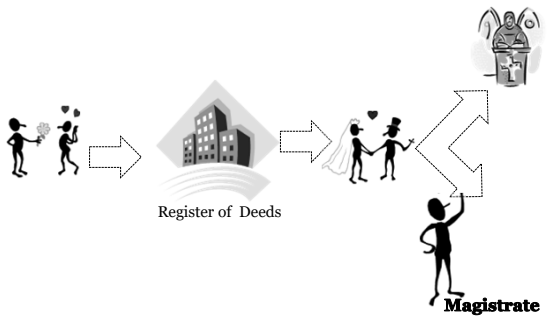
	Civil Law	Criminal Law
Who brings the action?		
What is the term for above?		
How does it begin?		
For what purpose?		
Does D have right to attorney?		
Can D refuse to testify?		
What are the consequences?		

	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**

Marriage

Marriage

The Path to Marital Bliss



Officiant

- A magistrate is the only option for a civil (non-religious) ceremony
- No other government official is authorized to conduct a marriage ceremony

Before the Ceremony

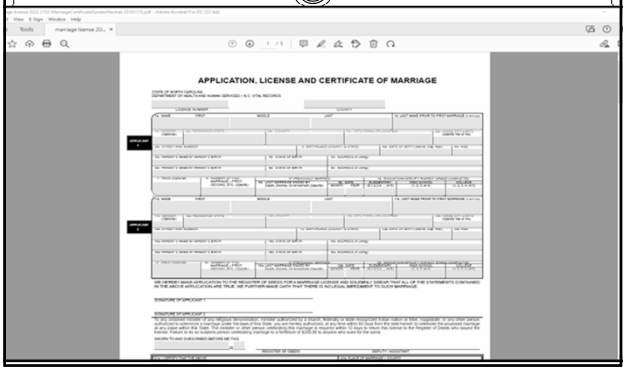
Marriage License

Name of Applicant #1:

Name of Applicant #2:

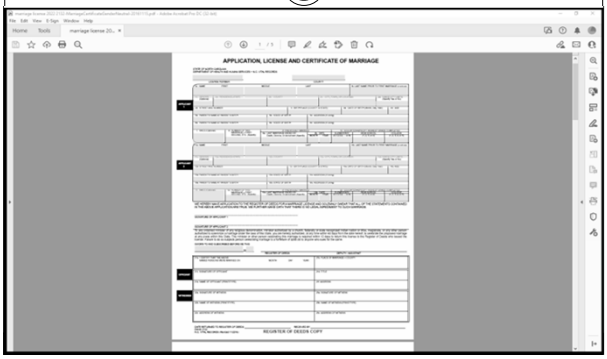
Date: Signed by ROD:

Check to be sure it's signed . . .



. . . and that it hasn't expired.

Expiration date?



Before the Ceremony

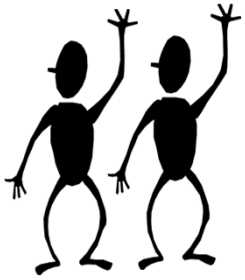
Marriage License

Name of Applicant #1: ✓

Name of Applicant #2: ✓

Date: ✓ Signed by ROD: ✓

2 Witnesses?
(GS 51-6)

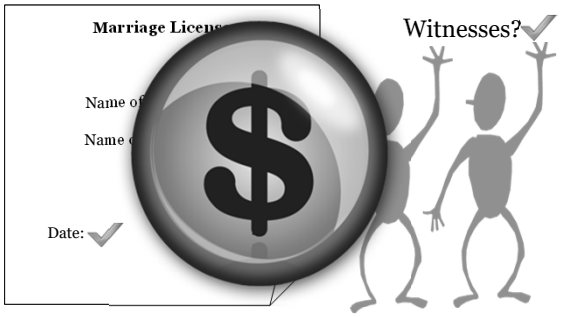


Witnesses

- Q: Can children under the age of seven serve as witnesses to a marriage?

- To serve as a witness, a person must be capable of testifying that he or she was present at the ceremony and of signing the certificate. Thus being a minor does not prevent a person from being a witness, so long as the person can understand and remember what they observe.

Before the Ceremony



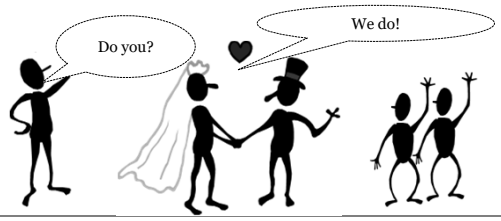
You perform the ceremony, but when you request payment of the $50 fee, the couple tells you that they have only $10 between them. What do you do?

Before the Ceremony: Summing Up

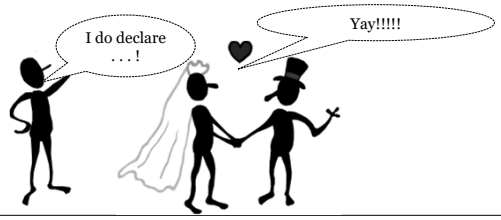
- Check names to be sure they match those on license.
- Check to be sure license is filled out and signed by ROD.
- Check to be sure license was issued within 60 days.
- Verify presence of two witnesses.
- Collect $50 (first).

The Ceremony
GS 51-1

Parties must express consent to marry "freely, seriously, & plainly," in the presence of each other, and in the presence of the magistrate.



Officiant must declare parties to be married.



Discussion

If parties present a valid marriage license, are accompanied by two competent witnesses, and are prepared to pay the fee, are there any circumstances under which you might nevertheless refuse to marry them?

If a magistrate has reason to believe that either of the parties is not capable of "freely, seriously, and plainly" consenting to the marriage, the magistrate should refuse to perform the ceremony.

Examples are intoxication and coercion.

What do you say? . . .

Pastor: Then if you'll take her as your wife,
And if you'll love her all your life,
And if you'll have, and if you'll hold,
From now until the stars grow cold,
And if you'll love through good and bad,
And whether you're happy or sad,
And love in sickness, and in health,
And when you're poor, and when in wealth,
And if you'll love with all your heart,
From now until death do you part,
Yes, if you'll love her through and through,
Please answer with these words:

Bride and Groom: I DO!

Pastor: You're married now! So kiss the bride,
But please, do keep it dignified.

What do you say?.....

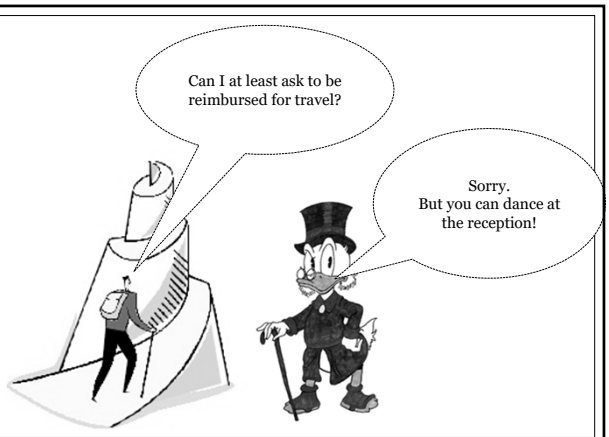
- So long as a ceremony meets the statutory requirements requiring each person to agree to be married and gives you an opportunity to declare that they are married, the particular words do not matter from a legal point of view.

Where do you perform the ceremony?.....

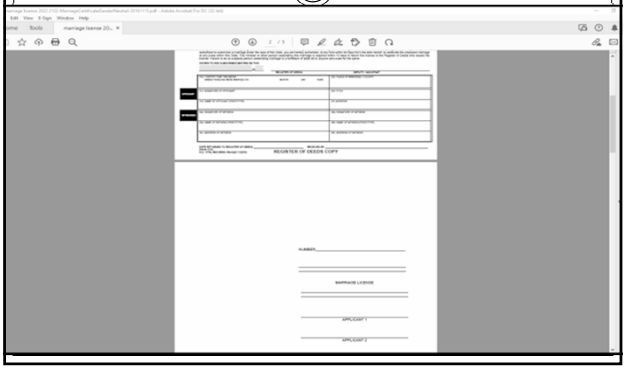
Is a magistrate required to climb a mountain to perform a marriage?

Must a magistrate learn to skydive to perform a marriage?

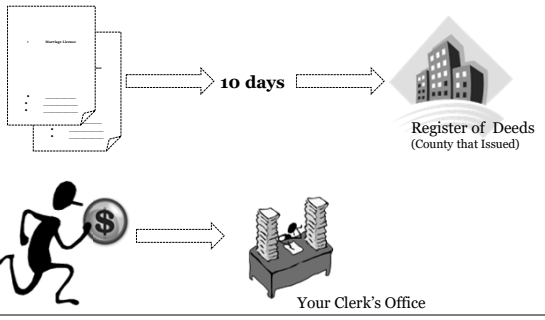
Maybe learn to scuba dive?



After the Ceremony



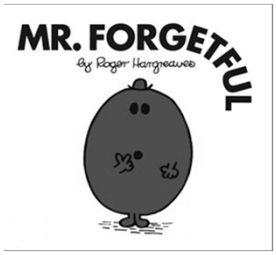
After the Ceremony



Example: A couple from Hoke County asks you, a magistrate in Lee County, if you would be willing to marry them in beautiful Richmond County, at the Rockingham Speedway. The license was issued Cumberland County.

What if I forget?

What is the consequence of failing to return the license, returning an unsigned certificate, or marrying a couple without a license?



What if you forget?

1. The marriage is invalid.
2. The marriage is voidable– that is, it might be declared invalid if challenged.
3. The marriage is valid, but the magistrate must pay a $200 fine.

FAQs

Q: What is the consequence of failing to return the license, or marrying a couple without a license?

$200 Fine

GS 51-7

OUTLINE ON PERFORMING MARRIAGES

I. Getting Married in North Carolina

A. Applicable statute: GS Ch. 51.

B. Registers of Deed are responsible for determining eligibility to marry, manifested by issuance of marriage license.

C. Common law marriages are not recognized.

D. The only people authorized to perform a valid marriage are (1) an ordained minister of any religious denomination, (2) a minister authorized by a church, or (3) a magistrate;

II. Pre-Ceremony Checklist: Verify

A. Names on license match names of person standing before you.

B. Marriage license issued within last 60 days.

C. License is signed by Register of Deeds of any county in North Carolina.

D. Couple is prepared to pay $50 fee.

E. Presence of at least two witnesses to ceremony capable of (1) signing their name and (2) relating and understanding what they observe.

III. Marriage Ceremony

A. Couple must orally consent to take each other as spouses, freely, seriously and plainly.

B. Must be in the presence of each other and authorized officiant.

C. Officiant must declare such persons to be married.

IV. Fees and certificates

A. A $50.00 fee is collected by the magistrate for performing marriage ceremony. No other fee may be taken. Can attend the reception.

B. Fee goes to clerk of court in magistrate's county.

C. The magistrate must fill out and sign <u>both</u> copies of the certificate and <u>return both</u> copies to register of deeds in issuing county within 10 days. Failure to do so subjects magistrate to $200 penalty.

D. An officiant who performs a marriage without a valid license or fails to return the license to the Register of Deeds within 10 (ten) days "shall forfeit and pay two hundred dollars ($200.00) to any person who sues therefore, and shall also be guilty of a Class 1 misdemeanor." GS 51-7.

NOTE: There is no specific procedure for "returning" marriage certificates to an out-of-county register of deeds. While mailing the certificate by first class mail is permissible, a magistrate is advised to make a copy for their records with a notation of the date mailed.

Review Questions on Marriage

1. A magistrate can legally perform a marriage anywhere in the state of North Carolina.

   True False

2. A couple who want a civil marriage ceremony—as opposed to a religious ceremony—have no alternative but to be married by a magistrate.

   True False

3. An eight-year-old child may serve as a legal witness in a marriage ceremony.

   True False

4. A magistrate should verify that both parties are of legal age or otherwise meet the legal requirements of eligibility before performing a marriage ceremony.

   True False

5. A magistrate may not accept any money other than the $50 fee for performing a marriage unless the magistrate has left the office and traveled to the ceremony. In that case, the magistrate may accept reimbursement of expenses.

   True False

6. At the completion of the ceremony the magistrate should provide one copy of the marriage license to the couple and return the other to the Register of Deeds office in the county in which the ceremony was performed.

   True False

7. A marriage license is good for one year.

   True False

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:

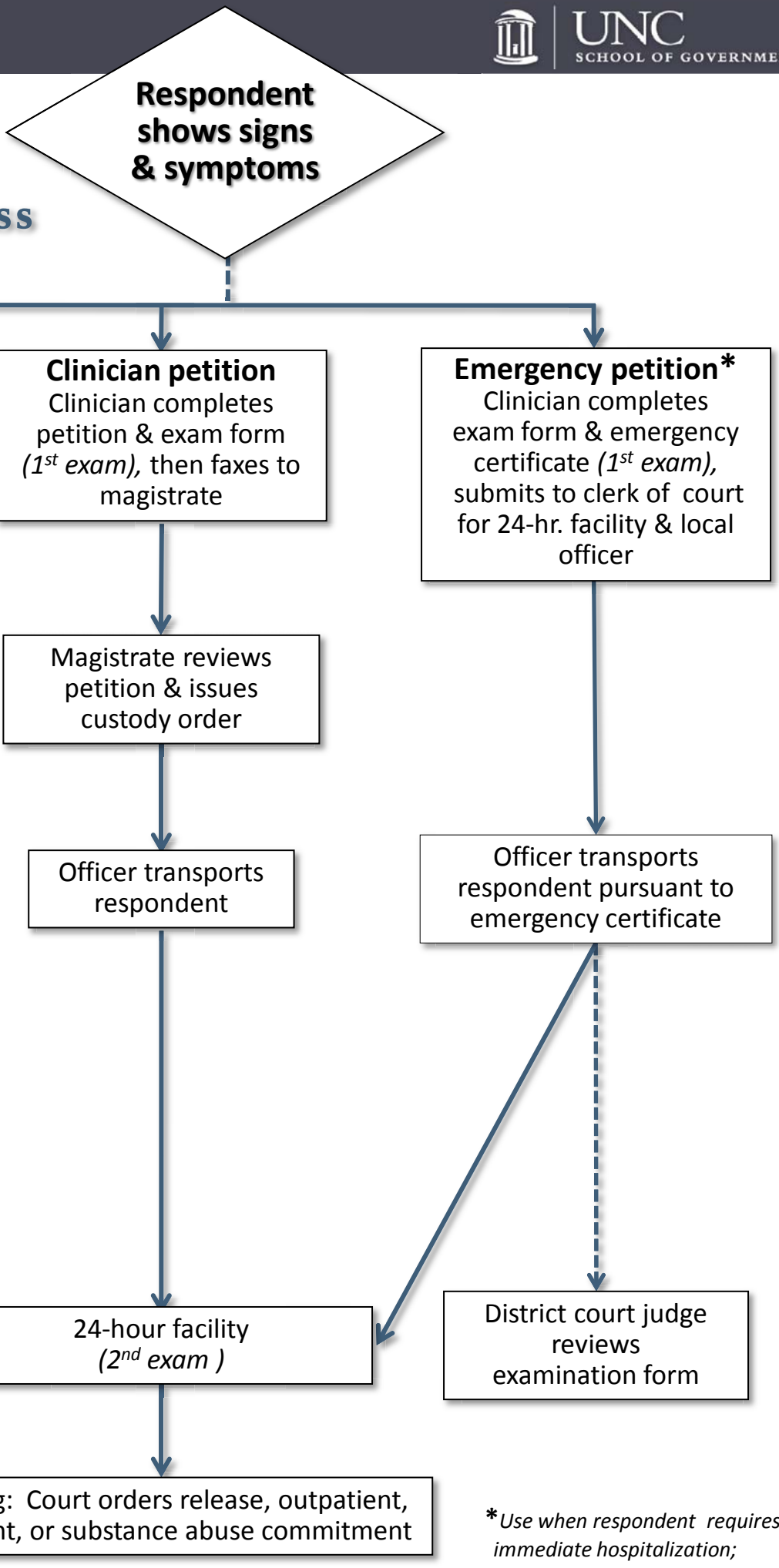
1. inflicted, attempted to inflict, or threatened to inflict serious bodily harm on another and there is a reasonable probability that this conduct will be repeated, or
2. acted in a way that created a substantial risk of serious bodily harm to another and there is a reasonable probability that this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

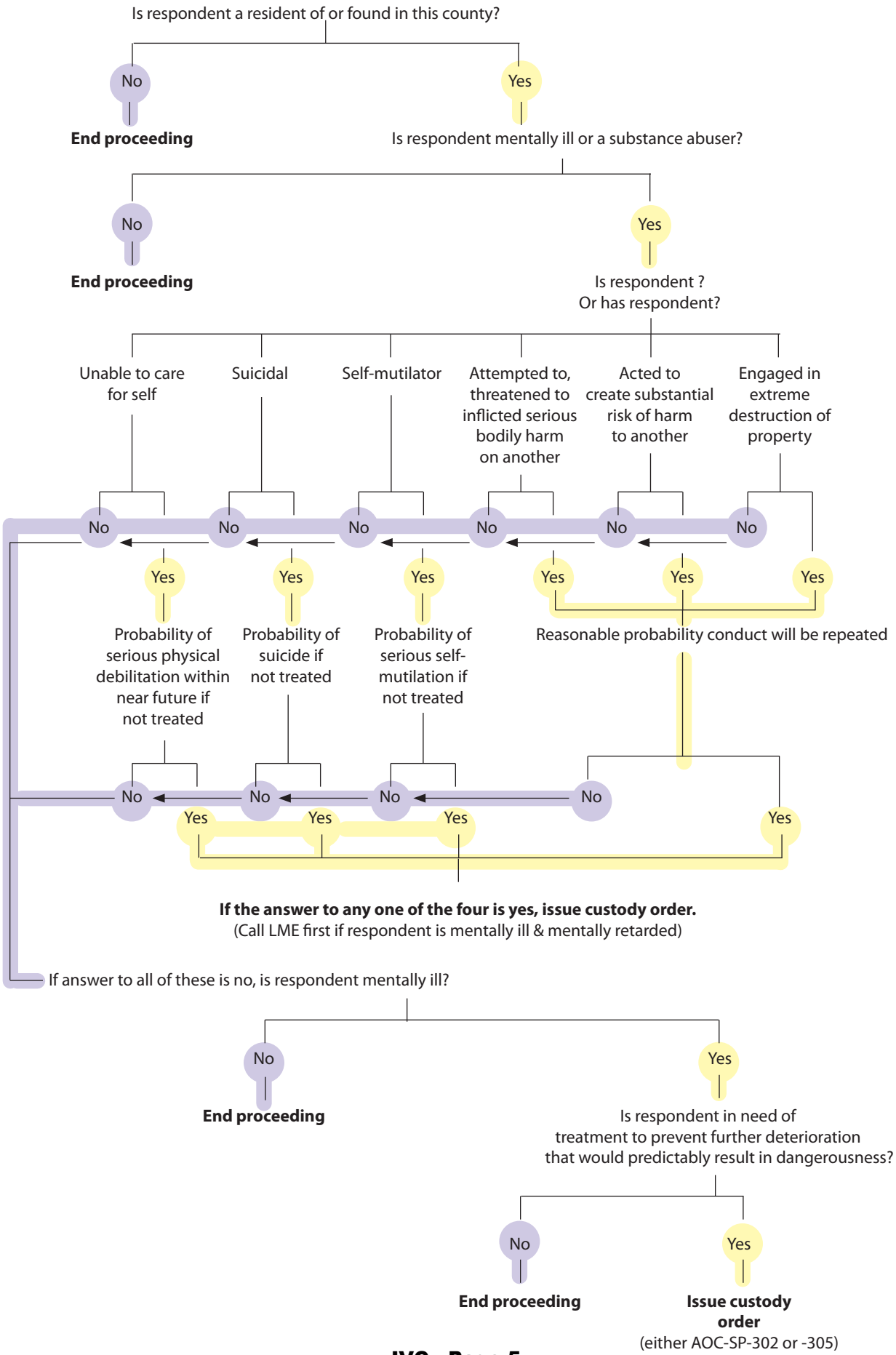
North Carolina Involuntary Commitment Process



**Use when respondent requires immediate hospitalization; procedure by-passes magistrate.*

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?)

Involuntary Commitment—Case Studies
(July 2015)

1. You are a magistrate who receives a petition from an emergency room physician. The physician has checked box number 1 on the petition, which states that the respondent, Martin, is "mentally ill and dangerous to self of others or mentally ill and in need of treatment in order to prevent further disability and deterioration that would predictably result in dangerousness." The facts upon which the physician's opinion is based, according to the petition, are: "Patient behaving in a bizarre manner. Confused. Poor judgment. Unclear if suicidal."

   What do you do? Describe what you do and explain why.

2. Molly lives with her husband and daughter. Her husband reports that Molly has forgotten to turn off the stove two times in the last week, resulting in the burning of some pots and pans and a Formica countertop. Molly is extremely forgetful, frequently talks to the wall, and appears to be out of touch with her real surroundings. She has been diagnosed with bipolar disorder (manic-depressive disorder).

   Is Molly dangerous to herself or others? Why or why not?

3. John goes downtown, hangs out on the main street sidewalk, blocks people from walking by, preaches loud words, and refuses to leave after being directed by the city police. John's brother says that John is religiously preoccupied, has ideas of persecution, and delusions of grandeur. John cannot understand why City Hall will not give him a license. John's brother is afraid that if John persists in trying to convert someone on the street who is resisting John's idea, then this person might become physically aggressive toward John. John's brother does not get any indication that John is aggressively motivated in the sense of being physically violent. John's brother has prepared a petition/affidavit for commitment for the magistrate. John's brother has written down in the petition the facts stated above and added that he believes John is in a mentally ill state of mind, is dangerous to himself or others, and needs medical treatment.

   Is John dangerous to himself or others? Why or why not?

4. Same facts as in number 3, except the petitioner adds that John "assaulted two people yesterday." Is John dangerous to himself or others? Why or why not?

5. Jane has been unemployed for almost one year, having left her job because she felt she was being harassed by married men at work. She has not attempted to seek other employment and has been living in her car for the past two weeks, despite the cold weather (December). Jane believes that people are harassing her. Jane's daughter, Mary, was able to get her mother assessed by a physician who diagnosed Jane as suffering from psychotic depression, and possibly paranoid schizophrenia. The doctor also noted to Mary that Jane was not eating well. Since this initial evaluation two weeks ago, Jane has refused treatment and begun living in her car. Mary reports that her mother seems to have imaginary friends visiting her car, has a flat affect, and believes that others are "harming her." Mary believes that her mother is incapable of providing for herself in her present state and is not getting sufficient nourishment. Mary says that Jane does not appear to have eaten much in the last two weeks and is losing weight. Jane apparently runs the car engine periodically to keep warm. Mary fears that Jane might die of carbon monoxide poisoning if Jane continues to live in her car the rest of the winter.

   Is Jane dangerous to herself? Why or why not?

6. Mary has a hammer in the house, breaks everything she can find, and told her husband that if he went to sleep she would bash his brains out. She has threatened to kill her daughter, granddaughter and sister. The daughter says, "Upon coming home, I found the TV busted, the telephone had been cut away from the wall, and glass was all over the living room. When I asked what happened, mother became excited and said that she had broken the TV, cut the phone, and broke some of the glass. On the phone the night before, mother had threatened to kill father and aunt."

   Is Mary dangerous to herself or others? 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?

Involuntary Commitment

"Reasonable Grounds to Believe"

"The affidavit shall include facts on which the affiant's opinion is based." G.S. 122C-261(a).

"The affidavit must set out facts upon which the affiant's opinion is based." In re Hernandez, 46 N.C. App. 265 (1980).

"If the clerk or magistrate finds reasonable grounds to believe that the facts alleged in the affidavit are true and that the respondent [probably meets the commitment criteria], then clerk or magistrate shall issue an order . . . " G.S. 122C-261(b).

Reasonable grounds to believe: The *knowledge of facts* that would lead a reasonable person of ordinary intelligence and prudence to believe.

Reasonable grounds to believe that the respondent probably meets the commitment criteria: The *knowledge of facts* that would lead a reasonable person of ordinary intelligence and prudence to believe the respondent probably meets the commitment criteria.

For the magistrate or clerk to have reasonable grounds to believe, he or she must first have knowledge of facts that lead to that belief. To have knowledge of facts that would give reasonable grounds to believe, the affiant must assert facts (signs and symptoms) in the affidavit. Mere conclusions or opinions do not suffice to give the magistrate or clerk reasonable grounds to believe, for the magistrate cannot simply adopt the belief of others. Rather, the magistrate must come to his or her own belief based on facts asserted in the affidavit.

What Happens After a Magistrate Issues a Custody and Transportation Order

Source: Administration of Justice Bulletin, September 2007

Upon request, the magistrate or clerk of court has issued an order for custody and transportation of a person alleged to be in need of examination and treatment. This order is not an order of commitment but only authorizes the person to be evaluated and treated until a court hearing. The individual making the request has filed a petition with the court for this purpose and is, therefore, called the "petitioner." The individual to be taken into custody for examination will have an opportunity to respond to the petition and is, therefore, called the "respondent." If you are taken into custody, the word "respondent," below, refers to you.

1. A law enforcement officer or other person designated in the custody order must take the respondent into custody within 24 hours. If the respondent cannot be found within 24 hours, a new custody order will be required to take the respondent into custody. Custody is not for the purpose of arrest, but for the respondent's own safety and the safety of others, and to determine if the respondent needs treatment.

2. Without unnecessary delay after assuming custody, the law enforcement officer or other individual designated to provide transportation must take the respondent to a physician or eligible psychologist for examination.

3. The respondent must be examined as soon as possible, and in any event within 24 hours, after being presented for examination. The examining physician or psychologist will recommend either outpatient commitment, inpatient commitment, substance abuse commitment, or termination of these proceedings.

    - *Inpatient commitment*: If the examiner finds the respondent meets the criteria for inpatient commitment, the examiner will recommend inpatient commitment. The law enforcement officer or other designated person must take the respondent to a 24-hour facility.

    - *Outpatient commitment*: If the examiner finds the respondent meets the criteria for outpatient commitment, the examiner will recommend outpatient commitment and identify the proposed outpatient treatment physician or center in the examination report. The person designated in the order to provide transportation must return the respondent to the respondent's regular residence or, with the respondent's consent, to the home of a consenting individual located in the originating county. The respondent must be released from custody.

    - *Substance abuse commitment*: If the examiner finds the respondent meets the criteria for substance abuse commitment, the examiner must recommend commitment and whether the respondent should be released or held at a 24-hour facility pending a district court hearing. Depending upon the physician's recommendation, the law enforcement officer or other designated individual will either release the respondent or take him or her to a 24-hour facility.

    - *Termination*: If the examiner finds the respondent meets neither of the criteria for commitment, the respondent must be released from custody and the proceedings terminated. If the custody order was based on the finding that the respondent was probably mentally ill, then the person designated in the order to provide transportation must return the respondent to the respondent's regular residence or, with the respondent's consent, to the home of a consenting individual located in the originating county.

4. If the law enforcement officer transports the respondent to a 24 hour facility, another evaluation must be performed within 24 hours of arrival. This evaluator has the same options as indicated in step 3 above. If the respondent is not released, the respondent will be given a hearing before a district court judge within 10 days of the date the respondent was taken into custody.

STATE OF NORTH CAROLINA

File No.

_____ County

In The General Court Of Justice
District Court Division

IN THE MATTER OF	
Name And Address Of Respondent	**AFFIDAVIT AND PETITION FOR INVOLUNTARY COMMITMENT** G.S. 122C-261, 122C-281

Social Security No. Of Respondent (if available)	*Date Of Birth*	*Drivers License No. Of Respondent*	*State*

I, the undersigned affiant, being first duly sworn, and having sufficient knowledge to believe that the respondent is a proper subject for involuntary commitment, allege that the respondent is a resident of, or can be found in the above named county, and is:

(check all that apply)

☐ 1. mentally ill and dangerous to self or others or mentally ill and in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness.

☐ in addition to being mentally ill, respondent is also "mentally retarded" pursuant to G.S. 122C-261.

☐ 2. a substance abuser and dangerous to self or others.

The facts upon which this opinion is based are as follows: (*State facts, not conclusions, to support ALL blocks checked.*)

Name And Address Of Nearest Relative Or Guardian		*Name And Address Of Person Other Than Petitioner Who May Testify*	
Home Telephone No.	*Business Telephone No.*	*Home Telephone No.*	*Business Telephone No.*

Petitioner requests the court to issue an order to a law enforcement officer to take the respondent into custody for examination by a person authorized by law to conduct the examination for the purpose of determining if the respondent should be involuntarily committed.

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME		*Signature Of Petitioner*	
Date	*Signature*	*Name And Address Of Petitioner (type or print)*	
☐ *Deputy CSC* ☐ *Assistant CSC* ☐ *Clerk Of Superior Court* ☐ *Magistrate*			
☐ *Notary (use only with physician or psychologist petitioner)*	*Date Notary Commission Expires*	*Relationship To Respondent*	
SEAL	*County Where Notarized*	*Home Telephone No.*	*Business Telephone No.*

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

(Over)

AOC-SP-300, Rev. 5/17

PETITIONER'S WAIVER OF NOTICE OF HEARING

I voluntarily waive my right to notice of all hearings and rehearings in which the Court may commit the respondent or extend the respondent's commitment period, or discharge the respondent from the treatment facility.

Signature Of Witness	*Date*
	Signature Of Petitioner

NOTE: *"Upon the request of the legally responsible person or the minor admitted or committed, and after that minor has both been released and reached adulthood, the court records of that minor made in proceedings pursuant to Article 5 of [Chapter 122C] may be expunged from the files of the court." G.S. 122C-54(e).*

STATE OF NORTH CAROLINA

File No.

_____ County

In The General Court Of Justice
District Court Division

IN THE MATTER OF	
Name And Address Of Respondent	**AFFIDAVIT AND PETITION FOR INVOLUNTARY COMMITMENT** G.S. 122C-261, 122C-281

Social Security No. Of Respondent (if available)	*Date Of Birth*	*Drivers License No. Of Respondent*	*State*

I, the undersigned affiant, being first duly sworn, and having sufficient knowledge to believe that the respondent is a proper subject for involuntary commitment, allege that the respondent is a resident of, or can be found in the above named county, and is:

(check all that apply)

☐ 1. mentally ill and dangerous to self or others or mentally ill and in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness.

☐ in addition to being mentally ill, respondent is also "mentally retarded" pursuant to G.S. 122C-261.

☐ 2. a substance abuser and dangerous to self or others.

The facts upon which this opinion is based are as follows: (*State facts, not conclusions, to support ALL blocks checked.*)

Name And Address Of Nearest Relative Or Guardian		*Name And Address Of Person Other Than Petitioner Who May Testify*	
Home Telephone No.	*Business Telephone No.*	*Home Telephone No.*	*Business Telephone No.*

Petitioner requests the court to issue an order to a law enforcement officer to take the respondent into custody for examination by a person authorized by law to conduct the examination for the purpose of determining if the respondent should be involuntarily committed.

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME		*Signature Of Petitioner*	
Date	*Signature*	*Name And Address Of Petitioner (type or print)*	
☐ *Deputy CSC* ☐ *Assistant CSC* ☐ *Clerk Of Superior Court* ☐ *Magistrate*			
☐ *Notary (use only with physician or psychologist petitioner)*	*Date Notary Commission Expires*	*Relationship To Respondent*	
SEAL	*County Where Notarized*	*Home Telephone No.*	*Business Telephone No.*

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

(Over)

AOC-SP-300, Rev. 5/17

PETITIONER'S WAIVER OF NOTICE OF HEARING

I voluntarily waive my right to notice of all hearings and rehearings in which the Court may commit the respondent or extend the respondent's commitment period, or discharge the respondent from the treatment facility.

Signature Of Witness	*Date*
	Signature Of Petitioner

NOTE: *"Upon the request of the legally responsible person or the minor admitted or committed, and after that minor has both been released and reached adulthood, the court records of that minor made in proceedings pursuant to Article 5 of [Chapter 122C] may be expunged from the files of the court." G.S. 122C-54(e).*

STATE OF NORTH CAROLINA

File No.

_____ County

In The General Court Of Justice
District Court Division

IN THE MATTER OF	
Name And Address Of Respondent	**FINDINGS AND CUSTODY ORDER INVOLUNTARY COMMITMENT** **(PETITIONER APPEARS BEFORE MAGISTRATE OR CLERK)** G.S. 122C-252, -261, -263, -281, -283

Social Security No. Of Respondent	*Date Of Birth*	*Driver's 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 probably:
(Check all that apply)

☐ 1. has a mental illness and is dangerous to self or others or has a mental illness and is in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness.
  ☐ In addition to probably having a mental illness, the respondent also probably has an intellectual disability. *(If this finding is made, see G.S. 122C-261(b) and (d) for special instructions.)*

☐ 2. is 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 COMMITMENT EXAMINER'S FINDINGS SHALL BE TRANSMITTED TO THE CLERK OF SUPERIOR COURT IMMEDIATELY.)

- → IF the commitment 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 commitment examiner finds that the respondent has a mental illness and is 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 commitment examiner finds that the respondent has a mental illness and is 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 commitment examiner finds that the respondent is a substance abuser and subject to involuntary commitment, the commitment 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.

Original-File Copy-24-Hour Facility Copy-Special Counsel Copy-Attorney General
(for *Return Of Service*, see AOC-SP-302A Return)

IN THE MATTER OF	_____ County	File No.
Name Of Respondent	Date And Time Of Issuance Of Custody Order	**NOTE:** *Use this page for the return of a Findings And Custody Order Involuntary Commitment.*

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. 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.*

B. PATIENT DELIVERY TO FIRST EXAMINATION SITE

The respondent was presented to an authorized commitment examiner as shown below:

Date Presented	Time ☐ AM ☐ PM	Name Of Commitment 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 commitment 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 commitment examiner found that the respondent has a mental illness 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 facility 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 commitment examiner recommended inpatient commitment and a 24-hour facility was not immediately available or medically appropriate. Upon further examination, a commitment 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 Commitment 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 commitment 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.*

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*	*Driver's 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 probably:
(Check all that apply)

☐ 1. has a mental illness and is dangerous to self or others or has a mental illness and is in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness.
  ☐ In addition to probably having a mental illness, the respondent also probably has an intellectual disability. *(If this finding is made, see G.S. 122C-261(b) and (d) for special instructions.)*

☐ 2. is 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 COMMITMENT EXAMINER'S FINDINGS SHALL BE TRANSMITTED TO THE CLERK OF SUPERIOR COURT IMMEDIATELY.)

→ IF the commitment 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 commitment examiner finds that the respondent has a mental illness and is 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 commitment examiner finds that the respondent has a mental illness and is 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 commitment examiner finds that the respondent is a substance abuser and subject to involuntary commitment, the commitment 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.

Original-File Copy-24-Hour Facility Copy-Special Counsel Copy-Attorney General
(for *Return Of Service*, see AOC-SP-302A Return)

IN THE MATTER OF	_____ County	File No.
Name Of Respondent	Date And Time Of Issuance Of Custody Order	**NOTE:** *Use this page for the return of a Findings And Custody Order Involuntary Commitment.*

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. 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.*

B. PATIENT DELIVERY TO FIRST EXAMINATION SITE

The respondent was presented to an authorized commitment examiner as shown below:

Date Presented	Time ☐ AM ☐ PM	Name Of Commitment 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 commitment 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 commitment examiner found that the respondent has a mental illness 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 facility 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 commitment examiner recommended inpatient commitment and a 24-hour facility was not immediately available or medically appropriate. Upon further examination, a commitment 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 Commitment 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 commitment 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.*

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*	*Driver's 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 probably:

(Check all that apply)

☐ 1. has a mental illness and is dangerous to self or others.

☐ In addition to probably having a mental illness, the respondent also probably has an intellectual disability. *(If this finding is made, see G.S. 122C-261(b) and (d) for special instructions.)*

☐ 2. is 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* ☐ *Assistant CSC*	☐ *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.

Original-File Copy-24-Hour Facility Copy-Special Counsel Copy-Attorney General
(for *Return Of Service*, see AOC-SP-302B Return)

IN THE MATTER OF	_____ County	File No.
Name Of Respondent	Date And Time Of Issuance Of Custody Order	**NOTE:** *Use this page for the return of a Findings And Custody Order Involuntary Commitment.*

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. 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.*

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 Commitment 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 commitment examiner (petitioning clinician) recommended inpatient commitment and a 24-hour facility was not immediately available or medically appropriate. Upon further examination, a commitment 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 Commitment 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 commitment 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.*

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.*

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

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*	*Driver's 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 probably:

(Check all that apply)

☐ 1. has a mental illness and is dangerous to self or others.

☐ In addition to probably having a mental illness, the respondent also probably has an intellectual disability. *(If this finding is made, see G.S. 122C-261(b) and (d) for special instructions.)*

☐ 2. is 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* ☐ *Assistant CSC*	☐ *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.

Original-File Copy-24-Hour Facility Copy-Special Counsel Copy-Attorney General
(for *Return Of Service*, see AOC-SP-302B Return)

IN THE MATTER OF	_____ County	File No.
Name Of Respondent	Date And Time Of Issuance Of Custody Order	**NOTE:** *Use this page for the return of a Findings And Custody Order Involuntary Commitment.*

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. 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.*

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 Commitment 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 commitment examiner (petitioning clinician) recommended inpatient commitment and a 24-hour facility was not immediately available or medically appropriate. Upon further examination, a commitment 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 Commitment 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 commitment 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.*

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.*

STATE OF NORTH CAROLINA
Department of Health and Human Services
Division of Mental Health, Developmental Disabilities, and Substance Abuse Services

County _____
Client Record # _____
File # _____

FIRST EXAMINATION FOR INVOLUNTARY COMMITMENT

Name of Respondent	**DOB**	**Age**	**Sex**	**Race**	**M.S.**

Address *(Street or Box Number)*	**City**	**State**	**Zip**	**County**	**Phone**

Legally Responsible Person or Next of Kin (Name)	**Relationship**

Address *(Street or Box Number)*	**City**	**State**	**Zip**	**County**	**Phone**

Petitioner (Name)	**Relationship**

Address *(Street or Box Number)*	**City**	**State**	**Zip**	**County**	**Phone**

EXAMINATION INFORMATION

The First-Level examination and evaluation for the above-named respondent:

was conducted on _____ /_____ /_____ *(MM/DD/YYYY)* at _____:_____ ☐ **A.M.** ☐ **P.M.**

was conducted:
☐ In person at the following facility _____ OR ☐ Via telemedicine technology

Included in the examination was an assessment of the respondent's:

☐ (1) Current and previous mental illness and intellectual disability 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 self or others as defined in G.S.122C-3 (11*).

The following findings and recommendations are made based on this examination^:

SECTION I – CRITERIA FOR COMMITMENT

It is my opinion that the respondent meets the criteria for the selected type of commitment as the respondent is:

☐ **Inpatient**
(1st Exam – Commitment Examiner, eligible Psychologist or Physician)
- ☐ An individual with a mental illness;
- ☐ Dangerous to:
  - ☐Self *or*
  - ☐Others;
- ☐ In addition to having a mental illness is also intellectually disabled;
- ☐ None of the above

☐ **Outpatient** *(1st Exam – Commitment Examiner, eligible Psychologist or Physician)*
- ☐ An individual with a mental illness;
- ☐ 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*);
- ☐ Current mental status or the nature of his/her illness limits or negates his/her ability to make an informed decision to seek treatment voluntarily or comply with recommended treatment;
- ☐ None of the above

☐ **Substance Abuse**
(1st Exam – LCAS CE, eligible Psychologist or Physician)
- ☐ A Substance Abuser;
- ☐ Dangerous to:
  - ☐Self *or*
  - ☐Others;
- ☐ None of the above

^*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 for a face-to-face evaluation. *(*Statutory definitions begin on page 3)*

Name of Respondent:	DOB:

SECTION II – DESCRIPTION OF FINDINGS

Clear description of findings (findings for each criterion checked in Section I must be described):

Impression/Diagnosis:

HEALTH SCREENING

A health screening (N.C. G.S. § 122C-3(16a)) does not constitute a medical evaluation† and should be completed at the same location as the first examination or by utilizing telemedicine equipment and procedures (N.C.G.S.§ 122C-263(a1)).

☐ **Check box & sign to attest that the health screening is being replaced by a medical evaluation†** skip to Section III

_____ _____
Signature Printed Name, Credentials, Date & Time

Vital Signs

BP _____ HR _____ RR _____ Temp _____ Date & Time _____
If person taking vitals is different than person completing this form, sign/print name & credentials below:

_____ _____
Signature Printed Name, Credentials, Date & Time

Known/reported medical problems (diabetes, hypertension, heart attacks, sickle cell anemia, asthma, etc.):

Known/reported allergies:

Known/reported current medications (please list):

If ANY of the below are present, check box and send respondent to an <u>Emergency Department</u> by the most appropriate means:

☐ Chest pain or shortness of breath
☐ Suspected overdose on substances or medications within the past 24 hours (including acetaminophen)
☐ Presence of severe pain (e.g. abdominal pain, head pain)
☐ Disoriented, confused, or unable to maintain balance
☐ Head trauma or recent loss of consciousness
☐ Recent physical trauma or profuse bleeding
☐ New weakness, numbness, speech difficulties or visual changes
☐ Other Rationale (including medical evaluation indicated, but not available at current location):

☐ None of the above

Name of Respondent:	DOB:

IF ANY of the below are present, check box and consult° with medical provider‡ within one hour:

☐ Age < 12 or > 65 years old
☐ Systolic BP > 160 or < 100 and/or diastolic > 100 or < 60
☐ Heart Rate >110 or < 55 bpm
☐ Respiratory Rate > 20 or < 12 breaths per minute
☐ Temperature > 38.0 C (100.4 F) or < 36.0 C (96.8 F)
☐ Known diagnosis of diabetes and not taking prescribed medications
☐ Recent seizure or history of seizures and not taking seizure medications
☐ Known diagnosis of asthma or chronic obstructive pulmonary disease and not taking prescribed medications
☐ Visible or reported open sores, wounds, or active bleeding
☐ Severe constipation **or** vomiting **or** diarrhea
☐ Painful urination or new onset incontinence
☐ Known or suspected pregnancy
☐ Used substances of abuse, (e.g. alcohol, opiates, benzodiazepines, cocaine, etc.) or prescription medication not prescribed to them, within the past 48 hours
☐ Other Rationale:

_____

☐ None of the above

_____ _____

Signature of Person Completing Health Screening | Printed Name, Credentials, Date & Time

†***DEFINITION OF Medical Evaluation****: Medical history and physical exam performed by a medical provider*
‡***DEFINITION OF Medical Provider****: MD, DO, PA, or NP licensed in N.C.*
°Consultation can be via telephone, telemedicine or in person

***STATUTORY DEFINITIONS for Form No. DMH 5-72-19**

Commitment examiner. - A physician, an eligible psychologist, or any health professional or mental health professional who is certified under G.S. 122C-263.1 to perform the first examination for involuntary commitment described in G.S. 122C-263(c) or G.S. 122C-283(c).

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. Clear, cogent, and convincing evidence that an individual has committed a homicide in the relevant past is prima facie evidence of dangerousness to others.

Dangerous to self. - Within the relevant past the individual has done any of the following: (1) acted in such a way as to show all of the following: (I) The individual 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 the individual's daily responsibilities and social relations or to satisfy the individual's need for nourishment, personal or medical care, shelter, or self-protection and safety. (II) There is a reasonable probability of the individual 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 herself. (2) The individual has attempted suicide or threatened suicide and that there is a reasonable probability of suicide unless adequate treatment is given. (3) The individual has mutilated himself or herself or attempted to mutilate himself or herself 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.

Health screening. - An appropriate screening suitable for the symptoms presented and within the capability of the entity, including ancillary services routinely available to the entity, to determine whether or not an emergency medical condition exists. An emergency medical condition exists if an individual has acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in placing the individual's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.

Name of Respondent:	DOB:

Local management entity/managed care organization or **LME/MCO**. - A local management entity that is under contract with the Department to operate the combined Medicaid Waiver program authorized under Section 1915(b) and Section 1915(c) of the Social Security Act.

Local management entity or **LME.** - An area authority.

Mental illness. - 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 the individual's affairs and social relations as to make it necessary or advisable for the individual to be under treatment, care, supervision, guidance or control. When applied to a minor, a mental condition, other than an intellectual disability alone, that so lessens or impairs the minor's capacity to exercise age adequate self-control and judgment in the conduct of the minor's activities and social relationships so that the minor 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.

SECTION III – RECOMMENDATION FOR DISPOSITION

☐ **Inpatient Commitment** for_____days *(respondent must have a mental illness **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 & Phone Number) _____

☐ **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 or Legally Responsible Person Consented to Voluntary Treatment

☐ Respondent was held at first evaluation site pending placement at a 24-hour facility and no longer meets criteria for inpatient commitment:
☐ Terminate proceedings and release respondent
☐ Recommend outpatient commitment
Proposed Outpatient Treatment Center or Physician: (Name) _____
(Address & Phone Number) _____

☐ Release respondent and Terminate Proceedings (insufficient findings to indicate that respondent meets commitment criteria)

_____
Signature of Commitment Examiner

_____
Print Name of Examiner

Credentials *(check one):* ☐ MD/DO ☐ Eligible Psychologist ☐ PA
☐ NP *(Master's-level or Higher)* ☐ LCSW ☐ LPC
☐ LCAS *(Substance Abuse Evaluation Only)*

_____
Address of 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 of Facility

_____
Date

CC: Clerk of Superior Court where petition was initiated; 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 Facility/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 examiner shall communicate his findings to the clerk by telephone.

STATE OF NORTH CAROLINA

File No.

_____ County

In The General Court Of Justice
Superior Court Division

IN THE MATTER OF:

Name And Address Of Respondent

FINDINGS AND ORDER INVOLUNTARY COMMITMENT PHYSICIAN-PETITIONER RECOMMENDS OUTPATIENT COMMITMENT

G.S. 122C-261

NOTICE: *This form is to be used instead of the Findings And Custody Order (AOC-SP-302) only when the petitioner is a physician or psychologist who recommends outpatient commitment or release pending hearing for a substance abuser.*

FINDINGS

The petitioner in this case is a physician/eligible psychologist who has recommended outpatient commitment/substance abuse commitment with the respondent being released pending hearing.

The Court finds from the petition in the above matter that there are reasonable grounds to believe that the facts alleged in the petition are true and that the respondent is probably:

☐ mentally ill and in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness.

☐ a substance abuser and dangerous to himself/herself or others.

ORDER

It is ORDERED that a hearing before the district court judge be held to determine whether the respondent will be involuntarily committed.

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

NOTE TO CLERK: *Schedule an initial hearing for the respondent pursuant to G.S. 122C-264 or G.S. 122C-284 and give notice of the hearing as required by those statutes.*

AOC-SP-305, Rev. 1/98

SUPPLEMENT TO SUPPORT IMMEDIATE HOSPITALIZATION
(To be used in addition to "Examination and Recommendation for Involuntary Commitment, Form 572-01)

CERTIFICATE

The Respondent, _____
requires immediate hospitalization to prevent harm to self or others because:

I certify that based upon my examination of the Respondent, which is attached hereto, the Respondent is (check all that apply):

- ☐ Mentally ill and dangerous to self
- ☐ Mentally ill and dangerous to others
- ☐ In addition to being mentally ill, is also mentally retarded

_____
Signature of Physician or Eligible Psychologist

Address: _____
City State Zip: _____
Telephone: _____
Date/Time: _____

Name of 24-hour facility: _____
Address of 24-hour facility: _____

CC: 24-hour facility
Clerk of Court in county of 24-hour facility

Note: If it cannot be reasonably anticipated that the clerk will receive the copy within 24 hours (excluding Saturday, Sunday and holidays) of the time that it was signed, the physician or eligible psychologist shall also communicate the findings to the clerk by telephone.

NORTH CAROLINA
_____ County
Sworn to and subscribed before me this
_____ day of _____, 20__

(seal)

_____
Notary Public

My commission expires:_____

Pursuant to G.S. 122C-262 (d), this certificate *shall serve as the Custody Order* and the law enforcement officer or other person *shall* provide transportation to a 24-hr. facility in accordance with G.S. 122C-251.

TO LAW ENFORCEMENT: See back side for Return of Service

RETURN OF SERVICE

☐ **Respondent WAS NOT taken into custody for the following reason:**

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

Date Respondent Taken into Custody	*Time* ☐ AM ☐ PM		
Name of 24-Hour Facility	*Date Delivered*	*Time Delivered* AM ☐ PM ☐	*Date of Return*
Name of Transporting Agency	*Signature of Law Enforcement Official*		

ADMINISTRATION OF JUSTICE BULLETIN

2007/05 September 2007

THE MAGISTRATE'S ROLE IN INVOLUNTARY COMMITMENT

■ Joan G. Brannon

What is Involuntary Civil Commitment?

Involuntary civil commitment is the process that the state, through its courts, uses to order a person who meets certain statutory criteria to obtain mental health treatment. The person ordered to receive treatment is called "the respondent." Civil commitment is involuntary because the respondent is ordered to submit to mental health treatment without his or her consent.

When a respondent is involuntarily committed, the state has substituted its judgment about what is best for the respondent for the respondent's own judgment. This substituted judgment is a significant intrusion on the respondent's right to liberty, as is the involuntary commitment itself. Despite its intrusiveness, the commitment process before 1973 contained very few safeguards to assure that the respondent was not arbitrarily deprived of freedom. Procedural due process was lacking insofar as a person could be committed for twenty days, without notice or a hearing, if a physician certified that the person was mentally ill or inebriate and dangerous to self or others.[1] Substantive due process was lacking in that a respondent could be committed for up to 180 days if, after an informal hearing, the clerk of court found that he or she was mentally ill or inebriate. The respondent did not need to be dangerous to self or others to be committed.[2] In 1973 the process was changed so that no respondent could be taken into custody without a hearing in which a magistrate found that the respondent was either mentally ill or "inebriate" (later changed to

■ The author is a faculty member of the School of Government. She wishes to thank the following people who graciously reviewed this Bulletin: her colleague, Mark Botts, Lisa Corbett and Angel Gray of the Attorney General's Office, and the High Point, North Carolina magistrates.

1. N.C. G.S. § 122-59 (1971).
2. N.C. G.S. § 122-63 (1971).

"substance abuser") and dangerous to self or others.[3] In 1975 the United States Supreme Court held that a finding of mental illness alone could not justify involuntary commitment. The state must show some dangerousness. "A state cannot constitutionally confine without more a nondangerous individual who is capable of surviving safely in freedom by himself or with the help of a willing and responsible family members or friends."[4]

Parts six, seven and eight of Article 5, Chapter 122C of the North Carolina General Statutes establish the procedures for involuntary commitment. A brief overview of these procedures is set out below.

Description of Commitment Process

The statutory procedure for an involuntary commitment involves some or all of the following stages:

The Petition for Commitment: A person who has knowledge of someone he or she believes needs mental health or substance abuse treatment petitions the magistrate to begin the involuntary commitment process.[5] (Petitions may also be presented to the clerk of superior court. Although this bulletin will refer to magistrates only, the same law and procedure applies if the petition is presented to a clerk.) This petition is an affidavit setting out facts intended to show that the respondent meets the statutory criteria for issuing an order (called a custody order) to take the respondent into custody for examination by a physician or eligible psychologist.

Review of the Petition: The magistrate reviews the petition to determine whether reasonable grounds exist to find that the respondent meets the criteria for a custody order.[6] If the magistrate does not find reasonable grounds to believe that the respondent meets the criteria, the magistrate must decline to issue the order.

Custody Order: If the magistrate does find reasonable grounds to conclude that the respondent meets the criteria for a custody order, the magistrate must issue an order to a law enforcement officer to take the respondent into custody and transport him or her to a local physician or psychologist for an examination.[7]

Examinations: A local physician or eligible psychologist[8] examines the respondent and if the examiner finds that the respondent does not meet the criteria for commitment, the respondent is released and the process of involuntary commitment ends.[9] If, however, the examiner finds that the respondent meets the commitment criteria, the examiner must recommend outpatient,[10] inpatient,[11] or substance abuse commitment.[12] If outpatient commitment is recommended, the respondent will then be transported to his or her residence (or the residence of a consenting individual) and released pending a district court hearing.[13] If the examiner recommends inpatient commitment, the respondent must be transported directly to a designated 24-hour facility for a second examination.[14] This examiner has the same options as the first examiner: if he or she finds that the respondent meets none of the commitment criteria, the respondent will be released; if the

3. N.C. G.S. §§ 122-58.1, -58.3 (1973). See In re Hayes, 18 N.C. App. 560, 197 S.E.2d 582 (1973) in which the court held the former statutory procedure unconstitutional.

4. O'Connor v. Donaldson, 422 U.S. 563, 576, 95 S.Ct. 2486, 2494, 45 L.Ed.2d 396, 407 (1975).

5. G.S. 122C-261(a), -281(a).

6. G.S. 122C-261(b), -281(b).

7. Id.

8. Eligible psychologist means a licensed psychologist who holds permanent licensure and certification as a health services provider psychologist issued by the North Carolina Psychology Board. G.S. 122C-3(13d).

9. G.S. 122C-263(d)(3), -283(d)(2).

10. Outpatient commitment means treatment in an outpatient setting and may include medication, individual or group therapy, day or partial day programming activities, services and training including educational and vocational activities, supervision or living arrangements, and any other services prescribed either to alleviate the individual's illness or disability, maintain semi-independent functioning, or to prevent further deterioration that may reasonably be predicted to result in the need for inpatient commitment to a 24-hour facility. G.S. 122C-3(27).

11. Inpatient commitment involves holding the respondent in the custody of a facility the state has designated "24-hour" facilities. A "24-hour facility" is one whose primary purpose is to provide services for the care and treatment of persons who are mentally ill or substance abusers and provides a structured living environment and services for a period of 24 consecutive hours or more. G.S. 122C-3(14)g. Such facilities include state operated psychiatric hospitals, public and private psychiatric and substance abuse hospitals, and general hospitals with inpatient psychiatric or substance abuse services.

12. G.S. 122C-283(d). Substance abuse commitment may result in either outpatient or inpatient treatment.

13. G.S. 122C-263(d)(1), 122C-283(d)(1).

14. G.S. 122C-263(d)(2), 122C-283(d)(1). See supra note 11 for a definition of 24-hour facility.

respondent meets the criteria for outpatient commitment, the respondent will be released pending a district court hearing; if the respondent meets the inpatient commitment criteria, he or she will be held at the hospital pending a hearing before the district court.[15]

District Court Hearing: A respondent who is recommended for either outpatient or inpatient commitment is entitled to a hearing in district court. This hearing must occur within 10 days of the date the respondent is taken into custody by order of the magistrate.[16] At the hearing, if the court is persuaded by clear, cogent and convincing evidence that the respondent meets the commitment criteria, it will order involuntary commitment.[17]

The magistrate's role in the involuntary commitment process is a small but important one. Magistrates decide whether to issue orders to take respondents into custody for examination. Magistrates do not actually commit anyone; district court judges determine whether to commit. The role of the magistrate as an independent and neutral judicial official determining whether to initiate the process for involuntary commitment is a safeguard to provide due process to a person before depriving that person of liberty as required by the United States Constitution.[18]

The rest of this bulletin will focus on the magistrate's role in the process that potentially leads to involuntary commitment.

Criteria For Issuing A Custody Order

When a person (called the petitioner) appears before a magistrate to initiate the process of involuntary commitment, the magistrate must determine whether there are reasonable grounds to believe that the respondent meets the statutory criteria for issuing a custody order. Reasonable grounds exist when, taking into consideration all the relevant information, a reasonable person would conclude that there is a fair likelihood that the respondent meets the criteria for a custody order. The "reasonable grounds" standard is synonymous with the probable cause standard that magistrates use in issuing warrants.[19]

There are three situations in which a magistrate can issue a custody order:

1. The respondent is mentally ill and dangerous to self or others.
2. The respondent is mentally ill and needs court-ordered treatment to prevent further disability or deterioration that would predictably lead to dangerousness.
3. The respondent is a substance abuser and dangerous to self or others.[20]

The first standard, mentally ill and dangerous, is the most complicated of the standards.

Mentally Ill and Dangerous to Self or Others

Under this standard the magistrate must draw two conclusions from the facts presented before issuing a custody order: first, that the respondent is probably mentally ill; and next, that the respondent is probably dangerous to self or dangerous to others.[21]

Mentally Ill

An adult respondent is mentally ill when his or her capacity to use self-control, judgment, and discretion in the conduct of his or her affairs and social relations has been so reduced by an illness that it becomes necessary or advisable for the respondent to be under treatment, care, supervision, guidance, or control.[22] A minor respondent is mentally ill when he or she has a mental condition, other than mental retardation alone, that so impairs his or her capacity to exercise age adequate self-control or judgment in the conduct of activities and social relationships that he or she needs treatment.[23] In both cases, the important features of mental illness are: (1) an illness (2) that impairs judgment and self-control and (3) makes treatment advisable. This is a legal standard, not a medical standard, and therefore does not require that the respondent have been diagnosed with a recognized mental illness by a physician or psychologist. Rather,

15. G.S. 122C-266(a), 122C-285(a).

16. G.S. 122C-267(a), 268(a), -286(a).

17. G.S. 122C-267(h) (outpatient commitment), -268(j) (inpatient commitment); 122C-286(h) (substance abuse commitment).

18. See In re Reed, 39 N.C. App. 227, 249 S.E.2d 864 (1978).

19. Id. at 229, 249 S.E.2d at 866.

20. A summary of the standards for involuntary commitment is found at Appendix I at the end of this bulletin.

21. G.S. 122C-261(b).

22. G.S. 122C-3(21)(i).

23. G.S. 122C-3(21)(ii).

the magistrate must listen for facts that show that the respondent needs treatment because of a mental condition that is impairing his or her ability to make judgments or exercise self-control.

In determining whether there are reasonable grounds to find that the respondent is mentally ill, a magistrate should look for conduct that is on the extreme ends of behaviors. Of course every person can, at times, engage in behavior that might be called extreme: a person can be so hostile that he slams the door in someone's face or so agitated that she drives off from the store with the grocery bags on top of her car. But in a respondent who is mentally ill, this behavior should go one step further: hostility may be taken to the point of attacking someone or anxiety may be manifested by a complete inability to carry on with the other functions of daily life. Also the extreme behavior is continuing rather than a one-time occurrence. The magistrate must examine the information provided about the respondent's behavior, movements, speech, motions and thoughts. For example, is the respondent seeing things that are not really there? Is the respondent in constant motion or is he totally quiet and apathetic? Appendix II at the end of this bulletin gives examples of the kinds of extreme behaviors that might indicate mental illness.

If a magistrate determines that the respondent is probably mentally ill, the next step is to determine whether the respondent is probably dangerous to self or others.

Dangerous to Self

A petitioner can show that the respondent is dangerous to self in three different ways: Respondent is unable to care for himself or herself, is suicidal, or has engaged in self-mutilation.

Respondent is unable to care for self

The first way of proving dangerousness is by showing that, within the relevant past, the respondent has been unable to care for himself or herself and as a result is likely to suffer serious physical debilitation in the near future if treatment is not given.[24] Magistrates should note that although the appellate cases cited in this bulletin are instructive, they are based on evidence presented at the district court hearing where the standard of proof—clear, cogent, and convincing evidence—is significantly higher than the reasonable grounds determination that the magistrate must make. The requirement that the behavior have occurred within the "relevant past" does not mean that the behavior must have occurred within the "recent past." There is no specific time within which the past behavior must have occurred to be relevant. (The concept of "relevant past" is discussed more thoroughly below at page 7.)

The test for finding that the respondent is unable to care for self has two prongs and both must be satisfied before issuing a custody order. First, the magistrate must determine that the respondent has acted in such a way as to show that he or she probably would be unable, without care, supervision, and the continued assistance of others not otherwise available, to exercise self-control, judgment, and discretion in the conduct of daily responsibilities and social relations, or to satisfy the need for nourishment, personal or medical care, shelter, or self-protection and safety. Put more simply, the first prong requires the magistrate to find that the respondent probably would be unable to care for himself or herself in regard to daily affairs without treatment. For example, a respondent, who required anti-psychotic medication but refused to take it, would not eat properly, and refused recommended outpatient treatment was found dangerous to himself. Failure to care for medical, dietary, and grooming needs meets the test of dangerousness to self, the court said.[25] On the other hand, unusual eating habits alone may not show dangerousness to self. The North Carolina Court of Appeals was hesitant to find that a respondent who fasted for a time, then ate a whole chicken or loaf of bread, and also ate about five pounds of sugar every two days was dangerous to himself.[26]

If the respondent seems unable to care for his or her daily needs, the magistrate must go on to make a second, more specific, finding that this inability to care for self creates a probability that the respondent will suffer serious physical debilitation within the near future. In the example above, where the respondent's dietary habits were irregular, the court noted that it could not find a likelihood of serious debilitation because the state had presented no evidence of the effect of the irregular diet on the respondent, or any evidence on how long he had been eating that way.[27] The result might have been different if the respondent was diabetic. On the other

24. G.S. 122C-3(11)a.1.

25. In re Lowery, 110 N.C. App. 67, 428 S.E.2d 861 (1993).

26. In re Monroe, 49 N.C. App. 23, 270 S.E.2d 537 (1980). The decision was an appeal from the district court's commitment so the standard of proof that was not met was clear, cogent and convincing rather than the magistrate's standard of reasonable grounds.

27. Id. at 29, 270 S.E.2d at 540.

hand, where a petitioner presented evidence that the respondent had been living in her car for two weeks during the winter, had been unemployed for the last year, having left her job because she felt she was being harassed, and had no plans for earning income, and that her only means of subsistence was food brought by the petitioner, the court found that the respondent was at risk of serious physical debilitation.[28] In determining the reasonable probability of future dangerous conduct, the magistrate may consider previous episodes of dangerousness to self.[29]

If the petitioner presents evidence that the respondent's behavior is grossly irrational, that the respondent is unable to control his or her actions, that the respondent's behavior is grossly inappropriate to the situation, or that the respondent's insight and judgment are severely impaired, the magistrate may presume that the respondent probably meets this second prong.[30]

To summarize, a magistrate may find a respondent dangerous to self if the respondent seems unable to take care of his or her daily needs and is likely to suffer serious physical debilitation in the near future if he or she does not receive treatment. However, the respondent cannot be found dangerous to self merely because he or she behaves in a way that may provoke others to harm him or her. For example, a respondent who was not physically violent herself, but who aggressively preached on the street corner, trying to convert all passersby, was not dangerous to herself merely because someone who reacted negatively to her conversion attempt might react in a way that is physically harmful to her.[31]

Respondent is suicidal

A respondent also can be dangerous to self if he or she has attempted or threatened suicide and there is a reasonable probability of suicide unless the respondent receives adequate treatment.[32] The magistrate may choose to treat an attempt at suicide, alone, as sufficient evidence that there is a reasonable probability of suicide. The magistrate also may treat a threat of suicide as grounds for issuing a custody order and leave the determination of whether there is a future likelihood of suicide to the examiners. Whether a statement constitutes a threat of suicide will depend on the respondent's history and the context in which the statement was made: for example, a statement like "I could kill myself" probably is not a threat of suicide when it comes from a person who has just done something enormously embarrassing, but it may be when it comes from someone who has suffered a dramatic loss of some kind.

Respondent has engaged in self-mutilation

The third way to show a respondent is dangerous to self is to prove that he or she has mutilated or attempted to mutilate himself or herself and that serious mutilation is likely to occur again unless the respondent is committed.[33] No North Carolina appellate cases have discussed this ground for commitment. Self-harm or self-injurious behavior is fairly prevalent today, [34] particularly among adolescents and may include burning, biting, cutting, head banging, picking at skin, pulling out hair, bruising. But some self-harm, while needing treatment, does not rise to the level of self-mutilation necessary for involuntary commitment, and the magistrate must be careful to distinguish between the two. The involuntary commitment statute requires that the magistrate find that serious self-mutilation is likely to occur unless the respondent is committed. Therefore, the frequency and the severity or seriousness of the injury is critical. The magistrate should also look at other factors such as the reason for the self-harm, whether the respondent has access to weapons to do serious harm, and the progression of seriousness of the injuries. One case from another state in which the facts showed dangerousness to self based on self-mutilative behavior indicated that the patient had a history of cutting himself, injuring

28. In re Medlin, 59 N.C. App. 33, 295 S.E.2d 604 (1982). The finding that the respondent was mentally ill was not disputed.

29. G.S 122C-3(11)a.

30. G.S. 122C-3(11)a.1.II.

31. In re Hogan, 32 N.C. App. 429, 232 S.E.2d 492 (1977).

32. G.S. 122C-3(11)a.2.

33. G.S. 122C-3(11)a.3.

34. About one percent of the United States population uses physical self-injury as a way of dealing with overwhelming feelings or situations, but the problem is more prevalent among teenagers where an estimated ten percent have experimented with self-mutilation. Teenagers and Self Mutilation: The Facts, http://www.psychiatric-disorders.com/warning-signs/self-mutilation.php. A recent study published in the August 2007 issue of the journal, Psychological Medicine, indicated 46% of U.S. high school students surveyed had practiced some form of self-mutilation in the past year. David Andreatta, Self-injury Might Be More Common Than Thought, RALEIGH NEWS & OBSERVER, July 2, 2007 at A3.

himself very seriously to the point that he required blood transfusions.[35]

Dangerous to Others

A magistrate must also issue a custody order for a mentally ill respondent if he or she is dangerous to others. A respondent is dangerous to others if, within the relevant past, he or she has: (1) inflicted or attempted to inflict serious bodily harm on another, or has acted in a way that creates a substantial risk of serious bodily harm to another, or has engaged in extreme destruction of property, and (2) there is a reasonable probability that such conduct will be repeated.[36]

Respondent has inflicted or attempted to inflict serious bodily harm on another

Most cases coming before a magistrate probably will be fairly clear cut as to whether the respondent inflicted or attempted to inflict serious bodily harm on another person. But what if the respondent has only threatened to inflict serious bodily harm on another? Is the threat a sufficient basis for finding that the respondent is dangerous to others? Courts addressing the issue have concluded that overt dangerous actions are not necessary to conclude that a respondent is dangerous to others. For example, a respondent who threatened his aged and nervous mother and family with increasing frequency over several weeks, saying he was going to "get you all," in conjunction with evidence that he believed his family had sexually seduced him and that he appeared ready to fight any time one of them said something to him, led the court to conclude that the respondent was dangerous to others.[37] In another case, a respondent was found dangerous to others based on evidence that he kept an iron pipe and hatchet under his bed and, through threats, had kept his mother in one chair, unmoving, while he screamed, shouted, cursed, and threatened to "bust" her head if she called anybody.[38] A respondent who had threatened many people in the neighborhood and had threatened to cut her brother's throat was found dangerous to others.[39]

In order to find a respondent dangerous to others on the basis of threats alone, however, the petitioner must present specific evidence about the kind of harm the respondent threatened, when the threats were made, and in what context. For example, the mere allegation that the "respondent ha[d] made statements to her husband of a threatening nature," without more, is insufficient.[40]

One issue that sometimes troubles magistrates is commitment of persons who are residing in nursing homes. For example, a resident of the nursing home who suffers from dementia or bipolar disorder becomes violent and attacks another resident of the nursing home and the nursing home staff seeks to have the resident involuntarily committed. The fact that the respondent is in a nursing home or the fact that the respondent suffers from dementia should not result in any different decision by the magistrate. If the magistrate finds reasonable grounds to believe the respondent is mentally ill (i.e., has an illness—and dementia and Alzheimer's disease are mental illnesses--that impairs judgment and self-control and makes treatment advisable) and is dangerous to self or others, the magistrate should issue a custody order.

Respondent's behavior creates a substantial risk of serious harm

There are no reported North Carolina cases that have addressed a respondent whose actions, though not intended to inflict serious bodily harm on another, have nonetheless created a substantial risk of serious harm. Some situations, of course, will be clear cut: if the respondent, while playing with matches, sets fire to an occupied twenty-unit apartment building in the middle of the night, the respondent's behavior creates a substantial risk of serious harm. Other cases will require a judgment call: if the respondent has a habit of digging man-sized holes in a field near his house, whether or not such conduct creates a substantial risk of serious harm depends on the depth of the holes, the amount of pedestrian traffic in the field, and the visibility of the holes to pedestrians who do walk in the field. If the field sees significant pedestrian traffic, and the respondent artfully covers the holes

35. In re Best Interest of M.G. 2002 WL 31854887 (Tex. App.-Tyler 2002)

36. G.S. 122C-3(11)(b).

37. In re Monroe, 49 N.C. App. 23, 270 S.E.2d 537 (1980).

38. In re Collins, 49 N.C. App. 243, 271 S.E.2d 72 (1980).

39. In re Jackson, 60 N.C. App. 581, 299 S.E.2d 677 (1983). This respondent had also cut her brother's hand within the last week, but the court did not discuss the seriousness of this cut or its role in the determination that she was dangerous to others.

40. In re Holt, 54 N.C. App. 352, 354, 283 S.E.2d 413, 415 (1981).

with grass, the holes may create a substantial risk, but if the holes are only two inches deep, they may not create a risk of serious physical harm.

Respondent has engaged in extreme destruction of property

The one reported case in North Carolina dealing with dangerousness to others based on engaging in extreme destruction of property emphasized the "extreme" requirement. In that case the respondent had used a hammer to break everything she could find in her house, including the television, the telephone, and all available glass.[41]

Reasonable probability of dangerous behavior being repeated

Unlike the second prong of the dangerousness to self test, the second prong of the dangerousness to others test—a reasonable probability that the dangerous behavior will be repeated—has not been emphasized in court cases. The statute provides that the magistrate may consider previous episodes of dangerous behavior in determining future probability of dangerous conduct.[42] Therefore, as long as the magistrate finds past acts of dangerousness this prong is satisfied.

Within the relevant past

The tests for dangerousness to self and others share the requirement that the respondent's allegedly dangerous behavior has occurred within the relevant past. This requirement is no different than the requirement of relevance in evidence law, generally. That is, any information that tends to make the existence of a material fact more or less likely is relevant.[43] In the context of involuntary commitment, the respondent's behavior occurred within the relevant past if the behavior makes it more or less likely that the respondent is dangerous to self or others at the time commitment is considered. "[The] acts are relevant because they occurred close enough in time to the district court [or magistrate's] hearing to have probative value on the ultimate question before the court of whether there was a 'reasonable probability that such [violent] conduct [would] be repeated.'"[44] So, for example, if the petitioner presents information that the mentally ill respondent, now thirty years old, went through a period when she was ten where she would only eat dirt, the behavior probably did not occur within the relevant past.

The concept of within the relevant past does not depend solely on the passage of time, however, but on the totality of the circumstances as the petitioner presents them. For example, the petitioner presents evidence that the mentally ill respondent tried to kill his brother three years ago after refusing to take medication prescribed for his mental illness. This information may seem remote in time. However, if the petitioner supplements this evidence with the information that the mentally ill respondent has once again stopped taking his prescription medication and is exhibiting symptoms similar to those that preceded the three-year-old incident, that three-year-old evidence may have occurred within the relevant past. Although most information the magistrate hears will probably not be this remote, the important thing to remember is that there is no bright-line in time beyond which information is no longer relevant. In fact, one of the problems the General Assembly wanted to cure in changing the language of the standard from "within the recent past" to "within the relevant past" was the practice of some judicial officials of setting a specific limit on the time frame for the conduct.[45]

Summary

The magistrate must issue a custody order when he or she finds reasonable grounds to believe that the respondent is probably mentally ill and dangerous to self or others.

Mental illness has three elements:
(1) an illness
(2) that impairs judgment and self-control
(3) to a degree that makes treatment or supervision advisable.

A respondent is dangerousness to self if he or she:
(1) is unable to care for self and there is a reasonable probability of serious physical debilitation in the near future or
(2) has attempted or threatened suicide and there is a reasonable probability of suicide or

41. In re Williamson, 36 N.C. App. 362, 244 S.E.2d 189 (1978). There was also evidence that the respondent threatened to physically injure family members.

42. G.S. 122C-3(11)b.

43. G.S. 8C-1, Rule 401.

44. Davis v. N.C. Dep't of Human Res., 121 N.C. App. 105, 115, 465 S.E.2d, 2, 8 (1995)

45. See Joan Brannon "Mental Health," NORTH CAROLINA LEGISLATION 1989 at 127 (Institute of Government 1990).

(3) has mutilated, or attempted to mutilate, himself or herself and there is a reasonable probability of serious self-mutilation.

A respondent is dangerous to others if

(1) he or she has:
  (a) inflicted or attempted to inflict serious bodily harm on another or
  (b) acted in a way that creates a substantial risk of serious bodily harm to another or
  (c) engaged in extreme destruction of property and
(2) there is a reasonable probability that such conduct will be repeated.

Mentally Ill and in Need of Treatment

Even if a mentally ill respondent is not dangerous to self or others, a magistrate still must issue a custody order if the respondent, based on his or her psychiatric history, is in need of treatment to prevent further disability or deterioration that would predictably lead to dangerousness.[46] Mental illness in this context means the same thing as mental illness in the inpatient commitment context: (1) an illness (2) that impairs judgment and self-control (3) to the extent that treatment or supervision is advisable. Although this standard (unlike the mentally ill and dangerous to self or others standard) does not specifically require the petitioner to show that within the relevant past the respondent has engaged in, attempted, or threatened to engage in conduct that is dangerous to self or others, such evidence seems necessary to show a psychiatric history indicating that deterioration leading to dangerousness is likely. That is, psychiatric history that would make dangerous deterioration predictable is bound to be a history of past instances in which the respondent did become dangerous. For example, if the petitioner presents evidence that the respondent has stopped taking her antipsychotic medication and states that the lack of medication will make the respondent dangerous, this statement alone probably is not sufficient grounds to issue a custody order: it should be supported by information that when the respondent has gone off her medication in the past she has done, attempted, or threatened to do, something dangerous.

Involuntary Commitment of Mentally Retarded Respondents

Special rules apply in issuing custody orders for mentally ill persons who are also mentally retarded. A mentally retarded respondent may be involuntarily committed only if he or she meets one of the standards set out above; that is, the respondent must be mentally ill and dangerous to self or others or must be mentally ill and in need of treatment to prevent deterioration that would predictably lead to dangerousness.[47] It is often difficult, if not impossible, to determine whether the dangerous behavior is caused by the mental retardation or mental illness, If the magistrate finds reasonable grounds to believe the respondent is mentally ill as well as mentally retarded and if the magistrate finds dangerousness to self or others, the magistrate should issue the commitment order and leave it to the professionals to determine whether involuntary commitment is appropriate for the respondent.

Moreover, a mentally retarded person cannot be admitted to a state psychiatric hospital unless the respondent is so extremely dangerous as to pose a serious threat to the community and to other patients in a non-state hospital or is so gravely disabled by both multiple disorders and medical fragility or deafness that alternative care is inappropriate. In both of those situations the determination of whether the respondent meets the criteria for commitment to a state psychiatric hospital is made by the Local Management Entity for the area where the respondent resides or is found.[48] If a respondent is mentally retarded, the petitioner must produce facts indicating this on the petition, and the magistrate must specifically note it on the custody order.

"Mental retardation" is defined as "significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested before age 22."[49] Making such a diagnosis is beyond the knowledge of lay petitioners and magistrates alike and should be left to the professional examiner. However, the petition must

46. G.S. 122C-261(b).

47. G.S. 122C-261(b). In Thomas S. v. Flaherty, 699 F. Supp. 1178 (W.D.N.C. 1988) a federal district court held that North Carolina was inappropriately confining and treating mentally ill retarded persons in the state psychiatric hospitals and ordered the state to provide a full range of habilitative treatment for mentally retarded persons confined in state psychiatric hospitals. The requirement limiting admission to state hospitals was enacted in 1995 in response to that case. See Joan Brannon, 1996 Legislation Amending the Involuntary Commitment and Domestic Violence Laws, ADMINISTRATION OF JUSTICE MEMORANDUM No. 96/04 at 1.

48. G.S. 122C-261(f).

49. G.S. 122C-3(22) (1996).

include facts indicating mental retardation. Four questions can help a magistrate determine whether the respondent is probably mentally retarded:

(1) Has a doctor or psychologist ever said that the respondent has mental retardation?
(2) Has the respondent ever been in special education classes for students with mental retardation?
(3) Has the respondent ever received special services for respondents with mental retardation such as sheltered workshops or group home placement?
(4) Did the problems relating to intelligence and functioning begin before age 22?

In order to find the respondent mentally retarded, the answer to the fourth question must be "yes" and at least one of the other three questions must also be answered in the affirmative.[50]

The special provisions regarding mentally retarded persons do not apply to substance abuse commitments.

Substance Abuse Commitment

Magistrates may also be asked to issue custody orders for respondents who are substance abusers. The standard for issuing a custody order in these circumstances is: (1) the respondent is a substance abuser who is (2) dangerous to self or others.[51] Substance abuse means the pathological use or abuse of alcohol or other drugs in a way, or to a degree, that produces an impairment in personal, social, or occupational functioning; it may include a pattern of tolerance and withdrawal.[52] The use does not need to have occurred over any certain length of time or in any certain amount. To be pathological the use need only be habitual or compulsive and have a negative impact on the respondent's functioning. Such functional impairment might mean, for example, that the respondent misses important meetings at work because of alcohol or drugs, verbally abuses friends and family members when drunk, or suffers delusions when she has gone too long without drugs or alcohol.

A magistrate who finds that the respondent is probably a substance abuser and is dangerous to self or others must issue a custody order. The standard for assessing danger to self or others is the same as described under the standard for inpatient commitment of persons with mental illness.

50. Brannon, supra note 47 at 2-3.

51. G.S. 122C-281.

52. G.S. 122C-3(36). Unlike the definition of mental illness, this definition is a medical one.

Procedure for Initiating Involuntary Commitment

To begin the process of involuntary commitment a person must petition for an order (the custody order) to have the respondent picked up for examination by a physician. Petitioning for a custody order differs in several significant ways from the usual small claims court procedure. First of all, the procedure is not a trial; it is merely a mechanism to have the respondent taken into custody for examination. Petitioning for a custody order is an ex parte hearing: that is, the hearing takes place without notice to, or the presence of, the opposing party—in this case, the respondent. The respondent normally is not present, but even if respondent is present, the usual procedure for presentation of evidence is not followed. The respondent is not part of the process and does not present evidence in his or her favor or get to cross examine the petitioner or petitioner's witnesses. Also, two fundamental rules of evidence are not followed in petitioning for involuntary commitment. First, the petitioner is deemed a competent witness even in cases where he or she has no personal, firsthand, knowledge of the respondent's state. This departure from the rules of evidence leads to the second, which is that a petitioner can prove his or her case, and the respondent may be taken into custody and transported for examination, entirely on the basis of hearsay evidence.[53] In this last respect, hearing a petition for a custody order is like the probable cause determination in issuing criminal process.

Who may initiate a petition?

Anyone with information about the respondent may petition for a custody order.[54] The respondent's family members or friends, neighbors, social workers, teachers, physicians or law enforcement officers can all be petitioners. The petitioner's knowledge of the respondent's condition does not have to be firsthand; hearsay information about the respondent is acceptable. For example, a law enforcement officer may petition for a custody order on the basis of information told to him or her by the respondent's neighbor, or a respondent's sister may petition based on information from the respondent's mother. In this respect, the petition resembles an application for a warrant: hearsay evidence can be considered, but at the trial of the matter before a

53. In re Zollicoffer, 165 N.C. App. 462, 598 S.E.2d 696 (2004).

54. G.S. 122C-261(a), -281(a).

district court, the witness must have personal knowledge of the facts about which he or she is testifying.

Who is subject to a custody order?

Any person may be subject to a custody order (assuming the petitioner presents sufficient evidence), no matter his or her age. Involuntary commitment of minor children may occur less frequently than of adults because parents (or guardians) are given the power to consent to treatment for their minor children and can have them admitted to treatment without showing dangerousness. Involuntary commitment thus generally occurs only when a child's parents do not consent to treatment, the parents cannot be found, or because of the child's dangerousness, the parents believe it is best to involuntarily commit the child. However, if the petitioner presents sufficient facts to commit a minor, the magistrate cannot refuse to issue a custody order for a minor simply because the parent could seek a voluntary admission.

Where is the petition initiated?

Petitions may be made to a magistrate in the county where the respondent lives or in the county where the respondent is found.[55] For example, if a resident of Cabarrus County is found wandering the streets of downtown Charlotte without proper clothing, speaking to imaginary friends, either a magistrate in Cabarrus County or a magistrate in Mecklenburg County is authorized to issue a custody order for the respondent and the petitioner can go to either place. Most often the petition is brought in the county where the respondent is found. A respondent who is found in North Carolina need not be a resident of the state to be involuntarily committed. A Mecklenburg County magistrate could also issue a custody order for a resident of South Carolina who is found in Mecklenburg County.[56]

How is a petition made?

Personal Appearance

Most petitioners must appear personally before the magistrate to execute the petition.[57] The magistrate may have the petitioner fill out the petition or may complete it for the petitioner after the petitioner has conveyed the relevant facts about the respondent's condition. Either way, the petitioner must swear to the facts contained in the petition. An unsworn petition cannot serve as the basis for issuance of a custody order.[58]

Physician or Psychologist Petitioner

One group of petitioners does not have to personally appear before the magistrate: when the petitioner is a physician or eligible psychologist[59] who has examined the respondent, he or she may execute an affidavit before any official authorized to administer oaths (usually a notary public) and submit the affidavit to the magistrate by delivering the original to the magistrate or sending a copy by telefacsimile transmission.[60] The physician or psychologist examiner need not appear before the magistrate to testify, but the magistrate must have the notarized affidavit or a faxed copy of it in front of him or her and make a determination from the facts contained in the affidavit that the respondent meets the custody order criteria. Because the physician's or psychologist's evaluation must comply with the requirements of an initial examination, the physician or psychologist petitioner frequently will attach a form called "Examination and Recommendation to Determine the Necessity for Involuntary

55. G.S. 122C-261(a), -281(a).

56. If a resident of another state is involuntarily committed in North Carolina, the State psychiatric hospital may return the respondent to his or her home state. G.S. 122C-345.

57. G.S. 122C-261(a), -281(a).

58. In re Ingram, 74 N.C. App 579, 328 S.E.2d 588 (1985).

59. There is a pilot program operating in several western Local Management Entities (LMEs) allowing the initial evaluation to be performed by a licensed clinical social worker, a masters level psychiatric nurse or a masters level certified addictions specialist in addition to a physician or eligible psychologist. In those LMEs when these clinicians perform the initial evaluation, they are treated like physicians and eligible psychologists and do not have to personally appear before the magistrate when they are the petitioner.

60. G.S. 122C-261(d). A similar provision for transmission by telefacsimile is not included in the substance abuse statute. However, since the procedure could be followed without a statutory provision, it can be followed in substance abuse commitments also.

Commitment"[61] to the affidavit and the facts may be stated in the attachment.

If the affidavit is submitted by telefacsimile transmission, the physician or psychologist must mail the original no later than five days after transmission to the clerk or magistrate to be filed in the case file. Sometimes rather than mailing the original, the physician or psychologist will give it to the law enforcement officer who comes to the physician or psychologist to take the respondent into custody under the order.

Petition Must Show Facts

The "Affidavit and Petition for Involuntary Commitment" (AOC-SP-300) is a sworn affidavit setting forth facts that show that the respondent meets at least one of the standards for issuance of a custody order. The magistrate must issue a custody order if the petition shows that the respondent is probably: (1) mentally ill and dangerous to self or others; (2) mentally ill and in need of treatment to prevent deterioration that would predictably lead to dangerousness; or (3) a substance abuser who is dangerous to self or others.

The petition must set forth facts in support of petitioner's allegations and not just conclusions. Facts are assertions or statements about something having objective reality—an actual event in time or space. Conclusions are judgments. Statements in a petition such as "the respondent lacks self-control and is unable to provide for himself" or "the respondent is a mentally ill … person who is dangerous to [her]self or others [and] [r]espondent has strange behavior and irrational in her thinking"[62] are conclusions. An example of a statement of facts is: "For the past two weeks the respondent has been hallucinating, claiming that an escaped convict is after him and that his wife is secretly keeping the convict in the basement of their home. On three occasions between April 23 and 25 he threatened to shoot his wife if she does not get rid of the convict. On April 26, the respondent purchased a gun, shot his wife in the arm, and told her that she had three days to get the convict out of the house."

The facts stated in the petition must support all the criteria necessary for a custody order. The statement of facts above, for example, establishes that the respondent is probably mentally ill (hallucinating, claiming that an escaped convict is conspiring with his wife), that he inflicted serious physical harm on someone (shot his wife), and that there is a likelihood such conduct will be repeated (past behavior and still hallucinating indicates conduct likely to reoccur); this statement of facts supports a finding that the respondent is mentally ill and dangerous to others. But recall the example of the mentally ill respondent who fasted for days at a time and then ate a whole loaf of bread or a chicken, and ate five pounds of sugar every two days. While this statement of facts may have supported a finding that the respondent was unable to care for himself, it did not show that he was in danger of serious physical debilitation, as required to find the respondent mentally ill and dangerous to himself. The following petition also was found to be insufficient to allege mental illness and dangerous to self: "Respondent has strange behavior and irrational in her thinking. Leaves home and no one knows of her whereabouts, and at times spends the night away from home. Accuses her husband of improprieties."[63] An example of a sufficient petition based on respondent's danger to self is: "Respondent stopped taking her psychiatric medicine (Haldol) three weeks ago. She has begun having trouble sleeping at night and hasn't slept more than one hour in the past 48 hours. She hasn't bathed for a week and has been talking constantly for the last week even though normally she is a quiet person. Last night when it was 25 degrees outside, I found her walking around in the back yard in a short-sleeved shirt saying she was looking for her mother, who died fifteen years ago."

A petition adequate to obtain a custody order for a substance abuser might be the following: "The respondent has been smoking crack cocaine three times daily for the last two weeks; he lost his job two days ago when he showed up at work high and now that he has no income of his own to buy drugs today he beat his mother and father to steal their money."

When a respondent is mentally retarded as well as mentally ill, the petition might allege (in addition to facts necessary to support the other required elements for commitment) something to the effect that the respondent was identified as mentally retarded when she was in second grade and has been receiving special education services for the mentally retarded since that time. It is not clear whether it is necessary to allege facts regarding the mental retardation since that is not a criteria for commitment, but rather a special provision that affects the choice of hospitals for the respondent. However, since the statute requires the magistrate to find that "the respondent is also probably mentally ill"[64] the safest practice is to include facts supporting that finding.

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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.

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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.

Involuntary Commitment: The Legal Criteria for Commitment

Mark Botts

UNC SCHOOL OF GOVERNMENT

Involuntary Commitment

- Criteria—The grounds for court-ordered treatment.
- Procedure—The process for obtaining court-ordered treatment.

Because the commitment st[illegible]es provide for a drastic remedy, those that use the[illegible] do so with "care and fitness." In re Ingram, 74[illegible]p. 579 (1985), [illegible]ing Samons, 9 NC App. [illegible]70).

Topics

- Criteria for Commitment (online)
  - Three kinds of commitment
  - Defining terms, including "dangerousness"
  - Writing a legally sufficient petition
- Commitment procedures
  - Layperson Petition Procedure
  - Clinician Petition Procedure
  - Emergency criteria and procedure

The Petitioner

The individual who asks the magistrate—through the submission of a sworn affidavit—to commence the commitment process

The affidavit is also called a petition

4

The Respondent

The individual who is the subject of the petition and—if the magistrate commences the commitment case—

- Will be examined by a commitment examiner
- Will have the opportunity to respond to the petitioner's allegations at a court hearing

5

The Magistrate

- Determines whether there are reasonable grounds to believe that
  - the facts alleged in the affidavit are true, and
  - the respondent probably meets the criteria for commitment
- Orders custody and evaluation of the respondent

6

The District Court Judge

Orders commitment of the respondent if there is clear, cogent, and convincing evidence that the respondent meets the criteria for commitment

The Commitment Examiner

Examines the respondent to determine whether the respondent meets the statutory criteria for commitment

Examiners who are qualified to perform the first examination:

- Physicians
- PhD psychologists with a health services provider certificate
- The following professionals if qualified through DHHS training and certification: licensed clinical social workers (LCSW), master's level or higher nurse practitioners (NP), physician assistants (PA), licensed clinical mental health counselors (LCMHC), licensed marital and family therapists (LMFT) and licensed clinical addictions specialists (LCAS)
  - LCAS qualified to perform only substance abuse commitment exam
  - https://dmhdsohf.ncdhhs.gov/IVCCredentials/ProviderList

The Clerk of Superior Court

- Receives the findings and recommendations of commitment examiners
- Maintains the court record containing the petition, custody order, and commitment examination forms
- Calendars the case for a hearing
- Appoints an attorney to represent the respondent

9

Law Enforcement Officer or Designated Person

Responsible for the custody and transportation of the respondent during the commitment process.

- Law-enforcement officer—a sheriff, deputy sheriff, police officer, State highway patrolman, or an officer employed by a city or county under G.S. 122C-302 (officers employed and trained to assist individuals who are intoxicated in public).
- Designated person—a person designated in the transportation plan of a city or county, adopted under G.S. 122C-251(g), to provide a part or all the transportation and custody required by the involuntary commitment process.

Custody and Transportation Agreements—G.S. 122C-251(g)

- The governing body of a city or county must adopt a plan for transportation of respondents in involuntary commitment proceedings.
- Acute care hospitals must participate in developing the plan
- Law-enforcement personnel, volunteers, or other public or private agency personnel may be designated to provide all or parts of the transportation.

11

24-Hour Facility

For involuntary commitment purposes, a facility:

- Whose primary purpose is to provide treatment for mental illness, developmental disabilities, or substance abuse
- That provides a structured living environment and services for a period of 24 consecutive hours or more, and
- That is designated by NC DHHS as a facility for the custody and treatment of involuntary clients

The Criteria for Commitment

1. **Inpatient commitment**—mentally ill + dangerous to self or others
2. **Substance abuse commitment**—substance abuser + dangerous to self or others
3. **Outpatient commitment**—mentally ill, capable of surviving safely in the community, in need of treatment to prevent dangerousness, and unable to seek treatment voluntarily

1. mental illness
2. substance abuse
3. dangerous to self
4. dangerous to others

Question

In North Carolina, the magistrate should never issue an involuntary commitment custody order unless he or she has reasonable grounds to believe that the respondent is dangerous to self or others.

- Yes (that's True)
- No (that's False)

Criteria for Outpatient Commitment

- Mentally ill
- Based on psychiatric history, needs treatment to prevent further disability or deterioration that would predictably result in dangerousness
- Current mental status or nature of illness limits or negates the patient's ability to make an informed decision to seek treatment voluntarily or to comply with recommended treatment
- Capable of surviving safely in the community with available supervision from family, friends, or others

Question

In the definition of "dangerous to self" there are three kinds of dangerousness, or three ways that someone can be dangerous to himself or herself.

- Yes
- No

Dangerous to Self

Within the relevant past, the individual has:

- Acted in a way to show unable to care for self + reasonable probability of serious physical debilitation in the near future unless adequated treatment is given
- Attempted or threatened suicide + reasonable probability of suicide unless adequate treatment is given
- Attempted or engaged in self-mutilation + reasonable probability of serious self-mutilation uness adquate treatment is given

Relevant Past

- Acts are within the relevant past if they occur close enough to the present time to have probative value on the question whether the conduct will continue
- Acts that are part of—or connected to—the current or ongoing episode, incident, or situation that help you assess what is happening and what is likely to happen if adequate treatment is not given

Question

If an individual is unable to exercise self-control, judgment, and discretion in the conduct of her daily responsibilities and social relations, or to satisfy her need for nourishment, personal or medical care, shelter, self-protection, or safety, then the individual meets the statutory definition for "dangerous to self" for purposes of involuntary commitment.

- Yes (that's True)
- No (that's False)

Dangerous to Self

A two prong test that requires a finding of:

- a lack of self-care ability regarding one's daily affairs, and
- a probability of serious physical debilitation resulting from the more general finding of lack of self-caring ability. In re Monroe, 49 N.C.App. 23 (1980).

Question

When determining whether there is—for someone who lacks self-care ability—a reasonable probability of serious physical debilitation in the near future unless adequate treatment is given (the second prong of the dangerous-to-self definition) you may take into consideration previous episodes of dangerousness to self when applicable.

- Yes
- No

Unable to Care for Self

Dorothy stopped taking her medication for mental illness. She has begun to experience visual and audio hallucinations and has ceased eating and bathing. You believe that she is unable to exercise judgment and discretion in the conduct of her daily responsibilities related to nourishment and medicine.

As you consider whether there is a reasonable probability that she will suffer serious physical debilitation in the near future, may you take into account that, two years ago, after exhibiting these same behaviors, she suffered serious dehydration and malnourishment requiring hospitalization?

Suicide

attempt

or

threat

+

reasonable probability of suicide

Sample Case

- Patient with history of paranoid schizophrenia.
- Patient came to ED trying to get back on psychiatric medication. Wants to speak to MD about medications.
- Presented to Hospital ED with "flight of ideas and paranoia."
- Afraid his girlfriend is trying to kill him.
- Named other people he thinks are trying to kill him. Believed cab driver was plotting to kill him.
- Began to cry and became hysterical.
- Patient "endorses" "suicidal ideation."

Sample Case

- Patient says she has been "very depressed" for the last 3 years, but it has "worsened lately."
- Hopeless, sad, worried. Under eating. Difficulty falling asleep. Frequent wakening. Decreased energy. She was tearful throughout and spoke of feelings of worthlessness.
- Says she "does not want to live anymore."
- She first got depressed after separating from her husband 12 years ago. Attempted suicide then by taking pills. Then got therapy and medication, and depression got better.
- She just lost her job with a cleaning company
- Daughter recently asked her to move out of her house

Self-Mutilation

actual
or
attempted
+
reasonable probability of serious self-mutilation

Dangerous to Others

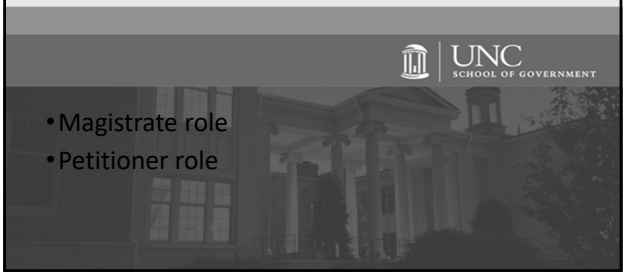
Within the relevant past, the individual has:

1. Inflicted, attempted, or threatened serious bodily harm + reasonable probability of conduct repeating
2. Created a substantial risk of serious bodily harm + reasonable probability of conduct repeating
3. Engaged in extreme destruction of property + reasonable probability of conduct repeating

Summary of Commitment Criteria

1. **Outpatient commitment**—mentally ill, capable of surviving in the community, in need of treatment to prevent dangerousness, and unable to seek treatment voluntarily
2. **Inpatient commitment**—mentally ill + dangerous to self or others
3. **Substance abuse commitment**—substance abuser + dangerous to self or others

Submitting a Legally Sufficient Petition



- Magistrate role
- Petitioner role

Question

Magistrates and clinicians are very busy people, so it is okay—and even a good idea—to summarize, condense, collapse, shorten, or pare down the information that a petitioner for commitment would want to write in the fact section of the Affidavit and Petition for Involuntary Commitment.

- Yes
- No

The Magistrate's Role

Question

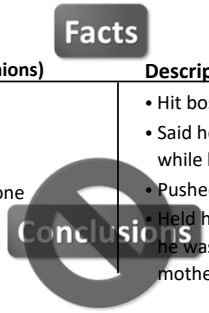
The statements, "Patient exhibits bizarre behavior," "Respondent is suicidal," "Patient is mentally ill," and "Respondent is dangerous," are opinions or conclusions that, alone, does not reveal the factual basis upon which they are based and, therefore, are unhelpful to determining whether the patient is either mentally ill or dangerous to self or others. As such, they not appropriate for the fact section of the Affidavit and Petition for Involuntary Commitment.

- Yes (that's True)
- No (that's False)

Appellate Court said:

"Statute requires the affidavit to contain the facts on which the affiant's opinion is based. **Mere conclusions do not suffice** to establish reasonable grounds for issuance of custody order." In re Ingram, 74 N.C. App. 579 (1985).

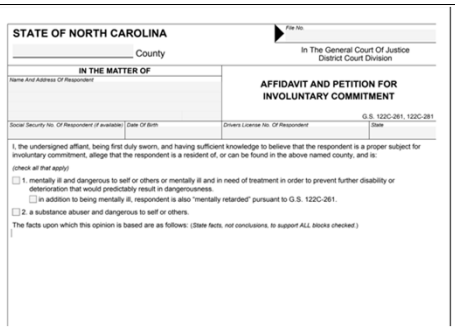
Information Must Be Factual



Conclusions (Opinions)	Descriptive Facts
▪ Violent ▪ Threatening ▪ Aggressive ▪ Assaulted someone	• Hit boss with a wrench • Said he would cut brother while he slept • Pushed Mom off the porch • Held hammer in air saying he was going to bust mother's head

Case Studies and Petition Exercise

AOC-SP-300



STATE OF NORTH CAROLINA

_____ County

File No.

In The General Court Of Justice
District Court Division

IN THE MATTER OF

Name And Address Of Respondent

AFFIDAVIT AND PETITION FOR INVOLUNTARY COMMITMENT

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

Social Security No. Of Respondent (if available) | Date Of Birth | Drivers License No. Of Respondent | State

I, the undersigned affiant, being first duly sworn, and having sufficient knowledge to believe that the respondent is a proper subject for involuntary commitment, allege that the respondent is a resident of, or can be found in the above named county, and is:

(check all that apply)

☐ 1. mentally ill and dangerous to self or others or mentally ill and in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness.

☐ in addition to being mentally ill, respondent is also "mentally retarded" pursuant to G.S. 122C-261.

☐ 2. a substance abuser and dangerous to self or others.

The facts upon which this opinion is based are as follows: (*State facts, not conclusions, to support ALL blocks checked.*)

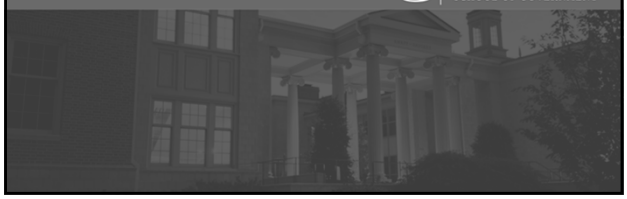
Questions?

- Mark Botts
  - 919.962.8204
  - botts@sog.unc.edu

Involuntary Commitment: The Procedure for Commitment

Mark Botts

UNC SCHOOL OF GOVERNMENT



1

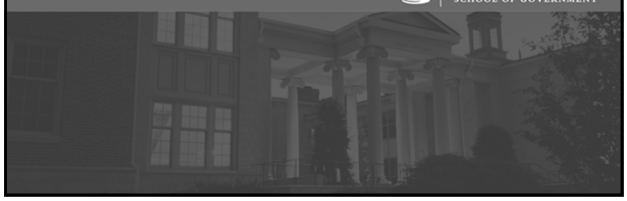
Overview of Commitment Procedure—Three Procedural Pathways

Petitioner Affidavit	Magistrate Order	Clinician Exam	Clinician Exam	District Court Order
Clinician Petitioner Exam & Affidavit		Magistrate Order	Clinician Exam	District Court Order
Clinician Exam & Emergency Certificate		District Court Review	Clinician Exam	District Court Order

2

The Layperson Petition Procedure

UNC SCHOOL OF GOVERNMENT



3

The Petitioner

- Anyone with knowledge may petition
- Petitioner must appear personally
- Jurisdiction is in the county where respondent resides or is found

4

Magistrate Role

If the magistrate finds that the commitment criteria are met for either

- outpatient commitment,
- inpatient commitment, or
- substance abuse commitment

the magistrate shall issue a custody and transportation order (AOC-SP-302A)

5

Custody-GS 122C-261

The magistrate shall issue the order to

- a law enforcement officer or
- any other person authorized under G.S. 122C-251

to take the respondent into custody for examination by a physician or psychologist

- S.L. 2018-33, sec. 8, requires LME/MCOs to create a "community crisis plan"—developed with the participation of acute care hospitals, other first examination facilities, law enforcement agencies, and magistrates—that identifies where the respondent shall be taken for the first exam. Intended to divert some respondents from hospital ED to mental health facilities with commitment examiners.

6

LME-MCO service regions—2022

- Tailored Plan contracts awarded to all existing LME/MCOs
- DHHS working with future Tailored Plan to prepare for December 2022 implementation

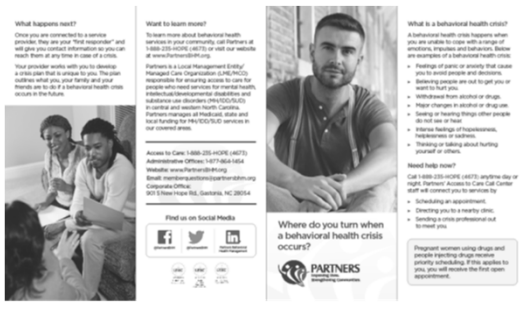
7

Magistrate Must Explain Next Steps to Petitioner

- Next steps in the commitment process
- Other useful information:
  - Law enforcement protocol on restraint
  - Likely wait time at community hospital
- Useful contact information
  - Other resources/options for petitioner if the commitment process terminates at the first examination

8

Crisis Services Brochure



9

2015 Legislation

- A custody order may be delivered to the law enforcement officer by electronic or facsimile transmission.

- Applies to all custody orders including
  - Transfer from one 24-hour facility to another
  - Outpatient pick up order

10

10

Custody-GS 122C-261, -251

Upon receipt of the custody order, the law enforcement officer must take the respondent into custody within 24 hours after the order is signed

Without unnecessary delay, the officer must take the respondent to a physician or psychologist for examination.

11

Hospital ED Role

Commitment Examination—As soon as possible and w/n 24 hours after respondent is presented

- Outpatient commitment
- Inpatient commitment
- Substance abuse commitment

12

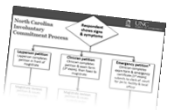
Hospital ED Role—Findings and Recommendations

Findings		Result
No commitment criteria	→	Release
Outpatient commitment	→	Release pending hearing
Inpatient commitment	→	Inpatient facility
Substance abuse commitment	→	Release or inpatient facility

13

Summary: Procedure for the Layperson

1. Petition
2. Custody Order
3. Custody and Transportation
4. Examination and Health Screen
5. Release or 24-Hour Facility



14

The Clinician Petition Procedure

Authorized Clinicians

- Physicians
- PhD psychologists with a health services provider certificate
- If qualified through DHHS training and certification→ licensed clinical social workers, masters level or higher nurse practitioners, physician assistants, licensed clinical mental health counselors, licensed marital and family therapists and—for substance abuse commitment only--licensed clinical addictions specialists

15

Forms

- "First Examination For Involuntary Commitment" (DMH 5-72-19)
  - https://www.ncdhhs.gov/assistance/mental-health-substance-abuse/involuntary-commitments
- "Affidavit and Petition for Involuntary Commitment" (AOC-SP-300)
  - https://www.nccourts.gov/documents/forms?

❖ To petition the magistrate for a custody order under the clinician procedure, a clinician must complete and submit both forms

16

Petitioner May Avoid Personal Appearance Before Magistrate

If the petitioning commitment examiner:

➢Examines the respondent (physical face to face presence or via telemedicine equipment and procedures), and

➢Signs the "Affidavit and Petition" before an official authorized to administer oaths (notary),

- Then petitioner may file the examination and affidavit forms by delivering copies through facsimile transmission
- Must mail originals within 5 days to the clerk of superior court

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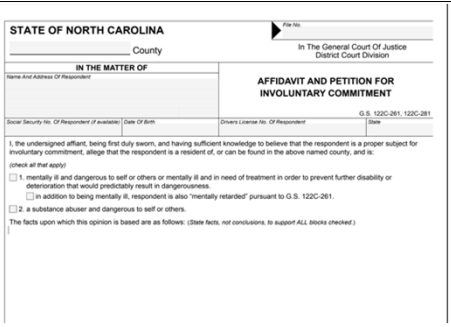
AOC-SP-300



STATE OF NORTH CAROLINA

_____ County

File No.

In The General Court Of Justice
District Court Division

IN THE MATTER OF

Name And Address Of Respondent

AFFIDAVIT AND PETITION FOR INVOLUNTARY COMMITMENT

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

Social Security No. Of Respondent (if available) | Date Of Birth | Drivers License No. Of Respondent | State

I, the undersigned affiant, being first duly sworn, and having sufficient knowledge to believe that the respondent is a proper subject for involuntary commitment, allege that the respondent is a resident of, or can be found in the above named county, and is:

(check all that apply)

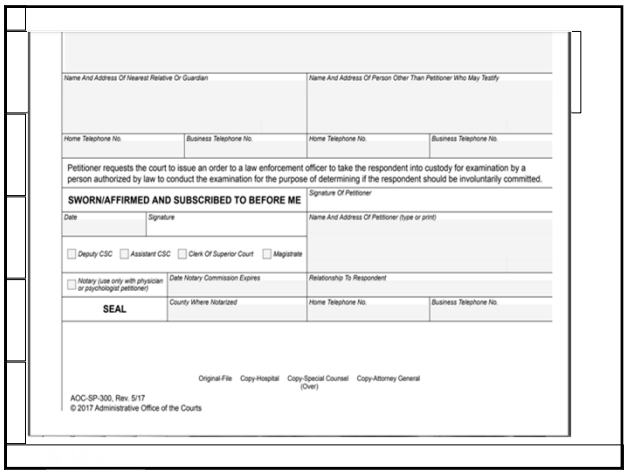
☐ 1. mentally ill and dangerous to self or others or mentally ill and in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness.

☐ in addition to being mentally ill, respondent is also "mentally retarded" pursuant to G.S. 122C-261.

☐ 2. a substance abuser and dangerous to self or others.

The facts upon which this opinion is based are as follows: (State facts, not conclusions, to support ALL blocks checked.)

18



Name And Address Of Nearest Relative Or Guardian		Name And Address Of Person Other Than Petitioner Who May Testify	
Home Telephone No.	Business Telephone No.	Home Telephone No.	Business Telephone No.

Petitioner requests the court to issue an order to a law enforcement officer to take the respondent into custody for examination by a person authorized by law to conduct the examination for the purpose of determining if the respondent should be involuntarily committed.

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME		Signature Of Petitioner	
Date	Signature	Name And Address Of Petitioner (type or print)	
☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court ☐ Magistrate			
☐ Notary (use only with physician or psychologist petitioner)	Date Notary Commission Expires	Relationship To Respondent	
SEAL	County Where Notarized	Home Telephone No.	Business Telephone No.

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

AOC-SP-300, Rev. 5/17
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STATE OF NORTH CAROLINA
Department of Health and Human Services
Division of Mental Health, Developmental Disabilities, and Substance Abuse Services

County _____
Client Record # _____
File # _____

FIRST EXAMINATION FOR INVOLUNTARY COMMITMENT

Name of Respondent	DOB	Age	Sex	Race	M.S.
Address (Street or Box Number)	City	State	Zip	County	Phone
Legally Responsible Person or Next of Kin (Name)		Relationship			
Address (Street or Box Number)	City	State	Zip	County	Phone
Petitioner (Name)		Relationship			
Address (Street or Box Number)	City	State	Zip	County	Phone

EXAMINATION INFORMATION

The First-Level examination and evaluation for the above-named respondent:

20

HEALTH SCREENING

A health screening (N.C. G.S. § 122C-3(16a)) does not constitute a medical evaluation[2] and should be completed at the same location as the first examination or by utilizing telemedicine equipment and procedures (N.C.G.S.§ 122C-263(a1)).

Check box below and sign to attest if a health screening is being replaced by a medical evaluation

☐ Sign/Print Name, Credentials, Date & Time

_____

Vital Signs

BP _____ HR _____ RR _____ Temp _____ Date & Time _____

If person taking vitals is different than person completing this form, sign/print name & credentials below:

_____

Known/reported medical problems (diabetes, hypertension, heart attacks, sickle cell anemia, asthma, etc.):

21

Commitment Examiner—Identify the Recommended Commitment on Exam Form

Section III: Recommendation—page 4 of Examination Form

- Inpatient commitment
- Outpatient commitment
- Substance abuse commitment

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)_____
☐ 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

22

Magistrate is Guided by the Clinician's Recommendation

If the petitioning examiner recommends:

- Outpatient commitment, then evaluate the facts presented in the examiner's affidavit according to the outpatient commitment criteria
- Inpatient commitment, then evaluate the facts presented in the affidavit according to the inpatient commitment criteria
- Substance abuse commitment, then evaluate the facts presented in the affidavit according to the substance abuse commitment criteria

23

Examiner Role → Magistrate Role

Examiner Recommendation		**Magistrate Order**
Outpatient commitment	→	Hearing Order (release)
Inpatient commitment	→	Custody Order (inpatient facility)
Substance abuse commitment and hold pending hearing	→	Custody Order (inpatient facility)
Substance abuse commitment and release pending hearing	→	Hearing Order (release)

24

Custody Order

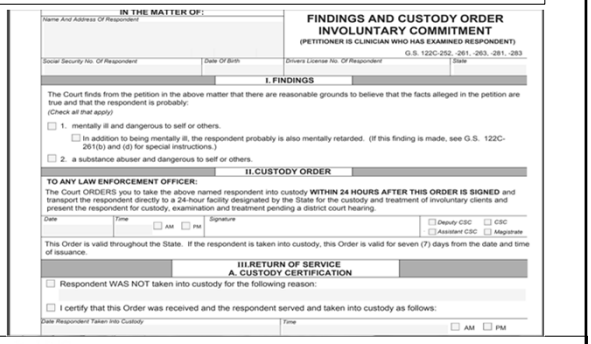
The magistrate shall issue an order to

- a law enforcement officer or
- any other person authorized under G.S. 122C-251

To take the respondent into custody and transport to a 24-hour facility for custody, examination, and treatment pending hearing

25

Custody Order—AOC-SP-302B



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

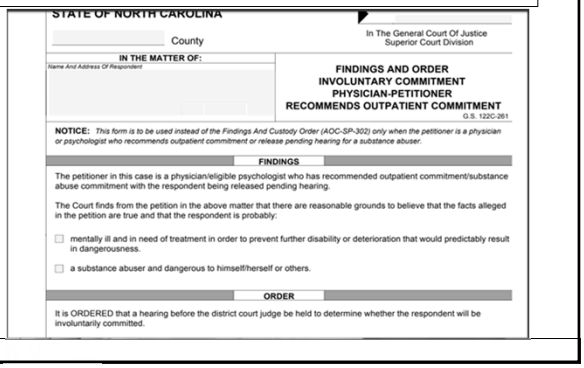
☐ Respondent WAS NOT taken into custody for the following reason:

☐ 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

26

Order that a Hearing be Held AOC-SP-305



STATE OF NORTH CAROLINA
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.

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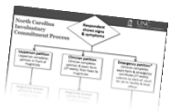
Summary: Commitment Examiner Petition Process

1. Examination
2. Petition
3. Custody Order
4. Custody and Transportation



To use this procedure, petitioner must;
- Be qualified to perform the 1st examination
- Perform the commitment examination
- Notarize the affidavit/petition

If so, petitioner can avoid personal appearance

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Next Steps

After 1st exam and recommendation of inpatient commitment:

If a 24-hour facility is not
- Immediately available or
- Medically appropriate

The respondent may be temporarily detained under appropriate supervision at the site of first examination.

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Seven Day Limit

- ❑Seven days after issuance of custody order, commitment must be terminated if 24-hour facility still not available or medically appropriate
  - Physician must report to clerk of court
  - Proceedings must be terminated
- ❑New commitment proceedings may be initiated
  - Requires new petition
  - Requires new examination if petitioner is clinician
  - Requires new custody order

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Change in Respondent's Status

1. If at any time a physician or psychologist determines respondent no longer meets the inpatient criteria:
   - Respondent must be released (proceedings terminated), or
   - Physician may recommend outpatient commitment
2. Decision to release or recommend outpatient commitment must
   - Be made in writing (conduct exam and use exam form)
   - Reported to the clerk of superior court by most reliable and expeditious means

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Change in Respondent's Status

☐ Respondent was held at first evaluation site pending placement at a 24-hour facility and no longer meets criteria for inpatient commitment:
- ☐ Terminate proceedings and release respondent
- ☐ Recommend outpatient commitment
  - Proposed Outpatient Treatment Center or Physician: (Name) _____
  - (Address & Phone Number) _____
  - ☐ LME/MCO notified of appointment: (Name of LME/MCO) _____ Date: _____

☐ Release respondent and Terminate Proceedings (insufficient findings to indicate that respondent meets commitment criteria)

Signature of Commitment Examiner	This is to certify that this is a true and exact copy of the Examination and Recommendation for Involuntary Commitment
Print Name of Examiner Credentials (check one): ☐ MD/DO ☐ Eligible Psychologist ☐ PA ☐ NP (Master's-level or Higher) ☐ LCSW ☐ LPC ☐ LCAS (Substance Abuse Evaluation Only)	Original Signature – Record Custodian Title Address of Facility

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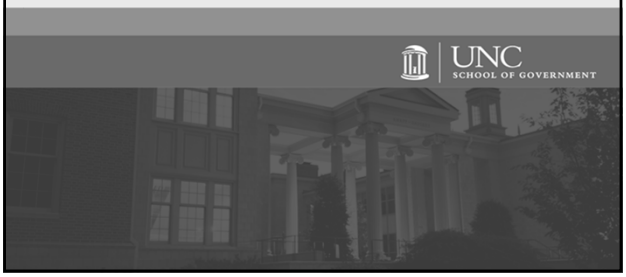
The Emergency Procedure



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Criteria for Emergency Commitment—Mental Illness

1. Mentally ill + Dangerous
2. Requires immediate hospitalization to prevent harm to self or others

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Transportation and Custody

- Magistrate is not involved
- No custody order needed

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Emergency Procedure Forms—Commitment Examiner

- "First Examination For Involuntary Commitment" (DMH 5-72-19)
- "Supplement to Support Immediate Hospitalization" (DMH 572-01-A)

www.ncdhhs.gov/assistance/mental-health-substance-abuse/involuntary-commitments

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Emergency Certificate

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

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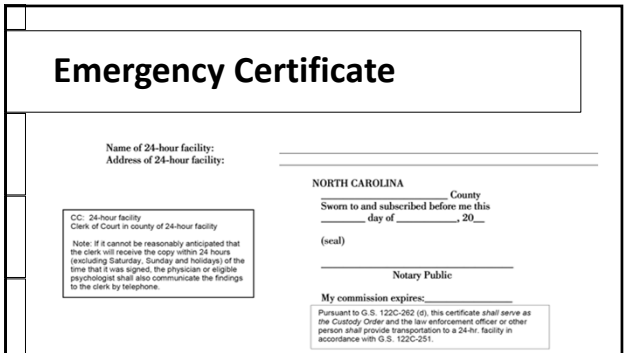
Emergency Certificate



Name of 24-hour facility:
Address of 24-hour facility:

NORTH CAROLINA
_____ County
Sworn to and subscribed before me this
_____ day of _____, 20__

(seal)

_____
Notary Public

My commission expires:_____

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.

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

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Examiner Opts to Petition for a Custody Order

- If upon examination of a respondent presented under the emergency procedure, the commitment examiner finds that the respondent
  - Does not require immediate hospitalization to prevent harm to self or others, but
  - Does meet the criteria for inpatient commitment
- The commitment examiner may petition the magistrate for a custody order in accordance with the clinician petition procedure

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Questions?

- Mark Botts
  - 919.962.8204 (ofc)
  - 919.923.3229 (cell)
  - botts@sog.unc.edu

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Contracts

Contracts

Small Claims Law, Ch. 3 (pp. 53-97)

Forms: Usually Complaint Form CVM-200 (Complaint for Money Owed) & Judgment Form CVM-400 (Judgment in Action to Recover Money or Personal Property). Summary ejectment actions are also contract cases, but specialized forms are used in those cases.

Introductory Activity

General Rule: The courts will enforce agreements between parties.

Brainstorm exceptions, limitations, conditions to the general rule:

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

File No.

STATE OF NORTH CAROLINA

_____ County

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

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

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

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

(check one below)

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

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

☐ For conversion *(describe property)*

Other: *(specify)*

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

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

(Over)

AOC-CVM-200, Rev. 9/13

INSTRUCTIONS TO PLAINTIFF OR DEFENDANT

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

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

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

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

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

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

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

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

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

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

AOC-CVM-200, Rev. 9/13

File No.

Film No.

Judgment Docket Book And Page No.

JUDGMENT IN ACTION TO RECOVER MONEY OR PERSONAL PROPERTY

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

Name And Address Of Plaintiff

County | Telephone No.

VERSUS

Name And Address Of Defendant 1

County | Telephone No.

Name And Address Of Defendant 2

County | Telephone No.

Name And Address Of Plaintiff's Attorney

STATE OF NORTH CAROLINA

_____ County

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

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

FINDINGS

The Court finds that:

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

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

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

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

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

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

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

☐ Other:

ORDER

It is ORDERED that:

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

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

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

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

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

☐ Other: *(specify)*

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

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

CERTIFICATION

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

Date | *Signature Of Magistrate*

AOC-CVM-400, Rev. 2/12

Job Aid

How to Analyze a Contracts Case

Is there a contract?

Who are the parties to the contract?

What are its terms?

Did defendant breach the contract?

What damages is plaintiff entitled to recover?

Another Way to Think About It

The plaintiff has the burden of proving by the greater weight of the evidence each of the following essential elements:

___ That there was a contract

___ That plaintiff and defendant were parties to the contract.

___ That the terms of the contract were A, B, C, etc.

___ The defendant breached term A as follows: ...

___ The breach by defendant resulted in my being damaged in this particular way. . .

___ The monetary amount of my damages is X, and here's how I calculated X. . .

Activity

1. Vet sues Pet Owner to recover payment for services rendered. Vet proves that Pet Owner brought Ms. Kitty to her office for a check-up and vaccinations. Vet examined the cat and gave her a rabies inoculation and injections to prevent feline leukemia and distemper shot. At check-out, Pet Owner refused to pay the $200 charge, claiming it was ridiculously high and that she never agreed to such a payment. What's the legal issue?

   _____

2. Customer sues Salesperson for breach of implied warranty. Customer proves that he purchased a pair of running shoes at Sears after informing Salesperson that he runs approximately 50 miles each week. The shoes fell apart after two weeks. Customer argues that he relied on the advice of Salesperson about which shoes to buy and seeks to recover $125, the cost of the shoes. What's the legal issue?

   _____

3. Landlord sues Tenant for $900 past-due rent. Tenant agrees that he did not pay last month's rent, but contends that he owes only $750 because LL agreed to reduce the rent in exchange for T's services in repairing and maintaining other rental properties owned by LL. T offers evidence that he provided such services. What's the legal issue?

   _____

4. LL sues T for summary ejectment. Written lease provides that LL has the right to evict T if T fails to "keep yard neatly maintained." T offers evidence of her yard maintenance activities (along with pictures). LL contends that these activities were insufficient. What's the legal issue?

   _____

5. Homeowner sues contractor to recover $1500 paid for construction of gazebo. The undisputed facts are that contractor agreed to construct a six-sided gazebo, but in fact constructed a gazebo with only five sides. What's the legal issue?

   _____

CHECKLIST FOR CONTRACT CASES IN SMALL CLAIMS COURT

DOES THIS CASE INVOLVE AN AGREEMENT BETWEEN π AND Δ?

WHO ARE THE PARTIES TO THE CONTRACT?

If parties are not identical to people who entered into contract, why not?

- Agency
- Guarantors
- Joint and Several Liability
- Husbands, Wives, and Kids

WHAT ARE THE TERMS OF THE AGREEMENT?

If the agreement is in writing, ask for a copy. Read it carefully. Are the terms clear?

If the agreement is not in writing, listen to the testimony about the terms.

- ☐ Do the parties agree about the terms of their agreement?
- ☐ If they don't agree, what specifically do they disagree about? What does π contend? What does Δ contend? In the case of a disagreement, the magistrate must determine the terms, remembering that the party seeking to enforce the contract has the B/P on its terms.
- ☐ Are there terms they left out? Assuming the intent to contract is clear, the magistrate "fills in the blanks" based on evidence about what is usual and reasonable, to implement the probable intention of the parties.

What rules of evidence should the magistrate be mindful of in determining the terms?

- ☐ If a contract is written, the *best evidence* of what the parties agreed to is the written contract.
- ☐ If a contract is written, evidence about what the parties said before signing the contract is not relevant unless meaning is unclear (parol *evidence rule).*
- ☐ In an action on an account, a *verified itemized statement of the account* is sufficient to prove that Δ owes that amount of money in the absence of evidence to the contrary.

Are there additional or different terms written into the agreement by the law?

- ☐ *In contracts for the sale of goods*, is π's claim for breach of warranty?
- ☐ *In actions based on a lease,* does the landlord have additional responsibilities under the RRAA?
- ☐ *In actions involving consumer credit sales,* does the Retail Installment Sales Act affect any of the contract terms?

Before moving to the next question, stop and decide what the terms of the agreement are.

Is the agreement one that the law will enforce?

- ☐ Does it involve a bargained-for exchange?
- ☐ Is this particular defendant (rather than someone else) bound by the contract?
  - --Does the contract involve a corporation?
  - --Does the contract involve an agency relationship?
- ☐ Is there any question about Δ's ability to consent?
  - --Was Δ a minor at the time of the contract?
  - -- Is there doubt about Δ's competence to contract?
- ☐ Is there a legal rule that renders this agreement unenforceable?
  - --Is this one of the kinds of contracts the law requires to be written?
  - --Did π wait too long to file the lawsuit?
  - --Are the terms of the agreement so one-sided and unfair as to be *unconscionable*?

DID Δ BREACH THE CONTRACT?

WHAT DAMAGES IS π ENTITLED TO?

Common damage items:

- ☐ Direct damages (difference between value of promised performance and what it will cost now)
- ☐ Incidental damages (costs of preparing to perform, those incurred in response to breach, those involved in minimizing injury)
- ☐ Consequential damages (foreseeable damages resulting from breach)
- ☐ Interest from date of breach

Special cases:

- ☐ Cancelling the contract: damages for putting everything back the way it was
- ☐ Liquidated damages clauses
- ☐ Failure to return property: FMV of property
- ☐ Breach of warranty: difference between FMV of goods as warranted and FMV of goods received
- ☐ Checks NSF: Amount of check + bank charge + processing fee + amount of check x 3 ($100-$500)
- ☐ Attorney fees

Be on the lookout for:

- ☐ Duty to mitigate damages
- ☐ Joint & several liability

Issue Presented	Location in Text
Whether the parties actually reached agreement	pp. 52 - 56
The asserted agreement is based on the behavior of the parties	*Implied contracts* *p. 56*
The terms of the contract don't involve mutual benefit or exchange.	*Consideration* p. 57
The agreement leaves out some important terms.	p. 59
One party claims the written contract is not the complete agreement and wants to testify to additional terms.	*Parole evidence rule* *pp. 61, 73-74*
The case is about a warranty in a contract involving a sale of goods.	pp. 61 - 66
The case is about an implied warranty in a contract for the sale of goods.	pp. 63-64, 65-66
The contract involves an illegal transaction.	*Illegality* p. 67
The contract was based on mistake.	*Mistake* p. 67 - 68
One party did not actually give free consent to the contract terms	pp. 68 - 69
One party to the contract was a minor or mentally competent.	pp. 69 - 72
Whether a contract is required to be written.	*Statute of Frauds* p. 73
Whether a contract is no longer enforceable because of a statute of limitations.	pp. 74 - 76
Whether a contract is so unfair and one-sided as to be unenforceable.	*Unconscionability* pp. 76 - 77
One person has contracted on behalf of another	*Agency* pp. 78 – 81, 95

The contract involves purchase of goods by a consumer on the installment plan	*RISA* pp. 81 - 84
Determining damages to award for breach of contract	*pp. 84 - 86*
Rule of evidence for proving amount owed on an account	*Verified itemized statement of account* pp. 86 - 87
Damages for breach of warranty	*pp. 87*
Damages for bad check	*pp. 87 - 88*
Whether injured party is required to minimize damages from breach	*Duty to mitigate damages pp. 89*
Two debtors sign contract	*Joint & several liability pp. 89*
Complete cancellation of contract	*Recission p. 90*
How to determine interest in contracts case	*pp. 90 – 91, (revised) 96 - 97*
Attorney's fees	*p. 91-94*

Activity

Using the Textbook in a Contracts Case

Find the page in Small Claims Law that addresses the legal question raised by the facts:

_____ A landlord asks that you award attorney fees as part of money damages in an action to recover possession of residential property.

_____ Bill never paid Samantha for the old clunker he bought from her 4 ½ years ago. Samantha finally sued him for the money, but Bill says she waited too long.

_____ Pamela promises her 16-year-old daughter Kamesha that if Kamesha doesn't drink or use illegal drugs before she's 18, Pamela will buy her a car. Kamesha, who just celebrated her 18th birthday, is suing her mom for the cost of the car she never got.

_____ Ivanna financed her purchase of a dining room table and chairs from Sebastian's Sensational Furniture. SSF sells the set for $200 to cash customers and $250 to customers buying on credit. Ivanna paid $50 down, and financed the remaining amount at 15% interest plus $4 for a credit report and $10 for a loan fee. SSF brought this action for money owed after Ivanna defaulted on her monthly payments.

_____ Leonardo and Rachel both signed the lease agreement as tenants on a two-year rental agreement for a very nice apartment. After 6 months, Rachel moved out. Leonardo stayed six more months before leaving with no notice and owing $4800 rent. The landlord doesn't know where Leonardo went, and has sued Rachel (who just won the lottery) for the $4800.

A Basic Introduction to Contract Law

Although contract law can become extremely complicated, at heart it is really very simple. A contract is nothing more than an agreement between two or more people that each will do something in exchange for receiving something. Regardless of whether a contract has hundreds of pages of fine print or consists of a few words and a handshake, there are four broad categories of legal issues that come up again and again.

Contract Formation

More often than one might think, fact situations may raise an issue about whether the parties actually have entered into a contract. The critical factors are (1) that the parties each *agreed* to a deal in which (2) each of them gives something up and gets something in return. See what you think about the following fact situations: contract or no?

1. I promise to give my daughter a pony for her birthday.
   Contract? Yes No

2. Luna and I agree that I will pay her $35 if she will cut my grass, and she agrees to do so.
   Contract? Yes No

3. I make an appointment to see my doctor, and she diagnoses a cold.
   Contract? Yes No

4. I put an ad in the paper saying "sofa for sale—best offer." Before Phil shows up at my door saying he'd like to buy it, though, I change my mind.
   Contract? Yes No

5. I agree to pay Samantha $1500 for her gently-used computer, but decide on the way to pick it up that I'd be better off buying a new one.
   Contract? Yes No

6. I agree to pay Samantha $1500 for her gently-used computer, but discover after I get home with it that the same computer costs $400 if I buy it new.
   Contract? Yes No

Answers and Explanations:

1. No contract. I promised to make a gift, but my daughter didn't give up anything—there was no agreement or bargain here. It would be different, though, if I had said, "If you do all the work in the garden this summer, I'll buy you a pony" and my daughter said, "Deal!"

2. **Contract.** I agreed to give up money for the benefit of getting my grass cut, and Luna agreed to do the work for the benefit of being paid.

3. **Contract.** Even though there was no negotiation between me and my doctor, it is common knowledge throughout our society that when you seek out treatment by a doctor, you will be charged a reasonable fee. There was agreement here, but it was *implied* from our behavior, rather than being a verbal agreement.

4. **No contract.** By putting an ad in the paper, I indicated my willingness to consider offers for the sofa, but I didn't enter into an agreement with Phil. The result might be different, though, if my ad said, "I'll sell my sofa to the first person who shows up at my door with $150 cash." In that case, I've made an offer, and indicated that a contract will come into existence if Phil shows up at my door with $150. If I change my mind, I will have to withdraw my offer before Phil accepts—I may need to put a sign in my front yard saying, "I withdraw my offer. Keep your money. I love my sofa."

5. **Contract.** Because Samantha and I have entered into an agreement, in which I give up money and get a computer, and she gives up her computer and gets money, I've lost the right to change my mind. Even though the actual performance of the contract has not yet occurred, *the agreement has,* and so a contract has been formed. Quite often a contract consists of an exchange of promises to perform, with performance occurring at a later date.

6. **Contract.** Whether a bargain is a good one or a bad one doesn't affect whether a contract has been formed. (Although in some extreme cases, it may affect whether the law will enforce that contract.) Freedom of contract means that we are all free to make a bad bargain.

Be sure to note the questions you missed and pay particular attention to the rule in those situations. Be sure to ask the instructor if you're puzzled.

Note: An important step in analyzing contract cases is determining WHO is liable under the contract. One common situation involves spouses who together enter into a contract, promising to pay the amount owed.

Example: Luna and Jane have been married for a little over a year, and they've decided it's time to buy furniture. They both sign an installment sales contract provided for 12 easy monthly payments of $135. If they fail to pay the amount owed, the furniture store has a choice under the legal principle of *joint and several liability.* It can sue Luna and Jane together, or either of them separately. If the store sues one of them separately, it can sue for the entire amount due—each of them has promised to pay the entire amount due.

Change the facts: Luna buys the furniture, signs the agreement, gets tired of Jane, and moves to Canada. Can the furniture store sue Jane? *[See p.9 for answer and explanation.]*

Determining the Terms of the Contract

Before you can decide whether a contract has been breached, you have to know what the contract requires each party to do. The details about the agreement between the parties are called the *terms* of the contract.

Judges are happiest when the terms of a contract are clear: preferably written and with enough detail, but without being so complicated that it's hard to understand. All too often, though, it's not easy to determine exactly what the parties agreed to. In trying to figure that out, says the law, judges should have as a guiding beacon the question of what the parties **intended.** [*But note*: When the terms of an agreement are clear, the law will not rewrite a contract even if the evidence shows that one of the parties intended something different.]

Sometimes it is difficult to identify the terms of a contract because the agreement between the parties was oral, and the evidence is conflicting about what the agreement was. In these cases, an important legal principle helps you as the judge decide what to do: The party who has the burden of proof (usually the plaintiff) has the responsibility of producing enough evidence to persuade you that the terms of the contract were most likely what s/he says they were. If you believe that the version offered by that party is the more likely version (i.e., "by the greater weight of the evidence"), then that term is treated as part of the contract. What if you conclude instead that his contention is possible? That term does not become a part of the contract unless you conclude that it is not only possible, but in fact more likely than not.

Try it out: Joanna is suing for money owed, saying that she lent Tom $50 three months ago, and that Tom promised to pay her back "within the next couple of months" with interest but has never done so. Tom says he borrowed the money to buy textbooks for college, and that he and Joanna agreed he would repay the loan at the end of this semester, when Tom begins working at his summer job. You're not sure who to believe. What do you do? *Check p. 9 for answer and explanation.)*

Sometimes the problem is not that the evidence about the terms is conflicting, but instead that there was no discussion about a term at all. In this case, the law sometimes fills in the blanks, and sometimes it does not. The rules about this are complicated, and a specific case may present a situation in which you need to consult reference material or ask for help. In many instances, though, your common sense will lead you to a correct result. When it is

obvious to you from the evidence that a term was not important to either party, or was obvious to both parties, the legal solution is usually to fill in the blank.

Example: I walk by a store and see a black sweater on a mannequin in the window. The mannequin is on a table containing many identical sweaters. The clerk notices my interest and asks if I would like to buy a sweater. I answer, "Yes—that's a great looking sweater." He boxes it up for me, and I pay for it, but when I open the box at home, I discover a polka-dot sweater. The salesclerk and I did not explicitly state that a term of the contract was that the sweater in the box would be identical to the sweater on the table. Nevertheless, that was an *implied* term of the contract.

Problem: Same facts, except this time the folded sweaters on the table are variously colored and patterned. The clerk says, "Would you like to pick one out?" and I respond, "No, thanks. Just box one up for me." Can you conclude from this evidence that one term of the contract was that the sweater would be black? *(Check p.10 for answer and explanation.)*

There is a special legal rule called the *parol evidence rule* about deciding what the terms of a contract are. [*Parol* is an old French word meaning "spoken words." The similar French word *parole* meant "word of honor." Cool, huh?] The legal name for this rule makes it sound very technical, but it actually amounts to common sense. The rule simply says that if a written contract is clear, but one party wants to introduce evidence that the actual verbal agreement between the parties was different from what is written down, the judge will base the decision on what is written down. The logic, of course, is that what is written down is more reliable evidence than recollections about what people said. Also, the law wants to encourage people to write their agreements down, so part of the reason for this rule is to support that encouragement. There are a couple of exceptions to the parol evidence rule, though. See if you can figure them out, based on the fact situations below:

Sol and Luna sign a written agreement that says, "I, Sol, will pay Luna $75 for performing yard work on my yard. Luna will complete this work between the 1st and the 5th of this month, and I will pay her upon completion."

Question #1: Luna has brought an action for money owed against Sol after Sol refused to pay her. Sol says that's because Luna didn't trim the shrubbery. Luna wants to introduce evidence that, at the time they were negotiating the agreement, she asked Sol what he meant by "yard work" and Sol said, "Mowing and raking the grass, edging the lawn, and using the weedeater in places where you can't get the mower." Based on this part of their negotiation, Luna says, trimming the shrubbery was not actually included in their agreement, and thus she did not breach by failing to do so. In this case, the judge can consider Luna's testimony. Can you figure out why?

Question #2: In this situation, Luna and Sol have entered into the same written agreement, but this time Sol wants to testify that, two weeks after they signed the contract, he asked Luna to include trimming the shrubbery, and Luna agreed, with the understanding that the she would have five extra days to do the work. The judge can consider this testimony. Can you figure out why? *[See p.10 for answers.]*

There's another situation in which a contract may have important terms even though the parties didn't discuss them, much less agree to them. *These terms* are automatically part of contracts involving the sale of goods under a comprehensive statute known as the Uniform Commercial Code. These special terms are called *implied warranties*, and there are two of them:

The *implied warranty of merchantability* is a term automatically inserted in a contract for the sale of goods to the effect that the seller promises (or "warrants") that the product it will do what it is ordinarily expected to do. An iron will get hot; a refrigerator will get cold. It doesn't matter that the contract doesn't say that explicitly (although often the contract will, and that's called an express warranty, or guarantee). If a person buys a a new television set that doesn't work, he has a legal claim that an implied term of the contract has been breached—the term that says the TV set I'm buying from you will work. Note that this implied term applies only when the seller is a merchant. If you buy an iron at a yard sale, you're on your own!

The *implied warranty of fitness for a particular purpose* is another term that makes good sense. That term says that if I consult a merchant who is in a specialized business or otherwise purports to be someone who has some expertise about which product is best for some particular purpose, there is an implied promise that the goods I buy based on that advice will be suited to that particular purpose. Let's say I go to a store that sells running shoes and tell the clerk I'm going to run the Boston Marathon, and I buy a pair of running shoes based on the advice of the salesman. Two weeks into my training, the shoes start to fall apart. I now have a legal claim that an implied term of the contract has been breached—the term that says these shoes will be suited for marathon running.

The rules about warranties are the first examples we've discussed of an important aspect of contract law: consumer protection legislation. This is a subject we'll return to in a few pages. For now, just notice that the law sometimes inserts or deletes a contract term, despite our society's commitment to the ideal of freedom of contract, in order to protect consumers.

There are exceptions and qualifications to the rules about implied warranties. One of the best known is that, when a seller sells something "as-is," the seller makes no warranty about the condition of the goods. If you are confronted with a case involving a technical

legal dispute about a question such as whether an attempted waiver of warranty was legally effective, or some similar complex question, it would be best to reserve judgment and consult reference material or otherwise seek assistance.

Is the Contract One That the Law Will Enforce?

So far, I have indicated several times that common sense is a generally reliable guide in arriving at a correct legal answer in contract cases. That statement is much less true when it comes to the rules about legal enforcement of contracts. While there are sound reasons for the legal principles to which we will now turn our attention, sometimes the result of their application in particular cases may seem to contradict common sense. The usual reason for this is that the principle is based on a policy decision made by our society that works well most of the time but may yield surprising or unfair results in a particular case.

Remember: This situation comes up after you have decided that the parties have entered into a contract, you have ascertained its terms, and you have determined that one party has breached the contract. Under what circumstances might the court, in this situation, nevertheless refuse to give the complaining party a remedy?

First, the law will usually refuse to enforce a contract in which one of the parties was not able (i.e., *lacked capacity*) to give legal consent. Stop here and ask yourself: what is an example of a party not able to give legal consent to a contract?

_____

If you said minors or persons who are mentally incompetent, you were correct. The general rule is that a contract by a minor or mentally incompetent person is not enforceable **against that person.** *[Note that* the law is perfectly willing to enforce a contract against another person on behalf of a minor or incompetent—we don't worry about protecting the interests of those who can protect themselves.] Similarly, a person who contracts because he has been tricked or misled, or who has been coerced in an illegal way, does not truly consent to the contract, and the law will not hold him to it. This is one of those general principles that have a lot of exceptions. Let's look at the rule, and at some of the exceptions, in the examples below.

Example #1:
Luna is 17 and looks 22. When she bought a car from Fast Eddie, she assured him she was 21. After she wrecks the car, she wants to return it and get a complete refund of her money. Can she?

Example #2:
Jane is a quiet woman with a sweet smile who gives no outward sign that she suffers from Alzheimer's and has been declared mentally incompetent. She goes to Sears and buys a

refrigerator for $900. She has purchased 3 other refrigerators this week. Sears wants to enforce its contract against Jane. Can it?

Example #3:
Susan signed a contract with Better Bodies as part of her New Year's resolution to finally knock off some weight, but she's thought better of it now. Better Bodies has sued Susan in small claims court for money owed on the contract, but Susan claims that Better Bodies should not be allowed to enforce the contract. She says they used glitzy machinery and a cool smoothie bar to talk her into signing a contract when they know very well that 9 out of 10 people who sign up stop coming within 6 weeks. Susan says she was tricked. Can Better Bodies enforce the contract?

Example #4:
Robbie Robber kidnapped Abe's sweet Petunia pug dog and demanded $1,000 for ransom. Not only did Abe pay, but he also solemnly swore that he wouldn't cooperate in any prosecution of Robbie. Robbie says that because Abe breached the contract by going to the police after recovering Petunia, Robbie has been severely injured—he's out dog and money, and in jail! Abe doesn't dispute that he broke his promise to Robbie. Does Robbie have a good case?

Example #5:
After showing Miranda several sheets of fine print and explaining them to her, Snidely closes the deal on a rental agreement by asking her to sign a rental contract that he has kept concealed until now that contains a very high rental fee, covering the contents with other papers and talking quickly so Miranda doesn't notice. Snidely has filed an action against Miranda, but she says she never laid eyes on the contract that bears her signature, and you believe her. Is the contract enforceable?
[Look at pp. 10-12 for answers and discussion.]

There are three other common reasons for a court to refuse to enforce a contract. Although they have legal-sounding names, they're pretty straightforward. As a general rule, these reasons are *affirmative defenses,* which means the defendant is responsible for bringing them to the attention of the judge and persuading the judge of their validity.

The Statute of Frauds. Some contracts are required to be written, dated, and signed by the debtor to be enforceable. The ones you are likely to see most often are retail installment sales contracts when the seller is furnishing the buyer credit so that he can buy the goods or services.

The Statute of Limitations. There are legal time limits within which a person must bring a lawsuit or else lose the right to do so. There are three important rules that come up frequently in this defense:

1. The statute of limitations for contracts for services or money lent is three years.

2. The statute of limitations for contracts for the sale of goods is four years.

3. In an action on an account, a part payment starts the statute of limitations all over again on the balance due.

Unconscionability. Remember when I said earlier that freedom of contract includes the right to make a bad deal? Sometimes a deal is SO bad, and the circumstances surrounding it are so troublesome, that the law refuses to enforce a contract. One judge described this kind of contract as one that "shocks the conscience." When a contract is made between two parties who are very unequal in terms of their bargaining power and sophistication, and the contract itself strikes almost everyone as extremely unfair, the law simply refuses to lend its support and approval by enforcing it. Instead, the contract—or often one or more of the terms of the contract—is labeled "unconscionable" and not enforced.

What Are the Damages?

Assume that you've determined a contract exists, identified its terms, and decided that the contract has been breached. How do you decide what to award the plaintiff? What is the measure of damages?

General rule: Amount of money owed plus interest from date of breach.

Special measure of damages in actions for breach of warranty term: Difference between fair market value of goods received and goods as warranted.

Interest: In all breach of contract actions, the law awards interest for the time period between the date of breech and the date of judgment. If the contract itself contains a rate of interest, that interest rate will apply (so long as it does not exceed the allowable rate under the law.) If the contract does not contain an interest rate, the rate is set by statute at 8% (sometimes referred to as "the legal rate.")

Attorney fees are not usually allowed as part of damages. In the case of contracts, a notable exception includes action on a note or other evidence of debt. Amount is at contract rate up to maximum of 15% of outstanding balance, and there is a notice provision that allows debtor to avoid attorney fees by paying off debt.

Example: I buy a pure-bred puppy from Super Intelligent Pets. I tell the salesperson I want the smartest dog in the store, and he tells me about the special Doggy IQ Test that all their dogs must take before being matched with an equally smart owner. I agree to pay $500 over a one-year period, with interest at 10%. I also agree that if SIP has to take me to court, I will pay an attorney fee of $200. After I take Einstein home, I discover he's dumb as dirt and I stop paying SIP. SIP sues me for breach of contract, and I counter-sue for breach of implied warranty of fitness for a particular purpose.

Assume you rule in favor of SIP and against me on my counterclaim. What will the damages consist of? [I'm not looking for a specific amount of money—just tell me in words what you'd be thinking about.]

Assume you rule against SIP and for me. How will you determine damages? *[Answers on p. 12.]*

Answers and Explanations

Page 3 *[Joint and several liability]:* Luna buys the furniture, signs the agreement, gets tired of Jane, and moves to Canada. Can the furniture store sue Jane?

Answer: No. Jane did not enter into the agreement with the furniture store, so she was not a party to the contract. Just being married to Luna doesn't mean Jane is legally responsible for all her agreements.

Page 3 *[Conflicting evidence of terms of contract]:* Joanna is suing for money owed, saying that she lent Tom $50 three months ago, and that Tom promised to pay her back "within the next couple of months" with interest but has never done so. Tom says he borrowed the money to buy textbooks for college, and that he and Joanna agreed that he would repay the loan at the end of this semester, when Tom begins working at his summer job. You're not sure who to believe. What do you do?

Answer*:* Dismiss the case. When both parties are credible and the versions offered by each are plausible, the party with the burden of proof loses. Before you become too concerned that this result may be unfair to Joanna—since she might be telling the truth, remember that she could have insisted on putting their agreement in writing.

Page 4 *[Determining contract terms*]: This time the folded sweaters on the table are variously colored and patterned. The clerk says, "Would you like to pick one out?" and I respond, "No, thanks. Just box one up for me." Can you conclude from this evidence that one term of the contract was that the sweater would be black?

Answer: No. Since the display was varied, and I refused to select a particular sweater, there is no evidence to support a finding that the color of the sweater was a term of this particular contract.

Pages 4 & 5 [*Parol evidence rule*]: Luna and Sol sign a written agreement that says, "I, Sol, will pay Luna $50 for performing yard work on my yard. Luna will complete this work between the 1st and the 5th each month, and I will pay her upon completion."

Question #1: Luna has brought an action for money owed against Sol after Sol refused to pay her. Sol says that's because Luna didn't trim the shrubbery. Luna wants to introduce evidence that, at the time they negotiated the agreement, she asked Sol what he meant by "yard work" and Sol said, "Mowing and raking the grass, edging the lawn, and using the weedeater in places where you can't get the mower." In this case, the judge can consider Luna's testimony. Can you figure out why?

Explanation: The term in the contract that refers to "yard work" is not clear—we don't know what the parties meant when they included that in the contract. Evidence about discussions they had before or at the time they negotiated the agreement may be considered by the judge in deciding what the term means. The judge may or may not believe Luna's testimony, of course, but this is an example of a case when the parol evidence rule does not apply to prevent the judge from even hearing the evidence. *Rule:* Parol evidence is properly admitted to explain a term in the contract that is ambiguous.

Question #2: In this situation, Luna and Sol have entered into the same written agreement, but this time Sol wants to testify that, two weeks after they signed the contract, he asked Luna to include trimming the shrubbery, and Luna agreed, with the understanding that the time for her performance would be increased from 5 days to 10. The judge can consider this testimony. Can you figure out why?

Explanation: This evidence is not about the original agreement, but about a change in the agreement that happened **later**. Obviously, we can't expect later agreements (called *modifications*) to be included in the original writing. The parol evidence rule applies only to evidence about events that happened before or at the same time as the contract.

Pages 6 & 7 [Reasons not to enforce a contract]:

Example #1: Luna is 17 and looks 22. She bought a car from Fast Eddie, and she assured Fast Eddie that she's over 18. After she wrecks the car, she wants to return it, and get a complete refund of her money. Can she?

Answer: Yes. Luna is a minor and had no legal ability to enter into this contract—as far as the law is concerned, Luna can enforce it against Fast Eddie if she wants to, but she can also

change her mind and cancel the contract at any point. If this seems unfair to you, remember that one purpose of this law is to encourage adults like Fast Eddie think twice before entering into a contract with a young person who may not be mature enough to make a good business decision.

Example #2: Jane is a quiet woman with a sweet smile who gives no outward sign that she suffers from Alzheimer's and has been declared mentally incompetent. She goes to Sears and buys a refrigerator for $900—one of the less expensive ones on the sales floor. She has purchased 3 other refrigerators this week. Sears wants to enforce its contract against Jane. Can it?

Answer: Maybe. We have a slightly different rule for contracts by people who are mentally incompetent, perhaps because the law realizes that, unlike young people, there may be no way for a merchant to tell if Jane is capable of giving legal consent. If Sears had no reason to know that Jane was incompetent, and there's no evidence that the contract was unfair or that Sears was taking advantage of Janet, courts will enforce the contract.

Example #3: Susan signed a contract with Better Bodies as part of her New Year's resolution to finally knock off some weight, but like most of us, she's thought better of it now. Better Bodies has sued Susan in small claims court for money owed on the contract, but Susan claims that Better Bodies should not be allowed to enforce the contract. She says they used glitzy machinery and a cool smoothie bar to talk her into signing a contract when they know very well that 9 out of 10 people who sign up stop coming within 6 weeks. Susan says she was tricked. Can Better Bodies enforce the contract?

Answer: Yes. This is the classic example of a bad bargain. Susan was not deceived by Better Bodies; the company may not have provided her with facts about how many customers change their minds, but it is under no duty to do so. The law distinguishes between active deception and a passive failure to inform. This situation reminds us of the old saying: Let the buyer beware.

Example #4: Robbie Robber kidnapped Abe's sweet Petunia pug dog and demanded $1,000 for ransom. Not only did Abe pay, but he also solemnly swore that he wouldn't cooperate in any prosecution of Robbie. Robbie says that because Abe breached the contract, he's been severely injured—he's out dog and money, and IN jail! Abe doesn't dispute that he made the promise to Robbie, and agrees as well that he broke it. Does Robbie have a good case?

Answer: I sure hope you said no. There are several problems with this contract, in addition to the main point of the question, which is that contracts made as a result of coercion or extortion are not enforceable. Neither are illegal contracts, of course. Finally, there was no real exchange here. Robbie gave up Petunia, but he had no right to her to begin with—she belonged to Abe!

Example #5: After showing Miranda several sheets of fine print and explaining them to her, Snidely closes the deal on a rental agreement by asking her to sign a rental contract that he has kept concealed until now that contains a very high rental fee, covering the contents with other papers and talking quickly so Miranda doesn't notice. Snidely has filed an action against Miranda, but she says she never laid eyes on the contract that bears her signature, and you believe her. Is the contract enforceable?

Answer: No. This is an example of a contract in which there was no real consent—Miranda's signature was obtained by a trick, and so it is not a meaningful sign that she agreed to this contract.

Page 9 [Determining damages]: I buy a pure-bred puppy from Super Intelligent Pets. I tell the salesperson I want the smartest dog in the store, and he tells me about the special Doggy IQ Test that all their dogs must take before being matched with an equally-smart owner. I agree to pay $500 over a one-year period, with interest at 10%. I also agree that if SIP has to take me to court, I will pay an attorney fee of $200. After I take Einstein home, I discover he's dumb as dirt and I stop paying SIP. SIP sues me for breach of contract, and I counter-sue for breach of implied warranty of fitness for a particular purpose.

Assume you rule in favor of SIP and against me on my counterclaim. What will the damages consist of? [I'm not looking for a specific amount of money—just tell me in words what you'd be thinking about.]

Answer: SIP is entitled to whatever portion of $500 I haven't yet paid, with 10% interest up to the date of judgment. In addition, assuming SIP properly gave me notice of its intent to seek attorney fees, I will have to pay attorney fees, but only up to 15% of the outstanding balance.

Assume you rule against SIP and for me. How will you determine damages?

Answer: Damages on a breach of warranty claim are determined based on the difference between the fair market value of Einstein as warranted and as she actually is. It will be my burden to prove to you the current fair market value of a super-intelligent puppy of Einstein's breed and the FMV of an ordinary dog of that breed. I will be entitled to that amount, plus interest of 8% (the legal rate, which applies unless a contract specifies a different rate) from the date of breach (which in this case would be the same as the date of sale).

Ethics

ETHICS

Revised by Tom Thornburg, School of Government, UNC Chapel Hill, January 2023

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 can lead to discipline or removal are the **North Carolina Rules of Conduct for Magistrates**, promulgated by the NC Administrative Office of the Courts on October 1, 2021, and last revised on October 1, 2022.

For years the **North Carolina Code of Judicial Conduct**, which guides judges but was only informally applied to magistrates, was the reference for determining what constituted bad conduct. The **Rules of Conduct for Magistrates** and the accompanying commentary about how to interpret them, will be the new go-to source for determining whether a magistrate's conduct is willful misconduct or conduct "prejudicial to the administration of justice." These Rules are modeled after the Code of Judicial Conduct but differ in some ways*. These Rules and their commentary appear at the end of this section of the notebook*.

The authority of chief district court judges to discipline magistrates is also made clear by the new Rules of Conduct and a summer 2022 revision of N.C. G.S. 7A-146 (see Session Law 2022-47). It adds a new section (13) to the statute describing administrative authority and duties of chief district court judges. It reads:

> *"(13) Investigating written complaints against magistrates. Upon investigation and written findings of misconduct in violation of the Rules of Conduct for Magistrates, a chief district court judge may discipline a magistrate in accordance with the Rules of Conduct for Magistrates. Written complaints received by the chief district court judge and records of investigations into those complaints are to be treated as personnel records under Article 7 of Chapter 126 of the General Statutes. Notwithstanding Article 7 of Chapter 126 of the General Statutes, once a letter of caution, written reprimand, or suspension has been issued by the chief district court judge, the written complaints, and the record of the chief district court judge's action on that complaint, including any investigatory records, are no longer confidential personnel records."*

While magistrates should look to the Rules of Conduct as their primary ethical guide, I expect the Code of Judicial Conduct, and the court decisions that have interpreted it, will be useful background for years to come. That Code also appears at the end of this section of the notebook.

Some of the Rules of Conduct have subsections and all have commentary. On the next page is a shorthand version of the Rules.

North Carolina Rules of Conduct for Magistrates

Preamble

An independent and honorable judiciary is indispensable to justice in our society, and to this end and in furtherance thereof, these Rules of Conduct for Magistrates are hereby established. A violation of these Rules of Conduct may be deemed prejudicial to the administration of justice that brings the Office of Magistrate into disrepute, or willful misconduct in office, or otherwise as grounds for removal proceedings pursuant to Article 16 of Chapter 7A of the General Statutes of North Carolina.

Rule 1

A magistrate should uphold the integrity of the Office of Magistrate and act accordingly.

Rule 2

A magistrate should avoid impropriety in all the magistrate's activities.

Rule 3

A magistrate should perform the duties of the magistrate's office impartially and diligently.

Rule 4

A magistrate may participate in cultural or historical activities or engage in activities concerning the legal, economic, educational, or governmental system, or the administration of justice.

Rule 5

A magistrate should regulate the magistrate's extra-judicial activities to ensure that they do not prevent the magistrate from carrying out the magistrate's official duties.

Rule 6

A magistrate may engage in political activity consistent with the magistrate's status as a public official.

Rule 7

Magistrates should respect the Chief District Court Judge's administrative supervision and authority over them.

Removal of Magistrates
Tom Thornburg, School of Government, UNC Chapel Hill
January 2022

This section is derived from "Removal of Court Officials," Administration of Justice Bulletin No. 2015/08 (November 2015) by Michael Crowell.

Article IV, section 17(3), of the North Carolina Constitution authorizes the General Assembly to establish a procedure for removal of a magistrate for misconduct or mental or physical incapacity. The legislature has implemented that provision by enactment of G.S. 7A-173.

Grounds for Removal

G.S. 7A-173(a) provides that the grounds for removal of a magistrate are the same as for removal of a judge. Thus, the grounds for removal are:

- willful misconduct in office,
- willful and persistent failure to perform the duties of the office,
- habitual intemperance,
- conviction of a crime involving moral turpitude, and
- conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

Because the grounds for removal are the same as for a judge, the **Code of Judicial Conduct** and cases that interpret it may be consulted to construe the statute. Like the **Code**, the new **NC Rules of Conduct for Magistrates** provides that any violation of its rules may be considered conduct prejudicial to the administration of justice or willful misconduct.

Procedure

The procedure for removal is set out in G.S. 7A-173(b), (c), and (d) and includes these steps:

- The process begins with the filing of "sworn written charges" with the clerk of court. The statute does not limit who may file such charges.
- If the chief district judge determines that the charges, if true, would be grounds for removal, the judge may suspend the magistrate pending a hearing. The magistrate's salary continues during the suspension.
- If a hearing is ordered, the chief district judge schedules a hearing before a superior court judge and sees that the magistrate is served with written notice of the hearing and a copy of the charges.

• The hearing may be before the senior resident superior court judge or any superior court judge holding court in the district.
• The hearing is to be held not less than ten and not more than thirty days after the magistrate has been given a copy of the charges.
• The hearing is public and must be recorded.
• The superior court judge must make findings of fact and conclusions of law.
• If the judge finds that grounds for removal exist, the judge must remove the magistrate from office and terminate the magistrate's salary. The statute does not give the judge discretion to order a lesser penalty.
• The magistrate may appeal the removal to the Court of Appeals for legal error. The magistrate is suspended from performing duties during the appeal.
• If the magistrate is restored to office upon appeal, the magistrate is entitled to back pay to the time of removal.

Case Law

The following cases provide additional guidance on removal of magistrates:

State v. Greer, 308 N.C. 515 (1983). Enactment of the removal statute does not prevent prosecution of a magistrate for violation of G.S. 14-230, corruption in office.

In re Ezzell, 113 N.C. App. 388 (1994). The magistrate was removed for sexual harassment. The court's holdings included the following:
• It may be that prosecution of a magistrate for removal is not within the constitutional duties of a district attorney, and that the superior court judge was incorrect in requesting the DA to undertake that role, but in this case the magistrate did not have standing to raise the issue and could not show that it affected the result.
• The superior court judge may appoint an independent counsel to prosecute the removal.
• The senior resident superior court judge is not disqualified from hearing the removal proceeding just because the judge appointed the magistrate.

In re Kiser, 126 N.C. App. 206 (1997). The magistrate was removed for aiding and abetting a teenager in unlawfully purchasing alcohol. The court held that although the grounds for removal of a magistrate are the same as for a judge, the court does not have discretion, as with a judge, to censure or suspend the magistrate; rather, by statute, the only option for the court is to remove the magistrate from office.

Note on Mootness

A removal proceeding against a judge is not made moot by the judge's resignation because the judge may face punishment in addition to loss of the office—loss of retirement benefits and disqualification from future judicial office—as a result of the removal. Because a magistrate does not face such additional punishment, the resignation of the magistrate would make the removal proceeding moot. A magistrate who is removed is not disqualified from being subsequently appointed to the office.

Discussion Questions for Ethics

1. A magistrate is married to a police officer. Can the magistrate handle cases in which the officer appears before him or her?

2. A magistrate's live-in boyfriend is charged with misdemeanor larceny. Do the Rules place any requirements on the magistrate concerning that criminal charge?

3. 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?

4. Your church asks you to serve as the head of its finance committee. Your duties wouldinclude raising money for next year's budget. Can you serve?

5. The incumbent sheriff is running for re-election and asks you to endorse him. Can you?

6. The incumbent resident superior court judge is running for re-election and asks you to endorse her. Can you?

7. A local bail bonding company gives each magistrate a gift certificate to the local mall at Christmas? Can you accept it?

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North Carolina Rules of Conduct for Magistrates

With Commentary

Preamble

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Rule 1

A magistrate should uphold the integrity of the Office of Magistrate and act accordingly.

A magistrate should act to establish, maintain, and preserve the integrity of the office and should personally observe appropriate standards of conduct to ensure that the integrity of the office is protected and preserved.

Commentary

[1] Conduct that compromises the integrity and impartiality of a magistrate undermines public confidence in the judicial system.

[2] The Supreme Court of North Carolina has described "conduct prejudicial to the administration of justice that brings the judicial office into disrepute" in the following way:

> Conduct prejudicial to the administration of justice that brings the judicial office into disrepute has been defined as "conduct which a judge undertakes in good faith but which nevertheless would appear to an objective observer to be not only unjudicial conduct but conduct prejudicial to public esteem for the judicial office."

In re Edens, 290 N.C. 299, 226 S.E.2d 5 (1976) (quoting *Geiler v. Comm'n on Jud'l Qualifications*, 10 Cal.3d 270, 110 Cal. Rptr. 201, 515 P.2d 1 (1973), *cert. denied*, 417 U.S. 932, 94 S.Ct. 2643, 41 L.Ed.2d 235 (1974)). *See also In re Inquiry Concerning a Judge (Brown)*, 358 N.C. 711, 599 S.E.2d 502 (2004).

[3] Magistrates should support professionalism within their sphere, including the professionalism of law enforcement agencies and legal professionals, and promote equal access to justice for all.

[4] Treating all persons with respect is critical to the judicial functions of the Office of Magistrate. A magistrate should conduct himself or herself with proper restraint and decorum that extends to all applicants, litigants, or others with whom the magistrate comes into contact. *See In re Inquiry Concerning a Judge (LaBarre)*, 369 N.C. 538, 798 S.E.2d 736 (2017) (censuring a judge for driving while impaired and for becoming belligerent and directing vulgar language and expletives towards police officers and other emergency responders after he was asked to submit to a second breath test); *In re Inquiry Concerning a Judge (Daisy)*, 359 N.C. 622, 614 S.E.2d 529 (2005) (censuring a judge for hugging, touching, and otherwise subjecting a judicial assistant and a paralegal to unwanted, uninvited, and inappropriate physical

contact). This does not mean, however, that any and all breaches of decorum necessarily provide a basis for discipline. *See In re Inquiry Concerning a Judge (Bullock)*, 324 N.C. 320, 377 S.E.2d 743 (1989) (refusing to censure a judge who, believing that a law enforcement officer had publicly expressed a desire to slap him, called the officer into the judge's chambers, told the officer, "If you want to slap me, there is no better time to do it than right now," and physically escorted the officer out of the judge's chambers).

Rule 2

A magistrate should avoid impropriety in all the magistrate's activities.

A. A magistrate should respect and comply with the law and should conduct himself or herself at all times in a manner that promotes public confidence in the integrity and impartiality of the judicial system.

B. A magistrate shall notify the Chief District Court Judge within three (3) days of learning:

(1) that the magistrate himself or herself has been charged with any non-traffic misdemeanor or felony or driving while impaired; or

(2) that an immediate family member, as defined in N.C. Gen. Stat. § 138A-3(40), or other person living in the same household as the magistrate has been charged with any non-traffic misdemeanor or felony or driving while impaired.

C. A magistrate should not allow the magistrate's family, social, or other relationships to influence the magistrate's conduct or judgment. The magistrate should not lend the prestige of the magistrate's office to advance the private interest of others except as expressly permitted by these Rules, nor should the magistrate convey or permit others to convey the impression that they are in a special position to influence the magistrate.

D. A magistrate should not hold membership in any organization that practices unlawful discrimination.

Commentary

[1] It is imperative that magistrates avoid actual improprieties, which include violations of law, court rules, or orders.

[2] Respect for and compliance with the law is required, not only in adjudicative circumstances but in all circumstances. *See In re Inquiry Concerning a Judge (LaBarre)*, 369 N.C. 538, 798 S.E.2d 736 (2017) (censuring a judge for driving while impaired and for becoming belligerent and directing vulgar language and expletives towards police officers and other emergency responders after he was asked to submit to a second breath test).

[3] A magistrate "is an officer of the district court." N.C. Gen. Stat. § 7A-170.

[4] A magistrate must not use the prestige of office to advance the magistrate's personal or family interests. Likewise, it is improper for a magistrate to use or attempt to use his or her position to gain personal advantage or preferential treatment of any kind. For example, it would be improper for a magistrate to

allude to his or her official status to gain favorable treatment in encounters with others. Similarly, a magistrate must not use official letterhead to gain an advantage in conducting personal business.

[5] A magistrate may provide a reference or recommendation for an individual with whom the magistrate has worked. The magistrate may use official letterhead for such reference or recommendation.

[6] A magistrate should not allow personal or family relationships to impair his or her ability to remain fair and impartial and to uphold the principles of these Rules. Also, a magistrate should not make comments or take actions that call the magistrate's impartiality or fairness into question. *See In re Inquiry Concerning a Judge (Hair)*, 335 N.C. 150, 436 S.E.2d 128 (1993) (censuring a judge for threatening an assistant district attorney, an SBI agent, and an attorney in private practice with professional reprisals for their perceived disloyalty to the judge in the judge's divorce case).

[7] A magistrate should not engage in conduct or speech that would subject a litigant, attorney, or other person appearing before the magistrate to unwarranted ridicule. *See In re Inquiry Concerning A Judge (Hill)*, 357 N.C. 559, 591 S.E.2d 859 (2003) (censuring a judge for (1) making unwarranted critical comments to an attorney, accusing the attorney of being heartless, and calling the attorney incompetent; and (2) attempting to grab a deputy sheriff's genitals after she ordered him to get out of her way as she entered the clerk of court's office).

[8] A magistrate's public manifestation of approval of unlawful discrimination on any basis diminishes public confidence in the integrity and impartiality of the judiciary. Accordingly, when a magistrate learns that an organization to which the magistrate belongs engages in unlawful discrimination, the magistrate must resign immediately from the organization.

Rule 3

A magistrate should perform the duties of the magistrate's office impartially and diligently.

A. Magistrate Duties in General. The official duties of a magistrate take precedence over all the magistrate's other activities. The magistrate's duties include all the duties of the office prescribed by law, including local Rules of Court, and those duties assigned by the Chief District Court Judge or Chief Magistrate, if the Chief District Court Judge has designated a Chief Magistrate. In the performance of these duties, the following standards apply.

B. Adjudicative responsibilities.

(1) A magistrate should be faithful to the law and maintain professional competence in it.

(2) A magistrate should be unswayed by partisan interests, public clamor, or fear of criticism.

(3) A magistrate should be patient, dignified, and courteous to applicants, litigants, witnesses, lawyers, law enforcement officers, and others with whom the magistrate deals in the magistrate's official capacity and should require similar conduct of the persons involved in the proceedings.

(4) A magistrate should accord to every person who is legally interested in a proceeding, including any person or such person's lawyer, or any entity, including the State, the full right to be heard according to law.

(5) Except as authorized by law, the magistrate should neither knowingly initiate nor knowingly consider ex parte or other communications concerning the matters involved in a pending proceeding. A magistrate, however, may obtain the advice of a disinterested expert on the law applicable to a proceeding before the magistrate.

(6) A magistrate should dispose promptly of the business of the court.

(7) A magistrate 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. This subsection does not prohibit a magistrate from making public statements in the course of official duties; from explaining for public information the procedures of the Court or magistrate's office consistent with these Rules; 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.

(a) Notwithstanding the foregoing, a magistrate shall not be prohibited from commenting on proceedings in which the magistrate is a litigant in any capacity.

C. Administrative responsibilities.

(1) A magistrate should

(a) diligently discharge the magistrate's administrative responsibilities; and

(b) maintain professional competence in:

(i) judicial administration,

(ii) the software and other technology adopted for the magistrate's use, and

(iii) the procedures established by the Courts and supervisory officials or officers with authority to do so.

(2) A magistrate shall comply with scheduling directives issued by the Chief District Court Judge or, where applicable, the Chief Magistrate. A magistrate shall be present and serve for the periods of time necessary to provide the services to the public and advance the interests of justice.

(3) A magistrate shall promptly transfer documents and monies to the Clerk's office, as well as other requisite documents and materials to law enforcement agencies, the District Attorney, or other agencies as required by law. Particularly with respect to monies, the magistrate must follow the directives promulgated by the North Carolina Administrative Office of the Courts.

D. Educational Duties and Responsibilities. To obtain and maintain the competence necessary for the Office of Magistrate, all magistrates must be appropriately instructed and have a requisite level of knowledge of the law.

(1) Failure to attend courses of educational instruction as required by law without good cause may constitute conduct prejudicial to the administration of justice that brings the judicial office into disrepute or willful misconduct in office.

E. Duty to Disqualify or Recuse

(1) On motion of any party, a magistrate should disqualify himself or herself from a proceeding in which the magistrate's impartiality may reasonably be questioned, including but not limited to instances where:

(a) The magistrate has a personal bias or prejudice concerning a party;

(b) The magistrate has personal knowledge of disputed evidentiary facts concerning the proceedings;

(c) The magistrate served as lawyer in the matter in controversy, or a lawyer with whom the magistrate previously practiced law served during such association as a lawyer concerning the matter, or the magistrate or such lawyer has been a material witness concerning it;

(d) the magistrate knows that he/she, individually or as a fiduciary, or the magistrate's spouse or minor child residing in the magistrate's household, has a financial interest in the subject matter in controversy or is a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(e) The magistrate or the magistrate's 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 magistrate to have an interest that could be substantially affected by the outcome of the proceeding;

(iv) is to the magistrate's knowledge likely to be a material witness in the proceeding.

(2) A magistrate must act to inform himself or herself about the magistrate's personal and fiduciary financial interests and must make a reasonable effort to inform himself or herself about the personal financial interests of the magistrate's spouse and minor children residing in the magistrate's 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 substantial "financial interest" in such securities unless the magistrate 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.

(4) Without the interposition of a motion for disqualification or recusal, a magistrate may disqualify himself or herself from participating in any proceeding upon the magistrate's own initiative where the magistrate concludes that his or her judgment in the matter may reasonably be called into question or may lead to the disrepute of the proceeding. Also, a magistrate potentially disqualified by the terms of this Rule may, instead of withdrawing from the proceeding, disclose on the record the basis of the magistrate's potential disqualification. If, based on such disclosure, the parties or lawyers, on behalf of their clients and independently of the magistrate's participation, all agree in writing that the magistrate's basis for potential disqualification is immaterial or insubstantial, the magistrate 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.

Commentary

[1] To ensure that magistrates are available to fulfill their official duties, magistrates must conduct their personal and extrajudicial activities in a manner so as to minimize the risk of conflicts that could disqualify them from performing their official duties.

[2] The right to be heard is an essential component of a fair and impartial system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed. The failure to do so prejudices the administration of justice. *See In re Edens*, 290 N.C. 299, 226 S.E.2d 5 (1976) (censuring a judge for disposing of a criminal case outside the courtroom when court was not in session and without notice to or input from the assistant district attorney who was prosecuting the docket).

[3] Ordinarily, to the extent reasonably possible, all parties or their lawyers shall be included in communications with a judicial official except when a differing procedure is prescribed under the law. Avoiding ex parte communications protects the fairness of the proceeding and the perception of a just and equal system of justice. It is particularly important in regard to civil matters over which the magistrate may be called to serve as an Officer of the District Court adjudicating the matter.

[4] The Rule allows a magistrate to initiate, permit, or consider ex parte communications only when authorized to do so by law. *See, e.g.*, N.C. Gen. Stat. § 1A-1, Rule 65(b)(ii) (contemplating application for restraining order without notice to other party or counsel and requiring that "the applicant's attorney certifies to the court in writing the efforts, if any, that have been made to give the notice and the reasons supporting the claim that notice should not be required"). Communications with magistrates may be ex parte, when, for example, a law enforcement officer or a complaining witness applies to a magistrate for the issuance of a warrant or of criminal process. In the civil context, a magistrate may be authorized to conduct an ex parte hearing, for instance, on an application for a domestic violence restraining order.

[5] A magistrate's conduct should be consistent with that expected of an impartial member of the judiciary. Consequently, a magistrate should not attempt to direct the conduct of criminal investigations, charging decisions, or defense of cases. *Cf.*, *In re Inquiry Concerning a Judge (Bullock)*, 328 N.C. 712, 403 S.E.2d 264, (1991) (censuring a judge for briefly confining an attorney to the jury room and threatening to issue rulings unfavorable to the attorney or the attorney's clients in future cases after the attorney refused to explain the reasons for his motion to withdraw as counsel and his refusal to make a recommendation concerning his client's participation in a first offender's program).

[6] Magistrates must efficiently dispose of the matters assigned to them and be available to decide the matters that come before the court. Although there are times when disqualification is necessary to protect the rights of litigants and preserve public confidence in the independence, integrity, and impartiality of the judiciary, unwarranted disqualification can bring public disfavor to the court and to the magistrate personally. The dignity of the court, the magistrate's respect for fulfillment of official duties, and a proper concern for the burdens that may be imposed upon the court and the magistrate's colleagues require that a magistrate not fail to appear for assigned duties or use disqualification to avoid cases.

[7] The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the magistrate is affiliated does not, by itself, disqualify the magistrate.

[8] A magistrate should disclose on the record information that the magistrate believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the magistrate believes there is no basis for disqualification.

Rule 4

A magistrate 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. A magistrate, subject to the proper performance of the magistrate's judicial duties, may engage in the following quasi-judicial activities, if in doing so the magistrate does not cast substantial doubt on the magistrate's capacity to decide impartially any issue that may come before the magistrate.

(1) A magistrate 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.

(2) A magistrate may appear at a public hearing before an executive or legislative body or official with respect to activities permitted under other provisions of these Rules, and the magistrate may otherwise consult with an executive or legislative body or official.

(3) A magistrate may serve as a member, officer, or director of an organization or governmental agency concerning the activities described in this Rule and may participate in its management and investment decisions.

(a) If a magistrate participates in raising funds for such an organization, the magistrate must take care to avoid giving the impression that he or she is acting in an official capacity.

(b) A magistrate may make recommendations to public and private fund-granting agencies regarding activities or projects undertaken by such an organization.

Commentary

[1] Arguably the activities covered by this Rule are better described as "extra-judicial" than as "quasi-judicial." This Rule labels them "quasi-judicial," however, because that term is used in the Code of Judicial Conduct's parallel provision. The North Carolina Code of Judicial Conduct, Canon 4, (Nov. 6, 2015).

Rule 5

A magistrate should regulate the magistrate's extra-judicial activities to ensure that they do not prevent the magistrate from carrying out the magistrate's official duties.

A. Avocational activities. A magistrate 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 the magistrate's judicial duties.

B. Civic and charitable activities. A magistrate may participate in civic and charitable activities that do not reflect adversely upon the magistrate's impartiality or interfere with the performance of the magistrate's duties. A magistrate 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 magistrate should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before the magistrate.

(2) A magistrate may be listed as an officer, director, or trustee of any cultural, educational, historical, religious, charitable, fraternal, or civic organization. If a magistrate participates in raising funds for the organization, the magistrate must take care to avoid giving the impression that he or she is acting in an official capacity.

(3) A magistrate 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 magistrate should refrain from financial and business dealings that reflect adversely on the magistrate's impartiality, interfere with the proper performance of the magistrate's judicial duties, exploit the magistrate's judicial position, or involve the magistrate in frequent substantial transactions with lawyers or persons likely to come before the court on which the magistrate serves.

(2) Subject to the requirements of Rule 5.C(1), a magistrate may hold and manage the magistrate's own personal investments or those of the magistrate's spouse, children, or parents, including real estate investments, and may engage in other remunerative activity not otherwise inconsistent with the provisions of these Rules.

(3) A magistrate should manage his or her investments and other financial interests to minimize the number of cases in which the magistrate is disqualified.

(4) Neither a magistrate nor a member of the magistrate's family residing in the magistrate's household should accept a gift from anyone except as follows:

(a) A magistrate may accept a gift incident to a public testimonial to the magistrate; books supplied by publishers on a complimentary basis for official or academic use; or an invitation to the magistrate and the magistrate's 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 magistrate or a member of the magistrate's family residing in the magistrate's 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 magistrates; or a scholarship or fellowship awarded on the same terms applied to other applicants; or

(c) Other than as permitted under this Rule, a magistrate or a member of the magistrate's family residing in the magistrate's household may accept any other gift only if the donor is not a party presently before the magistrate.

(5) For the purposes of this section "member of the magistrate's family residing in the magistrate's household" means any relative of a magistrate by blood or marriage, or a person treated by a magistrate as a member of the magistrate's family, who resides in the magistrate's household.

(6) Information acquired by a magistrate in the magistrate's judicial capacity must not be used or disclosed by the magistrate in financial dealings or for any other purpose not related to the magistrate's judicial duties.

D. Fiduciary activities. A magistrate should not serve as the executor, administrator, trustee, guardian, or other fiduciary, except for the estate, trust, or person of a member of the

magistrate's family, and then only if such service will not interfere with the proper performance of the magistrate's judicial duties.

(1) "Member of the magistrate's family" includes a spouse, child, grandchild, parent, grandparent, or any other relative of the magistrate by blood or marriage.

(2) As a family fiduciary, a magistrate is subject to the following restrictions:

(a) A magistrate should not serve if it is likely that as a fiduciary the magistrate will be engaged in proceedings that would ordinarily come before the magistrate.

(b) While acting as a fiduciary, a magistrate is subject to the same restrictions on financial activities that apply to the magistrate in his or her personal capacity.

E. Arbitration or Mediation Activities. A magistrate should not act as an arbitrator or mediator.

F. Practice of law. A magistrate who is an attorney should not engage in the private practice of law except as permitted in N.C. Gen. Stat. § 84-2.

G. Extra-judicial appointments. A magistrate 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 magistrate may represent his or her country, state, or locality on ceremonial occasions or in connection with historical educational or cultural activities.

Commentary

[1] Although a magistrate may not contemporaneously hold the Office of Magistrate and be engaged in the private practice of law, except to the limited extent permitted in N.C. Gen. Stat. § 84-2, a magistrate may act pro se in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with governmental bodies.

Rule 6

A magistrate may engage in political activity consistent with the magistrate's status as a public official.

A. Definitions. For the purposes of this Rule 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 the person 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 Senior Resident Superior Court Judge, Chief District Court Judge, or Clerk of Superior Court.

(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 that person's efforts to be elected to public office.

B. General Prohibitions. A magistrate during his or her active term in office should not:

(1) act as a leader of or hold an office in a political organization; or

(2) using the title of magistrate, make speeches for a political organization or non-judicial candidate, or use the prestige of the magistrate's office to publicly endorse, support, oppose, or criticize a candidate for non-judicial public office; or

(3) solicit funds on behalf of a political party, organization, or an individual seeking election to a non-judicial office, by specifically asking for such contributions in person, by telephone, by electronic media, or letter; or

(4) endorse a candidate for public office except a candidate for judicial office.

C. Resignation upon Candidacy. A magistrate should resign the magistrate's judicial office prior to becoming a candidate either in a party primary or in a general election for a non-judicial office.

D. Restrictions on Other Political Activity. A magistrate should not engage in political activity inconsistent with the terms of this Rule. A magistrate may not be disciplined under these Rules merely for deciding to support or not to support a particular judicial candidate. This Rule does not prevent a magistrate from engaging in activities described in Rules 4 or 5 or from engaging in any other constitutionally protected political activity.

Commentary

[1] A magistrate's candidacy for a non-judicial elective office such as sheriff or county commissioner could undermine the public's confidence in the magistrate's impartiality, especially if the election is partisan. *See, e.g.*, The North Carolina Code of Judicial Conduct, Canon 7.B.(5), (Nov. 6, 2015) (requiring judges to resign prior to becoming candidates for non-judicial offices).

[2] When seeking support or endorsement, or when communicating directly with an appointing or confirming authority, a candidate for appointment or reappointment as a magistrate must not make any pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office.

[3] Although family members of magistrates are free to engage in their own political activity, including running for public office, there is no "family exception" to the prohibition against a magistrate publicly endorsing candidates for non-judicial elective offices. A magistrate should not become actively involved in a family member's political activity or campaign for non-judicial public office. To avoid public misunderstanding, magistrates should take, and should urge their family members to take, reasonable steps to avoid any implication that the magistrates are using the prestige of their office to further the family member's political agenda or campaigns.

Rule 7

Magistrates should respect the Chief District Court Judge's administrative supervision and authority over them.

A. Discipline. Magistrates may be subject to discipline for:

(1) failing to follow a Chief District Court Judge's administrative directives;

(2) failing to comply and follow the North Carolina Rules of Conduct for Magistrates;

(3) willful misconduct in office;

(4) willful and persistent failure to perform the magistrate's duties;

(5) habitual intemperance;

(6) a conviction of a crime involving moral turpitude;

(7) conduct prejudicial to the administration of justice that brings the judicial office into disrepute; or

(8) engaging in any other conduct that could serve as a basis for removal under N.C. Gen. Stat. § 7A-173.

B. Forms of Discipline. A Chief District Court Judge may discipline magistrates under his or her supervision and authority. Discipline need not be progressive and may include, but is not limited to:

(1) counseling, either orally or in writing;

(2) a recommendation or directive for additional training;

(3) a written warning or reprimand; or

(4) the filing of sworn written charges in the Office of Clerk of Superior Court for the county in which the magistrate was appointed, and participation in subsequent proceedings.

C. Acknowledging Discipline.

(1) If requested by the Chief District Court Judge, a magistrate should sign a statement that sets out any discipline imposed on the magistrate and the basis for that discipline. The magistrate's signature acknowledges receipt of the statement but does not signify agreement with its contents. The magistrate may submit written objections to the statement.

(2) A magistrate's refusal to sign a disciplinary statement as required by Rule 7.C.(1) may constitute a separate violation of these Rules.

Commentary

[1] State law gives each Chief District Court Judge "administrative supervision and authority over the operation of the district courts and magistrates in his district." N.C. Gen. Stat. § 7A-146. The statute lists several examples of that authority. For instance, a Chief District Court Judge may "[a]ssign[] matters to magistrates, and consistent with the salaries set by the Administrative Officer of the Courts, prescrib[e] times and places at which magistrates shall be available for the performance of their duties[.]" *Id.* § 7A-146(4).

[2] Disciplinary records are part of a magistrate's personnel record, except for sworn written charges filed in the Office of Clerk of Superior Court pursuant to N.C. Gen. Stat. § 7A-173 and subsequent filings in any removal proceeding, which are court records. Personnel records are protected from public disclosure in accordance with Article 7 of Chapter 126 of the General Statutes of North Carolina.

These Rules are effective October 1, 2022.

Adopted on September 26, 2022

Andrew T. Heath
Director
Administrative Office of the Courts

A Record of the North Carolina Rules of Conduct for Magistrates

Rules Affected	Key Dates
Complete Rules Set	Adopted 1 October 2021 Effective1 October 2021
Rule 7	Adopted September 26, 2022 Effective 1 October 2022

LegacyTree Genealogists

Degree of Consanguinity

5° = 5 degrees of separation

							Gr (X5) grand-parent 7°
						Gr (X4) grand-parent 6°	Gr (X4) grand-uncles/ aunts 8°
					Gr (X3) grand-parent 5°	Gr (X3) grand-uncles/ aunts 7°	1st cousin 5x removed 9°
				Great-great-grand-parent 4°	Gr-gr-grand-uncles/ aunts 6°	1st cousin 4x removed 8°	2nd cousin 4x removed 10°
			Great-grand-parent 3°	Gr-grand-uncles/ aunts 5°	1st cousin 3x removed 7°	2nd cousin 3x removed 9°	3rd cousin 3x removed 11°
		Grandparent 2°	Grand-uncles/ aunts 4°	1st cousin twice removed 6°	2nd cousin twice removed 8°	3rd cousin twice removed 10°	4th cousin twice removed 12°
	Parent 1°	Aunts & Uncles 3°	1st cousin once removed 5°	2nd cousin once removed 7°	3rd cousin once removed 9°	4th cousin once removed 11°	5th cousin once removed 13°
You 0°	Siblings 2°	1st cousin 4°	2nd cousin 6°	3rd cousin 8°	4th cousin 10°	5th cousin 12°	6th cousin 14°
Children 1°	Nephews/ nieces 3°	1st cousin once removed 5°	2nd cousin once removed 7°	3rd cousin once removed 9°	4th cousin once removed 11°	5th cousin once removed 13°	6th cousin once removed 15°
Grandchildren 2°	grand-nephews/ nieces 4°	1st cousin twice removed 6°	2nd cousin twice removed 8°	3rd cousin twice removed 10°	4th cousin twice removed 12°	5th cousin twice removed 14°	6th cousin twice removed 16°
Great-grand-children 3°	great-grand-nephew/ niece 5°	1st cousin 3x removed 7°	2nd cousin 3x removed 9°	3rd cousin 3x removed 11°	4th cousin 3x removed 13°	5th cousin 3x removed 15°	6th cousin 3x removed 17°

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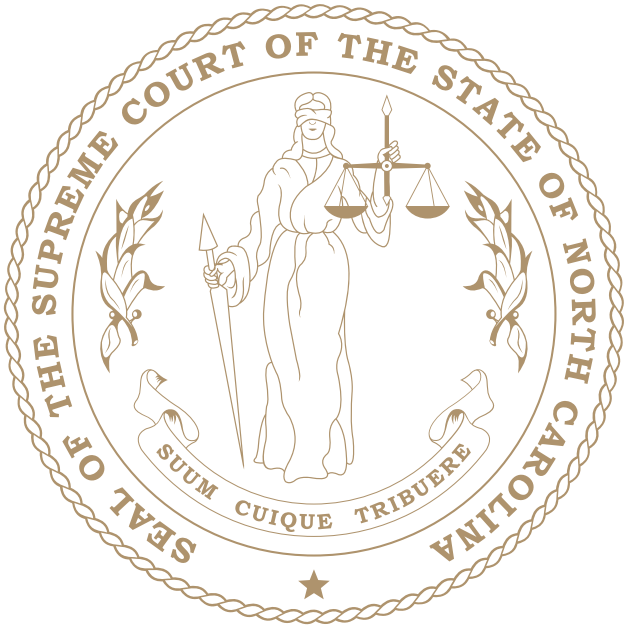
CODE OF JUDICIAL CONDUCT



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CODIFIED BY THE OFFICE OF ADMINISTRATIVE COUNSEL, SUPREME COURT OF NORTH CAROLINA

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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 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.

History Note.

346 N.C. 806; 357 N.C. 671; 360 N.C. 676.

Canon 1.

A judge should uphold the integrity and independence of the judiciary.

A judge should participate in establishing, maintaining, and enforcing, and should personally observe, appropriate standards of conduct to ensure that the integrity and independence of the judiciary shall be preserved.

History Note.

283 N.C. 771; 357 N.C. 671; 360 N.C. 676.

Canon 2.

A judge should avoid impropriety in all the judge's activities.

A. A judge should respect and comply with the law and should conduct himself/herself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge should not allow the judge's family, social or other relationships to influence the judge's judicial conduct or judgment. The judge should not lend the prestige of the judge's office to advance the private interest of others except as permitted by this Code; nor should the judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge may, based on personal knowledge, serve as a personal reference or provide a letter of recommendation. A judge 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.

History Note.

283 N.C. 771; 346 N.C. 806; 357 N.C. 671; 360 N.C. 676; 368 N.C. 1029.

Canon 3.

A judge should perform the duties of the judge's office impartially and diligently.

The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's 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. A judge should be unswayed by partisan interests, public clamor, or fear of criticism.

(2) A judge should maintain order and decorum in proceedings before the judge.

(3) A judge should be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in the judge's official capacity, and should require similar conduct of lawyers, and of the judge's staff, court officials and others subject to the judge's direction and control.

(4) A judge should accord to every person who is legally interested in a proceeding, or the person's 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 the judge.

(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 the judge's 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 the judge's 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 the judge's staff and court officials subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge.

(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. A judge should exercise the judge's power of appointment only on the basis of merit, avoiding nepotism and favoritism. A judge 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/herself in a proceeding in which the judge's impartiality may reasonably be questioned, including but not limited to instances where:

(a) The judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceedings;

(b) The judge served as lawyer in the matter in controversy, or a lawyer with whom the judge 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) The judge knows that he/she, individually or as a fiduciary, or the judge's spouse or minor child residing in the judge's 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) The judge or the judge's 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/herself about the judge's personal and fiduciary financial interests, and make a reasonable effort to inform himself/herself about the personal financial interests of the judge's spouse and minor children residing in the judge's 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/herself from participating in any proceeding upon

the judge's 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 the judge's 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.

History Note.

283 N.C. 771; 346 N.C. 806; 357 N.C. 671; 360 N.C. 676.

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 the judge's judicial duties, may engage in the following quasi-judicial activities, if in doing so the judge does not cast substantial doubt on the judge's capacity to decide impartially any issue that may come before the judge:

A. A judge 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. A judge 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 the judge may otherwise consult with an executive or legislative body or official.

C. A judge 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. A judge may not actively assist such an organization in raising funds but may be listed as a contributor on a fund-raising invitation. A judge may make recommendations to public and private fund-granting agencies regarding activities or projects undertaken by such an organization.

History Note.

283 N.C. 771; 357 N.C. 671; 360 N.C. 676.

Canon 5.

A judge should regulate the judge's extra-judicial activities to ensure that they do not prevent the judge from carrying out the judge's 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 the judge's judicial duties.

B. **Civic and Charitable Activities**. A judge may participate in civic and charitable activities that do not reflect adversely upon the judge's impartiality or interfere with the performance of the judge's 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 the judge.

(2) A judge may be listed as an officer, director or trustee of any cultural, educational, historical, religious, charitable, fraternal or civic organization. A judge may not actively assist such an organization in raising funds but may be listed as a contributor on a fundraising 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 the judge's impartiality, interfere with the proper performance of the judge's judicial duties, exploit the judge's judicial position or involve the judge in frequent transactions with lawyers or persons likely to come before the court on which the judge serves.

(2) Subject to the requirements of subsection (1), a judge may hold and manage the judge's own personal investments or those of the judge's 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/her investments and other financial interests to minimize the number of cases in which the judge is disqualified.

(4) Neither a judge nor a member of the judge's family residing in the judge's household should accept a gift from anyone except as follows:

(a) A judge may accept a gift incident to a public testimonial to the judge; books supplied by publishers on a complimentary basis for official or academic use; or an invitation to the judge and the judge's 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 the judge's family residing in the judge's 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 the judge's family residing in the judge's household may accept any other gift only if the donor is not a party presently before the judge and, if its value exceeds $500, the judge reports it in the same manner as the judge reports compensation in Canon 6C.

(5) For the purposes of this section "member of the judge's family residing in the judge's household" means any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who resides in the judge's household.

(6) A judge is not required by this Code to disclose his/her income, debts or investments, except as provided in this Canon and Canons 3 and 6.

(7) Information acquired by a judge in the judge's judicial capacity should not be used or disclosed by the judge in financial dealings or for any other purpose not related to the judge's 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 the judge's family, and then only if such service will not interfere with the proper performance of the judge's judicial duties. "Member of the judge's 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) A judge should not serve if it is likely that as a fiduciary the judge will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust or ward becomes involved in adversarial proceedings in the court on which the judge 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 the judge in his/her 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/her country, state or locality on ceremonial occasions or in connection with historical, educational or cultural activities.

History Note.

283 N.C. 771; 331 N.C. 771; 357 N.C. 671; 360 N.C. 676.

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 the judge's 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 the judge 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 the judge resides. For each calendar year, such report shall be filed, absent good cause shown, not later than May 15th of the following year.

History Note.

283 N.C. 771; 286 N.C. 729; 308 N.C. 807; 357 N.C. 671; 360 N.C. 676.

Canon 7.

A judge may engage in political activity consistent with the judge's 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 the person 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 nonjudicial 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 that person's 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/herself, 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;

(2) if a judge 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/herself as a member of a political party and make financial contributions to a political party or organization; provided, however, that he/she may not personally make financial contributions or loans to any individual seeking election to office (other than himself/herself) 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/her 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 the judge should resign the judge's 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/herself) 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/her 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.

History Note.

283 N.C. 771; 286 N.C. 729; 289 N.C. 733; 346 N.C. 806; 347 N.C. 685; 357 N.C. 671; 360 N.C. 676; 368 N.C. 1029.

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 the judge's tenure in judicial office.

History Note.

357 N.C. 671; 360 N.C. 676.

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 the judge's prior duties as legal counsel but the judge may not be compensated therefor.

History Note.

283 N.C. 771; 357 N.C. 671; 360 N.C. 676.

Practical Tips for New Judges Making the Transition to the Bench

By Judge Douglas S. Lavine

Hon. Douglas S. Lavine was appointed to the trial bench by Connecticut Governor Lowell P. Weicker Jr. in 1993 and to the Connecticut Appellate Court in 2006 by Governor M. Jodi Rell. The views expressed in this article are strictly his own. He can be reached at Douglas.Lavine@connapp.jud.ct.gov.

Congratulations! You have been appointed to the bench. I can assure you that you will find your new job to be enormously gratifying and challenging. You will have a rare opportunity to use your legal and personal skills, honed by the practice of law, to serve the community. I can honestly say that I have enjoyed going to work on all but a few days of the nearly sixteen years I have been on the bench. Almost all of my judge friends feel the same way.

With your new position comes a significant passage. You are beginning something exciting, but you are also ending an important phase of your life. You will be moving out of your previous comfort zone, one in which you may have had a high degree of control over your daily life and significant confidence in your abilities. In your new milieu, it is likely that almost everyone you deal with—other judges, lawyers, court staff—will initially understand the way the system operates better than you. It will take time to adapt to your new surroundings in what one writer has called the "neutral zone"—a time of reorientation to new circumstances and surroundings.[1] Be patient with yourself. In a relatively short period of time, you will emerge, like the proverbial butterfly from the cocoon, relaxed and confident, ready to fly.

Everyone will call you "Your Honor," doors will be held open, and lawyers will laugh at your jokes—even when they are not funny. *Especially* when they are not funny. You will carry an elevated status in your community, particularly in the legal world you inhabit. People will view you differently, and you will view yourself differently. You will be held to higher, more exacting standards. Everyone will stand when you enter the courtroom. I have a colleague who recalled the first time she headed out onto the bench. Everyone stood. She reflexively turned around, asking herself, "Whom are they standing for?" From now on, they will be standing for *you.* This is heady stuff and can result in a severe attack of early onset robitis, a dreaded disease sometimes afflicting new judges which I will discuss later.

It takes some time to adjust. Presumably, mentors, colleagues, and others you trust will offer advice. Like everyone who came before you, you will need to find your own way. No matter the advice you receive from other judges, every decision you make will be your own. It will become part of your judicial DNA. I wish you the best in ruling on the myriad issues you will confront over the years, issues often critical in the lives of the people who come before you and in the communities in which you live.

I do not claim to have any sage advice when it comes to the art of judging. But in more than fifteen years on the bench—thirteen as a trial judge, and almost three on the Connecticut Appellate Court—I have learned a few things about how to deal with recurring issues, some on the bench and many off, that you are sure to encounter. I claim to speak for no one but myself and underscore that the points raised here are based on my own experiences and observations, and sometimes, mistakes. As a judicial colleague, I hope these nuts-and-bolts suggestions will help you successfully cope with some of the mundane issues that you will face in your new role.

Dealing with Friends

Some people will take your new status in stride. But others, including people you have known your whole life, may act differently. Some acquaintances might be a bit standoffish or appear to be slightly intimidated. Others will tease you about having all the answers. Dealing with lawyer friends and colleagues—people you used to practice with or against—will present special challenges, especially when faced with issues of recusal or disqualification. It is important to be familiar with professional requirements relating to these issues. I recommend speaking to experienced judges with a good sense of local practices and mores before making recusal or disqualification decisions. Of course, judges have a duty *not* to remove themselves from a case merely because a motion has been made. But experience teaches that even if litigants lose their cases, they can accept their disappointment if they think they have had a fair hearing. Appearances matter. Obviously every case is different, but be very careful about remaining in a case if your fairness or objectivity can be reasonably questioned. You must be the guardian of your own reputation for fairness and impartiality.

The Line Between Public and Private Behavior

In a nutshell, it is best, under most circumstances, to act as if this line no longer exists. What I mean is this: whatever you say and do, anywhere and to anyone, can be grist for the mill if it reflects upon your fitness to dispense justice. I suggest the following approach: except, perhaps, when dealing with immediate family and friends, imagine that what you say or do will appear in your local newspaper. Much as you may try, you really cannot be a judge just during the hours you are at court, or in your chambers. You are a judge *all the time.* Let me give a few hypotheticals. (1) Every year, prior to your appointment, you have hosted a big party at which alcohol is served. In the past, if someone was stopped on the way home for a DUI, it might have been a cause for concern. Now, it could mushroom into a major career blemish. (2) In the past, you sat and smiled uncomfortably when someone told an inappropriate joke. Now, doing or saying nothing might be understood by oth-

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ers to be an endorsement of the offensive attitudes expressed by the teller of the joke. (3) In the past, when someone was tailgating at high speeds you might have been tempted to slow down, or yell at them, or gesticulate. Now, taking any of these actions could lead to an allegation that you exhibited "road rage" and lack appropriate judicial temperament. (4) In the past, you might talk freely in an elevator no matter who was in it. Now, any words you utter could have an impact on a case or a juror or could be repeated in another courtroom.

The simple truth is this: the line between private and public behavior has become blurred beyond recognition now that you are a judge. As a judge, you are a public figure. Your private conduct, therefore, is of interest to the public—and the press. Therefore, you must conduct yourself with the utmost care in private matters as well as public.

Requests for Legal Advice

Here is the usual scenario. You are at a party when the friend of a friend approaches you, introduces himself, and states he knows you are a judge. He makes small talk. He says that he knows you are not allowed to give legal advice. Actually, he tells you, he is not seeking legal advice, but he has just one question, and maybe you can assist. It seems that his brother-in-law has been kicked out of the house by his spouse and he wants to go in to get his clothes and other personal belongings. Any problem? Or "a friend's son" got caught in the school bathroom smoking marijuana and was manhandled by the school's personnel. Can't they sue the school? Or his elderly mother got this speeding ticket and . . . . You get the idea. As a lawyer, you have undoubtedly dealt with such questions throughout the years. But as a judge, it becomes more important still that you absolutely, positively say or do nothing that could be construed—or misconstrued—as giving legal advice. First of all, judges are prohibited from giving such advice. Secondly, it is not uncommon for laypeople to misunderstand or misinterpret legal concepts—or to hear what they want to hear. So even if you decide to be polite and give some seemingly innocuous counsel with a disclaimer, the disclaimer is likely to be ignored. The last thing you want to learn is that Joe Smith's friend went into criminal court and told the judge that he went into the house to retrieve his belongings because "Judge Jones told me I could." My advice? Tell the simple truth. Explain that you would like to be of assistance but that you are strictly prohibited, for professional reasons, from giving legal advice. And never, ever succumb to the temptation to do so.

Mentioning that You Are a Judge

Years ago, I worked as an assistant U.S. attorney. Often, I would be sitting next to someone on an airplane and the conversation would be relaxed and friendly until I mentioned that I was a prosecutor. Then everything stopped. I always assumed that people thought that I would initiate a tax investigation if they said the wrong thing. In your new role, people will react differently to you when they learn you are a judge. Some people will want to treat you more favorably because of your position. My advice is to resist, except in social situations where the subject arises naturally, the temptation to tell people that you are a judge unless you are asked. What that means is this. (1) If you are on a waiting list at a local restaurant, do not mention that you are a judge in the hope of getting seated before your time, and don't permit your spouse, significant other, or partner to do so either. (2) If you are pulled over for speeding, do not disclose that you are a judge in the hope of gaining favored treatment. And do not put your judicial credentials next to your driver's license so the officer will inevitably discover that you are a judge. (3) If your spouse has a dispute with the local mechanic because he charged more than he said he would, do not make that angry phone call claiming that, as a judge, you know what he is doing is unlawful, a violation of consumer protection laws, that you decided a case just like this, etc. (4) If your child is arrested for possession of marijuana, do not try to use your status to obtain preferential treatment for him or her. And so on. The bottom line is that the inappropriate use of your position to obtain special treatment is an abuse of power.

Charities

Some people will try to use your presence at an event or your name on a letterhead to raise funds. No matter how worthy the charity or cause, this should be resisted. Check relevant ethical rules, guidelines, and decisions to determine to what extent you can be involved in charitable events, including those with which you have had a long-time involvement.

Political Activities

Different considerations may apply, of course, in states in which judges are elected. But for appointed judges in places like Connecticut, the rule is simple. Political activity is strictly verboten. Avoid rallies, fund-raisers, making contributions, bumper stickers, and signs or posters on your lawn. If your spouse is involved in politics, steer clear of situations in which it appears that you yourself are engaging in political conduct.

Email

It is probable that at home you have received unsolicited email that is offensive to you. Be careful not to allow any such unsolicited material to be forwarded to your work computer. When writing email messages at work, avoid language that would embarrass you if printed in the local newspaper. Tell friends and colleagues *not* to send you jokes, articles, and pictures at work. When online at work, avoid sites or searches that could call up offensive material. Use your home computer to communicate with friends to avoid contamination of your work computer.

Work Interactions

All of your contacts with everyone in the work setting should be polite, professional, and courteous. You are a role model and should set the appropriate tone. This includes lawyers, secretaries, marshals, probation officers, the cleaning crew, family relations officers, stenographers, court reporters, members of the public, foreign visitors, school children on a class trip—virtually everyone. Court systems are huge echo chambers. Everything you say and do is grist for the mill. Rumors and anecdotes fly from court to court. If you are rude or inconsiderate, that will be known to everyone quickly. Jokes or comments that might have been appropriate in your past life, when talking to longtime associates or employees, are better left unsaid in your new role.

Discussing Cases or Opinions in Public

The scenario is a familiar one. You are out to lunch with judge friends and the discussion turns to a trial you are presiding over. You offer a few tart opinions on the performance of a lawyer or the merits of the case. Oops! You didn't notice, but in the next booth is the very lawyer you have been discussing, or the plaintiff, or a juror. The prospect of a mistrial in your first trial now dangles before you. Be very, very discreet when discussing legal matters, particularly a case, with a colleague. Talking about cases or decisions in a public setting—a restaurant, a hallway, an elevator—frequently invites disaster. Similarly, do not leave files, drafts of opinions, or anything else relating to a case lying around—in a car, at a restaurant, or anywhere.

Ruling Before You Are Ready

Your job is now to analyze arguments and make decisions. In a variety of settings, the problems requiring a decision will come at you very quickly. Nonetheless, my advice is to never rule unless you are comfortable with what you are doing. It is often said that lawyers prefer a timely decision, any decision, even if it is at odds with their positions, to being forced to wait. And there will be times when numerous factors—a heavy docket, a crowded court, the presence of people who have come from a long distance to attend a proceeding—will militate toward just ruling and moving on. I am *not* counseling timidity or indecision. But if that little internal voice that sometime speaks to you tells you that you are not ready to rule, listen to it. Take a recess. Hear more argument and think it over. Seek out advice from a senior colleague. Order additional briefs. Or just sleep on it. Very few decisions are so urgent that they cannot wait a few more hours or days.

Expressions of Personal Opinions on the Bench

During my first judicial assignment, a crusty veteran gave me two bits of advice. First, he said, always stop in the bathroom before going out onto the bench. Second, KYBMS—Keep Your Big Mouth Shut. I leave to you whether you choose to follow his first bit of advice. But over the years I have come to appreciate his blunt advice about keeping personal comments and observations to an absolute minimum. Pleasantries are okay. Occasional conversation can be alright. But always remember that we are *not* being paid to express our personal or political views on the matters of the day or share our thoughts on the pennant race, the state of the economy, or anything else. Nor are we a sort of master of ceremonies in a robe, presiding over an entertainment event. Except for court personnel, lawyers and the like, the people in the courtroom almost always do not want to be there. They are a captive audience. It is, frankly, somewhat egocentric to think otherwise and an abuse of your authority to force people to listen to opinions they would just as soon not hear.

Humor on the Bench or in Written Opinions

Off the bench, a lively and irreverent sense of humor can be charming. I used to think I was funny until my now-twenty-two-year-old daughter somewhere back in the eighth grade or so stopped laughing at my jokes and just sighed. But on the bench, or in written opinions, joke-telling runs the risk of detracting from the solemnity of the proceedings, being boorish, and veering off into abusiveness. A joke—particularly at someone's expense—may earn you snickers from some observers, but what seems funny to you will be deeply offensive to someone else. Criminal defendants, litigants in a divorce, plaintiffs in a malpractice case, and others forced into court, see nothing at all humorous about their situation. Never forget that for most people, a court case represents a traumatic event and frequently involves matters of the utmost importance in their lives. Even when you are acting with the best of intentions or trying to lessen the tension in the courtroom, attempts at humor are almost always likely to be misunderstood. My advice? Avoid the laugh lines; think it, but don't say it. The same applies to written opinions. Jokes, or opinions in verse, may seem clever when written, but they are not likely to seem funny to the people on the receiving end whose cases you are deciding.

Treating Everyone with Courtesy and Respect

You should strive to treat everyone—underline *everyone*—with patience, courtesy, and respect. This includes the corporation president and the convicted felon, the elderly alcoholic and the star athlete, the pro se litigant and the top flight lawyer. You speak for the community, so at times, you will be required to make harsh decisions—particularly when sentencing defendants convicted of serious crimes. But even as you voice the community's concerns, there is never a reason to treat any-

one with disrespect or deprive a person of inherent human dignity or make him or her the butt of jokes or derogatory remarks. Your job is to set the appropriate tone of dignity and fairness in the courtroom and to apply the rules fairly to everyone.

Dealing with the Media

How do you deal with the media? With extreme care. This is particularly the case if you receive a call asking you to comment on a pending matter. In most, if not all, jurisdictions, judges are prohibited from commenting on a pending case. In many jurisdictions, the judicial branch will have designated a person to handle calls and manage press relations. If you are uncomfortable returning reporters' calls, you can delegate that job to someone else. However, as a former reporter who covered legal matters, I can attest to the fact that often reporters are working under tight deadlines. Therefore, even if you cannot or do not wish to comment, the courteous thing to do is to return the call personally or to direct someone else to do it so that the reporter is informed that you cannot, or will not, comment.

Robitis

We turn now to the dreaded disease, robitis. Robitis is defined as a condition that befalls a judge when he or she dons a robe which causes the judge to assume a self-important, arrogant attitude. In your years in practice, you have undoubtedly practiced before judges with this dreaded affliction. Robitis can be fatal to a judge's career. Friends and colleagues will probably be reticent to tell you if you have come down with it. Figure out a way to have someone—perhaps a mentor or more experienced colleague who you respect—close the door and tell you if you are showing symptoms of the disease. Comments from lawyers and jurors, if you have access to them, can be helpful. If you see a recurring theme emerging in these comments, resist the human urge to resent them and ignore them. Also try to step outside of yourself—mentally—on occasion, look dispassionately down at your own behavior, and ask yourself if you like what you see. Your work is important; take it seriously. Try not to take yourself too seriously. A touch of humility goes a long way. So does a willingness to acknowledge that you have made a mistake or misunderstood an argument or would like to be educated on a point of law.

Ethical Concerns

You must be the guardian of your own integrity and reputation. Friends and family may ask you to do things not understanding that a different set of rules applies to you. My wife still makes fun of me when we are walking our dogs because I refuse to walk over a small patch of waterfront property near our home that has a "No Trespassing" sign posted. Explain to your family in emphatic terms that you are now living under a set of rules that is different from other people's and that you need to be scrupulous in ways that others may find excessive. Periodically review the Code of Judicial Conduct. When in doubt about the propriety of conduct, check with a senior colleague or a designated person in your judicial branch. Keep your ethical antennae up. Never do anything if you have qualms about its propriety.

A Final Comment

Again, congratulations to you. I guarantee that you will love being a judge. It is an honor and a privilege to be appointed or elected a judge. It is also a great responsibility. I wish you the best. I hope these suggestions are helpful to you as begin this exciting passage.

Endnote

1. WILLIAM BRIDGES, TRANSITIONS: MAKING SENSE OF LIFE'S CHANGES (1980).

JUDICIAL ETHICS AND SOCIAL NETWORKING SITES

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August 2012 (Updated)

One of the significant developments in communication in recent years is the astounding growth of social networking websites. Huge numbers of people have joined Facebook or LinkedIn or Twitter or other on-line social networks as a means to notify others of news in their lives, to learn what their friends and relatives and acquaintances are doing, and to generally stay in touch with other people with whom they have something in common. Businesses, organizations and government agencies use social networks to communicate information about their products and services and get limited feedback. For individuals, and for some kinds of organizations, the appeal of such sites is the opportunity for ongoing back-and-forth communication among large groups of people. Typically a social network allows someone to post a profile and photographs, videos, music, etc., and invite others to become "friends" or "fans." Some information may be shared with the whole world; other parts may be restricted to a select, small group.

As with the general population, the number of judges using social media sites continues to increase. A 2012 report says that 46.1 percent of judges surveyed use a social media profile site. Among those judges, Facebook is most popular, being the choice of 86.3 percent of the users.

For some time now state bar regulatory agencies have been addressing the effect of electronic communication on traditional ethical rules for lawyers — the extent to which law firm websites constitute advertising, whether e-mail inquiries establish an attorney/client relationship, and so on. Likewise, judges hearing cases have faced new legal issues involving electronic discovery and searches of computers. Judges are becoming familiar, too, with problems of jurors communicating with the outside world and conducting their own research via their smart phones and other devices.

Until recently, though, there has been relatively little reference material for judges concerning their own social networking and the Code of Judicial Conduct. The purpose of this paper is to share some information addressing questions of judges' personal use of social networks. I welcome any additional material anyone knows about.

Judges' use of social networks

A good overview of social networking issues for judges appears in an April 30, 2010, on-line article from Slate entitled "Tweet Justice." The article reports that some judges search Facebook and other sites to check on what lawyers and parties are up to, and it tells of one judge who requires all juveniles appearing before her to friend her on Facebook or MySpace so she can monitor their activities. As the article says, the new social media can generate ethical issues for judges. One question is the appearance created by a judge and lawyer "friending" each other on a social network. Another potential pitfall is the increased opportunity for ex parte communication. The article cites a North Carolina judicial discipline case arising from a Facebook friendship.

North Carolina disciplinary case

The North Carolina disciplinary case mentioned in the Slate article is an April 2009 reprimand issued by the Judicial Standards Commission. The judge and lawyer had decided at the beginning of a child custody/support proceeding to friend each other on Facebook and then exchanged comments about the case on the social network. That contact led to the reprimand for ex parte communication. The judge was also reprimanded for his independent research on the parties, without informing either side, through his visits to the wife's business website, a photography business where she posted both photographs and poems.

Articles about judges and social networks

For another example of how a judge's use of Facebook can lead to trouble, there is the resignation of Georgia judge Ernest Wood as reported in both the ABA Journal.

Another example, also reported in a local newspaper, involves a lawyer who served as a substitute judge in North Las Vegas. He was removed from the office once the district attorney discovered that the judge's MySpace page said one of his personal interests was "Breaking my foot off in a prosecutor's ass."

There are also two articles on social networking in American Judicature Society publications, but they are not on-line. One is "Judges and Social Networks" in the Judicial Conduct Reporter, Vol. 32, No. 1, p. 1. The other is "The Too Friendly Judge? Social Networks and the Bench," by Cynthia Gray in *Judicature* magazine, Vol. 93, p. 236 (May-June 2010).

Ethics opinions

The question of whether judges may join social networks and whether they may be social networking friends with lawyers, law enforcement officers and others now has been addressed

by eight state ethics committees. All the opinions say that judges may join social networks, but they disagree on the propriety of friending lawyers. Florida, Oklahoma and Massachusetts say no; New York, Kentucky, South Carolina, Ohio and California say yes, though usually with qualifications. All the opinions warn judges about the potential pitfalls of social networks for embarrassment and damage to the dignity and integrity of the office. The short reviews of the ethics opinions below explain the issues that may arise under the Code of Judicial Conduct.

Florida

The Florida Supreme Court's Judicial Ethics Advisory Committee's opinion 2009-20, issued on November 17, 2009, received a great deal of publicity because it was one of the earliest opinions and because it concluded that judges may not add lawyers as friends on a social network. The opinions from several other jurisdictions have taken a different view, as discussed below.

The Florida committee opined that a judge could join a social network and post comments and other materials so long as the material did not otherwise violate the Code of Judicial Conduct, but that the judge could not add as friends lawyers who appear before the judge, nor allow lawyers to add the judge as a friend. The committee further said that a judge's election campaign committee could post material on a social network and could allow lawyers and others to list themselves as "fans," provided the judge or campaign committee did not control who could list themselves in that manner.

The committee's concern was that the judge's acceptance of a lawyer as a friend on the judge's page on the social network would violate the canon which prohibits a judge from conveying the impression, or allowing others to convey the impression, that a person is in a special position to influence the judge. The comparable provision in North Carolina's Code of Judicial Conduct is in Canon 2B. The Florida's committee noted that being listed as a friend as the term is used on social network would not necessarily mean that the lawyer actually was in a special position, but the listing would convey that impression.

The original Florida opinion generated additional inquiries resulting in three follow-up opinions. The first is Opinion Number 2010-04 which advises that judicial assistants may add as Facebook friends lawyers who may appear before the judge for whom the assistant works, so long as the assistant's Facebook activity is conducted independently of the judge and does not mention the judge or court.

The next Florida opinion, Number 2010-05, advised that candidates for judicial office are not subject to the original opinion and that they, thus, may add as Facebook friends lawyers who are likely to appear before them if elected. The opinion is based on the wording of the Florida Code of Judicial Conduct which specifies the portions that apply to candidates.

Finally, the Florida Judicial Ethics Advisory Committee revisited and reiterated its support for its original opinion on March 26, 2010, with Opinion Number 2010-06. The new opinion was prompted by several inquiries, two of which proposed disclaimers on judges' Facebook pages and one of which asked about an organization's Facebook page. The committee advised, first, that a judge who is a member of a voluntary bar association which uses a Facebook page may use that page to communicate with other members, including lawyers, about the organization and about non-legal matters, and does not have to "de-friend" lawyer members who might appear before the judge. The opinion emphasized that the organization, not the judge, controlled the Facebook page and decided which friend requests would be accepted and rejected.

One judge asked whether the concerns expressed in the original opinion could be addressed by including a disclaimer on the judge's Facebook page stating that (a) the judge would accept as a friend anyone the judge recognized or who shared a number of common friends; (b) the term "friend" does not mean a close relationship; and (c) no one listed as a friend is in a position to influence the judge. Another judge inquired about a similar approach, proposing to state on the judge's Facebook page that the judge would accept as a friend all lawyers who requested to be added.

The Florida committee rejected both proposals and stuck to its original opinion. The committee majority said that the disclaimer failed to cure the impression that a lawyer listed as a Facebook friend had special influence. The majority observed that lawyers who chose not to use Facebook would not be listed as friends and that there was no assurance that someone viewing the page would see or read the disclaimer. A minority of the committee wrote a dissent, calling for withdrawal of the original opinion, arguing that judges are not prohibited from having lawyers as friends in the historic sense of the word and that adding a lawyer as a Facebook-defined friend creates no stronger impression of special influence than does ordinary socializing. The minority would advise that a judge may accept lawyers as Facebook friends and that any motion to require the judge to recuse because of that relationship would need to include additional specific allegations supporting the impression of special influence.

South Carolina

In October 2009 the South Carolina Advisory Committee on Standards of Judicial Conduct issued Opinion 17-2009. With little discussion the committee said that a magistrate may join Facebook and be friends with law enforcement officers and court employees so long as the site is not used for discussion of judicial business.

New York

More extended discussions, tending toward the same result as South Carolina but with more helpful analysis and discussion, have come from New York, Kentucky, Ohio and California. The gist of Opinion 08-176 of the New York Advisory Committee on Judicial Ethics, issued on January 29, 2009, is that there is nothing fundamentally different about a judge socializing through a social network and socializing in person, and nothing fundamentally different about communicating electronically rather than face to face. The key question for the committee was not whether a judge could join a social network but how the judge behaves on the network. The judge, said the committee, needs to be aware of the public nature of comments posted on such a site; the potential of creating the appearance that a lawyer who friends the judge will have special influence; and the likelihood that people might use the judge's social network page to seek legal advice. The committee observed that in some ways allowing a person to become a friend on a social network is no different than adding the person's contact information to a Rolodex, but still cautioned that when combined with other circumstances the friending can lead to the appearance of a close social relationship requiring disclosure or recusal.

Kentucky

One of the most extensive opinions is Formal Judicial Ethics Opinion JE-119 issued on January 10, 2010, by the Ethics Committee of the Kentucky Judiciary. The Kentucky committee does not believe that being designated a friend on a social network by itself conveys an impression of a special relationship. The committee repeats the cautions of the New York opinion, though, and notes that "social networking sites are fraught with peril for judges . . . ." Personal information, photographs and comments that might be appropriate for someone else may not satisfy the higher standards for judges. The committee also warns of the problem of ex parte communications and cites the North Carolina reprimand.

California

Opinion 66 from the Judicial Ethics Committee of the California Judges Association, issued on November 23, 2010, is well written and useful. The California committee concludes, with qualifications, that a judge may join a social network, even one which includes lawyers who may appear before the judge, but the judge must disclose the social network connection and must defriend the lawyer when the lawyer has a case before the judge.

As to whether a judge may friend a lawyer, the committee answers that it depends on the nature of the social network and whether the lawyer has a case before the judge. If the social network is one limited to the judge's relatives and a few close colleagues and it is used for exchanging personal information, for example, the likelihood will be greater that the lawyer appears to have special influence. There is much less risk, by comparison, when the social

network involves individuals and organizations interested in a particular subject or project, say a sports team or a charitable project, and the exchanges are limited to that topic. Regardless of the nature of the social network, however, the California opinion says the judge should always disclose that the judge has a social network tie to a lawyer and must recuse from any case in which a friend from the first kind of network, the more personal one, is participating. Even for the second kind of social network, the less personal one, the judge should de-friend the lawyer when the lawyer appears in a case before the judge.

One issue the California opinion addresses but others do not is the judge's obligation when others post comments on the judge's personal social network page. The committee says that the ethical obligation to avoid the appearance of bias requires the judge to monitor the judge's page frequently for such comments and to delete the comments, hide them from public view or otherwise repudiate anything others say that is offensive or demeaning. Leaving comments on the page can create the impression that the judge has adopted the comments.

The California opinion also admonishes judges to not create links to political organizations or others that would amount to impermissible political activity. And the judge must be careful not to lend the prestige of the office to another by posting any material that would be construed as advancing that other person's interest.

Finally, the opinion admonishes judges to be familiar with a social network's privacy settings and how to modify them. And the judge should be aware that other participants in the social network may not guard privacy as diligently and may thereby expose the judge's comments, photographs, etc., to others without the judge's permission.

Ohio

The Ohio opinion is Opinion 2010-7, issued December 3, 2010, by the Ohio Supreme Court's Board of Commissioners on Grievances and Discipline. It is the last opinion in the list of 2010 opinions.

The Ohio opinion observes that there is no prohibition on a judge being a friend of a lawyer who appears before the judge, thus friending on-line cannot be an ethics violation by itself. The opinion notes the special risks associated with social networks for judges and advises that: (a) the judge must be careful to maintain the dignity of the office in every comment, photograph, etc., posted on the site; (b) a judge should not interact on social networks with individuals or organizations whose advocacy or interest in matters before the court would raise questions about the judge's independence; (c) the judge should not make any comments on a site about any matter pending before the judge; (d) the judge should not use the social network for ex parte communications; and (e) the judge should not undertake independent investigation of a case by visiting a party's or witness' page. Finally, the Ohio opinion advises judges to consider

whether interaction with a lawyer on a social network creates any bias or prejudice concerning the lawyer or a party.

Oklahoma

The Oklahoma Judicial Ethics Advisory Board issued its Judicial Ethics Opinion 2011-3 on July 6, 2011. Oklahoma supports the Florida point of view, that while a judge may participate in social networking sites the judge should not be social network friends with lawyers, law enforcement officers, social workers or others who may appear in the judge's court. In the panel's view such a relationship can convey the impression that the person is in a special position to influence the judge. It is immaterial whether the person actually is in such a position, it is the possible impression that matters, and in the opinion of the Oklahoma committee, "We believe that public trust in the impartiality and fairness of the judicial system is so important that [it] is imperative to err on the side of caution where the situation is 'fraught with peril.'"

Massachusetts

The last opinion issued is CJE Opinion No. 2011-6 from the Committee on Judicial Ethics of the Massachusetts Supreme Judicial Court. Massachusetts relies on the Florida analysis in concluding that a judge may join a social network site but may not friend any lawyer who appears before the judge. "Stated another way, in terms of a bright-line test, judges may only 'friend' attorneys as to whom they would recuse themselves when those attorneys appeared before them." Friending creates the impression, Massachusetts concludes, that the lawyer is a special position to influence the judge.

The Massachusetts opinion repeats briefly the warnings from other opinions about the posting of embarrassing photographs, the avoidance of ex parte communications, and the like, and also adds a new caution. It tells judges not to identify themselves as judges on the social network site, nor allow others to do so. Such identification would run afoul of the code provisions against using the prestige of the office to advance private interests, in addition to the problem of creating an impression that others are in a special position to influence the judge.

Summary

Although the number of opinions about judges and social networks is still small, there does seem to be a consensus building on several issues. There appears to be general agreement among the ethics committee that:

(1) Judges may join on-line social networks.
(2) Social networks create opportunities and temptations for ex parte communication that judges must be careful to avoid.

(3) Judges are still judges when posting materials on their social networking pages and need to realize that the kinds of comments and photographs posted by others may not be appropriate for them.
(4) Judges need to avoid on-line ties to organizations that discriminate, just as they are prohibited from joining such organizations.
(5) Judges also need to avoid on-line ties to organizations that may be advocates before the court.
(6) Judges need to avoid posting comments on social network sites or taking other actions on such sites that lend the prestige of the judge's office to the advancement of a private interest.

The ethics committees divide most sharply on the issue of a judge accepting a lawyer as a friend on a social network. The majority of the states opining on the issue to date conclude that friending does not by itself establish such a relationship as to imply that the lawyer has special influence and does not by itself require the judge to recuse from cases with that lawyer, although they recognize that a social network friendship may create such problems when combined with other circumstances. In the view of those states, being a friend of a judge on a social network is no different than being a friend in person and does not by itself lead to automatic recusal. On the other hand, the ethics committees of three states have concluded that a social network friendship is sufficiently likely to create the impression of special influence that it should be barred. Although such an impression of favoritism may be mistaken, the approach of those ethics committee is to err on the side of caution when it comes to appearances of fairness.

Judges also should be aware of the security issues that come with social networking. A judge's page on Facebook or MySpace or other social network can provide lots of information to someone who is dissatisfied with the judge's decisions and wants to do harm.

8/10/12

Judicial ethics and discipline

A blog of the Center for Judicial Ethics of the National Center for State Courts

Interesting posts

Posted on May 21, 2019 by graycynthia

Several judicial discipline cases warn judges to resist the temptation to create social media posts that may interest or entertain the readers but do not reflect well on the dignity of the judiciary.

For example, one judge began a post with: "In the category of, You can't make this stuff up!" The post purported to be a verbatim account of his conversation with the tenant in an eviction proceeding involving drugs found in an apartment. (Instead of names, the judge referred to the individuals by their role in the case – "landlord," "tenant," etc.)

A maintenance man testified to finding powder that tested positive for cocaine under the bathroom rug in the tenant's apartment. The tenant testified that the heroin was not his — cocaine, not heroin, was his drug of choice and he keeps all of his drugs in a safe. When asked how the heroin got into his apartment, the tenant said, "I don't know. Maybe one of the hookers I had in my apartment left it."

The post ended: "Needless to say, the Court ruled in favor of the landlord."

When one of his Facebook friends asked if this was a true story, the judge posted: "Yes. It goes without staying but the tenant wasn't the brightest bulb in the chandelier."

Publicly reprimanding the judge, the Arizona Commission on Judicial Conduct found that the post and reply "mocked the

intelligence level of the tenant," creating an appearance of impropriety and diminishing public confidence in the judiciary. *Urie*, Order (Arizona Commission on Judicial Conduct June 12, 2018). *See also Massachusetts Advisory Opinion 2016-9* (judge should not tweet about a defendants using profanity or throwing urine and feces at a judge because "a reasonable person may perceive these posts to be needlessly offensive, or as making light of behavior by litigants who may have mental health problems").

In publicly reprimanding a judge for comments posted on his Facebook page, the Minnesota Board on Judicial Standards found that the judge had "put his personal interest in creating interesting posts ahead of his duty to maintain the appearance of impartiality." *In the Matter of Bearse*, Public reprimand(Minnesota Board on Judicial Standards November 20, 2015).

n one post, the judge had stated: "[L]isten to this and conclude that lawyers have more fun than people." He then described a medical school graduate's petition to expunge her disorderly conduct conviction based on her assault on her boyfriend after she found him having sex with her best friend. He explained that he had granted the petition even though it was filed about 2 years early under the statute and he would probably be reversed if the prosecution appealed." Comments on the post included: "I am always heartened by the application of common sense. An excellent decision, in my opinion," and "You're back in the saddle again Judge."

Those favorable comments, the Board stated, created the appearance that the judge's decisions "could be influenced by the desire to make a good impression of himself on his Facebook page."

The West Virginia Judicial Investigation Commission publicly admonished a judge for posting on his Facebook page a photo that showed him arraigning a woman on felony charges of forging her dying mother's will to inherit more than $1,000,000. *Public Admonishment of Hall* (West Virginia Judicial Investigation Commission October 31, 2017). The photo came from a story run by a television station about the case. The caption underneath the photo read, "Police: Woman Exploits over One Million Dollars from Dying Mom," and the news logo appeared to the right of the heading.

The post elicited comments from members of the public, including "[d]isgusting," "[h]ang 'em high Brent," "[h]opefully you set a high bond," and "I didn't think anything could be lower than rescinding DACA. I was wrong." Some comments expressed support for the judge's handling of the arraignment,

such as “[g]o Brent” and “[g]et ‘em Brent,” and “[t]hat face! Good one.”

The judge argued that, because the photo did not include “any comment, opinion, or statement,” it was not a comment about a pending case. The Commission strongly disagreed.

There is an old maxim that “a picture is worth a thousand words.” The saying is deigned to convey the concept that a single image often expresses an intricate idea better than any written description. By placing that still photo on his Facebook page, Respondent expressed to his Facebook friends the woman’s perceived guilt in a louder voice and in a more certain tone then if he had actually written the words himself.

The Commission emphasized that the judge’s post was “designed to elicit responses from his friends because that’s what Facebook is meant to be – an alternate public means of communication.” The Commission noted that the largely negative comments were “no surprise” and the judge’s “failure to remove them constituted a tacit endorsement,” concluding he had acted in a way that was “contrary to the neutral and detached demeanor of all judges but . . . undoubtedly popular with his friends.”

Small Claims Procedure

THE TEN MANDATORY RULES OF SMALL CLAIMS PROCEDURE

1. You must have subject matter jurisdiction.

2. You must have jurisdiction over the defendant, either through service of process or voluntary appearance.

3. A party may appear only *pro se* (on his or her own behalf) or through an attorney unless an exception applies.

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

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

6. Every action must be brought in the name of the real party in interest (rpii). If the plaintiff is not the rpii, the court must allow the plaintiff an opportunity to correct the error, continuing the case if necessary.

7. If defendant files a petition for bankruptcy, the small claims magistrate must stop the trial, discontinuing the action (using G-108) until the automatic bankruptcy stay is lifted.

8. Whether or not the defendant is present at trial, plaintiff must prove the essential elements of the case by the greater weight of the evidence (subject to one exception).

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

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

Small Claims Procedure/Basic School Study Guide

1. List the 3 requirements for a case to be heard in small claims court:

   _____

   _____

   _____

2. If the defendant has not been served when you call the case for trial, what should you do?

   _____

   Does your answer change if the defendant is present in the courtroom?

   _____

3. The defendant has been served, but is not present in the courtroom when you call the case for trial. What do you do?

   _____

   _____

4. In a small claims action for money owed, the defendant was served on Friday, July 7, and the trial is held Monday, July 10. The defendant is not present in court. What do you do?

   _____

   Is your answer different if the action is for summary ejectment?

   _____

5. In a small claims action, defendant's attorney has filed a motion to dismiss "pursuant to GS 1A-1, Rule 12(b)(6) for failure to state a claim upon which relief may be granted." What do you do?

   _____

6. In a small claims action for summary ejectment, the plaintiff/landlord does not appear in court, but instead sends her secretary. The secretary shows you a document giving her power of attorney to act on behalf of her employer. The defendant is present and asks you to dismiss the case. What do you do?

   _____

7. What difference does it make whether a case is dismissed with prejudice or without prejudice?

_____

8. In a summary ejectment action the plaintiff-landlord submits an SCRA affidavit stating that the plaintiff has been unable to determine whether the defendant-tenant is in the military. Attached to the affidavit is a DoD website printout indicating that the person's status is unknown, and the landlord explains that s/he does not know the birthdate or social security number of the tenant, John Smith. Do you accept the affidavit as sufficient?

_____

9. Would you say that the formal rules of evidence apply strictly or leniently in small claims court? Give a reason for your answer.

_____

10. What is the most common example in small claims court of a violation of the real party in interest rule? What should a magistrate do when a violation occurs?

_____

11. What AOC form should you use if you learn that the defendant has filed for bankruptcy? _____

12. What should you do if the plaintiff checks the wrong box on the complaint form?

_____

13. List the four steps for announcing your judgment in open court:

_____

_____

_____

_____

14. What should you do if, at the end of the evidence, you're not sure about your decision?

_____

How would you go about it?

_____

15. List the two things a party must do to appeal your decision, and explain in a few words what information you would give them about that.

_____

_____

_____

_____

_____

16. Imagine that after you've entered judgment, you realize that you made a legal error in your decision. What should you do?

_____

What remedy is available to the party who is hurt by your error?

_____

17. Assume that you have been authorized by your chief district court judge to consider motions under Rule 60(b)(1) to set aside small claims judgments. Give an example of a typical situation in which you might grant such a motion.

_____

_____

SMALL CLAIMS PROCEDURE

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

IS IT A SMALL CLAIMS ACTION?

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

Not Coercive Judgment
Not Action to Recover Real Property

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

Does at least one Δ reside in your county?

Amount in Controversy Rules

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

~ Claim-splitting is not allowed.

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

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

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

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

Q: Where does a corporation "reside"?

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

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

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

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

HAS Δ BEEN SERVED?

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

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

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

Service on a Corporate Δ:

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

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

HAVE ANY OTHER DOCUMENTS BEEN FILED WITH THE CLERK?

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

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

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

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

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

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

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

notice of the new trial date and time.

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

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

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

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

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

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

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

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

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

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

BEFORE YOU HEAR THE EVIDENCE

Complete the *Pre-Trial Checklist*

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

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

Who is an authorized representative? The party's attorney

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

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

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

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

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

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

Q: What do these terms actually mean?

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

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

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

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

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

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

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

Q: What is a legally sufficient affidavit?

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

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

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

Q: Who determines whether an affidavit is sufficient?

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

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

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

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

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

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

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

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

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

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

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

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

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

AT THE BEGINNING OF TRIAL

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

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

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

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

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

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

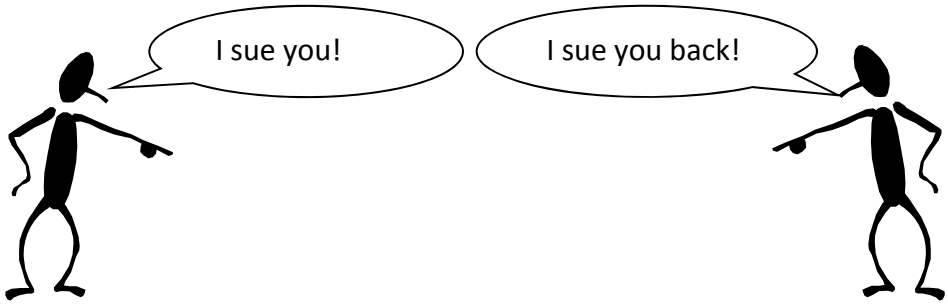
Rule: π can dismiss the case at any point before s/he has finished presented evidence. Use AOC-G-108 to record the dismissal.

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

Q: What's a counterclaim?

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

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



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

Rules for Counterclaims

Must not exceed $10,000.

Must be in writing.

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

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

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

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

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

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

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

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

One of the parties requests a continuance.

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

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

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

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

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

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

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

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

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

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

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

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

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

HEARING THE EVIDENCE

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

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

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

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

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

Trying a Case with a Counterclaim

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

Amending the Complaint

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

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

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

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

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

Q: What is the procedure for amending a complaint?

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

Entering Judgment and Other Post-Trial Issues

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

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

Q: What's the procedure for reserving judgment?

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

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

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

Steps in Entering Judgment

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

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

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

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

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

Appeal

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

Q: What is trial *de novo*?

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

Q: What is the procedure for appeal?

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

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

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

Q: What happens after the small claims judgment?

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

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

Motions to Set Aside Judgment under Rule 60(b)

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

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

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

Q: Who conducts the hearing?

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

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

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

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

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

Appendix

Bullet-Point Outlines (Parts 1, 2, & 3)
Pre-Evidence Checklist
Points to Remember in Making Decisions About
Evidence A Note on Dealing with Attorneys
Small Claims: What Lawyers Need to Know
What Happens After Small Claims Court
Sample Judgment for Plaintiff

Content Outline for Basic School: Small Claims Procedure, Part 1

Sources of law

GS Ch. 7A, Art. 19 is primary source of procedural rules applicable in small claims court. The NC Rules of Procedure set out in GS 1A-1 apply to all civil actions unless a different rule is specified and so "fill in the blank" for small claims when Art. 19 is silent. In addition, GS Ch. 42 contains some special procedural rules for summary ejectment cases.

Procedural Issues That Might Come Up Before Trial

Do you have authority to hear this kind of case? MR#1 Subject-matter jurisdiction

Is it a small claims case?

___ Remedy is money, recovery of property, or SE

___ Not available if value exceeds $10K

___ At least one defendant must reside in county

If a case does not meet the requirements to be assigned to small claims court, a magistrate does not have jurisdiction to rule and any judgment entered will be void.

Do you have authority over this defendant? MR#2 Personal jurisdiction

Has the defendant been served?

___ Check back of summons for return of service.

___ Usually sheriff, but also by certified mail/UPS, etc

___ No service? Allow t π to continue to attempt service unless π wants voluntary dismissal

OR

Has the defendant voluntarily appeared? Usually by showing up, but may also be other action, such as filing answer, counterclaim, or motion for a continuance.

If a defendant has not been served and does not appear, a magistrate does not have authority to enter a judgment against that defendant, and any judgment entered will be void.

Before You Begin Hearing Evidence

Who will present the case for π and Δ? MR#3 Only party or att'y unless exception applies.

General rule: Unless parties choose to represent themselves, they must be represented by an attorney. Individuals who are not attorneys are engaging in the unauthorized practice of law when they attempt to represent a party in court.

Exception #1: An LLC, corporation, or limited partnership may appear in small claims court, and on appeal to district court, through an agent (quite often, an employee with personal knowledge of the matters alleged in the complaint).

Exception #2: In an action for SE or related money damages, an agent with personal knowledge of the matters alleged in the complaint may sign the complaint and appear in court on behalf of an owner of rental property.

Content Outline for Basic School: Small Claims Procedure, Part 2

Before You Start Trial, cont'd

(If defendant is not present): Do you have a satisfactory SCRA affidavit? MR#4.

Affidavit must be satisfactory to you.

If it indicates that Δ is not in military, and does not have DOD website info attached, you must consider whether π has provided sufficient reason to support this finding.

If it indicates that π is unable to determine, affidavit should provide additional information as to reason.

If Δ is in military, follow local procedure for appointment of attorney and continue case for 90 days.

Was defendant served at least 5 business days (i.e., one week) prior to trial? MR#5.

If minimum notice requirement not met, continuance is required unless defendant affirmatively waives.

Note special rule for SE: 2 days minimum notice.

As Trial Begins . . .

Is someone missing?

If defendant has been served but does not appear, the plaintiff must present evidence sufficient to prove each essential element of the case in the same way as if the defendant were present. (MR#8)

If defendant is present and neither plaintiff nor authorized representative is present, dismiss the case with prejudice.

If neither party is present, follow local practice.

Is plaintiff the real party in interest? MR#6.

If not, do not dismiss, but instead continue case to allow substitution of correct plaintiff.

Does plaintiff ask for a voluntary dismissal?

Plaintiff is entitled to voluntary dismissal at any point before completion of plaintiff's evidence. Use AOC G-108.

Has defendant filed (or does defendant ask to file) counterclaim?

Defendant can file counterclaim at any point up to time case is calendared to be heard.
If defendant misses deadline, defendant has waived right to file counterclaim in this action but is still allowed to file separate small claims action.
Counterclaim must meet requirements for small claims re type of case and amount sought, but there is no requirement that plaintiff reside in county.
When you try a case with a counterclaim, you're trying two cases in one.

Does one party ask for a continuance?

Continuance is permissible, but not mandatory, if parties agree to it.
If one party does not agree, you must determine whether there is good cause for a continuance.

Do you have any reason to suspect the defendant has filed for bankruptcy? MR#7

If defendant has filed a petition for bankruptcy, federal law automatically stays further action in your lawsuit and affirmatively prohibits you from going ahead. Any judgment you enter would be void.
Use G-108 to discontinue – not dismiss -- the action until the bankruptcy case has been resolved.
The defendant is not legally obligated to prove to you that a bankruptcy petition has been filed. If you have any reason to suspect this is so, do not proceed until you have determined the truth.

Content Outline for Basic School: Small Claims Procedure, Part 3

Conducting Trial

Whether or not defendant is present, the plaintiff has the burden of proving each essential element of the case by the greater weight of the evidence. MR#8

When both parties are present, the plaintiff must testify first.

The defendant is not required to present any evidence until the plaintiff has established a prima facie case.

What if the plaintiff asks to amend the complaint?

Leave to amend "shall be freely granted."

Typically, question is not whether to allow amendment, but rather what notice is defendant entitled to in light of the change.

I recommend that you note amendment on judgment, rather than having plaintiff write on complaint (unless your clerk says otherwise).

Entering Judgment

Your judgment should dispose of all of the claims of all of the parties. MR#9

Be sure to follow the four steps:

-- Make a clear division between the close of evidence and your judgment.

--Begin by identifying the winning party, by name. NOT: "I'm ruling for the plaintiff."

-- Give a brief reason for your decision, making some reference, however brief, to "the law."

-- Inform the losing party of (1) the right to appeal to district court for "a whole new trial" and (2) how to do so.

What if you're not sure about the correct decision?

Instead of announcing your judgment in open court, you have the option of reserving judgment for up to 10 days (special rule for SE).

Requires you to fill out the certificate of service at bottom of judgment form.

You are responsible for mailing your decision to the parties.

Also useful when you anticipate disruption in courtroom.

After Judgment

Your judgment is a legal event which is final and may be changed in only one of two ways: appeal for trial de novo or being set aside under Rule 60(b). MR#10.

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Appeal

You should know and be prepared to inform parties about the procedure for appeal:

1) Notice of appeal, either in court or in clerk's office. 10-day deadline
2) Mandatory visit to clerk's office to pay costs of appeal. 20-day deadline, except for SE/10.
3) Appeal for trial de novo = whole new trial in district court

Rule 60(b) motion to set aside

Judgments are set aside for many reasons, and the decision to do so is typically made by a district court judge.

Some magistrates are authorized by the CDCJ to conduct hearings about whether a judgment should be set aside for one reason only: excusable neglect by a party (which in practice almost always means = failure to show up for trial).

NOTE that error of law by a magistrate is NOT grounds for setting aside a judgment. The only remedy for a legal error by a judicial official is appeal.

NOTE also that a magistrate has no legal authority to correct an error in a final judgment (exception for clerical errors). The remedy, again, is appeal.

After judgment is entered

Your authority to act in a case ends when you enter judgment. You have no authority to assist a plaintiff in collecting a judgment or to protect a defendant from a plaintiff who's breaking the rules. I suggest that you consider using the "What Happens After Small Claims Court" handout as an alternative to answering questions from parties about post-judgment procedure.

Pre-Evidence Checklist

Related to π

Name as it appears on complaint: _____
(If 2 names appear in one box, list both.)

Name of person who signed complaint, if different: _____

Name of person standing in front of you: _____

If not the π, relationship of person to π: _____

Name of injured party (rpii): _____

Related to Δ

How many Δs are listed on complaint (in separate boxes)? ____

Do you have a separate summons for each separate Δ? (circle one) Y N

For each Δ:

Name exactly as it appears on complaint: _____
(If 2 names appear in one box, list both.)

Name exactly as it appears on summons: _____

Name of person who was served: _____

Name of person standing in front of you: _____

If not the Δ, relationship of person to Δ: _____

Do you have any indication at this point that someone other than Δ is a more appropriate Δ? Y N

Special Cases

Is any party deceased, a minor, or a corporation?

Related to Case

What is π asking for? ___ money

___ possession of personal property

___ SE (i.e., recovery of possession of rental property)

___ something else

POINTS TO REMEMBER IN MAKING DECISIONS ABOUT EVIDENCE

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

Why?

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

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

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

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

What you might say:

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

Factors to consider in assessing credibility:

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

A Note on Dealing With Attorneys

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

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

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

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

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

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

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

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

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

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

Four Rules of Evidence You Should Know

Business records exception to hearsay rule

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

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

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

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

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

Best Evidence Rule (paraphrased)

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

Parole Evidence Rule

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

Note that the rule has no application in two circumstances:

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

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

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.

WHAT HAPPENS AFTER SMALL CLAIMS COURT

Location of Clerk's Office: _____

Notice to Both Parties

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

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

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

Notice to Plaintiff (Party Suing)

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

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

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

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

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

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

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

Notice to Defendant (Party Being Sued)

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

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

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

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

Sample Judgment for Plaintiff

I have listened carefully to the testimony you've presented and considered all the evidence in the case of Smith v. Jones. I am ready to make my decision (*enter judgment).*

Mr. Smith, I am going to rule in your favor on your claim for summary ejectment. Based on the evidence you've presented, I find that you and Mr. Jones entered into an oral lease agreement which required Mr. Jones to make monthly rental payments, due on the first of each month, in the amount of $500. I find that he paid $250 for August, and has made no payment since that time. And I find that you demanded payment of the rent at least ten days before filing this action, as required by law.

Mr. Jones, I listened to your testimony that you wanted, and intended, to pay Mr. Smith the rent, but were unable to do so because of circumstances beyond your control. I appreciate your coming to court today to explain the reason for your nonpayment, and I have no reason to doubt your word. Nevertheless, the law says that a landlord has the right to take possession of rental property when a tenant stops paying rent, even when the tenant is unable to make the payments. As a result Mr. Smith is entitled to possession of the rental premises at 110 S. Ginsberg Ave, in Colbin, NC, and to past due rent calculated up to this day in the amount of $850. I am denying Mr. Smith's claim for late fees because there was no agreement as to late fees in the lease. Mr. Jones, this judgment will earn interest at the rate of 8% until you pay what you owe to the clerk of court. The law provides that this judgment will become final after 10 days. Mr. Smith, 10 days from now if you wish to have this judgment carried out, you can go to the clerk's office to begin that procedure.

Mr. Jones, you have the right to appeal my decision to district court. You must give formal notice of appeal, and you may either do that now in open court, or you may file written notice of appeal in the clerk's office, so long as you do that within 10 days. If you do appeal, you must pay the costs of appeal to the clerk's office within 10 days.

Do either of you have any questions?

Small Claims Forms

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

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

STATE OF NORTH CAROLINA

File No.

_____ County

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

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

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

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

_____

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

addressed as follows: _____

_____

_____

_____

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

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

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

AOC-CV-105, New 8/17

STATE OF NORTH CAROLINA

_____ County

File No.

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

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

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

IMPORTANT! You have been sued! These papers are legal documents, DO NOT throw these papers out! You may want to talk with a lawyer about your case as soon as possible, and, if needed, speak with someone who reads English and can translate these papers!

¡IMPORTANTE! ¡Se ha entablado un proceso civil en su contra! Estos papeles son documentos legales. ¡NO TIRE estos papeles!
¡Puede querer consultar con un abogado lo antes posible acerca de su caso y, de ser necesario, hablar con alguien que lea inglés y que pueda traducir estos documentos!

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.

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

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

(Over)

AOC-CVM-100, Rev. 3/19

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 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, who is named below.

☐ 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 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, who is named below.

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

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

☐ Other manner of service *(specify)*

☐ Defendant WAS NOT served for the following reason:

FOR USE IN SUMMARY EJECTMENT CASES ONLY:

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

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

Address Of Premises Where Posted

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

File No.

STATE OF NORTH CAROLINA

_____ County

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

COMPLAINT FOR MONEY OWED

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

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	$

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

(check one below)

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

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

☐ For conversion *(describe property)*

Other: *(specify)*

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

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

(Over)

AOC-CVM-200, Rev. 9/13

INSTRUCTIONS TO PLAINTIFF OR DEFENDANT

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

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

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

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

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

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

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

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

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

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

AOC-CVM-200, Rev. 9/13

File No.

STATE OF NORTH CAROLINA

_____ County

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

COMPLAINT
IN SUMMARY EJECTMENT

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

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

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

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

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

Name And Address Of Plaintiff

County	Telephone No.

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

VERSUS

Name And Address Of Defendant 1 ☐ Individual ☐ Corporation

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

County	Telephone No.

Description Of Any Property Damage

Name And Address Of Defendant 2 ☐ Individual ☐ Corporation

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

County	Telephone No.

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

Name And Address Of Plaintiff's Attorney Or Agent

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

CERTIFICATION WHEN COMPLAINT SIGNED BY AGENT OF PLAINTIFF

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

Attorney Bar No.

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

(Over)

INSTRUCTIONS TO PLAINTIFF OR DEFENDANT

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

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

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

File No.

COMPLAINT TO RECOVER POSSESSION OF PERSONAL PROPERTY

☐ PLAINTIFF A SECURED PARTY
☐ PLAINTIFF NOT A SECURED PARTY

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

STATE OF NORTH CAROLINA

_____ County

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

Name And Address Of Plaintiff

County | *Telephone No.*

VERSUS

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

County | *Telephone No.*

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

County | *Telephone No.*

Name And Address Of Plaintiff's Attorney

Attorney Bar No.

WHEN PLAINTIFF IS A SECURED PARTY

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

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

Total Value Of Property To Be Recovered

$

Date | *Signature Of Plaintiff Or Attorney*

WHEN PLAINTIFF IS NOT A SECURED PARTY

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

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

Total Value Of Property To Be Recovered

$

Date Defendant Wrongfully Took Or Kept Property

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

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

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

(Over)

AOC-CVM-202, Rev. 8/17

INSTRUCTIONS TO PLAINTIFF OR DEFENDANT

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

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

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

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

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

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

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

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

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

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

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

File No.

STATE OF NORTH CAROLINA

_____ County

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

COMPLAINT TO ENFORCE POSSESSORY LIEN ON MOTOR VEHICLE

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

Name And Address Of Plaintiff

County	*Telephone No.*

VERSUS

Name And Address Of Defendant 1

County	*Telephone No.*

Name And Address Of Defendant 2

County	*Telephone No.*

Name And Address Of Plaintiff's Attorney

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

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

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

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

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

Make/Year Of Vehicle

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

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

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

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

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

Attorney Bar No.	*Date*	*Name Of Plaintiff Or Attorney (type or print)*	*Signature Of Plaintiff Or Attorney*

(Over)

AOC-CVM-203, Rev. 8/17

INSTRUCTIONS TO PLAINTIFF OR DEFENDANT

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

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

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

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

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

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

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

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

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

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

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

File No.

Film No.

Judgment Docket Book And Page No.

JUDGMENT IN ACTION TO RECOVER MONEY OR PERSONAL PROPERTY

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

Name And Address Of Plaintiff

County | Telephone No.

VERSUS

Name And Address Of Defendant 1

County | Telephone No.

Name And Address Of Defendant 2

County | Telephone No.

Name And Address Of Plaintiff's Attorney

STATE OF NORTH CAROLINA

_____ County

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

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

FINDINGS

The Court finds that:

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

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

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

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

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

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

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

☐ Other:

ORDER

It is ORDERED that:

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

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

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

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

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

☐ Other: *(specify)*

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

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

CERTIFICATION

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

Date | *Signature Of Magistrate*

AOC-CVM-400, Rev. 2/12

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

STATE OF NORTH CAROLINA

_____ County

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

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

Name And Address Of Defendant's Attorney

This action was tried before the undersigned on the cause stated in the complaint. Except as may be indicated below, the record shows that the defendant(s) was given proper notice of the nature of the action and the date, time and location of trial.

FINDINGS

The Court finds that:

1. a. Defendant 1 ☐ was ☐ was not present, and ☐ was served ☐ personally (Rule 4) ☐ by posting. ☐ was not served.
   b. Defendant 2 ☐ was ☐ was not present, and ☐ was served ☐ personally (Rule 4) ☐ by posting. ☐ was not served.
2. ☐ 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.
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(s) 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. at the request of the plaintiff, the claim for money damages is severed from the claim for possession and is not determined by this Judgment.
☐ 6. other: *(specify)*

☐ 7. costs of this action are taxed to the ☐ plaintiff. ☐ defendant(s).

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

CERTIFICATION

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

Date	*Signature Of Magistrate*

AOC-CVM-401, Rev. 3/19

File No.

Film No.

STATE OF NORTH CAROLINA

_____ County

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

JUDGMENT IN ACTION ON POSSESSORY LIEN ON MOTOR VEHICLE

G.S. 44A-4

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

FINDINGS

The Court finds that:

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

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

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

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

Name And Address Of Plaintiff

County | *Telephone No.*

VERSUS

Name And Address Of First Defendant

County | *Telephone No.*

Name And Address Of Second Defendant

County | *Telephone No.*

Name And Address Of Plaintiff's Attorney

Make/Year Of Vehicle

ID Number

Date Of Possession

(Plus Storage @ $ Per Day Until Sold)

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

ORDER

It is ORDERED that:

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

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

☐ Judgment Announced And Signed In Open Court

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

CERTIFICATION

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

Date | *Signature Of Magistrate*

STATE OF NORTH CAROLINA

_____ County

File No.

Judgment Abstract No.

Date Judgment Filed

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

Name Of Judgment Creditor (Plaintiff)

VERSUS

Name Of Judgment Debtor (Defendant)

MOTION TO CLAIM EXEMPT PROPERTY (STATUTORY EXEMPTIONS)

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

G.S. 1C-1603(c)

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

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

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

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

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

Street Address Of Residence

County Where Property Located	*Township*	*No. By Which Tax Assessor Identifies Property*

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

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

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

(Over)

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

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

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

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

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

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

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

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

(Over)

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

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

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

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

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

(Attach additional sheets for more lienholders.)

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

Item	Purpose

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

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

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

Name Of Insurer	Policy Number	Beneficiary(ies)

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

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

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

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

(Over)

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

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

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

State/Governmental Unit	Name Of Retirement Plan	Identifying Number

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

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

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

Item	Location	Estimated Value
		$
		$
		$

18. I certify that the above statements are true.

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

CERTIFICATE OF SERVICE

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

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

STATE OF NORTH CAROLINA

_____ County

File No.

Film No.

In The General Court Of Justice

☐ District ☐ Superior Court Division ☐ Small Claims

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

☐ DISMISSAL ☐ With Prejudice ☐ Without Prejudice

This action is dismissed for the following reason:

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

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

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

☐ Other:

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

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

☐ CONTINUANCE

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

☐ Plaintiff

☐ Defendant

☐ Judge or Magistrate

☐ Other: *(specify)*

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

☐ BANKRUPTCY

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

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

AOC-G-108, Rev. 11/02

STATE OF NORTH CAROLINA

_____ County

File No.

In The General Court Of Justice

Name And Address Of Plaintiff	**SERVICEMEMBERS CIVIL RELIEF ACT DECLARATION**
VERSUS	
Name And Address Of Defendant	G.S. Ch. 127B, Art. 4; 50 U.S.C. 3901 to 4043

NOTE: *Though this form may be used in a Chapter 45 Foreclosure action, it is not a substitute for the certification that may be required by G.S. 45-21.12A.*

DECLARATION

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

1. As of the current date: *(check one of the following)*
   - ☐ a. I have personal knowledge that the defendant named above is in military service.*
   - ☐ b. I have personal knowledge that the defendant named above is **not** in military service.*
   - ☐ c. I am unable to determine whether the defendant named above is in military service.*
2. As of the current date, I ☐ have ☐ have not received a copy of a military order from the defendant named above relating to State active duty as a member of the North Carolina National Guard or service similar to State active duty as a member of the National Guard of another state. *See* G.S. 127B-27 and G.S. 127B-28(b).
3. I ☐ used ☐ did not use the Servicemembers Civil Relief Act Website (https://scra.dmdc.osd.mil/) to determine the defendant's federal military service.
   ☐ The results from my use of that website are attached.
   (**NOTE:** *The Servicemembers Civil Relief Act Website is a website maintained by the Department of Defense (DoD). If DoD security certificates are not installed on your computer, you may experience security alerts from your internet browser when you attempt to access the website. Members of the North Carolina National Guard under an order of the Governor of this State and members of the National Guard of another state under an order of the governor of that state will **not** appear in the SCRA Website database.*)
4. The following facts support my statement as to the defendant's military service: *(State how you know the defendant is or is not in the military. Be specific.)*

***NOTE:** *The term "military service" includes the following: active duty service as a member of the United States Army, Navy, Air Force, Marine Corps, or Coast Guard; service as a member of the National Guard under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days for purposes of responding to a national emergency; active service as a commissioned officer of the Public Health Service or of the National Oceanic and Atmospheric Administration; any period of service during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause. 50 U.S.C. 3911(2). The term "military service" also includes the following: State active duty as a member of the North Carolina National Guard under an order of the Governor pursuant to Chapter 127A of the General Statutes, for a period of more than 30 consecutive days; service as a member of the National Guard of another state who resides in North Carolina and is under an order of the governor of that state that is similar to State active duty, for a period of more than 30 consecutive days. G.S. 127B-27(3) and G.S. 127B-27(4).*

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Date	*Signature Of Declarant*	*Name Of Declarant (type or print)*

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

(Over)

AOC-G-250, Rev. 5/21

Information About Servicemembers Civil Relief Act Affidavits And Declarations

1. Plaintiff to file affidavit/declaration

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

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

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

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

2. Appointment of attorney to represent defendant in military service

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

3. Defendant's military status not ascertained by affidavit/declaration

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

4. Satisfaction of requirement for affidavit/declaration

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

5. Penalty for making or using false affidavit/declaration

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

AOC-G-250, Side Two, Rev. 5/21

STATE OF NORTH CAROLINA

File No.	Scan No.(s) (official use only)

_____ County

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

Name And Address Of Plaintiff	**WRIT OF POSSESSION REAL PROPERTY**
VERSUS	G.S. 1-313(4), 42-36.2
Name And Address Of Defendant 1	*Name And Address Of Defendant 2*

To The Sheriff Of _____ County:

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

Description Of Property (include location)

Date Of Judgment	*Date Writ Issued*
	Signature
	☐ *Deputy CSC* ☐ *Assistant CSC* ☐ *Clerk Of Superior Court*

(Over)

AOC-CV-401, Rev. 8/17

RETURN

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

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

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

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

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

Name And Address Of Warehouse

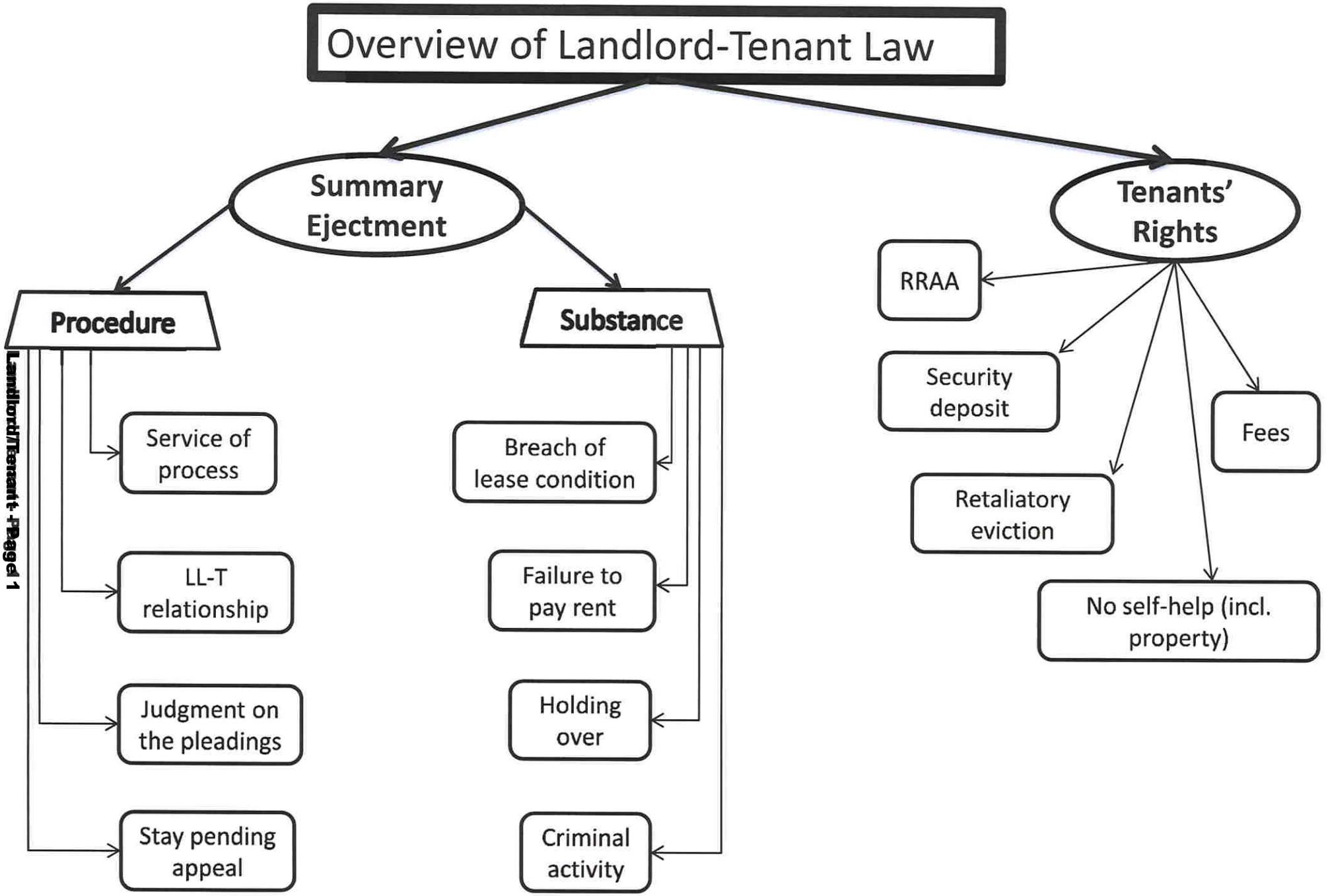
Fee Paid			*Signature Of Deputy Sheriff Making Return*
$			
Fee Paid By (type or print)			*Name Of Deputy Sheriff Making Return (type or print)*
Date Received	*Date Executed*	*Date Returned*	*County Of Deputy Sheriff Making Return*

TAB:

Landlord-Tenant

Law

LANDLORD-TENANT TABLE OF CONTENTS


Overview of Landlord-Tenant Law
Summary Ejectment
Tenants' Rights
Procedure
Substance
Service of process
LL-T relationship
Judgment on the pleadings
Stay pending appeal
Breach of lease condition
Failure to pay rent
Holding over
Criminal activity
RRAA
Security deposit
Retaliatory eviction
Fees
No self-help (incl. property)

Breach of a lease condition for which reentry is specified[1]

Plaintiff/LL must prove:

___ landlord-tenant relationship
___ lease contains a forfeiture clause
___ T breached lease condition for which forfeiture is specified
___ LL followed procedure set out in lease for declaring a forfeiture and terminating tenant's right to possession.

Common defenses:

___ LL failed to strictly follow procedure for termination set out in lease
___ LL fails to prove that T breached relevant lease provision (often due to RRAA)
___ LL continues with rental even after becoming aware of T's breach. [2]

Failure to pay rent

Plaintiff/LL must prove:

___ landlord-tenant relationship
___ terms of lease related to amount of rent and when it is due
___ tenant breached the lease by failing to pay rent when it was due
___ *LL made a clear and unequivocal demand after the rent was due that tenant pay all past-due rent*
___ LL waited at least 10 days after demand to file action
___ T has not yet paid the full amount owed.

Common defenses:

___ T does not owe rent because
  ___T has paid all rent due
  ___ LL's violation of the RRAA offsets total amount of rent due
___ LL failed to make proper demand because
  ___ LL made demand before rent was due
  ___ demand was not clear and unequivocal
___ LL failed to wait ten days after demand before filing complaint
___ This ground is not available because lease contains a forfeiture clause
___ The tenant tenders (i.e., offers to pay) the full amount of rent due plus court costs in cash prior to judgment.

[1] G.S. 42-30 authorizes a magistrate to enter judgment on the pleadings (i.e., without requiring plaintiff to present evidence at trial) if: (1) defendant has been served, but (2) is not present at trial and has not filed an answer; (3) Box #3 is checked on the complaint; and (4) plaintiff requests judgment on the pleadings in open court. Judgment in this instance is for possession only; if the plaintiff seeks money damages, that claim must be supported by evidence as usual.

[2] Exception in GS 42-26(c) provides that LL may accept partial rent without waiving breach if lease so states. Applies only to evictions based on breach of a lease condition triggering forfeiture.

Holdover

Plaintiff/LL must prove:

___ landlord-tenant relationship
___ terms of lease related to duration and procedure for termination, if any
___ LL has followed procedure set out in lease or, if none, given statutory notice, to terminate[3]
___ T has not vacated.

Most common defenses:

___ LL accepted rent for period(s) after the termination date
___ improper notice

Criminal activity[4]

Plaintiff/LL must prove ***one*** of the following things:

___ Criminal activity occurred within the rental unit
___ The rental unit was used to further criminal activity
___ T, household member, or guest engaged in criminal activity on premises or in immediate vicinity
___ T gave permission for a barred person to return to property
___ When person barred from unit re-entered unit, T failed to notify LL or LEO

Most common defenses:

___ T did not know or have reason to know of first three grounds listed above
___ T took all reasonable steps to prevent criminal activity
___ Eviction would create serious injustice[5]

[3] GS 42-14, -14.3 establishes notice requirements for termination in the absence of a provision in the lease:

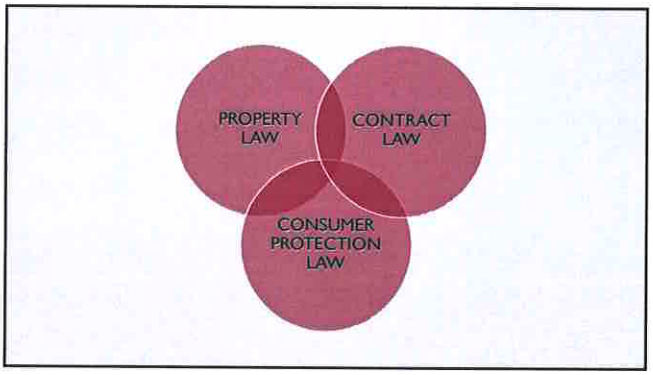
Year-to-year lease	30 days
Month-to-month	7 days
Week-to-week	2 days
MH space	60 days

[4] [4] GS Ch. 42, Art. 7; *see* Brannon, NC Small Claims Law pp. 176-186

[5] GS 42-46(c)

INTRODUCTION TO LANDLORD-TENANT LAW

1



2

PROPERTY LAW

Owning property is like owning a bundle of sticks.

- EXCLUDE
- USE
- POSSESS
- TRANSFER

3

CONTRACT LAW

- A lease is a contract.
- A lease may be oral or written, unless the term is for a period longer than three years.
- A lease establishes and governs the landlord/tenant relationship.

4

CONSUMER PROTECTION LAW

- Residential Rental Agreements Act
- Unfair and Deceptive Practice Claim
- Defense of Retaliatory Eviction
- Self-Help Eviction prohibited
- State and Federal Fair Housing Acts

5

SUMMARY EJECTMENT ACTIONS

- An action in summary ejectment is defined as an action brought by a landlord to recover possession of rental property from a tenant.
- Two-step process in North Carolina
  1. Hearing before small claims magistrate
  2. Writ of Possession issued by clerk and executed by the sheriff

6

MOST FREQUENT SMALL CLAIMS ACTION – MANY SPECIAL RULES!

RESIDENTIAL

- No self-help eviction
- Procedural statutes very preferential for LLs
- Consumer protection statutes very preferential for Ts

COMMERCIAL

- Self-help eviction okay so long as no breach of the peace
- LLs still benefit from most procedural statutes
- Consumer protection statutes NA
- Largely governed by contract

Designed to be (1) incredibly fast, and (2) incredibly cheap.

7

SUBJECT MATTER JURISDICTION IN SUMMARY EJECTMENT ACTIONS

- The types of cases heard in small claims court are defined by statute (G. S. 7A-210) and assigned by the Chief District Court Judge in each county (G.S. 7A-211).
- An action to recover possession of real property not involving a SIMPLE LANDLORD/TENANT RELATIONSHIP is not an action in summary ejectment.
- A judicial official is without SUBJECT MATTER JURISDICTION to hear such an action.

8

DEFINITION OF A SIMPLE LANDLORD-TENANT RELATIONSHIP:

Regardless of the label attached by the parties, a landlord-tenant relationship is created when:

1. Landlord has the right of possession.
2. The landlord transfers that right to the tenant.
3. There is an exchange of value (rent).
4. There is an agreement, written or oral, specifying the duration of the transfer and the value the landlord is entitled to receive.

9

NO SUMMARY EJECTMENT FOR YOU…MAYBE WHAT TYPES OF RELATIONSHIPS MAY BE EXCLUDED?

1. Buyers/Sellers
2. Cohabitants such as family, friends, or romantic partners
3. Innkeeper/Guest

10

SE IS ALSO USELESS WHEN IT COMES TO …

Removing your sister from the property daddy left you

Forcing the live-in nanny to stop living in after you fire her.

Moving out the former homeowner so that you can move into the foreclosed property.

Helping you sell a home on the installment plan, again . . . and again . . . and again . . . and again.

Making the paying customer leave your hotel, residential treatment center, or group home.

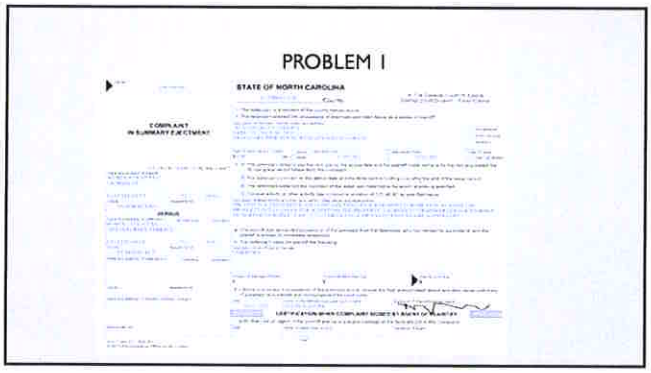
11

BUYERS/SELLERS

- Is there a contract for the sale of the property?
- Has there been a recission of that contract?
- Is the agreement a lease with an option to purchase? Has the option been exercised?

12

PROBLEM 1



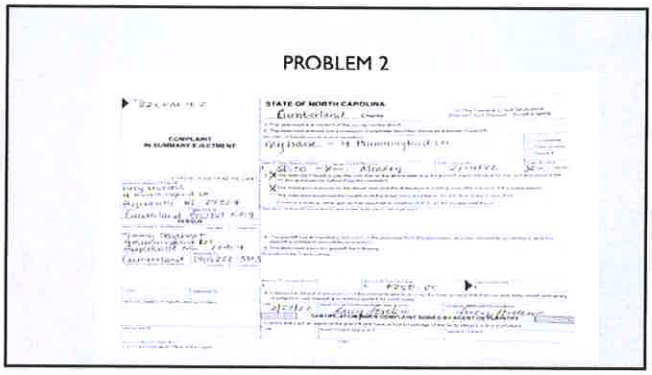
13

SHARED OCCUPANCY

- What was the intention of the parties at the time of move in?
- Did both parties contribute to the living expenses?
- How long did they live together?
- Did the landlord approve the person moving in?

14

PROBLEM 2



15

INNKEEPER/GUEST

- Was there a lease?
- Was the property the sole and permanent resident of the occupant?
- What was the length of the residence?
- What was the layout of the property?
- Did the property have a hotel license and operate as such?
- Did the owner maintain control over the premises?
- Did the owner retain the room key?
- Did the owner provide maid service?
- Did the owner share facilities with the occupant?
- Did the owner repair and maintain the rooms?
- Did the owner or the occupant pay the utilities?

16

PROBLEM 3


STATE OF NORTH CAROLINA

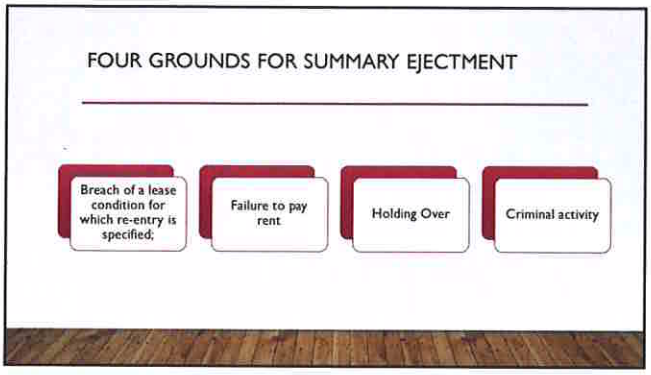
COMPLAINT
IN SUMMARY EJECTMENT

17

WHAT DOES IT ALL MEAN?

- Don't assume the relationship of the parties before you is that of landlord/tenant.
- Parties may have relationships that require the magistrate to analyze the facts and determine if the case is properly in small claims court.
- When the relationship is not just that of landlord/tenant, apply the tests set forth by the case law.

18


FOUR GROUNDS FOR SUMMARY EJECTMENT
Breach of a lease condition for which re-entry is specified;
Failure to pay rent
Holding Over
Criminal activity

19

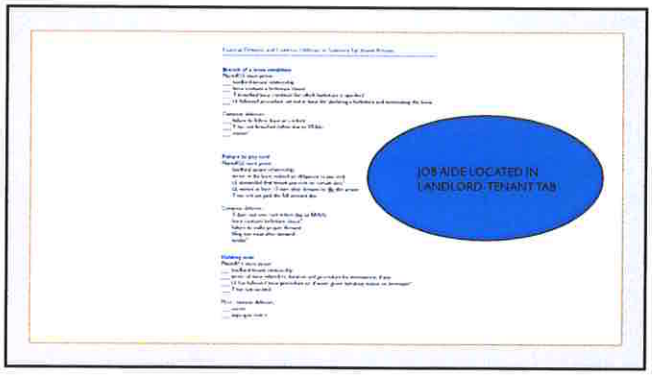
GROUNDS FOR SUMMARY EJECTMENT AND COMMON DEFENSES

1

THERE ARE 4 REASONS – AND ONLY 4.

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

2



3

BREACH OF A LEASE CONDITION

Plaintiff/LL must prove:

- landlord-tenant relationship
- lease contains a forfeiture clause
- T breached lease condition for which forfeiture is specified
- LL followed procedure set out in lease for declaring a forfeiture and terminating tenant's right to possession.

4

Normal rule in contract law: Breach of contract gives innocent party the right to sue for money damages.

Measure of damages in breach of contract case? Amount required to restore innocent party to position that party would have occupied if there had been no breach.

5

USUAL RULE ILLUSTRATED (NO FORFEITURE CLAUSE)

- Our lease says no loud parties.
- Tenant has a loud party on the first of the month and thus has breached the lease.
- LL's remedy is to sue for breach of contract, collect money damages calculated based on evidence of damages LL has suffered due to T's loud party.
- Next month, T has another loud party.

6

SPECIAL PREFERENTIAL RULE FOR LLS:

The LL and T have included in the contract the rule they've agreed on if T breaches a provision in the lease: "If T violates a term we've agreed to, LL has the right to cancel our lease and make T leave."

Forfeiture Clause!!!

7

ALWAYS BEGIN WITH *BREACH OF A LEASE CONDITION*

"Let me take a look at your lease."

Written lease "left at home"? = Big Problem (*Best Evidence Rule*).

8

17. Tenant's Breach:
(a) Events Constituting Breach: It shall constitute a breach of this Agreement if Tenant fails to:
(i) pay the full amount of rent herein reserved as and when it shall become due hereunder; or
(ii) perform any other promise, duty or obligation herein agreed to by him or imposed upon him by law and such failure shall continue for a period of five (5) days from the date the Landlord provides Tenant with written notice of such failure or shall occur again any time thereafter without any requirement of further notice from the Landlord.

In either of such events and as often as either of them may occur, the Landlord, in addition to all other rights and remedies provided by law, may, at its option and with or without notice to Tenant, either terminate this lease or terminate the Tenant's right to possession of the Premises without terminating this lease.*

*From the North Carolina Association of REALTORS®, Inc. "Residential Rental Contract"- Standard Form 410-T, Revised 11/2019

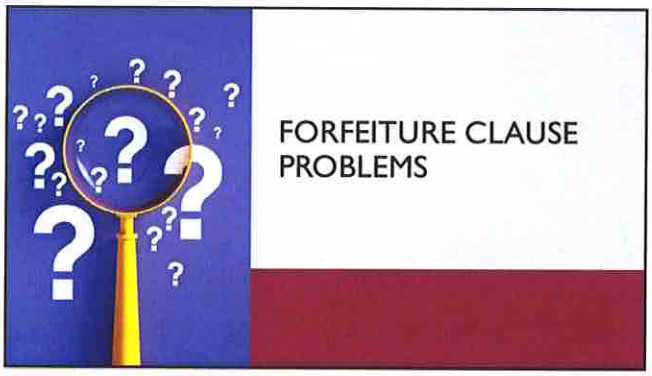
9

BREACH OF A LEASE CONDITION: COMMON DEFENSES

- LL failed to strictly follow procedure for termination set out in lease
- LL fails to prove that T breached relevant lease provision (often due to RRAA)
- LL continues with rental even after becoming aware of T's breach.*

* Note GS 42-46(c)/LL can accept partial rent if written in lease/this ground only.

10



FORFEITURE CLAUSE PROBLEMS

11

GENERAL ASSEMBLY TO THE RESCUE!!!

§ 42-3. Term forfeited for nonpayment of rent. In all verbal or written leases of real property of any kind in which is fixed a definite time for the payment of the rent reserved therein, there shall be implied a forfeiture of the term upon failure to pay the rent within 10 days after a demand is made by the lessor or his agent on said lessee for all past-due rent, and the lessor may forthwith enter and dispossess the tenant without having declared such forfeiture or reserved the right of reentry in the lease.

12

FAILURE TO PAY RENT

Plaintiff/LL must prove:

- landlord-tenant relationship
- terms of lease related to amount of rent and when it is due
- tenant breached the lease by failing to pay rent when it was due
- *LL made a clear and unequivocal demand after the rent was due that tenant pay all past-due rent*
- LL waited at least 10 days after demand to file action
- T has not yet paid the full amount owed.

13

FAILURE TO PAY RENT

The objective of this statutory ground for ejectment is to the give the landlord an enforcement mechanism to make the tenant pay rent.

14

WHAT'S THE STRATEGY FOR GETTING THE TENANT TO PAY?

Allowing the tenant to avoid eviction by paying all rent due and court costs at any time right up to the minute before you enter judgment is called …

TENDER

NOTE WELL: Effective tender requires payment of all rent due + court costs in cash prior to judgment.

15

WHAT'S THE STRATEGY FOR GETTING THE TENANT TO PAY?

Demanding that s/he do so.

Allowing the tenant to avoid eviction by paying all rent due and court costs at any time right up to the last minute.

And the last minute is immediately before you enter judgment.

16

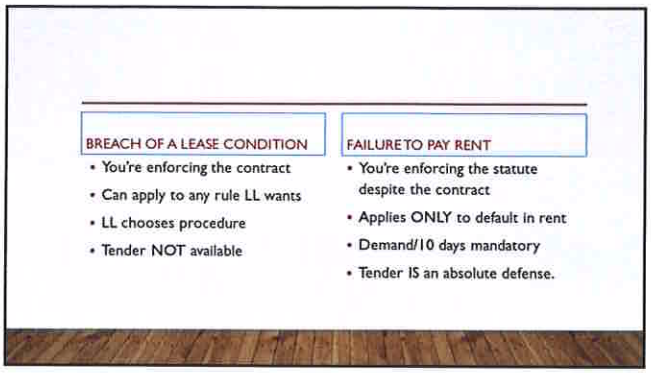
FAILURE TO PAY RENT: COMMON DEFENSES

- T does not owe rent because
  - T has paid all rent due
  - LL's violation of the RRAA offsets total amount of rent due
- LL failed to make proper demand because
  - LL made demand before rent was due
  - Demand was not clear and unequivocal
- LL failed to wait 10 days after demand before filing complaint
- This ground is not available because lease contains a forfeiture clause.
- T tenders the full amount of rent due plus court costs in cash prior to judgment.

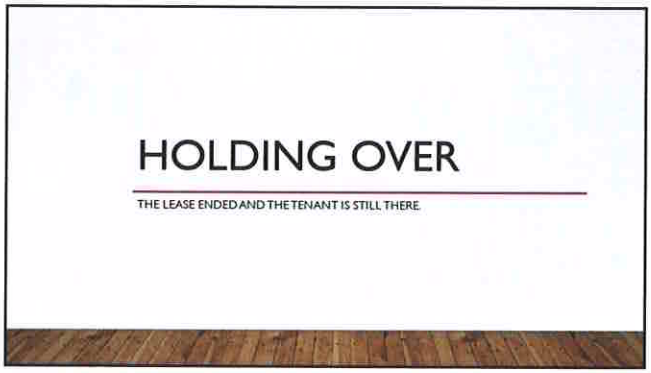
17

FAILURE TO PAY RENT PROBLEMS

18


BREACH OF A LEASE CONDITION
• You're enforcing the contract
• Can apply to any rule LL wants
• LL chooses procedure
• Tender NOT available
FAILURE TO PAY RENT
• You're enforcing the statute despite the contract
• Applies ONLY to default in rent
• Demand/10 days mandatory
• Tender IS an absolute defense.

19


HOLDING OVER
THE LEASE ENDED AND THE TENANT IS STILL THERE.

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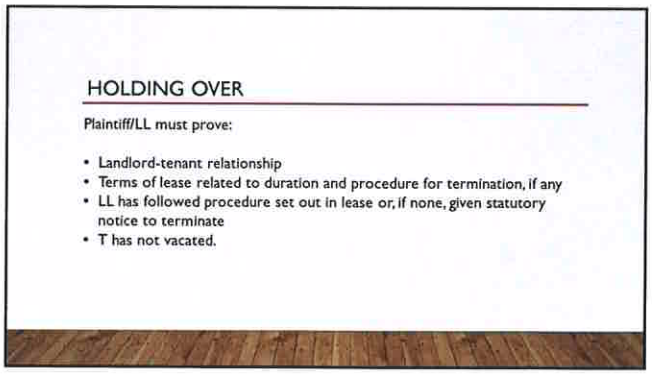
HOLDING OVER
Plaintiff/LL must prove:
• Landlord-tenant relationship
• Terms of lease related to duration and procedure for termination, if any
• LL has followed procedure set out in lease or, if none, given statutory notice to terminate
• T has not vacated.

21

TYPES OF LEASES

- Tenancy for Years
  - Definite, fixed term
  - Any fixed period to which parties agree
- Periodic Tenancy
  - Does not end on definite date or last a defined period of time
  - Renewable from one period to the next
  - LL or T may terminate by giving notice either as set out in the lease or by statute

22

STATUTORY NOTICE REQUIREMENTS FOR TERMINATION OF PERIODIC TENANCY

- **If the lease does not include a notice provision,** G.S. 42-14 sets out the following notice provisions:
  - Year-to-year lease 30 days
  - Month-to-month lease 7 days
  - Week-to-week lease 2 days
  - Mobile Home space 60 days

23

HOLDING OVER: COMMON DEFENSES

- LL accepted rent for period(s) after the termination date
- Improper notice

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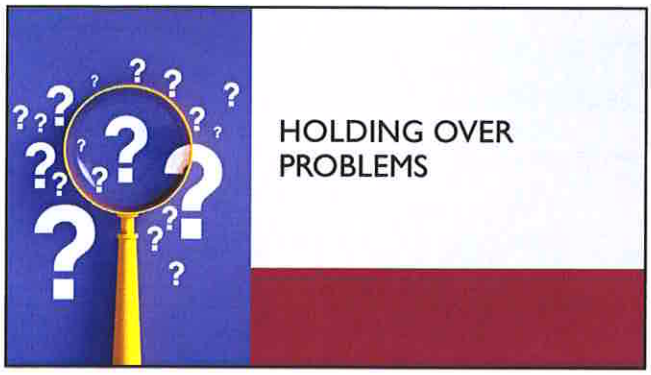

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CRIMINAL ACTIVITY

Plaintiff/LL must prove **one** of the following things:

- Criminal activity occurred with the rental unit;
- The rental unit was used to further criminal activity;
- T, a household member, or guest engaged in criminal activity on premises or in immediate vicinity;
- T gave permission for a barred person to return to property; OR
- When person barred from unit re-entered, T failed to notify LL or LEO.

26

CRIMINAL ACTIVITY: COMMON DEFENSES

- T did not know or have reason to know that criminal activity was occurring in the rental unit, that the rental unit was used to further criminal activity or that any member of T's household or guest was engaged in criminal activity.
- T took all reasonable steps to prevent criminal activity.
- Eviction would create a serious injustice.

27

OTHER DEFENSES TO SUMMARY EJECTMENT

- *Res judicata*-LL cannot bring a second action for possession after losing a prior action based on the same breach
- Retaliatory Eviction-certain activities of tenant protected by law against eviction

28

RULES OF PROCEDURE IN SUMMARY EJECTMENT CASES

1

REVIEW: MANDATORY RULES OF SMALL CLAIMS PROCEDURE

1. Subject Matter Jurisdiction
2. Personal Jurisdiction
3. Who May Appear
4. Servicemembers Civil Relief Act
5. Minimum Notice Requirements
6. Real Party In Interest
7. Bankruptcy Stay
8. No Default Judgments
9. Judgment
10. Judgment is Final

2

MANDATORY RULE #1 SUBJECT MATTER JURISDICTION

- If there is no "simple landlord/tenant relationship," there is no subject matter jurisdiction for summary ejectment before magistrate.
- Beware of plaintiffs trying to improperly remove defendants using summary ejectment without a landlord/tenant relationship.

3

MANDATORY RULE #2 PERSONAL JURISDICTION AND SERVICE OF PROCESS

- Service can be by any of the following means:
  1. By personal service on the defendant by the sheriff,
  2. By the sheriff leaving the summons and complaint at the defendant's dwelling with a person of suitable age and discretion who also resides in the dwelling, or
  3. By certified mail, return receipt requested, addressed to defendant.
- For SUMMARY EJECTMENT ONLY, service can be by mailing a copy of the summons and complaint to the defendant by first class mail and posting a copy in a conspicuous place on the premises from which the defendant is to be evicted.
- A defendant who has not been served can make a voluntary appearance.

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5

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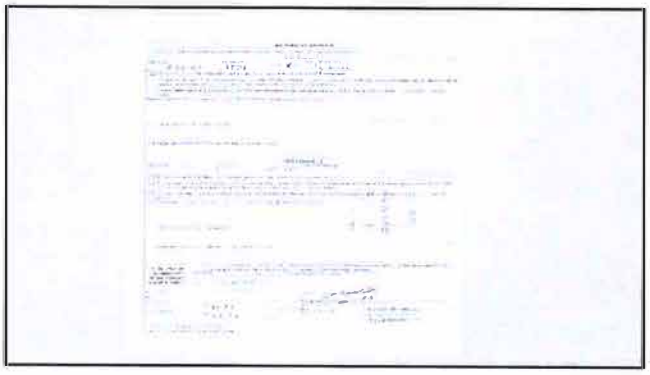

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IMPACT OF SERVICE BY POSTING ON MONETARY JUDGMENTS

- Magistrate may enter judgment for possession ONLY.
- Magistrate should leave #7 on CVM-401 related to costs of court blank.

8

VOLUNTARY APPEARANCE BY DEFENDANT

- If defendant has not been served or is served by first class mail + posting, magistrate may enter a monetary judgment if defendant is present in court.
- If LL is seeking both money damages and possession, service is by posting, and defendant is not present, then plaintiff can ask for the claims to be severed. The possession claim is heard immediately. The claim for money damages is heard after defendant has been personally served.
- A private process server can serve the severed claim for money damages.

9

MANDATORY RULE #3 WHO MAY APPEAR

- **Usual Rule:** only a party or an attorney representing the party may appear.
- **Summary Ejectment Exception:** Agent with personal knowledge may sign complaint and represent LL.

10

Special rule for who can appear on behalf of LL


5. The defendant owes the plaintiff the following

Description Of the Property Damage

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

(Over)

11

MANDATORY RULE #4 SCRA

- Just as in all cases in small claims court, the magistrate should not proceed without the Servicemembers Civil Relief Act Declaration if the defendant is not present.
- Confirm whether the defendant is active duty.
- If plaintiff is unable to determine, do not proceed.

12

13

MANDATORY RULE #5 MINIMUM NOTICE REQUIREMENTS

- Mandatory minimum notice period for service of process in SE cases is 2 calendar days.
- If mandatory minimum period is not met, magistrate should continue the case.
- Defendant can make a knowing waiver of minimum notice, and magistrate should indicate waiver on judgment.

14

MANDATORY RULE #6 REAL PARTY IN INTEREST

- Person entitled to possession (usually the owner) is the real party in interest and must be named as plaintiff.
- Do not dismiss the case.
- Give a reasonable to time to substitute the RPII.
  - Amend complaint
  - Finding by magistrate on judgment
- If RPII is not substituted, then magistrate may dismiss.

15

MANDATORY RULE #7 BANKRUPTCY STAY

- If defendant files for bankruptcy, the small claims action is automatically stayed.
- Magistrate should check the "Bankruptcy" box on AOC-G-108 for the clerk to remove the case and put it into inactive status.
- Any efforts by the landlord to lift the stay require the landlord to seek relief from the bankruptcy court.

16

The defendant does not have to file any federal court document with the magistrate to prove the bankruptcy filing, however, the magistrate can take steps to verify that the petition has actually been filed. If the magistrate determines that the stay applies, complete the form below to place the case in inactive status.

ORDER AOC-G-108

☐ BANKRUPTCY

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

17

MANDATORY RULE #8 NO DEFAULT JUDGMENTS

- Usual Rule: Plaintiff must introduce sufficient evidence in support of claim, regardless of whether defendant is present.
- Summary Ejectment Exception: Judgment on the Pleadings for possession
  1. Complaint alleges defendant's failure to pay rent as breach of lease for which reentry is allowed;
  2. Summons indicates service on defendant;
  3. Defendant has not filed an answer;
  4. Defendant fails to appear at hearing; and
  5. Plaintiff requests, in open court, a judgment based on the pleadings.

18

JUDGMENT IN ACTION FOR SUMMARY EJECTMENT AOC-CVM-401

FINDINGS

The Court finds that:

1. a. Defendant 1 ☐ was ☐ was not present, and ☐ was served ☐ personally (Rule 4) ☐ by posting ☐ was not served.
   b. Defendant 2 ☐ was ☐ was not present, and ☐ was served ☐ personally (Rule 4) ☐ by posting ☐ was not served.
2. ☐ 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 pleadings.
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.

19

MANDATORY RULE #9 JUDGMENT

- **Usual Rule:** The magistrate may reserve judgment for a period not in excess of 10 days.
- **Summary Ejectment Exception:** The magistrate shall render judgment on the same day on which the conclusion of all the evidence and submission of legal authorities occurs, unless the parties concur on an extension of additional time for entering the judgment and except for more complex summary ejectment cases, in which event the magistrate shall render judgment within 5 business days of the hearing.
- Remember it is important that the magistrate rule on all the claims.

20

JUDGMENT IN ACTION FOR SUMMARY EJECTMENT AOC-CVM-401

CERTIFICATION

I certify that a judgment has been entered on each party named by depositing a copy in a postpaid envelope addressed to such party at the residence last known to me or by the United States Postal Service.

Date _____ Signature of Magistrate

21

DAMAGES IN SUMMARY EJECTMENT ACTION

1. Unpaid rent up to date of judgment
2. Breach of contract damages
3. Fees pursuant to GS 42-46 (residential only)
4. Damage to property

22

1. UNPAID RENT UP TO DATE OF JUDGMENT

- Determine daily rent and award up to the date of judgment
- Do not include late fees, administrative fees, out-of-pocket expenses or any other damages in the Amount of Rent in Arrears
- Fees, expenses and damages should be listed as Amount of Other Damages

23

2. BREACH OF CONTRACT DAMAGES

- Occupancy damages for continued possession after end of lease
- When lease is for a fixed period, damages for remainder of term
  - NOTE: LL's Duty to Mitigate
- Check lease for liquidated damages clauses

24

3. AUTHORIZED FEES, COSTS AND EXPENSES

- Late fees
- Administrative fees
- Out-of-Pocket Expenses and Litigation Costs

25

4. DAMAGE TO PROPERTY

- Exceeds normal wear and tear
- Measure=difference between FMV of property before and after damage
- Cost of repair may be relevant to determination, but is not itself proper measure of damages

26

DISMISSAL WITHOUT TRIAL

- There are no special rules in Summary Ejectment.
- Plaintiff may enter a voluntary dismissal, with or without prejudice, at any time prior to resting their case.
- Plaintiff may request magistrate enter a voluntary dismissal after presentation of their evidence.
- Defendant may request an involuntary dismissal if plaintiff fails to appear.
- If neither party appears, the magistrate may enter an involuntary dismissal.

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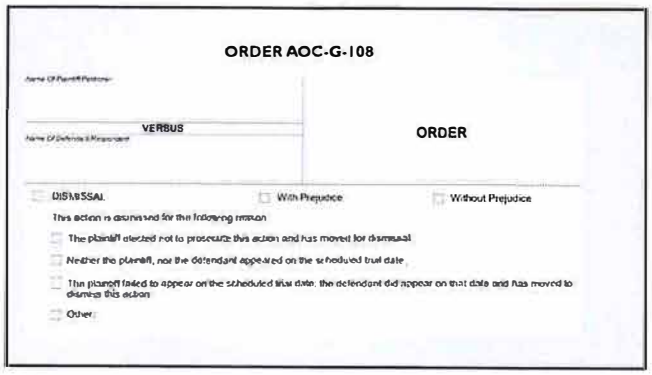

ORDER AOC-G-108

VERSUS

ORDER

DISMISSAL: With Prejudice Without Prejudice

This action is dismissed for the following reason:

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

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

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

Other:

28

NOTICE OF VOLUNTARY DISMISSAL AOC-CV-405

29

TENANTS' RIGHTS STATUTES

RESIDENTIAL RENTAL AGREEMENTS ACT, RETALIATORY EVICTION AND SELF-HELP EVICTION

1

RESIDENTIAL RENTAL AGREEMENTS ACT

- G.S. Chapter 42, Sections 38 to 44
- Protections for tenants not found at common law
- Right to fit housing that cannot be waived
- Greater protections for tenants
- Preferential procedures for landlords

2

WHO AND WHAT IS COVERED BY THE LAW?

- Applies ONLY to residential agreements
- Applies to any dwelling unit, including mobile homes and mobile home spaces, grounds, and facilities
- "Landlord" = property owners and agents
- Does NOT apply to vacation rentals, temporary lodging and permissive occupancy

3

EIGHT OBLIGATIONS OF THE LANDLORD

1. Comply with building and housing codes
2. Keep premises in a fit and habitable condition
3. Keep common areas in safe condition
4. Maintain and promptly repair electrical, plumbing, heating, and other supplied facilities and appliances
5. Install and keep in good repair a smoke detector
6. Install and keep in good repair a carbon monoxide detector
7. Notify tenant if water provided by the landlord exceeds a certain contaminant level
8. Repair within a reasonable time any "imminently dangerous condition" as set out in the statute

4

NOTICE REQUIREMENTS

- GENERAL RULE: T must give notice to reasonably permit the landlord to fulfill their obligation
- Written notice required for electrical, plumbing and other "facilities and appliances," except for emergencies
- Written notice required for replacement of or repairs to smoke alarms and carbon monoxide alarms
- Presumption that LL knows of conditions in existence at beginning of tenancy, no further notice by T required

5

6

TENANT'S OBLIGATIONS UNDER THE RRAA

- Keep property clean and undamaged-G.S. 42-43 (a)(1)-(4)
- Comply with applicable building and housing codes-G.S. 42-43 (a)(5)
- Be responsible for damage beyond ordinary wear and tear, acts of LL/third parties, natural forces-G.S. 42-43 (a)(6)
- Cooperate with LL to ensure that unit has operable smoke and/or carbon monoxide alarm-G.S. 42-43 (a)(7)

***LL must notify T in writing of violations, except for emergencies

7

REMEDIES FOR LANDLORD'S VIOLATION OF RRAA

- Mutually dependent obligations, but Tenant may not unilaterally withhold rent
- T may raise RRAA violations as defense
- T may file a claim/counterclaim for rent abatement
- T argues for "set-off" of LL's damages

8

DAMAGES

- T entitled to difference between FRV as warranted and FRV as-is + incidental damages
- T may ONLY recover up to amount of rent actually paid
- No punitive damages
- Treble damages in Unfair and Deceptive Practice claim

9

RETALIATORY EVICTION

- G.S. 42-37.1 to 42-37.3
- Cannot be waived by T
- Activities protected by law occurring within 12 months of filing
  1. Asking LL to make repairs
  2. Complaining to government agency about violation of law
  3. Formal complaint lodged against LL by government agency
  4. Attempting to exercise legal rights under law or in lease
  5. Organizing or participating in tenants' rights organizations

10

TENANT'S REMEDY

- Affirmative defense
- Dismiss SE action if proven by greater weight of the evidence
- T may have UDP claim under G.S. 75-1.1

11

REBUTTAL BY LANDLORD

1. T failed to pay rent or otherwise broke the lease and that is reason for eviction
2. T is holding over after end of tenancy for a definite period
3. T caused the complained of violations
4. Displacement of T required to comply with housing code
5. LL had given T good faith notice to quit before protected conduct occurred
6. LL plans in good faith to:
   1. Live there themselves;
   2. Demolish the premises or make major alterations; or
   3. Terminate use of premises as a dwelling for at least 6 months.

12

13

SELF-HELP EVICTION

- G.S. 42-25.6-42-25.9
- Cannot be waived by T
- Applies only to RESIDENTIAL tenants
- Actual and constructive self-help eviction prohibited
- Distress and distraint of T's personal property prohibited

14

TENANT'S REMEDIES

- Recover possession or terminate lease + damages
- Recover personal property, compensation for its value, and actual damages
- May have UDP claim

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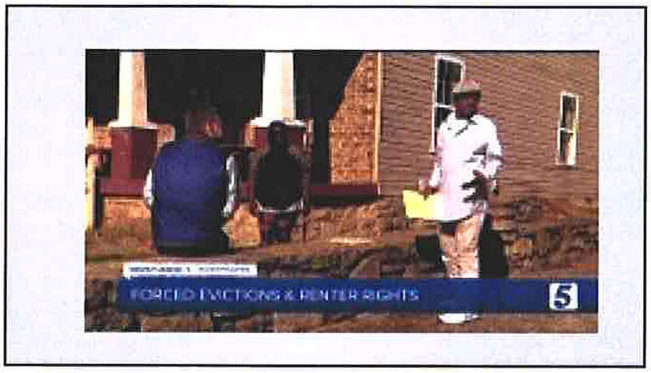

FORCED EVICTIONS & RENTER RIGHTS
5

16


RENTERS SAY THEY WERE KICKED OUT

17

Introduction to Landlord-Tenant Law

I. Property Law

Landlord-tenant law is a challenging combination of three areas of the law: Property Law, Contract Law, and Consumer Protection Law. Owning real property is like owning a bundle of sticks, and the owner of real property has the right to exclude, use, possess, and transfer. The lease is a stick in the bundle that gives the tenant the right to possess the landlord's property and the adjacent right of excluding others from the property, subject to whatever terms the landlord includes in the lease relating to inspection and re-entry for breach. The tenant may also have the right to use the property, but only in a manner consistent with the owner's wishes for how the property is to be used. For example, the owner still gets to determine if the property can be used for a pet or if the property is only for residential or commercial use. The tenant's lease does not give the tenant the right to sell, convey, or transfer the property to another as that right remains with the owner.

II. Contracts Law

In addition to transferring property rights from the owner to the tenant, the lease is a contract that establishes and governs the landlord-tenant relationship. A lease may be oral or written unless the term is for a period longer than three years. Summary ejectment cases are all contracts cases, so the same contract analysis applies and requires answers to the following questions:

1. Is there a contract (lease)?
2. Who are the parties to the contract (lease)?
3. What are the terms of the contract (lease)?
4. Did the defendant breach the contract (lease)?
5. What are the damages?

III. Consumer Protection Law

The landlord-tenant relationship is also governed by consumer protection law. As a matter of social policy, the State of North Carolina requires landlords to maintain residential rental premises at a certain minimal level of habitability. The tenant's rights to these protections under the law cannot be waived nor can the tenant give the landlord permission to violate the law. These protections for tenants are set out by statute and include the Residential Rental Agreements Act, claims for Unfair and Deceptive Trade Practices, the defense of retaliatory eviction, the prohibition against self-help eviction in residential tenancies, and Federal and State Fair Housing Acts. Even if these terms are not expressly stated in the rental contract, they are implied terms in every residential rental agreement.

IV. Summary Ejectment

Summary ejectment is a unique remedy that is only available in cases involving "a simple landlord-tenant relationship" and only for four specific breaches. An action in summary ejectment is defined as an action brought by a landlord to recover possession of rental property from a tenant. In North Carolina, summary ejectment, sometimes referred to as an eviction, is a two-step process that includes: 1. A hearing before a small claims magistrate, and 2. A writ of possession issue by a clerk and executed by the sheriff. Self-help evictions are not available to landlords to remove residential tenants, so to regain possession of the rental premises, the landlord must follow the two-step process set out by statute in Article 3 of NCGS Chapter 42. Self-help eviction is available to commercial landlords so long as there is no breach of the peace.

Summary ejectment cases are the most frequent type of small claims action and involve many special rules. The special rules of civil procedure related to summary ejectment actions will be discussed in more depth in another section, but it is important to remember that these rules must be followed. The procedural statutes for both residential and commercial summary ejectment cases are very preferential for landlords. As a balance to those procedural benefits, residential tenants benefit from consumer protection statutes. Consumer protection statutes related to residential tenants are not applicable to commercial tenants.

V. Subject Matter Jurisdiction

Before a judicial official can proceed in any matter there has to be subject matter jurisdiction that gives that judicial official authority to hear such an action. For summary ejectment actions, the threshold subject matter jurisdiction issue is whether there is a landlord-tenant relationship between the parties to the lawsuit. For magistrates, the type of cases heard in small claims court are defined by statute (NCGS 7A-210) and assigned by the Chief District Court Judge in each county (NCGS 7A-211). It is well established in North Carolina case law that summary ejectment is a statutory remedy that is only available to a landlord seeking to regain possession of real property from a tenant. If the action to recover possession of real property does not involve a simple landlord-tenant relationship, it is not an action in summary ejectment and the magistrate is without subject matter jurisdiction to hear such an action. If the action is not properly a summary ejectment action, then it is not assigned to the magistrate, and if the magistrate enters judgment without having subject matter jurisdiction to do so, the judgment is not valid.

VI. Simple Landlord-Tenant Relationship

Although there is no specific definition of "landlord-tenant relationship" in either the statute or in case law, some elements of that relationship are clear. The tenant must enter into "possession under some contract or lease, either actual or implied, with the supposed landlord, or with some person under whom the landlord claimed in privity, or where the tenant himself is in privity with some person who had so entered." Jones v. Swain, 89 N.C.App. 663

(1988). Landowners are in privity with subsequent landowners for the purpose of a landlord-tenant relationship when the transfer of property occurs (1) by voluntary sale, (2) by inheritance, or (3) by foreclosure. Tenants are in privity with subsequent owners of the leasehold when the transfer occurs by (1) assignment (not subleasing) or (2) by inheritance (subject to some exceptions).

Regardless of the label attached by the parties, [a] landlord-tenant relationship is created when: (1) there is reversion in the landlord; (2) creation of an estate in the tenant either at will or for a term less than that which the landlord holds; (3) transfer of exclusive possession and control of the tenant; and (4) a contract. Estate of Hawkins v. Wiseman, 191 N.C.App. 250 (2008) (unpublished), quoting Santa Fe Trail Neighborhood v. W.F. Coehn, 154 S.W.3d 432, 440 (Mo.App.W.D.2005).

Stated more simply, a landlord-tenant relationship is created when:

1. The landlord has the right of possession.
2. The landlord transfers that right to the tenant.
3. There is an exchange of value, usually referred to as rent.
4. There is an agreement, written or oral, specifying the duration of the transfer and the value the landlord is entitled to receive.

Because the summary ejectment procedures are designed to be efficient and inexpensive, plaintiffs may be attracted to small claims court to try to remove defendants with whom they do not have a landlord-tenant relationship. The benefits to the plaintiff/landlord include an expedited trial, the ability to appear in court through an agent rather than *pro se* or through an attorney, the limitations on continuances, and the promptness of the magistrate's decision. There are also potential benefits to defendant/tenants which may cause a defendant to argue for recognition as a tenant. The benefits to the defendant/tenant include the prohibition against self-help evictions for residential tenants, statutory protections and remedies for wrongful evictions, the prohibition against retaliatory evictions, and protections and remedies under the Residential Rental Agreements Act and the Tenant Security Deposit Act.

Some common situations that might appear in small claims but may not actually satisfy the requirement of a landlord-tenant relationship include: buyers and sellers, employers and employees, cohabitants such as family, friends, or romantic partners, and innkeepers and guests. When these types of relationships appear before the magistrate, it is important that the magistrate get the information that they need to determine if an actual landlord-tenant relationship has been established between the parties, because without the landlord-tenant relationship the case cannot go forward as a summary ejectment action.

Buyers/Sellers

North Carolina case law has long established that buyers and sellers are not within the jurisdiction of magistrates in a small claims action for summary ejectment. Some examples of this scenario include a buyer trying to remove an occupant after a courthouse tax sale, a lender trying to remove a borrower, and an owner trying to remove the buyer in a sales contract with a lease provision where the sales contract has not been cancelled. To analyze whether the parties before the magistrate have a buyer-seller relationship rather than a landlord-tenant relationship, the magistrate may find it helpful to ask the following questions:

- Is there a contract for the sale of the property?
- Has there been a recission of that contract? In other words, has the sales contract been canceled and only the lease provision remains?
- Is the agreement a lease with an option to purchase? Has the option been exercised?

Employers/Employees

As a general rule, an employee who occupies the premises as part of their compensation is in possession as an employee, and not as a tenant. If the employee is not a tenant, then an employee who refuses to leave when their employment terminates is likely a trespasser. However, for the employer/employee exception to apply, the party seeking to invoke it must prove one of the following about the occupancy of the residence:

- It is reasonably necessary for the effective performance of the employee's job; or
- It is inseparable from the job; or
- It is required by the employer as essential to the employment.

If the party claiming an employer-employee relationship cannot show one of the above, then the relationship is likely that of landlord-tenant, and summary ejectment is appropriate.

Shared Occupancy

Until recently, there has been a lack of North Carolina case law addressing what happens when two people who are romantically involved decide to live together and share expenses and one of them decides they no longer want to live together. The Court of Appeals decision in Bradley v. Tapia, 277 N.C.App. 385 (2021) (unpublished) analyzed whether the magistrate in small claims court and the district court judge on appeal had subject matter jurisdiction in a summary ejectment case between ex-lovers. The relevant facts established that the plaintiff purchased the home subject to a mortgage, both only in his name, and the parties orally agreed that defendant would reside in the home with the plaintiff and would pay one-half of all the expenses of the house, including the mortgage payments and utilities. The parties' romantic relationship was on-again-off-again. Defendant paid sporadically, and plaintiff gave her notice to vacate and filed and won a summary ejectment action against plaintiff for failure to pay her portion of the house expenses. Defendant argued that the court lacked

subject matter jurisdiction because there was no landlord-tenant relationship, but rather a business partnership to flip the residence. The Court of Appeals indicates the evidence presents a close question on the issue of an implied partnership between the parties but that ultimately the facts do not imply a partnership but support the conclusion that the legal relationship between the parties was one of a landlord and a tenant.

The facts that supported the legal conclusions made by the magistrate and the district court judge are similar to those any magistrate would need to consider when presented with a relationship between parties based on shared occupancy. The following questions may be helpful in determining whether the parties have created a landlord-tenant relationship:

- What was the intent of the parties at the time of their agreement?
- Is something of value being exchanged?
- If there is no landlord-tenant relationship, is there some other type of relationship not subject to summary ejectment or is the defendant a trespasser?

Courts in other jurisdictions have found the guest to be a trespasser and not a tenant where the parties did not intend to create a landlord-tenant relationship and there was no exchange of value for the defendant's right to occupy the property. Those courts looked at the frequency of any contributions made by the defendant to determine if they were in fact some type of rent or exchange of value in order to live in the property, and whether rent was paid or demanded. In the Bradley case, the court found evidence of an intent to create a landlord-tenant relationship from the parties' agreement to share half of the expenses of the house, including the mortgage and the utilities and payments made by the defendant to the plaintiff toward that obligation. When family, friends and lovers appear before the magistrate, it is necessarily going to require the magistrate to inquire into the nature of the relationship to determine if there is truly a landlord-tenant relationship.

Innkeepers/Guests

In most cases, the typical innkeeper-guest relationship will be easy to identify by the nature of the transient lodging at issue. However, it is possible that a landlord-tenant relationship can exist in a premises that is typical of transient lodging, because the terms of the agreement between the parties are more like a lease. In Baker v. Rushing, 104 N.C.App. 240 (1991), the court found sufficient evidence to support a conclusion that the occupants were residential tenants based on the following:

- Existence of oral leases
- Sole and permanent resident of each tenant
- Length of residency
- Weekly payments referred to as "rent"
- The operation of the building did not change after defendant obtained a hotel license

When a case appears before the magistrate with facts that indicate the relationship between the parties is more like a landlord-tenant relationship than that of an innkeeper and guest, the magistrate may find the following questions helpful to the determination:

- Is there a lease?
- Is the property the sole and permanent residence of the occupant?
- What is the length of the occupant's residence?
- What is the layout of the property?
- Does the property have a hotel license and operate as such?
- Does the owner maintain control over the premises?
- Does the owner retain a room key?
- Does the owner provide maid service?
- Does the owner share the facilities with the occupant?
- Does the owner repair and maintain the rooms?
- Who is responsible for the utilities?
- Is the property furnished or unfurnished?

Whether the premises are a hotel, campground, or boarding house, the magistrate must consider all the circumstances in determining whether a particular agreement between the parties is a lease and whether it created a landlord-tenant relationship. In Shepard v. Bonita Vista Properties, 191 N.C.App. 614 (2008), *aff'd per curiam*, 363 N.C. 252 (2009), the premises at issue were a campground. While the Court of Appeals ultimately did not have to reach the issue of whether the plaintiffs were tenants because the defendant had committed an unfair practice under G.S. Ch. 75 regardless of the plaintiffs' status, but the trial court found that the plaintiffs were residential tenants under G.S. Ch. 42.

Grounds for Summary Ejectment and Common Defenses

1. Grounds for Summary Ejectment

As discussed in the previous section, the unique remedy of summary ejectment is available only in cases involving "a simple landlord-tenant relationship" and this section will discuss the four, and only four, specific breaches for which summary ejectment is an available remedy. Those four breaches are:

1. Breach of a lease condition for which re-entry is specified,
2. Failure to pay rent,
3. Holding over, and
4. Criminal activity.

The most important aspect of making correct decisions in summary ejectment actions is identifying the grounds and then applying the rules associated with that ground.

1. Breach of a Lease Condition for which Reentry is Specified

No matter what the complaint says, the magistrate should begin every case by determining whether the lease contains a forfeiture clause (i.e., a lease condition for which re-entry is specified). The normal rule in contract law is that the innocent party has the right to sue the breaching party for money damages, but a landlord has the right to include a forfeiture clause in the lease allowing them to terminate the lease in addition to any claims they may have for money damages. The analysis for this ground works like this:

- Ask the plaintiff whether the lease is oral or written.
- If written, require that a copy of the lease be placed into evidence.
- Read the lease for language providing in essence that a consequence of breach may be termination of the lease. Key words are right of reentry and default, but neither may be used.
- Identify the trigger for forfeiture.
- Determine whether the plaintiff has demonstrated that tenant's behavior triggered forfeiture.
- Determine whether plaintiff strictly complied with any procedural requirements for declaring forfeiture set out in the lease. (For example, notice requirement.)

2. Failure to Pay Rent

What if there is no forfeiture clause? If the landlord has no contractual right to end the lease because of tenant's breach, the general rule is that a landlord's only remedy is money damages caused by the tenant's behavior. If the breach at issue in the case is failure to pay rent, North Carolina law throws the landlord a life preserver identified as "Failure to Pay Rent." The General Assembly passed a law (G.S. 42-3) specifically targeting a situation in which a tenant is occupying property, not paying rent, and refusing to leave by creating a statutory procedure allowing the landlord to eject the tenant if all efforts to obtain payment fail. **This ground is only available if there is no forfeiture clause in the lease.** The law will not override the parties' contractual agreement, so where the lease includes a valid forfeiture clause, including one triggered by the tenant's failure to pay rent, this ground is not available, and the landlord must follow the procedure set out in the lease for forfeiture.

To qualify for this statutory exception to the general rule, the landlord must make a demand that the tenant pay rent and must give the tenant at least ten days from the date of demand before filing an action for summary ejectment. The landlord has the burden of showing compliance with this requirement as part of a *prima facie* case.

Just as the statute provides a life preserver to the landlord, it also provides a defense for the tenant. If the tenant can come up with all money owed and court costs at any time prior to entry of judgment ("tender"), the tenant is entitled to have the action for SE dismissed. According to G.S. 42-33, effective tender includes "rent due and the costs of the action." If the landlord refuses to accept tender prior to appearing in court, the statute also provides that the tenant may pay the amount "into the court for the use of the plaintiff." No North Carolina case has addressed what "rent due" means in this context, so the School of Government position has been that magistrates should require tenants to pay the full amount of rent necessary to bring them into compliance with the lease. The amount required for effective tender may be greater than what the law allows the magistrate to award in a judgment for summary ejectment since the magistrate can only enter judgment in an amount through the date of court. Case law is also silent about whether effective tender includes late fees authorized by the rental agreement. Tender is a complete defense to a summary ejectment action based on G.S. 42-3, so the court must dismiss the action for possession if the tenant tenders.

3. Holding Over after the End of the Term

When the lease ends, and the tenant is still in possession of the property, the landlord can file an action for summary ejectment based on "Holding Over." There does not have to be any "fault" on the part of the tenant. The landlord can decide not to continue to rent to the tenant and give notice to terminate the lease, and if the tenant does not leave at the end of the term, the tenant is in breach. There are three ways a lease can end:

1. The parties agree at the beginning on the end-date (Example: "This lease for one year begins on September 1, 2011, and ends on August 31, 2012.")
2. The parties agree at the beginning on a procedure for ending the lease (Example: "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 (G.S. 42-14):
    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

Whether the notice given is pursuant to the terms of the lease or as set out by statute, the notice operates to terminate the lease as of the **end of the rental period**. For example, in a month-to-month lease, with rent payable on the first day of the month, and the lease is silent about notice, the landlord may give notice as early as September 1, or as late as September 23, to terminate the lease as of September 30. As discussed above, the law will not override the parties' contractual agreement, so where the lease includes a notice provision, the landlord must follow the procedure set out in the lease for notice.

4. Criminal Activity

A landlord who wants to evict a tenant because of criminal activity has two potential legal grounds: the statutory procedure set out in G.S. Ch. 42, Art. 7 "Expedited Eviction of Drug Traffickers and Other Criminals" or breach of a lease condition if the lease contains a forfeiture clause triggered by criminal activity. The statutory procedure in Article 7 applies to all residential rental agreements to protect the right of the public to "the peaceful, safe, and quiet enjoyment of their homes." 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 North Carolina Small Claims Law. There is very little case law interpreting the statute, thus the relevant law will be found primarily in the statute.

The definitions in G.S. 42-59 explain what, who and where are governed by the statute. "Criminal activity" is defined as conduct that would constitute a drug violation under G.S. 90-95 other than G.S. 90-95(a)(3) (possession of a controlled substance); any activity that would constitute conspiracy to violate a drug provision; or any other criminal activity that threatens the health, safety, or right of peaceful enjoyment of the entire premises by other residents or employees of the landlord. The statute regulates the activity of tenants, residents, and guests as those terms are defined by statute. The statute regulates activities that occur within the individual unit and the entire premises, as defined by statute.

Summary ejectment for criminal activity is a civil action that can be filed in small claims court or in district court. The expedited procedures in the statute apply to actions filed or appealed to district court, as the procedure for eviction in small claims court is already expedited. The magistrate can order a complete eviction, a partial eviction, and/or a conditional eviction. The appropriate judgment form is AOC-CVM-403 "Judgment in Action for Summary Ejectment Criminal Activity."

A complete eviction is an order evicting the tenant and everyone taking under the tenant. This type of eviction requires the landlord to prove one of the five following occurrences:

1. criminal activity occurred on or within the individual rental unit leased to the tenant; or
2. the individual rental unit was used to further or promote criminal activity; or
3. the tenant, any member of the tenant's household, or any guest engaged in criminal activity on or in the immediate vicinity of any portion of the entire premises; or
4. the tenant gave permission to or invited a person to return or reenter any portion of the entire premises knowing that person was barred either by a proceeding under this Article or by reasonable rules of a publicly assisted landlord; or
5. the tenant failed to notify a law enforcement officer or the landlord immediately upon learning that a barred person had returned to the tenant's individual rental unit.

A partial eviction is an order removing a person other than the tenant when the magistrate finds that has engaged in criminal activity on or in the immediate vicinity of some portion of the entire premises. Such a person must be named as a defendant, or if the person's name is unknown, named a "John (or Jane) Doe," stating the name is fictitious and adding a description sufficient to identify him or her (G.S. 42-62(b)).

A partial eviction may be ordered in combination with a conditional eviction. The partial eviction is directed at the person responsible for the criminal activity, while the conditional eviction is directed at

the tenant and addresses the tenant's responsibility in avoiding the risk of criminal activity in the future. In addition, a conditional eviction may be appropriate when the magistrate finds that a resident or guest has engaged in criminal activity, but that person is not named as a party in the action as discussed above. The tenant is not immediately evicted but signs an acknowledgement on the judgment form AOC-CVM-403 stating that he or she understands the terms of the court order and that violation of the court's order will result in termination of the tenancy.

To enforce the conditional eviction against the tenant if the landlord believes the tenant has violated the conditional eviction order, the landlord files a motion in the original action or a new summary ejectment action. At the hearing, the magistrate shall order the eviction of the tenant if the magistrate finds one of the following:

1. the tenant has given permission to or invited a person removed or barred from the premises to return to or reenter any portion of the entire premises; or
2. the tenant has failed to immediately notify appropriate law enforcement authorities or the landlord upon learning that a person who has been removed and barred has returned to or reentered the tenant's individual rental unit; or
3. the tenant has otherwise knowingly violated an express term or condition of any order issued by the court under this statute.

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 for which reentry is specified. For a discussion of this situation, see North Carolina Small Claims Law, pp. 182-184. The case can be analyzed in the same way as other breach of a lease condition cases using the following steps:

1. Determine whether the lease contains a forfeiture clause.
2. Determine whether there has been a breach.
3. Determine whether proper procedure was followed in terminating the lease.

2. Common Defenses

1. Failure to Prove Essential Elements

Except for when the landlord asks for judgment on the pleadings which will be discussed in the section on Procedural Rules for Summary Ejectment Cases, the landlord must prove all the essential elements of the grounds for summary ejectment. Most summary ejectment actions decided in favor of a tenant fail because the landlord is unable to prove all the essential elements of any of the four grounds for their claim for possession. Quite often this deficit is apparent to the magistrate even before a tenant begins introducing evidence – or in some cases in which the tenant is not even present at trial. Sometimes, though, a tenant's own testimony or other evidence will challenge one of the essential elements to a degree sufficient to prevent a conclusion that the landlord has proven it by the greater weight of the evidence. For example, in a summary ejectment action based on breach of a lease condition, the landlord must prove that they followed the procedure set out in the lease for declaring a forfeiture and terminating the tenant's right to possession, and if the landlord fails to do so, the landlord has failed to prove an essential element and the case should be dismissed.

One of the most common "essential elements" defenses presented in summary ejectment cases is based on default in rent payments – whether based on "breach of a lease condition" or "failure to pay rent" -- when a tenant claims that the condition of the rental premises violated the Residential Rental Agreements Act (RRAA), thus reducing the actual amount of rent owed to the landlord. See North Carolina Small Claims Law pp. 197- 199 for details, including an example of the calculations necessary to assess this defense.

2. Waiver

Waiver is a broad equitable defense that is very fact-specific and potentially applicable in many contract cases. In the landlord-tenant context, the waiver doctrine provides that when a landlord learns that the tenant has breached the lease in a manner entitling the landlord to terminate the lease, the landlord is presented with a choice: either terminate the lease, or "waive the breach" and continue with the agreement. A landlord may either terminate or continue the lease, but the landlord may not act inconsistently to indicate an intention to waive the breach and then seek eviction. Depending on the particular situation, there are many ways to waive the breach, but the most common behavior is to accept money from the tenant. Nothing else appearing, the assumption is that a tenant who gives a landlord money does so in the belief that the payment will allow the tenant to remain in possession of the property.

There is an exception to the waiver doctrine when (1) the ground for ejectment is breach of a lease condition, (2) the LL accepts partial rent or partial housing subsidy payment, and (3) the written lease contains a non-waiver provision consistent with these requirements. GS 42-26(c).

Waiver is not an available defense when summary ejectment is based on criminal activity pursuant to GS 42, Art. 7, or when plaintiff is a public housing authority, although there are exceptions to this rule. See Small Claims Law, p. 172.

3. Res judicata

A landlord who brings a second action for possession after losing a prior action based on the same breach will have the action dismissed based on this defense, roughly translated as "it has already been adjudicated." Note that failure to pay rent in May is NOT the same breach as failure to pay rent in April.

4. Tender

A tenant who offers to pay the total amount of rent owed plus court costs in cash at any time prior to entry of judgment is entitled to dismissal of the summary ejectment action **provided that the ground for eviction is GS 42-3, the statutory implied forfeiture of failure to pay rent. Tender is not a defense to summary ejectment based on any other ground.** Because tender is a defense – rather than an offer to settle -- when the ground for eviction is failure to pay rent under GS 42- 3, a LL cannot defeat the defense merely by refusing to accept payment.

5. Retaliatory Eviction

See GS Ch. 42, Art. 4A, which sets out the details of this defense.

Rules of Procedure for Summary Ejectment Cases

1. **Mandatory Rule #1 Subject Matter Jurisdiction**
   - In the absence of a "simple landlord-tenant relationship," both small claims magistrate and district court judge lack subject matter jurisdiction to hear action labeled as "summary ejectment."

2. **Mandatory Rule #2 Personal Jurisdiction and Service of Process**
   - Service of process must occur at least 2 days prior to trial date. Action must be calendared within 7 business days of the complaint being filed. The sheriff must serve summons and complaint within 5 days of the complaint being filed.
   - For Summary ejectment only, service by first class mail + posting on rental premises is sufficient for award of possession only. Magistrates should leave #7 related to award of costs on CVM-401 Judgment Form blank.
   - If landlord is seeking both money damages and possession, service is by posting, and defendant is not present, 2017 amendment allows plaintiff to ask that the claims be "severed," with claim for possession heard immediately and money damages claim heard at later time after defendant has been personally served.
   - Service by private process server not allowed even after unsuccessful attempt by sheriff for possession claim, but private process server allowed to serve severed claim for money damages.
   - The magistrate can enter a monetary judgment if the defendant makes a voluntary appearance in court.

3. **Mandatory Rule #3 Who May Appear**
   - Agent with personal knowledge may sign the complaint and represent landlord. GS 7A-223(a).

4. **Mandatory Rule #4 Servicemembers Civil Relief Act**
   - Just as in all cases in small claims court, the magistrate should not proceed without the SCRA Declaration if the defendant is not present.

5. **Mandatory Rule #5 Minimum Notice Requirements**
   - The mandatory minimum notice period is only TWO calendar days in summary ejectment cases.
   - If the mandatory minimum notice period is not met, the magistrate should continue the case unless the defendant makes a knowing waiver.

6. **Mandatory Rule #6 Real Party in Interest**
   - The property owner is the real party in interest (RPII) and must be listed as plaintiff in complaint.
   - If the RPII is not listed as the plaintiff, allow a reasonable time for substitution. Only dismiss if the RPII is not substituted.

7. **Mandatory Rule #7 Bankruptcy Stay**
   - Just as in all cases in small claims court, the magistrate should not proceed if the defendant has filed for bankruptcy.

- The action is automatically stayed, and any efforts to lift the stay require the landlord to seek relief from the bankruptcy court.

8. Mandatory Rule #8 No Default Judgments

- In all small claims actions, the usual rule is that the plaintiff must introduce sufficient evidence in support of the claims, regardless of whether the defendant is present.
- Summary Ejectment Exception: Plaintiff is entitled to judgment on the pleadings (JOTP) if:
    - Complaint alleges defendant's failure to pay rent as breach of lease for which reentry is allowed as grounds.
    - Defendant was served but has not filed an answer nor appeared for trial.
    - Plaintiff requests JOTP in open court

9. Mandatory Rule #9 Judgment

- Continuances are available only for good cause and for no more than five days or the next session of court, whichever is greater, unless the parties consent to a longer period.
- Magistrate prohibited from reserving judgment unless the parties agree or the court finds the case is "more complex." In case of complex case, magistrate required to enter judgment within 5 business days.
- If judgment is for landlord in small claims court and tenant appeals, tenant is subject to being evicted while appeal is pending unless tenant satisfies statutory requirements for obtaining stay.
- Costs of appeal for trial *de novo* must be paid within 10 (not 20) days of entry of judgment.
- Appeal subject to dismissal in district court under some conditions, requiring magistrate to make a finding when tenant presents a defense in small claims court.
- The sheriff must execute a writ of possession within 5 days of issuance.

Damages in Summary Ejectment Action

There are four types of damages that might be awarded to a landlord in a summary ejectment action:

1. Unpaid rent up to date of judgment
2. Breach of contract damages
    a. Occupancy damages for continued possession after end of lease
    b. When lease is for a fixed period, damages for remainder of term (*NOTE: landlord has duty to mitigate damages)
    c. Check lease for liquidated damages clauses
3. Fees pursuant to GS 42-46 (residential only)
    a. Late fees
    b. Administrative fees
        1. Complaint-Filing Fee
        2. Court-Appearance Fee
        3. Second Trial Fee
    c. Out-of-Pocket Expenses and Litigation Costs
        1. Filing fees
        2. Costs for service of process
        3. Reasonable attorneys' fees paid or owed
4. Damage to property (exceeding normal wear and tear) Measure is difference between FMV of property before and after damage. Cost of repair may be relevant to determination, but is not itself proper measure of damages

Fees in Summary Ejectment Actions

For Leases Entered into On or After Oct. 1, 2009, the following fees are authorized by G.S. 42-46:

Late Fees

In residential leases, parties may agree to late fees for payments five or more days late. When rent is paid monthly, the maximum fee is $15 or 5%, whichever is greater. In the case of weekly rent, the maximum late fee is $4 or 5%, whichever is greater. Prior to a 2021 amendment to the statute, it was clear that any late fees charged contrary to the provisions of the statute were against public policy and therefore void and unenforceable. The 2021 amendment changed the name of that section of the statute to "Limitations on Charging and Collection of Administrative Fees and Out-of-Pocket Expenses and Litigation Costs" when before it had simply referred to limitations on "fees." Based on this change to the section, the landlord could argue that late fees exceeding the statutory maximums are no longer void and unenforceable, but instead can be made to conform to the statutory maximums. The magistrate should exercise their discretion when determining if the late fees should be void and unenforceable or made to conform to the statute.

Complaint-Filing Fee

In residential leases, parties may agree in writing to an administrative complaint-filing fee, not to exceed $15 or 5%, whichever is greater. The complaint-filing fee may be charged as part of the amount required to cure default. The landlord is entitled to this fee only if:

- tenant was in default,
- LL filed and served complaint for SE,
- tenant cured the default, and
- LL dismissed the claim prior to judgment.

Court-Appearance Fee

In residential leases, parties may agree to an administrative court-appearance fee, not to exceed 10% of the monthly rent, only if:

- tenant was in default
- LL won a SE action
- neither party appealed.

Second Trial Fee

In residential leases, parties may agree to a second administrative trial fee, not to exceed 12% of monthly rent, in the event of a new trial following appeal from small claims judgment. If a Court-Appearance Fee was awarded as part of small claims judgment, that award is vacated. The landlord must prove:

- tenant was in default
- LL prevailed.

Out-of-Pocket Expenses and Litigation Costs

In addition to the late fees and administrative fees outlined above, a landlord also is permitted to charge and recover from a tenant the following out-of-pocket expenses and litigation costs:

1. Filing fees charged by court.
2. Costs for service of process pursuant to statute.
3. Reasonable attorney's fees actually paid or incurred, pursuant to a written lease, not to exceed 15% of the amount owed by the tenant, or 15% of the monthly rent stated in the lease if the eviction is based on a default other than the nonpayment of rent.

Additional Rules Related to Administrative Fees and Out-of-Pocket Expenses and Litigation Costs

LL can charge only one of the three administrative fees, and that fee may not be deducted from subsequent rent payment or asserted as ground for default in subsequent SE action. Landlords are prohibited from attempting to charge larger administrative fees than those provided by statute and any such lease provision in violation of the law is void. Landlords are prohibited from attempting to collect out-of-pocket expenses or litigation costs other than those provided by statute and any such lease provision in violation of the law is void.

Liquidated Damages Provisions

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.

Knutton v. Cofield, 273 NC 355 (1968).

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

Procedural Issues Related to Damages

Related to Complaint

In all cases in which a plaintiff seeks money damages, the magistrate should award damages – if at all – based on the evidence presented at trial. Remember that the complaint serves a notice function, and that the plaintiff is not limited to the amount stated in the complaint. In summary ejectment actions, the amount of rent due as of the date of trial will almost always differ from the amount requested in the complaint. It is not necessary to amend the complaint, unless the amount requested at trial is significantly greater or due to newly asserted claims.

When Service is by Posting

The wording of the summary ejectment complaint form requests money damages in addition to possession unless the plaintiff affirmatively modifies the form. The result is that many times plaintiffs may be largely unaware that they have asserted two separate claims for relief, each of which must be disposed of in a final judgment. When service is by posting and the defendant does not appear, the magistrate does not have jurisdiction to award money damages, including costs. If the plaintiff does not request that the claim be severed pursuant to GS 7A-223(b1), the magistrate should note on the judgment form that the claim for damages was not considered because service was by posting.

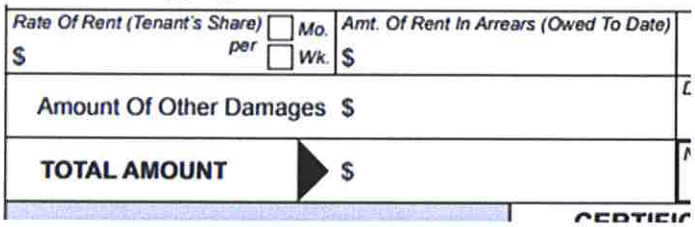
If the plaintiff does request that the claim be severed, note that the issue about costs is resolved: no determination as to costs is made at Part 1 of the trial, regarding possession, and the tenant will have been personally served when Part 2 of the case is decided and a final judgment entered.

Related to Stay of Enforcement

A judgment awarding possession of rental premises is enforceable after ten days even if the tenant appeals, unless the tenant obtains the (entirely separate) stay of enforcement pending appeal.

Because the stay procedure involves calculating amounts of money to be deposited in the clerk's office, litigants and magistrates alike sometimes confuse the details of this procedure with calculation of damages. This is particularly true because the magistrate must enter information related to both aspects of the case on the judgment form.

- On the judgment form, under Findings, the magistrate should complete #3 by recording the smallest amount of rent both parties agree is owed. (If the defendant does not appear for trial or file an answer, this amount will be based on the LL's testimony and/or the amount requested in the complaint.) Note that this record of the parties' contentions is entirely unrelated to the amount of rent, if any, actually determined by the magistrate to be owed.
- On the portion of the judgment form reproduced below, the block labeled Rate of Rent should be completed for use by the clerk if necessary, in case of appeal. On the other hand, the block labeled Amt. of Rent in Arrears should be completed by the magistrate only if the intent is to enter a money judgment.



- Potential *res judicata* issues: The legal doctrine of *res judicata* provides that a final judgment on the merits bars subsequent actions between the same parties on the same issues—not only those issues which actually were litigated, but also those that might have been. GS 42-28 provides that a landlord in a summary ejectment action may seek, in addition to possession, "rent in arrears, and damages for the occupation of the premises since the cessation of the estate of the lessee . . . but if he omits to make such claim, he shall not be prejudiced thereby in any other action for their recovery." In a significant case, the Court of Appeals reminded us that the statutory right to seek monetary damages in a separate action from a summary ejectment claim "does not create an exception to the general rule that all damages must be recovered in one action." Chrisalis Properties, Inc. v. Separate Quarters, Inc., 101 NC App 81 (1990), *rev. denied* 328 NC 570 (1991). The rule applies to all damages arising out of tenant's breach of lease and its subsequent termination. Arguably, damage to property would not fall under this rule, because it is a tort, rather than breach of contract.
- Impact of security deposit: Unless the security deposit is part of the case – typically because tenant has filed a counterclaim – the magistrate should determine damages and enter judgment without regard to any security deposit that might be available as another source of compensation for damages.

What Magistrates Need to Know About the RRAA

The Residential Rental Agreements Act (and Other Tenants' Rights Statutes)

The Residential Rental Agreements Act is set out in G.S. Chapter 42, Sections 38 to 44. This law, which was passed in 1977, changed NC law to require landlords to maintain residential rental premises at a certain minimal level of habitability. This obligation is imposed as a matter of social policy by the State of North Carolina. For that reason, a tenant has no authority to give a landlord permission to violate the law. In exchange for providing greater protections to tenants, including prohibiting self-help eviction and requiring landlords to provide fit and habitable housing, a number of preferential procedures are provided to landlords allowing fast and inexpensive evictions when tenants breach a lease.

Who and What is Covered by the Law?

The RRAA applies only to residential rental agreements.

The law applies to any dwelling unit, including mobile homes and mobile home spaces, as well as surrounding grounds and facilities provided for use by residential tenants.

The statute defines "landlord" to include not only property owners, but also rental agencies or other persons who have or appear to have authority to comply with the legal requirements imposed by the RRAA.

The RRAA does not apply to vacation rentals covered by GS Ch. 42A, temporary lodging in hotels or motels, and to permissive occupancy of premises furnished without charge.

What Does the Law Provide?

The law imposes 8 distinct obligations on a landlord:

1. It must comply with building and housing codes.
2. It must keep premises in a fit and habitable condition.
3. It must keep common areas in safe condition
4. It must maintain and promptly repair electrical, plumbing, heating, and other supplied facilities and appliances.
5. It must install a smoke detector and keep it in good repair.
6. It must install a carbon monoxide detector and keep it in good repair.

7. It must notify the tenant if water the landlord charges to provide exceeds a certain contaminant level.
8. It must repair within a reasonable time any "imminently dangerous condition" listed in the statute:
   a. Unsafe wiring.
   b. Unsafe flooring or steps.
   c. Unsafe ceilings or roofs.
   d. Unsafe chimneys or flues.
   e. Lack of potable water.
   f. Lack of operable locks on all doors leading to the outside.
   g. Broken windows or lack of operable locks on all windows on the ground level.
   h. Lack of operable heating facilities capable of heating living areas to 65 degrees Fahrenheit when it is 20 degrees Fahrenheit outside from November 1 through March 31.
   i. Lack of an operable toilet.
   j. Lack of an operable bathtub or shower.
   k. Rat infestation as a result of defects in the structure that make the premises not impervious to rodents.
   l. Excessive standing water, sewage, or flooding problems caused by plumbing leaks or inadequate drainage that contribute to mosquito infestation or mold.

Notice Requirements

General rule: The tenant must give whatever notice is necessary to reasonably permit the landlord to fulfill his obligations.

With regard to #4, the rule related to electrical, plumbing, and other "facilities and appliances," the tenant is required to give written notice that repair or maintenance is necessary (except in case of emergency).

A property owner is presumed to have knowledge of conditions in existence at the beginning of the rental, and no further notice by the tenant is required.

A Tenant Can't Excuse a Landlord from the Law's Requirements

The obligations imposed on landlords by the RRAA are not based on the rental agreement between the parties, but are imposed by law. Consequently, the rules apply

- even if the contract says nothing about them
- even if the lease specifically states that the tenant waives those rights
- even if the housing had obvious violations which the tenant was aware of when the tenant entered into the lease
- even if the rent is substantially lowered to reflect the FRV of the defective property

Q: What is the effect of a lease provision that specifies that an appliance (e.g., dishwasher) is being provided as an accommodation to the tenant, but only if the tenant agrees to pay any cost of repair if the appliance breaks?

A: The provision is not enforceable; the landlord is required to repair the dishwasher. Note that the landlord is not required to provide a dishwasher, but is required to maintain and repair those appliances it provides.

Q: What are the landlord's rights and obligations if the tenant's own behaviors cause an imminently dangerous condition (#8) on the property?

A: The landlord is required to repair or remedy any imminently dangerous condition, even one that results from the tenant's fault, but the tenant is responsible for paying the actual and reasonable costs of repairs.

A Tenant Has Obligations Too

GS 42-43 lists the requirements applicable to tenants related to keeping property clean and undamaged and to cooperating with the landlord to ensure that the rental unit has at all times an operable smoke and/or carbon monoxide alarm. A landlord who becomes aware of a tenant's violations of these requirements is required to give written notice to the tenant except in case of emergency.

Remedies: What Happens When a Landlord Fails to Meet His Responsibilities Under the Act?

At the outset, you are confronted with two apparently contradictory provisions of the Act that have worried commentators. On the one hand, the obligations of the landlord and the tenant under the Act are "mutually dependent"—that is, each of them is obligated only if the other keeps his part of the bargain. Based just on this provision, one might reasonably conclude that a tenant's obligation to pay rent "depends" on the landlord's provision of fit and habitable premises. But another section of the Act specifically says that a tenant may not "unilaterally withhold rent prior to a judicial determination of the tenant's right to do so." What does this mean?

No one is absolutely certain, because there have actually been only a few appellate cases interpreting the RRAA. It seems clear, though, that a tenant who withholds rent because the landlord violates the RRAA risks being evicted for failure to pay rent. A much safer course would be to pay rent and then bring an action in rent abatement; a tenant who prevails in this action will recover damages for the landlord's past violation of the Act and may well also secure a "judicial determination of [his] right" to withhold future rent until the landlord complies with the law.

If a tenant does not adopt this safer course, but instead withholds rent, one leading commentator suggests the following approach:

First, determine the actual amount of rent owed, after factoring in the amount of offset to which the tenant is entitled due to the landlord's breach of the RRAA. If that amount is zero, dismiss the action. If the amount is greater than zero, the next step depends on the specific basis for the action:

If the action is based on breach of a lease condition for which forfeiture is specified, the landlord is entitled to possession upon making the usual showing.
If the action is based on failure to pay rent, however, the tenant may successfully defend by tendering the amount which the magistrate has determined is actually owed.

Repair & Deduct?

Can a tenant hire someone to fix the roof, pay for it out of his own pocket, and then take that amount out of the rent? We don't know, and the commentators are divided in their predictions. Until North Carolina courts clarify the law, it seems likely that many courts will cautiously allow tenants to do this, with the facts of the individual case being important (a tenant who gives notice, waits a long time, and then spends a small amount of money being much more likely to prevail than a tenant who fails to give notice and makes major repairs, such as replacing a roof).

Procedure

The Act states that a tenant may enforce his rights under the RRAA by civil action, *including "recoupment, counterclaim, defense, setoff, and any other proceeding, including an action for possession."* Thus, a magistrate may be confronted with applying the Act in any of the following circumstances:

1. The landlord brings an action for possession and/or money damages, and the tenant defends by contending that the landlord violated the Act.

2. The landlord brings an action for possession and/or money damages, and the tenant brings a counterclaim for rent abatement based on the landlord's violation of the Act.

3. The landlord brings an action for money damages, and the tenant responds by arguing that the landlord's damages should be reduced ("set-off") because of his violation of the Act.

4. The tenant files an action for rent abatement.

Damages

The tenant is entitled to the difference between the FRV (fair rental value) of the property as warranted and the FRV of the property as it actually is, plus any incidental damages (for example, the tenant had to

buy a space heater when the furnace stopped working). NOTE: A tenant may only recover up to the amount of rent he actually paid.

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

Exercise: Let's Look at Some Lease Provisions

Lease #1:

Resident accepts Property in its present "AS-IS" condition . . .

All appliances of any kind including window air conditioners are specifically excluded from this Agreement. Such appliances remain as a convenience to Resident and Management assumes no responsibility for their operation. No part of the monthly rent is attributable to them.

Discount for prompt payment and maintenance: Time is of the essence of this Agreement. If the rent, and any previous balance due, is received and accepted on or before (the due date described above) and Resident complies with the maintenance requirements contained herein, a _____ Dollar discount will be credited to the rental payment.
Resident shall at his own expense and at all times maintain the premises in a clean and sanitary manner, including all equipment and appliances therein. . . Resident expressly stipulates and agrees that Management is granting a rental discount in exchange for Resident's agreeing to perform and bear the expense of, or have performed, minor maintenance and repairs on the dwelling, therefore Management shall NOT be responsible for maintenance and repairs of the premises during the term of this Agreement. If Resident repair responsibilities conflict with any state laws to the contrary, Resident expressly agrees to fully waive and relinquish any protections so provided.

Lease #2

In the event repairs are needed beyond the competence of the Tenant, Tenant is urged to contact the Landlord. Tenant is offered the loan of the shed as an incentive to make his own decisions on repairs to the property and to allow Landlord to rent the property without the need to employ professional management. Therefore, as much as possible, Tenant should refrain from contacting the landlord or his agent except for emergencies, or for expensive repairs.

Tenant warrants that any work or repairs performed by him will be undertaken only if he is competent and qualified to perform it. Tenant will be totally responsible for all activities to assure that work is done in a safe manner which will meet all the applicable codes and statutes. Tenant further warrants that he will be accountable for any mishaps or accidents resulting from such work, and will hold the Landlord free from harm, litigation, or claims of any other person. Tenant is responsible for all plumbing repairs including faucets, leaks, stopped up pipes, frozen pipes, water damage, and bathroom caulking.

Appliances or furniture in the unit at date of lease are loaned not leased to Tenant. Maintenance of appliances or furniture is the responsibility of Tenant who will keep them in good repair.

Rent Abatement Problem

Larry Landlord rents an apartment to Tommy Tenant. There is no written lease. Tommy pays $600 rent on the first of each month. Larry files for summary ejectment based on failure to pay rent on March 15, based on Tommy's failure to pay rent for February and for March. You hear the case on March 25.

Imagine that Larry establishes a prima facie case, but Tommy's testimony is that the apartment has had no heat since he moved in, on Jan. 1st. He testifies that he notified Larry immediately of the problem, and Larry promised to fix it, but beyond providing a space heater, has taken no other steps to repair the heating system. Tommy tells you that he believes the apartment with a single space heater, rather than a central heating system, is worth only $300 a month. He is prepared to tender the full amount due in order to maintain possession of the property.

Assuming you find Tommy's estimate credible, what amount must he tender? _____

	January	February	March
FRV	$300	$300	$300
Amt pd by T	$600	0	0
Balance	+$300	0	-($300)

Assume that Tommy is not asking to remain in possession of the property, but that he is instead merely disputing the amount owed. What is your money judgment? _____

Landlord-Tenant Law: North Carolina Small Claims Law by Brannon (2009)

The chapter on Landlord-Tenant Law in Joan Brannon's book on small claims law continues to be an outstanding reference. While a few portions of the text have been rendered inaccurate by subsequent legislation or case law, the majority of these relate to procedural modifications applicable to small claims court.

Readers should be aware of the following changes:

- References throughout the text to damages not exceeding $5000 should read "$10,000" due to legislation in 2013 increasing the jurisdictional amount for small claims cases.
- In 2010 the General Assembly passed GS 47G and GS 47H governing the buyer/seller relationship discussed on p. 151 when the agreement is an option to purchase contract executed with lease agreement or a contract for deed.
- The unconscionability issue discussed on p. 160 was directly addressed by the NC Supreme Court in Eastern Carolina Regional Housing Authority v. Lofton, 789 SE2d 449 (2016), in an opinion holding that a landlord is not required to produce evidence negating the possibility that eviction in the particular circumstances would be unconscionable.
- Monetary damages are addressed starting on p. 165, and it should be added that if the landlord is seeking both money damages and possession, service is by posting, and defendant is not present, a 2017 amendment to G.S. 7A-223 allows plaintiff to ask that the claims be "severed," with claim for possession heard immediately and money damages claim heard at later time after defendant has been personally served.
- The section on p. 170 referring to "Other Contractual Fees" has been substantially amended by legislation enacted in 2009 amending GS 42-46 establishing a hierarchy of permissible administrative fees as well as out-of-pocket and other litigation expenses.
- In 2012 the General Assembly added GS 42-26(c) permitting a landlord to accept partial payment of rent in certain circumstances without waiving the right to pursue eviction. This legislation is an important addition to the discussion of waiver beginning on p. 171 of the book.
- The section labeled Security Deposits on p. 189 of the book should be supplemented with legislation making minor amendments to GS 42-51. In addition, Neil v. Kuester Real Estate Services, Inc., 237 NC App 132 (2014) is an important case limiting the "full refund" remedy for violation of the Act to willful violations of GS 42-50, the provision related to the deposit of funds to a trust account.
- The section on pp. 190-192 governing a landlord's right to dispose of tenant's property should be revised to correct references to dollar amounts and time periods in accordance with statutory amendments set out in GS 42-25.9 and 42-36.2
- GS 42-42 was amended to add to the Landlord's Duties under the RRAA listed on p. 193 to include providing an operable carbon monoxide alarm and repairing and remedying any imminently dangerous conditions on the premises as defined by statute.

Forfeiture Clauses[1]

If the Lessee shall fail to pay any installment of rent when due and payable or to perform any of the other conditions as herein provided, such failure shall at the option of the Lessor, terminate this lease and upon one days notice to the Lessee the Lessor may without further notice or demand reenter upon and take possession of said premises without prejudice to other remedies, the Lessee hereby expressly waiving all the legal formalities.

Stanley v. Harvey, 90 N.C. App. 535, 538, 369 S.E.2d 382, 384 (1988)

Is this a forfeiture clause? Yes No

What triggers it? _____

What procedure is required to exercise it? _____

What does it give the LL a right to do? _____

_____

Should the Defendant remain in default of the lease for 30 days following notice from the Plaintiffs of default, the Plaintiffs may thereupon enter upon the premises and expell (sic) the lessee (Defendant) therefrom, without prejudice to any other remedy which the lessor, his executors, administrators or assigns may have on account of such default.

Menache v. Atl. Coast Mgmt. Corp., 43 N.C. App. 733 (1979)

Is this a forfeiture clause? Yes No

What triggers it? _____

What procedure is required to exercise it? _____

What does it give the LL a right to do? _____

[1] Edited for improved readability

In a default other than failure to pay rent, the lessor will take no action to effect a termination of the lease without first giving the tenant a reasonable time to cure the default. Upon the payment of the rent and performing the other terms of the lease, the lessee shall have the quiet enjoyment of the property.

Couch v. ADC Realty Corp., 48 N.C. App. 108, 113, 268 S.E.2d 237, 241 (1980)

Is this a forfeiture clause? Yes No

What triggers it?_____

What procedure is required to exercise it?_____

What does it give the LL a right to do?_____

In case Landlord should bring suit for the possession of the premises, for the recovery of any sum due hereunder, or because of the breach of any covenant herein, or for any other relief against Tenant, declaratory or otherwise, or should Tenant bring any action for any relief against Landlord, declaratory or otherwise, arising out of this lease, and Landlord should prevail in any such suit, Tenant shall pay Landlord a reasonable attorney's fee which shall be deemed to have accrued on the commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment

Morris v. Austraw, 269 N.C. 218, 222, 152 S.E.2d 155, 158 (1967)

Is this a forfeiture clause? Yes No

What triggers it? _____

What procedure is required to exercise it? _____

What does it give the LL a right to do? _____

In the event of any default hereunder or if the Landlord shall at any time deem the tenancy of the Tenant undesirable by reason of objectionable or improper conduct on the part of the Tenant, his family, servant, guests, invitees, or causing annoyance to other Tenants in said building, or should the Tenant occupy the subject premises in violation of any rule, regulation or ordinance issued or promulgated by the Landlord or any rental authority, then and in any of said events the Landlord shall have the right to terminate this lease by giving the Tenant personally or by leaving at the leased premises a thirty day written notice of termination and this Lease shall terminate upon the expiration of thirty days from the delivery of such notice if the default is not remedied within a reasonable time not in excess of 30 days and the Landlord, at the expiration of said thirty day notice or any shorter period conferred under or by operation of law shall thereupon be entitled to immediate possession of said premises and may avail himself of any remedy provided by law for the restitution of possession and the recovery of delinquent rent. If this lease is terminated, Landlord shall refund prepaid and unearned rent, and any amount of the security deposit recoverable by the Tenant.

However, in the event the default is nonpayment of rent, Landlord shall not be required to deliver thirty day notice as provided above but may serve Tenant with a ten day written notice of termination whereupon the Tenant must pay the unpaid rent in full or surrender the premises by the expiration of the ten day notice period. Failure by Tenant to pay all past due rent by the expiration of the ten day notice period shall imply a forfeiture of the term and the Landlord may forthwith enter and dispossess tenant without have declared such forfeiture or having reserved the right of reentry in the lease.

Is this a forfeiture clause? Yes No

What triggers it? _____

What procedure is required to exercise it? _____

What does it give the LL a right to do? _____

Landlord may give 5 days written notice to tenant to correct any of the following defaults:

Failure to pay rent or added rent on time

Improper assignment of the lease, subletting all or part of the premises, or allowing another to use the premises

Improper conduct by tenant or other occupant of the premises

Failure to fully perform any other term in the lease.

If tenant fails to correct one of these defaults within 5 days landlord may cancel the lease by giving tenant a written 3 day notice stating the date the term will end. On that date the term and the tenant's rights in this lease automatically end and tenant must leave the premises and give landlord the keys.

Is this a forfeiture clause? Yes No

What triggers it? _____

What procedure is required to exercise it? _____

What does it give the LL a right to do? _____

In the event that you fail to comply with any one or more of the terms and conditions contained herein or referenced hereto, or should you fail to perform any other promise, duty or obligation herein agreed to or imposed by law, any such failure shall constitute your immediate and instant default of this agreement without notice or warning of any kind to you. Upon any default by you, we shall be entitled to collect from you any and all expenses, damages, and costs (including reasonable attorney's fees and court costs) arising out of or in any way relating to said default. In the event of a default by you, we may, with or without notice to you, do any one or more of the following acts: (1) terminate your right to possession of the home without terminating this agreement, and/or (2) terminate this agreement.
Excerpted from AANC lease 2008.

Events Constituting Breach: It shall constitute a breach of this agreement if Tenant fails to

(i) Pay the full amount of rent herein reserved as and when it shall become due hereunder; or

(ii) Perform any other promise, duty, or obligation herein agreed to by him or imposed upon him by law and such failure shall continue for a period of five (5) days from the date the Landlord provides Tenant with written notice of such failure.

In either of such events and as often as either of them may occur, the Landlord, in addition to all other rights and remedies provided by law, may, at its option and with or without notice to Tenant, either terminate this lease or terminate the Tenant's right to possession of the Premises without terminating this lease.
NCREC Standard Form 410-T (2006)

Failure to Pay Rent

1. LL has a forfeiture clause in the lease providing that being more than 3 days late with the rent on more than 2 occasions in a 6-month period is a breach of the lease authorizing the LL to terminate the lease. T recently lost his job and—for the first time -- missed a rent payment. The following day, on March 2, LL demanded that the tenant make immediate arrangements to catch up the rent or else be evicted. On March 15, having received no payment, the LL filed this action for SE. Who wins?

2. LL's lease contains a provision stating that, in the event the T is late with rent, the T is aware and agrees that, pursuant to the lease, the LL is considered to have made a demand effective the moment the payment is late. T misses a payment on March 1, and LL files for SE on March 12 without having communicated with T. Who wins?

3. T knows that he's likely to have trouble paying the rent this month and discusses it with the LL, who says, "Just do the best you can—pay as much as you can as soon as you can, because I don't want to have to evict you." That conversation happened on February 27, and on March 1, the T missed the rent payment. On March 12, LL files for SE. Who wins?

4. Imagine the above conversation happened on March 1. Different result?

5. T failed to pay rent on March 1, and LL promptly demanded the rent. On March 9, LL files for SE. Who wins?

6. T failed to pay rent on March 1, and LL promptly demanded the rent. On March 9, LL accepted half the rent. On March 11, LL files for SE. Who wins?

7. T failed to pay rent on March 1, and LL promptly demanded the rent. On March 12, LL filed for SE. When the case comes to court, the T offers to pay total rent plus reimbursement for court costs, in cash right then. LL refuses to accept the sum offered, saying she's willing to forget about the money, but still wants possession, saying she doesn't want to have to come back to court every time the tenant is late. Who wins?

8. Is the result different if T is prepared to pay all past due rent but doesn't have enough cash for court costs?

Holding Over

1. Lease runs from Jan. 1- Dec. 31, 2018. On Jan. 2, 2019, LL files SE action. Testimony is that T has always paid rent on time. T testifies that she attempted to pay rent on Jan. 1, 2019, but LL refused it.
   When did lease end? _____
   What result? _____

2. Lease runs from Jan. 1 – Dec. 31, 2018. On Jan. 1, 2019, LL accepts usual rent payment from T. T pays rent on Feb. 1 and again on March 1. On March 15, LL files SE action, testifying that she has reminded T on several occasions that lease ended at the end of 2018, and that T needs to find another place to live, but he's still there.
   When did lease end? _____
   What result? _____

3. Lease runs from Jan. 1- Dec. 31, 2018, with right to renew for another year if notice is given in writing at least 30 days prior to expiration. On November 24 T calls LL to inform her that he intends to exercise his option to renew. On Jan. 1, 2019, LL refuses to accept rent, and files SE action on Jan. 2.
   When did lease end? _____
   What result? _____

4. Lease runs from Jan. 1- Dec. 31, 2018, with right to renew for another year if notice is given in writing at least 30 days prior to expiration. On November 24 T calls LL to inform her that he intends to exercise his option to renew. On Jan. 1, 2019, LL accepts rent. On Jan. 15, LL tells T the lease will end on January 31. On Feb. 1, LL files SE action.
   When did lease end? _____
   What result? _____

5. Lease runs from Jan. 1 – Dec. 31, 2018, but tenant continues to pay and LL continues to accept rent on monthly basis. On March 25 LL tells T that the lease will end effective April 1. On April 2, LL files SE action.
   When did lease end? _____
   What result? _____

6. Month-to-month lease, with rent due on first. On March 15, LL tells T lease will end on March 23. When T hasn't vacated by March 24, LL files SE action.
   When did lease end? _____
   What result? _____

7. Month-to-month lease, containing following provision: *This lease may be terminated by either party giving thirty days written notice.* On March 15, T tells LL that she'll be moving out at the end of the month. LL tells her that that's not enough notice. T moves out as planned. On May 1, LL files an action for money damages, based on T's failure to pay rent for April. LL explains that he found another tenant to move in as of May 1.
   When did lease end? _____
   What result? _____

8. Would the result be different if LL wished T good luck, said he had a replacement tenant on the waiting list, and accepted the key on March 31?
   When did lease end? _____
   What result? _____

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?

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 newT.) Who wins? What legal principle explains your answer?

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. 1he 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?

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. 1LL 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?

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 Tasks 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?

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?

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.

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?

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?

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?

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?

TAB:

Recovering Personal Property

Actions to Recover Personal Property

Forms: Complaint Form CVM-202 (Complaint to Recover Possession of Personal Property) & Judgment Form CVM-400 (Judgment in Action to Recover Money or Personal Property).

"He took my dog!"

- I'm the owner or legal possessor.
- He wrongfully (1) took, or (2) retained my dog.

"He welshed on his debt, and we want our collateral."

- He agreed that we could repo the property if he missed a payment.
- He missed a payment.

These are two entirely different lawsuits. Only the remedy is thesame.

Job Aid

Essential Elements of Action to Recover Personal Property as a Property Owner

____Plaintiff is owner (or person entitled to possession).

____Property was wrongfully taken or retained.

____Defendant has possession of property. [If not, plaintiff may amend complaint to seek money damages for conversion.]

____Damages necessary to return plaintiff to original position: return of property, compensation for injury to property, and costs associated with loss of use.

Essential Elements of Action to Recover Personal Property as a Secured Party

____The existence of a valid security agreement.

____That the security agreement created a security interest in the specific property at issue.

____The debtor defaulted.

Introductory Activity

Assume that in each of the fact situations below the plaintiff seeks the remedy of recovering personal property. The plaintiff probably could also file an action for money damages -- and might also be able to establish probable cause for a criminal charge -- but neither of those are before you for this activity.

If the plaintiff should file as a property owner, write PO in the blank. If the plaintiff should file as a secured party, write SP in the blank.

_____ Plaintiff is suing her former roommate to recover possession of her iPad.

_____ Plaintiff is suing his ex-spouse to recover possession of the quilt he inherited from his grandmother.

_____ Plaintiff is suing a debtor who borrowed money from plaintiff and put up a boat as collateral.

_____ Plaintiff is suing the person who bought her car after the buyer failed to make the final payment.

_____ A tenant is suing his landlord to recover the furniture he left behind when he was evicted.

_____ A furniture store is suing a customer to recover furniture sold on the installment plan after the customer defaults.

Activity

Secured Transactions: Learning the Lingo

Friendly Furniture sells bedroom furniture, and Connie Consumer would like to purchase some. Connie doesn't have the money to pay the entire purchase price, though. So FF offers to sell her the furniture on an installment plan—in other words, to "finance" her purchase. Of course, there's a possibility that Connie will take the furniture but not finish paying for it. If that happened, FF could certainly sue Connie for breach of contract. But there's a good chance that Connie might turn out to be "judgment-proof," and even if she isn't, it would involve a lot of effort and expense on FF's part to collect. An alternative, which helps FF feel more secure, and thus more interested in selling to low-income customers, is for FF and Connie to enter into another contract saying that if Connie misses a payment, FF can repossess the furniture. FF doesn't even have to come to court, unless its effort to retrieve the furniture might cause a breach of the peace.

As you know, a business deal is often referred to as a transaction, and this special type of two-contracts-in-one is called a_____. To create a secured transaction, the debtor must sign a written, dated_____that describes the property involved specifically enough so that it may be identified. The parties to this agreement are Connie, the *debtor,* and FF, the_____. The property that secures the transaction is called_____.

Rather than saying that FF and Connie entered into a security agreement in which FF obtained the right to repossess the collateral if Connie doesn't pay, it's easier to simply say that FF tooka _____ _____ in the property. The legal term for Connie's failure to pay, which triggers FF's right to repossess, is_____.

The rules about what FF does after repossessing the property are complex. If FF sells the property, it is required to conduct the sale in a_____manner. Any amount still owing after the sale is called a_____, and FF's lawsuit seeking that amount is an *action on the deficiency*.

Word Bank

commercially reasonable

SECURITY AGREEMENT

COLLATERAL

Security interest

DEFICIENCY

Secured party

default

SECURED TRANSACTION

"He Took My Dog" Cases: Actions by a Property Owner

Action for Conversion (aka Forced Sale*): π wants money damages*

Essential elements:

- Plaintiff is owner (or person entitled to possession)
- Defendant wrongfully took or retained
  NOTE: Wrongful retention requires demand for return, even if due date specified.
- FMV
  Plaintiff's opinion testimony sufficient

Action to Recover Possession of Property

Essential elements:

- Plaintiff is owner (or person entitled to possession)
- Property was wrongfully taken or retained
- Defendant has possession of property
  If not, plaintiff may amend complaint to seek money damages for conversion.
- Damages necessary to return plaintiff to original position: return ofproperty, compensation for injury to property, and costs associated with loss ofuse.

"We Want Our Collateral" Cases: Actions by a Secured Party

SP is either a lender (L) or a seller of property on credit (S).

Essential Elements

- Valid security agreement
- Applicable to property sought to be recovered
- Debtor defaulted in manner triggering right to repossess

Essential Element #1: Valid Security Agreement

- Authenticated by debtor
- Description of property sufficient to allow identification
- Writing sufficient to indicate intention to create security interest

- If the agreement involves the extension of *consumer credit*, the document must be dated.

Q: What's a consumer credit transaction?
A: A transaction involving

- A seller who in ordinary course of business regularly extends credit,
- buyer is natural person,
- goods or services are purchased for personal, family, household, or agricultural purposes,
- debt is payable in installments or finance charge imposed,
- amount does not exceed $75,0000.

Essential Element #2: SA applies to particular property sought to be recovered.

Retail Installment Sales Act

A seller in a consumer credit sale is allowed to take a security interest only in:

- The property sold
- Previous purchases not yet paid off
- Personal property to which goods are installed ($300+)
- MV to which repairs are made ($100 +)
- Property sold for use in agricultural business

SI taken in property other than that above is void.

FIFO rule applies to allocation of payments to collateral purchased from same seller over time. S has burden of proof on proper allocation.

RISA (GS Ch. 25A)

RISA applies only to sellers.

A federal regulation governs lenders and provides SI in household goods other than *purchase money security interest* is unfair trade practice. *Purchase money security interest* is interest taken in property purchased with money obtained from loan.

Rights of Secured Party on Buyer's Default

May repossess without court order <u>if no breach of peace</u>.

Q: What is the effect of breach of peace?

A: It renders repossession wrongful. Consequences of wrongful repossession are that SP may be liable for conversion, civil trespass, or even criminal charges.

Q: What factors should I consider in determining whether repossession caused breach of peace?

- A: Location
- Debtor's express or constructive consent
- Reactions of third parties
- Type of premises entered
- Use of deception by creditor

NOTE: A secured party always has the option of sue for $ or repossession; not required to repossess.

What Happens after Repossession

Sell or Keep?

Generally, SP has option of sale or keeping goods in full satisfaction of debt.

Debtor must agree to decision not to sell, either by

- signing agreement or
- by failing to object to notice of intent to keep within 20 days

Consumer goods/60% of debt paid: SP must sell property within 90 days.

Statutory requirements for sale of repossessed property:

- Debtor is entitled to notice of sale,
  Notice must be given in commercially reasonable manner (timing, content, and manner sent)

  Consumer goods: GS 25-9-614 spells out required contents of notice.

- Debtor has right to redeem property at any point prior to sale.
  Amount owed, expenses, and attorney fees (if SA provides) required for redemption.

  Effect of acceleration clause: D must pay full amount of debt to redeem property.

- Sale must be conducted in commercially reasonable manner "in every aspect."
  Whether sale meets CRM standard depends on facts; guiding star is reasonable efforts to obtain best price.

  Whether sale is CR may include consideration of time, place, price obtained for goods, amount of publicity, other broad range of factors.

  May require S to make reasonable efforts to prepare property for sale.

S may elect public sale (auction, with notice to general public) or private sale (all others). S is allowed to purchase property only at public sale unless fair price is capable of objective determination.

Post-sale

- Proceeds allocated in order to
  expenses,
  debt to S,
  debt to other SPs,
  surplus to D.
- Consumer goods: S must provide written accounting to D.

Action for deficiency

If proceeds of sale are insufficient for expenses & debt to seller, seller may bring action for $ owed ("action for deficiency").

Essential elements:

~S gave D proper written notice of disposition of property
~Sale was conducted in CRM
~Amount of remaining debt

Defense

Failure to conduct CR sale →Rebuttable presumption that value of property was at least equivalent to amount of debt.

D's Remedies for Creditor's Violation of Rules

- 60% Rule: action for conversion
- Any actual damages debtor is able to prove
- Consumer goods: liquidated damages of not less than total finance charge plus 10% principal
- Treble damages if B proves unfair or deceptive practice
- $500 penalty for
  ~Creditor who refuses to provide statement of amount owed or list of collateral securing debt in response to written request, or
  ~Creditor who fails to account for proceeds of sale and who has a pattern of noncompliance.

Rights of Third Parties

SP may be able to repossess property from 3rd parties if SP has a *perfected* security interest.

Perfection may occur in four ways:

- By filing financing statement with Secretary of State.
- A purchase money security interest is automatically perfected.
- In the case of motor vehicles, by filing a lien with DMV.
- Creditor retains possession of property (e.g., pawnbroker)

Priority rules for perfected security interests:

- Purchase money security interest prevails over all others.
- First to perfect wins otherwise.
- Perfected interest wins over unperfected interest.

Special rule for consumer goods

A "good faith purchaser" of consumer goods who purchases from a buyer takes free of a security interest in the goods if

- The GFP did not know there was a security interest in the goods;
- The GFP paid for the goods;
- The goods were for the GFP's personal use; the goods before a financing statement was filed.
- The GFP bought the goods before a financing statement was filed.

1. Womble Furniture Co. filed this small claims action to recover a dining room table, six chairs, one couch, a cocktail table and an upholstered wing chair sold to the defendant. At trial, Womble introduces a written security agreement signed on April 5, 2020, in which defendant agreed that the items listed would be collateral for the extension of credit for their purchase on that day from Womble. Womble indicates that the defendant defaulted on March 1, 2020 and asks for judgment to recover all of the items listed. Defendant admits he's missed a payment or two but argues that he only owes $300 and the items Womble seeks to recover are worth more than $300. He wants you to limit your judgment to recover only the dining room table and chairs, since those items alone are worth more than $300. How do you rule? Give your reasons.

2. Fantastic Furniture Co. brings an action to recover possession of a dining room set sold to Samuel and Letitia Sand. At trial the manager of Fantastic Furniture Co. testifies that he sold the furniture,and that the Sands entered into an oral agreement to use furniture as collateral for the debt. He then introduces his account record, which shows a default by the Sands. How do you rule and why?

3. ABC Appliance Co., a secured party, brings an action to recover possession of a refrigerator against Simon Sampler. The magistrate entered a judgment in favor of ABC Appliance Co. Two months later ABC Appliance Co. brings an action to recover deficiency indebtedness. Simon Sampler argues that he shouldn't have to pay because ABC Appliance Co. didn't sell the fridge in a way most likely to bring a good price. At the trial ABC Appliance Co. proves that upon recovering the refrigerator, it sold it to an employee for $150. ABC Appliance proves that $200 was owed on the debt when the refrigerator was repossessed, and that the company's expenses in selling the refrigerator was $50. ABC Appliance asks for a judgment of $100. Simon Sampler says that ABC Appliance gave him notice by calling him two hours before the sale was to take place, and that selling it to an employee is shady. How do you rule and why on ABC's claim?

4. Abe Barker calls Sam's Heating and Cooling and asks to have them deliver and install a window unit. Sam's Heating and Cooling comes out to his house, installs the unit, and then sends a bill to Barker for $700, the cost of the unit and installation. Barker does not pay the bill; Sam's Heating and Cooling brings an action to recover possession of the air conditioning unit. At the trial Sam's proves the facts stated above; Barker is not present.
   If Sam's sues as a property owner, how do you rule and why?
   If Sam's sues as a secured party, how do you rule and why?

5. Easy Credit Appliance Co. filed a civil action on July 1, 2020, to recover a refrigerator purchased on June 1, 2014; a clothes dryer purchased on June 1, 2015; a VCR purchased on June 1, 2016; a television set purchased on June 1, 2017, and a washing machine purchase on June 1,2018. As each item was purchased, the buyer signed a security agreement listing the item just purchased and all the items previously purchased as security for the debt. The buyer defaulted on his

payments on March 5, 2020. Easy Credit is asking for a judgment to repossess all of the items listed as collateral. The defendant argues that he has been paying $75 on the contract since 2014, so he must have paid off some of the items by now. How do you rule? What is the name of the consumer protection law that governs your ruling?

DVPOs

Ex Parte DVPOs
TABLE OF CONTENTS

Ex Parte DVPOs—Bullet Points

What It Is & When It's Available

- Primary relief sought by plaintiff is protective order issued by DC enforceable by contempt or criminal law
- Ex parte DVPO is supplemental remedy sought by plaintiff for purpose of protection during interval between filing complaint/motion and DC hearing.
- Ex parte DVPO issued following hearing conducted in absence of defendant.
- Magistrates may issue ex parte DVPO if
  - ✓ Authorized by CDCJ
  - ✓ Court is not in session
  - ✓ No DCJ available within next four hours
- Ex parte DVPO expires at midnight of next day district court is in session.

Ultimate Legal Questions

Does it clearly appear from specific facts shown that there is a danger of acts of domestic violence against the plaintiff or minor child? If so, what relief is necessary to protect plaintiff/child from such acts?

Has an act of domestic violence in fact occurred?

Essential Elements

Requires plaintiff to prove

1) Relationship &
2) Act

Firearms

If plaintiff establishes right to relief, magistrate must inquire about firearms.

If any of 5 statutory factors are present, magistrate must order surrender of firearms.

Remedy

Magistrate must order defendant to refrain from further acts of DV, Magistrate may order additional relief necessary to protect the plaintiff/child.

Custody

Magistrate is prohibited from entering order related to temporary custody of minor children unless magistrate finds substantial risk of physical or emotional injury or sexual abuse.

Plaintiff must provide CV-609 (Affidavit as to Status of Minor Child)

Procedure

If no complaint has been filed with the clerk and the clerk's office is closed, magistrate has authority to accept complaint from plaintiff and issue a summons.

Find out how many copies of the order your office requires.

Provide plaintiff with copy of order and deliver copy to sheriff for service.

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. T he defendant also 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 final 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 up to 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 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.

Particular behavior qualifies as domestic violence only if the defendant:

-- tried to cause physical injury;

-- intentionally caused physical injury;

-- 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;

-- 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 torment or 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.**

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

_____

_____

If a magistrate determines that *it clearly appears* from *specific facts shown* that there is *danger of acts of domestic violence* against the plaintiff or a minor child, the magistrate *may* order any relief set out in GS 50B-3 that the magistrate finds is necessary to protect them from such acts. [Note, however, additional showing required for order related to child custody.]

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* enter an order which at a minimum prohibits the defendant from committing any further 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 are listed in GS 50B-3 and 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. How much does it cost?
3. What do I have to prove to get one?
4. What if the defendant violates the order?
5. How long will it last?
6. Can I get one for my kids and family too?
7. Do I need a lawyer to get one?
8. Is there anyone that can help me fill out the forms?
9. When will the defendant find out about it?

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

10. _____

11. _____

12. _____

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.

West's North Carolina General Statutes Annotated
Chapter 50B. Domestic Violence

N.C.G.S.A. Ch. 50B, Refs & Annos
Currentness

N.C.G.S.A. Ch. 50B, Refs & Annos, NC ST Ch. 50B, Refs & Annos
The statutes and Constitution are current through S.L. 2022-75 of the 2022 Regular Session of the General Assembly, subject to changes made pursuant to direction of the Revisor of Statutes. Some statute sections may be more current; see credits for details.

End of Document

West's North Carolina General Statutes Annotated
Chapter 50B. Domestic Violence (Refs & Annos)

N.C.G.S.A. § 50B-1

§ 50B-1. Domestic violence; definition

Effective: December 1, 2015
Currentness

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

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

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

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

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

(1) Are current or former spouses;

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

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

(4) Have a child in common;

(5) Are current or former household members;

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

(c) As used in this Chapter, the term "protective order" includes any order entered pursuant to this Chapter upon hearing by the court or consent of the parties.

Credits

Added by Laws 1979, c. 561, § 1. Amended by Laws 1985, c. 113, § 1; Laws 1987, c. 828; Laws 1987 (Reg. Sess., 1988), c. 893, §§ 1, 3; Laws 1995 (Reg. Sess., 1996), c. 591, § 1, eff. Oct. 1, 1996; S.L. 1997-471, § 1, eff. Dec. 1, 1997; S.L. 2001-518, § 3, eff. March 1, 2002; S.L. 2003-107, § 1, eff. May 31, 2003; S.L. 2009-58, § 5, eff. June 5, 2009; S.L. 2015-181, § 36, eff. Dec. 1, 2015.

N.C.G.S.A. § 50B-1, NC ST § 50B-1

The statutes and Constitution are current through S.L. 2022-75 of the 2022 Regular Session of the General Assembly, subject to changes made pursuant to direction of the Revisor of Statutes. Some statute sections may be more current; see credits for details.

End of Document

West's North Carolina General Statutes Annotated
Chapter 50B. Domestic Violence (Refs & Annos)

N.C.G.S.A. § 50B-2

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

Effective: June 18, 2021
Currentness

(a) Any person residing in this State may seek relief under this Chapter by filing a civil action or by filing a motion in any existing action filed under Chapter 50 of the General Statutes alleging acts of domestic violence against himself or herself or a minor child who resides with or is in the custody of such person. Any aggrieved party entitled to relief under this Chapter may file a civil action and proceed pro se, without the assistance of legal counsel. The district court division of the General Court of Justice shall have original jurisdiction over actions instituted under this Chapter. Any action for a domestic violence protective order requires that a summons be issued and served. The summons issued pursuant to this Chapter shall require the defendant to answer within 10 days of the date of service. Attachments to the summons shall include the complaint, notice of hearing, any temporary or ex parte order that has been issued, and other papers through the appropriate law enforcement agency where the defendant is to be served. In compliance with the federal Violence Against Women Act, no court costs or attorneys' fees shall be assessed for the filing, issuance, registration, or service of a protective order or petition for a protective order or witness subpoena, except as provided in G.S. 1A-1, Rule 11.

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

(c) Ex Parte Orders.--

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

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

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

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

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

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

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

<Text of (c1) eff. until Dec. 1, 2022.>

(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.

<Text of (c1) eff. Dec. 1, 2022.>

(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. When the office of the clerk is closed and a magistrate has been authorized under this section to hear a motion for emergency relief ex parte, an authorized magistrate shall accept for filing a complaint alleging domestic violence and motion for emergency relief ex parte, note thereon the filing date, and the magistrate shall issue a summons. Any endorsement or alias and pluries summons pursuant to G.S. 1A-1, Rule 4(d) shall be issued by the clerk, assistant clerk, or deputy clerk of the court in the county in which the action is commenced. Any complaint and motion for emergency relief ex parte and any other documents accepted for filing under this section and any order entered by the magistrate shall be delivered to the clerk's office for processing as soon as that office is open for business. If it clearly appears to the magistrate from specific facts shown that there is a danger of acts of domestic violence against the aggrieved party or a minor child, the magistrate may enter orders as it deems necessary to protect the aggrieved party or minor children from those acts, except that a temporary order for custody ex parte and prior to service of process and notice shall not be entered unless the magistrate finds that the child is exposed to a substantial risk of physical or emotional injury or sexual abuse. If the magistrate finds that the child is exposed to a substantial risk of physical or emotional injury or sexual abuse, upon request of the aggrieved party, the magistrate shall consider and may order the other party to stay away from a minor child, or to return a minor child to, or not remove a minor child from, the physical care of a parent or person in loco parentis, if the magistrate finds that the order is in the best interest of the minor child and is necessary for the safety of the minor child. If the magistrate determines that it is in the best interest of the minor child for the other party to have contact with the minor child or children, the magistrate shall issue an order designed to protect the safety and well-being of the minor child and the aggrieved party. The order shall specify the terms of contact between the other party and the minor child and may include a specific schedule of time and location of exchange of the minor child, supervision by a third party or supervised visitation center, and any other conditions that will ensure both the well-being of the minor child and the aggrieved party. An ex parte order entered under this subsection shall expire and the magistrate shall schedule an ex parte hearing before a district court judge by the end of the next day on which the district court is in session in the county in which the action was filed. Ex parte orders entered by the district court judge pursuant to this subsection shall be entered and scheduled in accordance with subsection (c) of this section.

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

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

(e) All documents filed, issued, registered, or served in an action under this Chapter relating to an ex parte, emergency, or permanent domestic violence protective order may be filed electronically.

Credits

Added by Laws 1979, c. 561, § 1. Amended by Laws 1985, c. 113, §§ 2, 3; Laws 1987 (Reg. Sess., 1988), c. 893, § 2; Laws 1989, c. 461, § 1; Laws 1994 (Ex. Sess.), c. 4, § 1, eff. May 1, 1994; S.L. 1997-471, § 2, eff. Dec. 1, 1997; S.L. 2001-518, § 4, eff. March 1, 2002; S.L. 2002-126, § 29A.6.(a), eff. Oct. 1, 2002; S.L. 2004-186, § 17.2, eff. Oct. 1, 2004; S.L. 2004-186, §

19.1, eff. Aug. 12, 2004; S.L. 2009-342, § 2, eff. Dec. 1, 2009; S.L. 2012-20, § 1, eff. Oct. 1, 2012; S.L. 2013-390, § 1, eff. Oct. 1, 2013; S.L. 2015-62, § 3(b), eff. Dec. 1, 2015; S.L. 2021-47, § 10(i), eff. June 18, 2021; S.L. 2022-47, § 4(a), eff. Dec. 1, 2022.

N.C.G.S.A. § 50B-2, NC ST § 50B-2

The statutes and Constitution are current through S.L. 2022-75 of the 2022 Regular Session of the General Assembly, subject to changes made pursuant to direction of the Revisor of Statutes. Some statute sections may be more current; see credits for details.

End of Document

West's North Carolina General Statutes Annotated
Chapter 50B. Domestic Violence (Refs & Annos)

N.C.G.S.A. § 50B-3

§ 50B-3. Relief

Effective: December 1, 2019
Currentness

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

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

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

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

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

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

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

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

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

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

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

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

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

c. Otherwise interfering with the other party.

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

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

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

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

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

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

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

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

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

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

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

e. Whether a party placed the aggrieved party or the minor child in reasonable fear of imminent serious bodily injury.

f. Whether a party caused an aggrieved party to engage involuntarily in sexual relations by force, threat, or duress.

g. Whether there is a pattern of abuse against an aggrieved party or the minor child.

h. Whether a party has abused or endangered the minor child during visitation.

i. Whether a party has used visitation as an opportunity to abuse or harass the aggrieved party.

j. Whether a party has improperly concealed or detained the minor child.

k. Whether a party has otherwise acted in a manner that is not in the best interest of the minor child.

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

a. Ordering an exchange of the minor child to occur in a protected setting or in the presence of an appropriate third party.

b. Ordering visitation supervised by an appropriate third party, or at a supervised visitation center or other approved agency.

c. Ordering the noncustodial parent to attend and complete, to the satisfaction of the court, an abuser treatment program as a condition of visitation.

d. Ordering either or both parents to abstain from possession or consumption of alcohol or controlled substances during the visitation or for 24 hours preceding an exchange of the minor child.

e. Ordering the noncustodial parent to pay the costs of supervised visitation.

f. Prohibiting overnight visitation.

g. Requiring a bond from the noncustodial parent for the return and safety of the minor child.

h. Ordering an investigation or appointment of a guardian ad litem or attorney for the minor child.

i. Imposing any other condition that is deemed necessary to provide for the safety and well-being of the minor child and the safety of the aggrieved party.

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

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

(a2) If the court orders that the defendant attend an abuser treatment program pursuant to G.S. 50B-3(a)(12), the defendant shall begin regular attendance of the program within 60 days of the entry of the order. When ordering a defendant to attend an abuser treatment program, the court shall also specify a date and time for a review hearing with the court to assess whether the defendant has complied with that part of the order. The review hearing shall be held as soon as practicable after 60 days from the entry of the original order. The date of the review shall be set at the same time as the entry of the original order, and the clerk shall issue a Notice of Hearing for the compliance review to be given to the defendant and filed with the court on the same day as the entry of the order. If a defendant is not present in court at the time the order to attend an abuser treatment program is entered and the Notice of Hearing for review is filed, the clerk shall serve a copy of the Notice of Hearing together with the service of the order. The plaintiff may, but is not required to, attend the 60-day review hearing.

(a3) At any time prior to the 60-day review hearing set forth in subsection (a2) of this section, a defendant who is ordered to attend an abuser treatment program may present to the clerk a written statement from an abuser treatment program showing that the defendant has enrolled in and begun regular attendance in an abuser treatment program. Upon receipt of the written statement, the clerk shall remove the 60-day review hearing from the court docket, and the defendant shall not be required to appear for the 60-day review hearing. The clerk shall also notify the plaintiff that the defendant has complied with the order and that no 60-day review hearing will occur.

<Text of (b) eff. until Dec. 1, 2022.>

(b) Protective orders entered pursuant to this Chapter shall be for a fixed period of time not to exceed one year. The court may renew a protective order for a fixed period of time not to exceed two years, including an order that previously has been renewed, upon a motion by the aggrieved party filed before the expiration of the current order; provided, however, that a temporary award of custody entered as part of a protective order may not be renewed to extend a temporary award of custody beyond the maximum one-year period. The court may renew a protective order for good cause. The commission of an act as defined in G.S. 50B-1(a) by the defendant after entry of the current order is not required for an order to be renewed. Protective orders entered, including consent orders, shall not be mutual in nature except where both parties file a claim and the court makes detailed findings of fact indicating that both parties acted as aggressors, that neither party acted primarily in self-defense, and that the right of each party to due process is preserved. Protective orders entered pursuant to this Chapter expire at 11:59 P.M. on the indicated expiration date, unless specifically stated otherwise in the order.

<Text of (b) eff. Dec. 1, 2022.>

(b) Protective orders entered pursuant to this Chapter shall be for a fixed period of time not to exceed one year. The court may renew a protective order for a fixed period of time not to exceed two years, including an order that previously has been renewed, upon a motion by the aggrieved party filed before the expiration of the current order; provided, however, that a temporary award of custody entered as part of a protective order may not be renewed to extend a temporary award of custody beyond the maximum one-year period. The court may renew a protective order for good cause. If the hearing for a motion to renew a protective order is set on a date after which the current order will have expired, the court may temporarily renew the current order upon the ex parte application of the plaintiff for a fixed period of time not to extend beyond the date of the renewal hearing or 30 days from the date the current order is set to expire, whichever occurs first, absent the express written consent of both parties or their attorneys. This temporary renewal may not extend a temporary award of custody entered as part of a protective order beyond the maximum one-year period. If a temporary renewal is granted, and the defendant is not personally present in

court, the order shall be served on the defendant in the same manner as an ex parte order issued pursuant to G.S. 50B-2. If a temporary renewal is granted, the Clerk shall provide a copy to the sheriff. The commission of an act as defined in G.S. 50B-1(a) by the defendant after entry of the current order is not required for an order to be renewed.

Protective orders entered, including consent orders, shall not be mutual in nature except where both parties file a claim and the court makes detailed findings of fact indicating that both parties acted as aggressors, that neither party acted primarily in self-defense, and that the right of each party to due process is preserved.

Protective orders entered pursuant to this Chapter expire at 11:59 P.M. on the indicated expiration date, unless specifically stated otherwise in the order.

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

(b2) Upon the written request of either party at a hearing after notice or service of process, the court may modify any protective order entered pursuant to this Chapter after a finding of good cause.

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

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

(1) Domestic violence agencies and services.

(2) Sexual assault agencies and services.

(3) Victims' compensation services.

(4) Legal aid services.

(5) Address confidentiality services.

(6) An explanation of the plaintiff's right to apply for a permit under G.S. 14-415.15.

(d) The sheriff of the county where a domestic violence order is entered shall provide for prompt entry of the order into the National Crime Information Center registry and shall provide for access of such orders to magistrates on a 24-hour-a-day basis. Modifications, terminations, renewals, and dismissals of the order shall also be promptly entered.

Credits

Added by Laws 1979, c. 561, § 1. Amended by Laws 1985, c. 463, § 1; Laws 1994 (Ex. Sess.), c. 4, § 2, eff. May 1, 1994; Laws 1995, c. 527, § 1; Laws 1995, (Reg. Sess., 1996), c. 591, § 2, eff. Oct. 1, 1996; Laws 1995 (Reg. Sess., 1996), c. 742, § 42.1, eff. June 21, 1996; S.L. 1999-23, § 1, eff. Feb. 1, 2000; S.L. 2000-125, § 9, eff. Dec. 1, 2000; S.L. 2002-105, § 2, eff. Sept. 6, 2002; S.L. 2002-126, § 29A.6.(b), eff. Oct. 1, 2002; S.L. 2003-107, § 2, eff. May 31, 2003; S.L. 2004-186, §§ 17.3 to 17.5, eff. Oct. 1, 2004; S.L. 2005-343, § 2, eff. Oct. 1, 2005; S.L. 2005-423, § 1, eff. Oct. 1, 2005; S.L. 2007-116, § 3, eff. Oct. 1, 2007; S.L. 2009-425, § 1, eff. Aug. 5, 2009; S.L. 2013-237, § 1, eff. Oct. 1, 2013; S.L. 2015-176, § 1, eff. Aug. 5, 2015; S.L. 2017-92, § 2, eff. Oct. 1, 2017; S.L. 2019-168, §§ 1, 2(b), eff. Dec. 1, 2019; S.L. 2022-48, § 1, eff. Dec. 1, 2022.

N.C.G.S.A. § 50B-3, NC ST § 50B-3

The statutes and Constitution are current through S.L. 2022-75 of the 2022 Regular Session of the General Assembly, subject to changes made pursuant to direction of the Revisor of Statutes. Some statute sections may be more current; see credits for details.

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West's North Carolina General Statutes Annotated
Chapter 50B. Domestic Violence (Refs & Annos)

N.C.G.S.A. § 50B-3.1

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

Effective: December 1, 2011
Currentness

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

(1) The use or threatened use of a deadly weapon by the defendant or a pattern of prior conduct involving the use or threatened use of violence with a firearm against persons.

(2) Threats to seriously injure or kill the aggrieved party or minor child by the defendant.

(3) Threats to commit suicide by the defendant.

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

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

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

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

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

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

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

(f) Motion for Return.--The defendant may request the return of any firearms, ammunition, or permits surrendered by filing a motion with the court at the expiration of the current order or final disposition of any pending criminal charges committed against the person that is the subject of the current protective order and not later than 90 days after the expiration of the current order or final disposition of any pending criminal charges committed against the person that is the subject of the current protective order. Upon receipt of the motion, the court shall schedule a hearing and provide written notice to the plaintiff who shall have the right to appear and be heard and to the sheriff who has control of the firearms, ammunition, or permits. The court shall determine whether the defendant is subject to any State or federal law or court order that precludes the defendant from owning or possessing a firearm. The inquiry shall include:

(1) Whether the protective order has been renewed.

(2) Whether the defendant is subject to any other protective orders.

(3) Whether the defendant is disqualified from owning or possessing a firearm pursuant to 18 U.S.C. § 922 or any State law.

(4) Whether the defendant has any pending criminal charges, in either State or federal court, committed against the person that is the subject of the current protective order.

The court shall deny the return of firearms, ammunition, or permits if the court finds that the defendant is precluded from owning or possessing a firearm pursuant to State or federal law or if the defendant has any pending criminal charges, in either

State or federal court, committed against the person that is the subject of the current protective order until the final disposition of those charges.

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

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

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

(1) Fail to surrender all firearms, ammunition, permits to purchase firearms, and permits to carry concealed firearms to the sheriff as ordered by the court;

(2) Fail to disclose all information pertaining to the possession of firearms, ammunition, and permits to purchase and permits to carry concealed firearms as requested by the court; or

(3) Provide false information to the court pertaining to any of these items.

(j) Violations.--In accordance with G.S. 14-269.8, it is unlawful for any person to possess, purchase, or receive or attempt to possess, purchase, or receive a firearm, as defined in G.S. 14-409.39(2), machine gun, ammunition, or permits to purchase or carry concealed firearms if ordered by the court for so long as that protective order or any successive protective order entered against that person pursuant to this Chapter is in effect. Any defendant violating the provisions of this section shall be guilty of a Class H felony.

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

(l) Nothing in this section is intended to limit the discretion of the court in granting additional relief as provided in other sections of this Chapter.

Credits

Added by S.L. 2003-410, § 1, eff. Dec. 1, 2003. Amended by S.L. 2004-203, § 34(a), eff. Dec. 1, 2004; S.L. 2005-287, § 4, eff. Aug. 22, 2005; S.L. 2005-423, §§ 2, 3, eff. Oct. 1, 2005; S.L. 2011-183, § 40, eff. June 20, 2011; S.L. 2011-268, §§ 23, 24, eff. Dec. 1, 2011.

N.C.G.S.A. § 50B-3.1, NC ST § 50B-3.1

The statutes and Constitution are current through S.L. 2022-75 of the 2022 Regular Session of the General Assembly, subject to changes made pursuant to direction of the Revisor of Statutes. Some statute sections may be more current; see credits for details.

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West's North Carolina General Statutes Annotated
Chapter 50B. Domestic Violence (Refs & Annos)

N.C.G.S.A. § 50B-4

§ 50B-4. Enforcement of orders

Effective: October 1, 2017
Currentness

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

(b) Repealed by S.L. 1999-23, § 2, eff. Feb. 1, 2000.

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

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

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

(f) The term “valid protective order,” as used in subsections (c) and (d) of this section, shall include an emergency or ex parte order entered under this Chapter.

(g) Notwithstanding the provisions of G.S. 1-294, a valid protective order entered pursuant to this Chapter which has been appealed to the appellate division is enforceable in the trial court during the pendency of the appeal. Upon motion by the aggrieved party, the court of the appellate division in which the appeal is pending may stay an order of the trial court until the appeal is decided, if justice so requires.

Credits

Added by Laws 1979, c. 561, § 1. Amended by Laws 1985, c. 113, § 4; Laws 1987, c. 739, § 6; Laws 1989, c. 461, § 2; Laws 1994 (Ex. Sess.), c. 4, § 3, eff. May 1, 1994; Laws 1995 (Reg. Sess., 1996), c. 591, § 3, eff. Oct. 1, 1996; S.L. 1999-23, §§ 2.1, 8; S.L. 2002-126, § 29A.6.(c), eff. Oct. 1, 2002; S.L. 2003-107, § 3, eff. May 31, 2003; S.L. 2009-342, § 4, eff. July 24, 2009; S.L. 2017-92, § 1, eff. Oct. 1, 2017.

N.C.G.S.A. § 50B-4, NC ST § 50B-4

The statutes and Constitution are current through S.L. 2022-75 of the 2022 Regular Session of the General Assembly, subject to changes made pursuant to direction of the Revisor of Statutes. Some statute sections may be more current; see credits for details.

End of Document

West's North Carolina General Statutes Annotated
Chapter 50B. Domestic Violence (Refs & Annos)

N.C.G.S.A. § 50B-4.1

§ 50B-4.1. Violation of valid protective order

Effective: December 1, 2010
Currentness

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

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

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

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

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

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

(g) Unless covered under some other provision of law providing greater punishment, any person who, while in possession of a deadly weapon on or about his or her person or within close proximity to his or her person, knowingly violates a valid protective

order as provided in subsection (a) of this section by failing to stay away from a place, or a person, as so directed under the terms of the order, shall be guilty of a Class H felony.

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

(h) For the purposes of this section, the term "valid protective order" shall include an emergency or ex parte order entered under this Chapter.

Credits

Added by S.L. 1997-471, § 3. Amended by S.L. 1997-456, § 27, eff. Dec. 1, 1997; S.L. 1999-23, § 4, eff. Dec. 1, 1999; S.L. 2001-518, § 5, eff. March 1, 2002; S.L. 2007-190, § 1, eff. Dec. 1, 2007; S.L. 2008-93, § 1, eff. Dec. 1, 2008; S.L. 2009-342, § 5, eff. July 24, 2009; S.L. 2009-389, § 2, eff. July 31, 2009; S.L. 2010-5, § 1, eff. Dec. 1, 2010; S.L. 2015-91, § 3, eff. Dec. 1, 2015.

N.C.G.S.A. § 50B-4.1, NC ST § 50B-4.1

The statutes and Constitution are current through S.L. 2022-75 of the 2022 Regular Session of the General Assembly, subject to changes made pursuant to direction of the Revisor of Statutes. Some statute sections may be more current; see credits for details.

End of Document

West's North Carolina General Statutes Annotated
Chapter 50B. Domestic Violence (Refs & Annos)

N.C.G.S.A. § 50B-4.2

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

Currentness

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.

Credits
Added by S.L. 1999-23, § 5, eff. Dec. 1, 1999.

N.C.G.S.A. § 50B-4.2, NC ST § 50B-4.2
The statutes and Constitution are current through S.L. 2022-75 of the 2022 Regular Session of the General Assembly, subject to changes made pursuant to direction of the Revisor of Statutes. Some statute sections may be more current; see credits for details.

End of Document

West's North Carolina General Statutes Annotated
Chapter 50B. Domestic Violence (Refs & Annos)

N.C.G.S.A. § 50B-5

§ 50B-5. Emergency assistance

Currentness

(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).

Credits

Added by Laws 1979, c. 561, § 1. Amended by Laws 1985, c. 113, § 5; S.L. 1999-23, § 6, eff. Dec. 1, 1999.

N.C.G.S.A. § 50B-5, NC ST § 50B-5

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End of Document

West's North Carolina General Statutes Annotated
Chapter 50B. Domestic Violence (Refs & Annos)

N.C.G.S.A. § 50B-5.5

§ 50B-5.5. Employment discrimination unlawful

Currentness

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

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

Credits
Added by S.L. 2004-186, § 18.1, eff. Oct. 1, 2004.

N.C.G.S.A. § 50B-5.5, NC ST § 50B-5.5
The statutes and Constitution are current through S.L. 2022-75 of the 2022 Regular Session of the General Assembly, subject to changes made pursuant to direction of the Revisor of Statutes. Some statute sections may be more current; see credits for details.

End of Document

West's North Carolina General Statutes Annotated
Chapter 50B. Domestic Violence (Refs & Annos)

N.C.G.S.A. § 50B-6

§ 50B-6. Construction of Chapter

Currentness

This Chapter shall not be construed as granting a status to any person for any purpose other than those expressly stated herein. This Chapter shall not be construed as relieving any person or institution of the duty to report to the department of social services, as required by G.S. 7B-301, if the person or institution has cause to suspect that a juvenile is abused or neglected.

Credits

Added by Laws 1979, c. 561, § 1. Amended by Laws 1985, c. 113, § 6; S.L. 1998-202, § 13(r), eff. July 1, 1998.

N.C.G.S.A. § 50B-6, NC ST § 50B-6

The statutes and Constitution are current through S.L. 2022-75 of the 2022 Regular Session of the General Assembly, subject to changes made pursuant to direction of the Revisor of Statutes. Some statute sections may be more current; see credits for details.

End of Document

West's North Carolina General Statutes Annotated
Chapter 50B. Domestic Violence (Refs & Annos)

N.C.G.S.A. § 50B-7

§ 50B-7. Remedies not exclusive

Effective: December 1, 2019
Currentness

(a) The remedies provided by this Chapter are not exclusive but are additional to remedies provided under Chapter 50 and elsewhere in the General Statutes.

(b) Any subsequent court order entered supersedes similar provisions in protective orders issued pursuant to this Chapter.

Credits
Added by Laws 1979, c. 561, § 1. Amended by S.L. 2019-168, § 2(a), eff. Dec. 1, 2019.

N.C.G.S.A. § 50B-7, NC ST § 50B-7
The statutes and Constitution are current through S.L. 2022-75 of the 2022 Regular Session of the General Assembly, subject to changes made pursuant to direction of the Revisor of Statutes. Some statute sections may be more current; see credits for details.

End of Document

West's North Carolina General Statutes Annotated
Chapter 50B. Domestic Violence (Refs & Annos)

N.C.G.S.A. § 50B-8

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

Currentness

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

Credits

Added by Laws 1979, c. 561, § 1. Amended by S.L. 2003-107, § 4, eff. May 31, 2003.

N.C.G.S.A. § 50B-8, NC ST § 50B-8

The statutes and Constitution are current through S.L. 2022-75 of the 2022 Regular Session of the General Assembly, subject to changes made pursuant to direction of the Revisor of Statutes. Some statute sections may be more current; see credits for details.

End of Document

West's North Carolina General Statutes Annotated
Chapter 50B. Domestic Violence (Refs & Annos)

N.C.G.S.A. § 50B-9

§ 50B-9. Domestic Violence Center Fund

Effective: July 1, 2022
Currentness

(a) The Domestic Violence Center Fund is established within the State Treasury. The fund shall be administered by the Department of Administration, North Carolina Council for Women and Youth Involvement, and shall be used to make grants to centers for victims of domestic violence and to The North Carolina Coalition Against Domestic Violence, Incorporated. This fund shall be administered in accordance with the provisions of the State Budget Act. The Department of Administration shall make quarterly grants to each eligible domestic violence center and to The North Carolina Coalition Against Domestic Violence, Incorporated. The Department of Administration shall send the contracts to grantees within 10 business days of the date the Current Operations Appropriations Act, as defined in G.S. 143C-1-1, is certified for that fiscal year.

(b) Each grant recipient shall receive the same amount. To be eligible to receive funds under this section, a domestic violence center must meet the following requirements:

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

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

(3) It shall be a nonprofit corporation or a local governmental entity.

(c) On or before September 1, the North Carolina Council for Women and Youth Involvement shall report on the quarterly distributions of the grants from the Domestic Violence Center Fund to the chairs of the House Appropriations Committee on General Government and the Senate Appropriations Committee on General Government and Information Technology and to the Fiscal Research Division. The report shall include the following:

(1) Date, amount, and recipients of the fund disbursements.

(2) Eligible programs which are ineligible to receive funding during the relative reporting cycle as well as the reason of the ineligibility for that relative reporting cycle.

Credits

Added by Laws 1991, c. 693, § 3. Amended by Laws 1991 (Reg. Sess., 1992), c. 988, § 1; S.L. 2017-57, § 31.2(a), eff. July 1, 2017; S.L. 2021-180, § 20.6(a), eff. July 1, 2021; S.L. 2022-74, § 20.1, eff. July 1, 2022.

N.C.G.S.A. § 50B-9, NC ST § 50B-9

The statutes and Constitution are current through S.L. 2022-75 of the 2022 Regular Session of the General Assembly, subject to changes made pursuant to direction of the Revisor of Statutes. Some statute sections may be more current; see credits for details.

End of Document

Court of Appeals rules that denying domestic violence protection to persons in same-sex dating relationships is unconstitutional

****After this entry was posted, the North Carolina Supreme Court affirmed the decision of the Court of Appeals in M.E. v. T.J. and left the holding of the Court of Appeals regarding samesex dating relationships undisturbed. M.E. v. T.J., 380 N.C. 539 (2022), affirming as modified, 275 N.C. App. 528 (2020).**

In this post on August 15, 2017, DVPOs for Same-Sex Dating Relationships?, my former colleague Jeff Welty discussed the constitutionality of G.S. 50B-1(b)(6) in light of recent rulings by the United States Supreme Court addressing the rights of same-sex couples and in light of a South Carolina appellate court ruling that providing domestic violence protection to persons in heterosexual dating relationships while denying protection to persons in same-sex dating relationships is unconstitutional. Like the South Carolina statute, N.C.G.S. 50B-1(b)(6) provides that while persons of the opposite sex in a dating relationship are eligible for a DVPO, persons of the same sex in a dating relationship are not eligible for protection. On December 31, 2020, in M.E. v. T.J., the North Carolina Court of Appeals held this provision unconstitutional as applied to deny a plaintiff protection from domestic violence simply because plaintiff and defendant had been in a same-sex dating relationship rather than a heterosexual relationship.

Definition of domestic violence

To obtain an ex parte DVPO, a plaintiff must establish there is a danger of acts of domestic violence at the time the request is made, G.S. 50B-2(c)(1), and to obtain a permanent DVPO, plaintiff must establish that an act of domestic violence occurred. G.S. 50B-3(a). G.S. 50B-1 defines domestic violence as one of the acts listed in G.S. 50B-1(a) committed by a person with whom plaintiff has or has had a personal relationship. Therefore, a plaintiff is entitled to protection pursuant to Chapter 50B only if the plaintiff can establish both a personal relationship with defendant and that defendant committed one of the specified acts against plaintiff or against a minor child residing with or in the custody or plaintiff. G.S. 50B-1(a).

Personal relationship is defined in G.S. 50B-1(b) and subsection 50B-1(b)(6) provides that personal relationship includes “persons of the opposite sex who are in a dating relationship or have been in a dating relationship.” Persons of the same sex who are in or have been in a dating relationship are not included in the definition of personal relationship. Therefore, persons who are in or have been in a same-sex dating relationship are not entitled to Chapter 50B protection unless those persons have one of the other personal relationships identified in G.S. 50B-1(b).

M.E. v. T.J.

Plaintiff M.E. filed a complaint seeking both an ex parte and a permanent DVPO pursuant to Chapter 50B alleging defendant T.J. had committed acts of domestic violence against her. Plaintiff alleged she had been in a dating relationship with defendant. The trial court denied plaintiff’s request for ex parte relief, stating in the order that although plaintiff’s allegations of violence were

"significant", the trial court could not grant the ex parte DVPO because plaintiff did not establish a relationship with defendant. While plaintiff and defendant had been in a dating relationship, they were of the same sex. Following the hearing on plaintiff's request for a permanent relief, the trial court entered an order denying plaintiff's request, stating in the order that:

"[P]laintiff has failed to state a claim upon which relief can be granted pursuant to the statute, due to the lack of statutorily defined personal relationship. …[H]ad the parties been of opposite genders, th[e] facts [presented] would have supported the entry of a Domestic Violence Protective Order (50B)."

Plaintiff appealed, arguing that the denial of her requests for both an ex parte DVPO and a permanent DVPO because she was in a same-sex relationship with defendant "violated her 14th Amendment and state constitutional rights to due process and equal protection of the laws." The court of appeals agreed, concluding that "[n]o matter the [level of constitutional] review applied, N.C.G.S. § 50B-1(b)(6) does not survive Plaintiff's due process and equal protection challenges under either the North Carolina Constitution or the Constitution of the United States."

The court of appeals held (emphasis added):

"We therefore reverse the trial court's denial of Plaintiff's complaint for a Chapter 50B DVPO, and remand for entry of an appropriate order under Chapter 50B. **The trial court shall apply N.C.G.S. § 50B-1(b)(6) as stating: "Are persons who are in a dating relationship or have been in a dating relationship." The holdings in this opinion shall apply to all those similarly situated with Plaintiff who are seeking a DVPO pursuant to Chapter 50B; that is, the "same-sex" or "opposite-sex" nature of their "dating relationships" shall not be a factor in the decision to grant or deny a petitioner's DVPO claim under the Act."**

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

CAUTION:
☐ Weapon Involved

RESPONDENT/DEFENDANT IDENTIFIERS

Sex	Race	DOB	HT	WT
Eyes	**Hair**	**Social Security Number**		
Drivers License No.		**State**	**Expiration Date**	

Distinguishing Features

THE COURT HEREBY FINDS THAT:

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

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

THE COURT HEREBY ORDERS THAT:

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

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

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

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

WARNINGS TO THE RESPONDENT/DEFENDANT:

This order shall be enforced, even without registration, by the courts of any state, the District of Columbia, and any U.S. Territory, and may be enforced by Tribal Lands (18 U.S.C. Section 2265). Crossing state, territorial, or tribal boundaries to violate this order may result in federal imprisonment (18 U.S.C. Section 2262).

This order will be enforced anywhere in North Carolina.

Only the Court can change this order. The plaintiff cannot give you permission to violate this order.

See additional warnings on Page 4.

(Over)

ADDITIONAL FINDINGS

1. As indicated by the check block under Respondent/Defendant's name on Page 1, the parties are or have been in a personal relationship.

☐ 2. That on *(date of most recent conduct)* _____ , the defendant

☐ a. ☐ attempted to cause ☐ intentionally caused bodily injury to ☐ the plaintiff ☐ the child(ren) living with or in the custody of the plaintiff

☐ b. placed in fear of imminent serious bodily injury ☐ the plaintiff ☐ a member of the plaintiff's family ☐ a member of the plaintiff's household

☐ c. placed in fear of continued harassment that rises to such a level as to inflict substantial emotional distress ☐ the plaintiff ☐ a member of plaintiff's family ☐ a member of plaintiff's household

☐ d. committed an act defined in G.S. 14- ☐ 27.21 (1st deg. rape) ☐ 27.22 (2nd deg. rape) ☐ 27.26 (1st deg. sexual off.) ☐ 27.27 (2nd deg. sexual off.) ☐ 27.33 (sexual battery) ☐ 27.31 (sexual activity by substitute parent) against ☐ the plaintiff ☐ a child(ren) living with or in the custody of the plaintiff by *(describe defendant's conduct)*

☐ 3. The defendant is in possession of, owns or has access to firearms, ammunition, and gun permits described below. *(Describe all firearms, ammunition, gun permits and give identifying number(s) if known, and indicate where defendant keeps firearms)*

☐ 4. The defendant

☐ a. ☐ used ☐ threatened to use a deadly weapon against the ☐ plaintiff ☐ minor child(ren) residing with or in the custody of the plaintiff

☐ b. has a pattern of prior conduct involving the ☐ use ☐ threatened use of violence with a firearm against persons

☐ c. made threats to seriously injure or kill the ☐ plaintiff ☐ minor child(ren) residing with or in the custody of the plaintiff

☐ d. made threats to commit suicide

☐ e. inflicted serious injuries upon the ☐ plaintiff ☐ minor child(ren) residing with or in the custody of the plaintiff in that *(state facts):*

☐ 5. The parties are the parents of the following child(ren) under the age of eighteen (18). The child(ren) are presently in the physical custody of the ☐ plaintiff. ☐ defendant. The plaintiff has submitted an "Affidavit As To Status Of Minor Child."

NOTE TO JUDGE: *A copy of AOC-CV-609 for each child must be attached to the order.*

Name	Sex	Date Of Birth	Name	Sex	Date Of Birth

☐ 6. The minor child(ren) is exposed to a substantial risk of physical or emotional injury or sexual abuse in that:

☐ 7. It is in the best interest of and necessary for the safety of the minor child(ren) ☐ that defendant stay away from the minor child(ren) ☐ that the defendant return the minor child(ren) to plaintiff ☐ and that the defendant not remove the minor child(ren) from plaintiff in that:

☐ 8. *(Check block only if plaintiff is entitled to physical care of child(ren).)* It is in the best interest of the minor child(ren) that defendant have contact with the minor child(ren) in that:

☐ 9. The ☐ defendant ☐ plaintiff is presently in possession of the parties' residence at _____

_____

(Over)

☐ 10. The ☐ defendant ☐ plaintiff is presently in possession of the parties' vehicle. *(describe vehicle)*

☐ 11. Other: *(specify)*

☐ 12. *(for magistrate only)* This matter was heard at a time when the district court was not in session and a district court judge was not available and would not be available for a period of four or more hours.

CONCLUSIONS

Based on these facts, the Court makes the following conclusions of law:

☐ 1. The defendant has committed acts of domestic violence against the plaintiff.

☐ 2. The defendant has committed acts of domestic violence against the minor child(ren) residing with or in the custody of the plaintiff.

☐ 3. It clearly appears that there is a danger of acts of domestic violence against the ☐ plaintiff. ☐ minor child(ren). [G.S. 50B-2(c)]

☐ 4. The minor child(ren) is exposed to a substantial risk of ☐ physical injury. ☐ emotional injury. ☐ sexual abuse. [G.S. 50B-2(c)]

☐ 5. The Court has jurisdiction under the Uniform Child Custody Jurisdiction And Enforcement Act.

☐ 6. It is in the best interest of and necessary for the safety of the minor child(ren) that the defendant ☐ stay away from the minor child(ren). ☐ (and) return the minor child(ren) to the physical care of the plaintiff. ☐ (and) not remove the minor child(ren) from the physical care of the plaintiff.

☐ 7. The defendant's conduct requires that he/she surrender all firearms, ammunition and gun permits. [G.S. 50B-3.1]

☐ 8. The plaintiff has failed to prove grounds for ex parte relief.

ORDER

It is ORDERED that:

☐ 1. the defendant shall not assault, threaten, abuse, follow, harass (by telephone, visiting the home or workplace or other means), or interfere with the plaintiff. A law enforcement officer shall arrest the defendant if the officer has probable cause to believe the defendant has violated this provision. **[01]**

☐ 2. the defendant shall not assault, threaten, abuse, follow, harass (by telephone, visiting the home or workplace or other means), or interfere with the minor child(ren) residing with or in the custody of the plaintiff. A law enforcement officer shall arrest the defendant if the officer has probable cause to believe the defendant has violated this provision. **[01]**

☐ 3. the defendant shall not threaten a member of the plaintiff's family or household. **[02]**

☐ 3a. the defendant shall not cruelly treat or abuse an animal owned, possessed, kept, or held as a pet by either party or minor child residing in the household.

☐ 4. the plaintiff is granted possession of, and the defendant is excluded from, the parties' residence described above and all personal property located in the residence except for the defendant's personal clothing, toiletries and tools of trade. **[03]**

☐ 5. any law enforcement agency with jurisdiction shall evict the defendant from the residence and shall assist the plaintiff in returning to the residence. **[08]**

☐ 6. the ☐ plaintiff **[08]** ☐ defendant **[08]** is entitled to get personal clothing, toiletries, and tools of trade from the parties' residence. A law enforcement officer shall assist the ☐ plaintiff ☐ defendant in returning to the residence to get these items.

☐ 6a. the plaintiff is granted the care, custody, and control of any animal owned, possessed, kept, or held as a pet by either party or minor child residing in the household.

☐ 7. the defendant shall stay away from the plaintiff's residence or any place where the plaintiff receives temporary shelter. A law enforcement officer shall arrest the defendant if the officer has probable cause to believe the defendant has violated this provision. **[04]**

☐ 8. the defendant shall stay away from the following places:

- ☐ a. the place where the plaintiff works. **[04].**
- ☐ b. any school(s) the child(ren) attend. **[04]**
- ☐ c. the place where the child(ren) receives day care. **[04]**
- ☐ d. the plaintiff's school. **[04]**
- ☐ e. Other: *(name other places)* **[04]** _____

The sheriff must deliver a copy of this order to the principal or the principal's designee at the following school(s): *(name schools)*

☐ 9. the plaintiff is granted possession and use of the vehicle described in Block No. 10 of the Findings on Page 3. **[08]**

☐ 10. The plaintiff is awarded temporary custody of the minor child(ren) *(Check any of a, b, or c that apply.)*

- ☐ a. and the defendant is ordered to stay away from the minor child(ren).
- ☐ b. and the defendant is ordered to immediately return the minor child(ren) to the care of the plaintiff.
- ☐ c. and the defendant is ordered not to remove the minor child(ren) from the care of the plaintiff.

☐ 11. *(If No. 10 is checked and you are allowing visitation to defendant)* The defendant is allowed the following contact with the minor child(ren):

☐ 12. the defendant is prohibited from ☐ possessing or receiving **[07]** ☐ purchasing a firearm for the effective period of this Order **[07]** ☐ and the defendant's concealed handgun permit is suspended for the effective period of this Order. **[08]**

☐ The defendant is a law enforcement officer/member of the armed services and ☐ may ☐ may not possess or use a firearm for official use.

☐ 13. the defendant surrender to the Sheriff serving this order the firearms, ammunition, and gun permits described in Number 3 of the Findings on Page 2 of this Order and any other firearms and ammunition in the defendant's care, custody, possession, ownership or control. **NOTE TO DEFENDANT:** ***You must surrender these items to the serving officer at the time this Order is served on you. If the weapons cannot be surrendered at that time, you must surrender them to the sheriff within 24 hours at the time and place specified by the sheriff. Failure to surrender the weapons and permits as ordered or possessing, purchasing, or receiving a firearm, ammunition or permits to purchase or carry concealed firearms after being ordered not to possess firearms, ammunition or permits is a crime. See "Notice To Parties: To The Defendant" on Page 4 of this Order for information regarding the penalty for these crimes and instructions on how to request return of surrendered weapons.***

☐ 14. the request for Ex Parte Order is denied.

☐ 15. Other: *(specify)* **[08]**

Date	*Signature*	☐ *District Court Judge* ☐ *Designated Magistrate*

NOTE TO PLAINTIFF: *If the judge signs this Order and gives it to you, take it to the Clerk's office immediately. If the magistrate signs this Order and gives it to you, follow the magistrate's directions.*

NOTE TO CLERK: *Give or mail a copy of this Order to the plaintiff and to the appropriate local law enforcement agency. Send copies to sheriff with Notice Of Hearing, Complaint and Summons for service on defendant. Send extra copies to the sheriff if required to deliver copy(ies) to the child(ren)'s school.*

NOTICE TO PARTIES

TO THE DEFENDANT:

1. **If this Order prohibits you from possessing, receiving or purchasing a firearm and you violate or attempt to violate that provision, you may be charged with a Class H felony pursuant to North Carolina G.S. 14-269.8 and may be imprisoned for up to 39 months.**
2. **If you have been ordered to surrender firearms, ammunition, and gun permits and you fail to surrender them as required by this Order, or if you failed to disclose to the Court all information requested about possession of these items or provide false information about any of these items you may be charged with a Class H felony and may be imprisoned for up to 39 months.** If you surrendered your firearms, ammunition, and permits, you may file a motion for the return of weapons with the clerk of court in the county in which this Order was entered when the protective order is no longer in effect, except if at the time this Order expires criminal charges, in either state or federal court, are pending against you alleged to have been committed against the person who is protected by this order, you may not file for return of the firearms until final disposition of the criminal charges. The form, "Motion For Return Of Weapons Surrendered Under Domestic Violence Protective Order" AOC-CV- 319 , is available from the clerk of court's office. The motion must be filed **not later than 90 days after the expiration of the Order that requires you to surrender the firearms or if you have pending criminal charges alleged to have been committed against the person who is protected by the domestic violence protection order, the motion must be filed not later than 90 days after final disposition of the criminal charges.** At the time you file the motion, the clerk will schedule a hearing before the district court for a judge to determine whether to return the weapons to you. The sheriff cannot return your weapons unless the Court orders the sheriff to do so. You must pay the sheriff's storage fee before the sheriff returns your weapons. If you fail to file a motion for return of the weapons within 90 days after the expiration of this Order, or the final disposition of criminal charges pending at the time this Order expired, or if you fail to pay the storage fees **within 30 days after the Court enters an order to return your weapons**, the sheriff may seek an order from the Court to dispose of your weapons.

TO THE PLAINTIFF:

1. You should keep a copy of this order on you at all times and should make copies to give to your friends and family. If you move to another county or state, you may wish to give a copy to the law enforcement agency where you move, but you are not required to do so.
2. The court or judge is the only one that can make changes to this order. If you wish to change any of the terms of this order, you must come back into court to have the judge modify the order.
3. If the defendant violates any provision of this order, you may call a law enforcement officer or go to a magistrate to charge the defendant with the crime of violating a protective order. You also may go to the Clerk of Court's office in the county where the protective order was issued and ask to fill out form AOC-CV-307, Motion For Order To Show Cause Domestic Violence Protective Order, to have an order issued for the defendant to appear before a district court judge to be held in contempt for violating the order.

Name Of Defendant	File No.

CERTIFICATION

I certify this order is a true copy.

Date	Signature Of Clerk	☐ Deputy CSC ☐ Assistant CSC ☐ Clerk of Superior Court

RETURN OF SERVICE

NOTE: *To be used when Magistrate issues ex parte protective order and order will be served on defendant separate from the complaint and civil summons. If complaint and summons are served with order, return on summons covers order.*

I certify that this Ex Parte Domestic Violence Order of Protection was received and served as follows:

Date Served	Time Served ☐ AM ☐ PM	Name Of Defendant

☐ By delivering to the defendant named above a copy of the order.

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

Name And Address Of Person With Whom Copies Left

☐ Other manner of service on the defendant *(specify)*

☐ Defendant WAS NOT served for the following reason.

Date Received	Signature Of Deputy Sheriff Making Return
Date Of Return	Name Of Deputy Sheriff Making Return (type or print)
	County Of Sheriff

STATE OF NORTH CAROLINA

_____ County

File No.

In The General Court Of Justice
District Court Division

Name Of Plaintiff (Person Filing Complaint)	**COMPLAINT AND MOTION FOR DOMESTIC VIOLENCE PROTECTIVE ORDER** G.S. 50B-1, -2, -3, -4
VERSUS	
Name And Address Of Defendant (Person Accused Of Abuse)	

(Check only boxes that apply and fill in blanks. Additional sheets may be attached.)

1. I live in _____ County, North Carolina.
2. The defendant and I ☐ are spouses. ☐ are former spouses.
   ☐ are persons of the opposite sex who are not married but live together or have lived together.
   ☐ have a child in common.
   ☐ are parent and child or grandparent and grandchild.
   ☐ are current or former household members.
   ☐ are persons of the opposite sex who are in or have been in a dating relationship.
3. There ☐ is ☐ is not another court proceeding between the defendant and me pending in this or any other state. *(List county, state, date, and what kind of proceeding, if applicable.)*

☐ 4. The defendant has attempted to cause or has intentionally caused me bodily injury; or has placed me or a member of my family or household in fear of imminent serious bodily injury or in fear of continued harassment that rises to such a level as to inflict substantial emotional distress; or has committed a sexual offense against me in that: *(Give specific dates and describe in detail what happened.)*

☐ 5. The defendant has attempted to cause or has intentionally caused bodily injury to the child(ren) living with me or in my custody; has placed my child(ren) in fear of imminent serious bodily injury or in fear of continued harassment that rises to such a level as to inflict substantial emotional distress; or has committed a sexual offense against the child(ren) in that: (*Give specific dates and describe in detail what happened.)*

☐ 6. I believe there is danger of serious and immediate injury to me or my child(ren).

☐ 7. *(Check this block if you ask for temporary child custody.)* The defendant and I are the parents of the following child(ren) under the age of eighteen.

A COPY OF "AFFIDAVIT AS TO STATUS OF MINOR CHILD" (AOC-CV-609) MUST BE ATTACHED FOR EACH CHILD.

Name	Sex	Date Of Birth	Name	Sex	Date Of Birth

(Over)

☐ 8. *(Fill in the block if you are asking for temporary child custody)* The minor child(ren) listed in No 7. above is exposed to a substantial risk of physical or emotional injury or sexual abuse in that: (*Describe in detail what happened that created a risk of physical or emotional injury or sexual abuse.)*

☐ 9. The defendant has firearms and ammunition as described below, ☐ has a permit to purchase a firearm, ☐ and has a permit to carry a concealed weapon. *(Describe all firearms, ammunition, gun permits and give identifying number(s) if known, and indicate where defendant keeps firearms and gun permits.)*

☐ 10. The defendant has used or threatened to use a deadly weapon against me or minor child(ren) in my custody or has a pattern of prior conduct involving the use or threatened use of violence with a firearm against any persons in that *(Give specific dates and describe in detail what happened.)*

☐ 11. The defendant has made threats to commit suicide in that *(Give specific dates and describe in detail what happened.)*

Because Of The Acts Of Domestic Violence By The Defendant, I Am Requesting That The Court Give Me The Following Relief:

(Check only boxes that apply.)

1. I want emergency relief.

☐ 2. Since there is a danger of acts of domestic violence against me or my child(ren), I want an Ex Parte Order before notice of a hearing is given to the defendant.

☐ 3. I want the Court to order the defendant not to assault, threaten, abuse, follow, harass or interfere with me and my child(ren).

☐ 3a. I want the defendant ordered not to cruelly treat or abuse an animal owned, possessed, kept, or held as a pet by either party or minor child residing in the household.

☐ 4. I want possession of our residence at the address listed below, and I want the defendant to move from and not return to the residence.

Address Of Residence

☐ 5. I want the Court to order the eviction of the defendant from the residence listed above and I want assistance in returning to the residence.

☐ 6. I want possession of the personal property such as clothing and household goods in the residence listed above except for the defendant's personal clothing, toiletries and tools of trade.

☐ 6a. I want the care, custody, and control of any animal owned, possessed, kept, or held as a pet by either party or minor child residing in the household granted to me.

VERSUS	File No.
Name Of Defendant	

☐ 7. I want the defendant to be ordered not to come on or about:

- ☐ (a) my residence.
- ☐ (b) any place where I am receiving temporary shelter.
- ☐ (c) the place where I work.
- ☐ (d) any school(s) the child(ren) attend.
- ☐ (e) the place where the child(ren) receives day care.
- ☐ (f) the place where I go to school.
- ☐ (g) Other: (name other places)

The child(ren) currently attend: *(name school)*

☐ 8. I want the defendant to be ordered to have no contact with me.

☐ 9. I want possession and use of the following vehicle:

Describe Vehicle

☐ 10. I want temporary custody of our minor child(ren) listed in this Complaint. I understand that I must file a separate child custody action for permanent custody.

☐ 11. I want the defendant to be ordered to make payments for the support of our minor child(ren), as required by law, but I understand it is only temporary and that I must file a separate child support action for regular, permanent child support.

☐ 12. I want the Court to prohibit the defendant from possessing or purchasing a firearm.

☐ 13. I want the Court to order the defendant to surrender to the sheriff his/her firearms, ammunition, and gun permits to purchase a firearm and carry a concealed weapon.

☐ 14. I want the defendant to be ordered to attend an abuser treatment program.

☐ 15. I want the defendant to be ordered to provide me and the child(ren) suitable alternative housing.

☐ 16. I want the defendant to be ordered to make payments for my support as required by law, but I understand it is only temporary and that I must file a separate action for regular permanent spousal support.

☐ 17. Other: *(specify)*

Date	*Signature Of Plaintiff (Person Filing Complaint)*

VERIFICATION

I, the undersigned, being first duly sworn, say that I am the plaintiff in this action; that I have read the Complaint and Motion; that the matters and things alleged in the Complaint and Motion are true except as to those things alleged upon information and belief and as to those I believe them to be true and accurate.

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME		*Date*
Date	*Signature*	*Signature Of Plaintiff (Person Filing Complaint)*
☐ *Deputy CSC* ☐ *Assistant CSC* ☐ *Clerk of Superior Court* ☐ *Designated Magistrate*		*Name Of Plaintiff (Type Or Print)*
☐ *Notary*	*Date My Commission Expires*	
SEAL	*County Where Notarized*	

INSTRUCTIONS FOR DOMESTIC VIOLENCE FORMS

FORMS YOU NEED TO FILL OUT:

I. Complaint And Motion For Domestic Violence Protective Order (AOC-CV-303)

1. You will need three (3) copies of this form.
2. Fill in:
   (a) Name of county;
   (b) Plaintiff's name - you are the plaintiff;
   (c) Defendant's name and address - a defendant is a spouse, former spouse, person of the opposite sex with whom you live or have lived as if married, your child or grandchild who is at least 16 years old, the mother or father of your child, a current or former household member, or a person of the opposite sex that you are dating or have dated;
   (d) Check the blocks and fill in the blanks that apply to you. If you are afraid of additional acts of domestic violence and you want the judge/magistrate to act immediately, check block #2 at the bottom of page 2, asking for an Ex Parte Order. A request for an Ex Parte Order will be heard soon and without giving notice to the defendant. If a magistrate hears your request for ex parte relief, the magistrate's order is only good for a short period of time and a second temporary Ex Parte Order must be issued by the judge. If the judge issues the temporary Ex Parte Order, another hearing will be held after the defendant is given notice. If no Ex Parte Order is entered, a hearing will still be held after the defendant is given notice;
   (e) Date and sign the complaint on the back *(above the veriication section).* The verification must be signed before a clerk or notary;
   (f) In some counties you may be able to take it to the magistrate's office on weekends and evenings.
3. If you or the defendant is under the age of eighteen (18) and not married, you must ask the clerk for the form to appoint a guardian ad litem (AOC-CV-318).

II. Notice Of Hearing On Domestic Violence Protective Order (AOC-CV-305)

1. You will need three (3) copies of this form.
2. Fill in:
   (a) Name of county;
   (b) Plaintiff's name;
   (c) Defendant's name and address.
3. **DO NOT** fill out the remainder of this form.

III. Ex Parte Domestic Violence Order Of Protection (AOC-CV-304)

1. You will need only one (1) copy of this form.
2. Fill in:
   (a) Name of county;
   (b) Plaintiff's name;
   (c) Defendant's name and address.
3. **DO NOT** fill out the remainder of this form.

IV. Civil Summons Domestic Violence (AOC-CV-317)

1. You will need three (3) copies of this form.
2. Fill in:
   (a) Name of county;
   (b) Plaintiff's name and address. You may give an address where you want your mail to go, not necessarily where you are staying;
   (c) Defendant's name and address *(under the block designated "Defendant');*
   (d) Defendant's name and address again in the block designated "Name and Address of Defendant."
3. **DO NOT** fill out the remainder of this form.

(Over)

V. Identifying information About Defendant Domestic Violence Action (AOC-CV-312)

1. You will need only one (1) copy of this form.
2. Fill in all the information that you know. Be as complete and accurate as you can.
3. Leave blank any portion for which you do not have the information.
4. You may either:
   (a) turn in the completed form to the clerk or magistrate with the other papers, or
   (b) keep the form, get the needed information, and turn in the completed form to the judge or magistrate at the hearing.

VI. Affidavit As To Status Of Minor Child (AOC-CV-609)

1. You **do not** need this form unless you are asking for temporary custody of the children.
2. You will need one (1) copy of this form for each minor child.
3. You must attach the completed form to the Complaint and give it to the clerk or magistrate with the other papers:
   (a) turn in the completed form to the clerk or magistrate with the other papers, or
   (b) keep the form, get the needed information, and turn in the completed form to the judge or magistrate at the hearing.

TAKE ALL FORMS TO THE CLERK/MAGISTRATE FOR FURTHER DIRECTIONS.

STATE OF NORTH CAROLINA

_____ County

File No.

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 ☐ Designated Magistrate	

☐ **ENDORSEMENT**
This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement	Time ☐ AM ☐ PM
Signature	
☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court	

(Over)

RETURN OF SERVICE

I certify that this Summons and a copy of the complaint ☐ and a copy of the ex parte order were received and served as follows:

DEFENDANT

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

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

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

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*

What Magistrates Need to Know About Domestic Violence Protective Orders

WHETHER AND HOW TO ISSUE AN EX PARTE DVPO

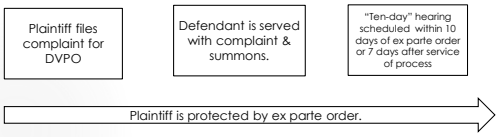
GS Chapter 50B: Domestic Violence Protective Orders

- Any NC resident can file a lawsuit asking for protection for herself or for a child residing with her or in her custody because the defendant has committed acts of DV. This is a civil action, and like all civil actions, it is initiated when a plaintiff files a complaint or a motion in an existing civil proceeding.
- No lawyer is required, and no court costs or other fees are charged.
- The remedy requested by the plaintiff is a coercive order directing or prohibiting the defendant from engaging in certain acts.
- Enforceable by contempt or criminal charge of violating DVPO.

Where you come in

- All magistrates in the criminal section are likely to be involved at the enforcement stage.
- Magistrates authorized by their chief district court judge are also involved at a very early stage of the civil proceedings.
- An ex parte DVPO is a temporary order put in place to protect the plaintiff during the time before the case comes to trial.
- An ex parte DVPO issued by a magistrate is an even briefer order put in place to protect the plaintiff until a district court judge can conduct a hearing on the request for an ex parte order.

Timeline



GS 50B-2(c1): Ex parte DVPOs Translation

- 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.

- A CDCJ may give a magistrate authority to hear requests for ex parte DVPOs when:
  - district court is not in session,
    &
  - no dcj will be available for 4 hrs

Procedure for ex parte DVPOs

- Generally, plaintiff files action as usual with clerk. If complaint includes request for ex parte order and no district court judge is available, you're the next stop.

- When the clerk's office is closed and a magistrate has been authorized to hear a motion for emergency ex parte relief, the plaintiff may "file" complaint with magistrate as first step.
  - The magistrate shall accept the complaint for filing, note thereon the filing date, and issue a summons. GS 50B-2(c1)
  - Any complaint, motion or other documents accepted by the magistrate shall be delivered to the clerk's office as soon as the office is opened for business. GS 50B-2(c1)

"*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.*" GS 50B-2(d)

AOC-CV-303: Instructions for DV Forms

- Complaint & Motion for DVPO (CV-303)
- Notice of Hearing on DVPO (CV-305)
- Ex Parte DVPO (CV-304)
- Civil Summons DV (CV-317)
- Identifying Info about Δ DV Action (CV-312)
- Affidavit as to Status of Minor Child (CV-609)

More . . .	Translation
▸ 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.	▸ Order automatically expires at midnight on next day court is in session. ▸ Magistrate is responsible for scheduling a second ex parte hearing, before a DCJ, before order expires.

Ultimate questions

- "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."
- **GS 50B-(c1).**
- If the magistrate "finds that an act of domestic violence has occurred, the court shall grant a protective order restraining the defendant from any further acts of domestic violence."
- **GS 50B-3 (a).**

Definition of DV:

Personal Relationship + Act

Personal Relationship: a relationship in which 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. Δ must be 16+.
- (4) Have a child in common;
- (5) Are current or former household members;
- (6) Are persons who are or have been in a dating relationship [ignore "of the opposite sex"]

M.E. v. T.J., 380 NC 539 (2022)

COURT HELD "OF THE OPPOSITE SEX" LANGUAGE IN 50B-1(B)(6) UNCONSTITUTIONAL

ORDERED THAT STATUTE BE READ TO COVER SAME SEX DATING RELATIONSHIPS

What's a dating relationship?

- ". . . 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." GS 50B-1(b)(6).
- *Thomas v. Williams,* 242 NC App 236 (2015)
  - No magic minimum length of time. Court should consider all the circumstances. "Dating relationship" should be interpreted broadly to cover a wide range of romantic relationships, with "only the least intimate of personal relationships" excluded.

Consider these factors:

2019

- 1. Was there a minimal social interpersonal bonding of the parties over and above [that of] mere casual [acquaintances or ordinary] fraternization?
- 2. How long did the alleged dating activities continue prior to the acts of domestic violence alleged?
- 3. What were the nature and frequency of the parties' interactions?
- 4. What were the parties' ongoing expectations with respect to the relationship, either individually or jointly?
- 5. Did the parties demonstrate an affirmation of their relationship before others by statement or conduct?
- 6. Are there any other reasons unique to the case that support or detract from a finding that a "dating relationship" exists?

Thomas v. Williams, 242 NC App 236 (2015)

An Act:

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

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

Notes on the Act

- Acts in self-defense are not included
- Plaintiff must be involved in personal relationship with Δ, but act may be directed to specified others
- "Fear" in #2 refers to actual, subjective fear. Objective test N/A.
- "Imminent" ≠ immediate, but rather "without significant delay."
- "Harassment" is knowing conduct (including electronic communication) that torments or terrorizes the other person & serves no legitimate purpose.
- Offenses specified in #3 are criminal sex offenses.

Special rules for kids . . .

"[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.

Special rules for guns . . .

Magistrate must always ask about defendant's ownership and/or access to firearms, ammunition, along with identifying information, in addition to permits to purchase and/or to carry concealed.

If statutory requirements exist, magistrate must order that defendant surrender all firearms, ammunition and permits to the sheriff

Statutory factors: your interview must cover whether defendant

2019

- has used or threatened to use a deadly weapon, or has a pattern of prior conduct involving the use or threatened use of a firearm against a person;
- has made threats to seriously injure or kill plaintiff or minor child;
- has threatened suicide;
- has inflicted serious injuries on plaintiff or child.

Ultimate questions

- "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."
- **GS 50B-(c1).**

- If the magistrate "finds that an act of domestic violence has occurred, the court shall grant a protective order restraining the defendant from any further acts of domestic violence."
- **GS 50B-3 (a).**

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 _____ , _____

AOC-CV-304: Ex Parte Domestic Violence Order of Protection

If the magistrate "finds that an act of domestic violence has occurred, the court shall grant a protective order restraining the defendant from any further acts of domestic violence."
GS 50B-3 (a).

Requests for custody: consider the possibilities

2019

- Plaintiff may be making a false allegation in order to gain an advantage in a custody dispute.
- Plaintiff may be attempting to use the DVPO action as a substitute for a custody case.
- Plaintiff may have genuine concerns about the safety and well-being of the children that, impartially assessed, fall short of "substantial risk" of injury.
- Plaintiff's decision to leave relationship and seek DVPO is motivated, either entirely or in large part, by defendant's threats or actions directed at children.
- Defendant is angry/devastated/desperate about separation and plaintiff has justified concerns about children's safety.

Gersch v. Fantasia (facts taken from opinion)
Plaintiff and defendant were once engaged, and the couple had a child before ending their relationship.

On the afternoon of 24 January 2006, Denice Gersch drove to her parent's house with the parties' infant son for a visitation exchange with defendant.

Upon parking her automobile in the driveway, Ms. Gersch's father, Mr. Gersch, took the infant carrier out of the automobile, and carried the infant towards his house.

Defendant (Peter Fantasia) asked Mr. Gersch, "Where [are] you going with my son?" and grabbed the infant carrier.

When Mr. Gersch tried to push defendant back, defendant punched Mr. Gersch, who fell to the ground.

Defendant then kicked Mr. Gersch in the head.

Ms. Gersch testified that she "jumped on Mr. Fantasia, grabbing him, trying to pull him off my 62–year–old father and my five-month old son. He slung me.... I ended up being slung into the railing."

Mr. Gersch then rushed into the house, with the baby, and locked the door.

Ms. Gersch testified that her mother took photos of the bruises she developed on her side as the result of being flung into the railing.

The police were called and, after conferring with their supervisor, declined to charge anyone at the scene.

Later that night Mr. Gersch was taken to the hospital for stitches on his face.

UNDERSTANDING DOMESTIC VIOENCE

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

Source: This *Wheel of Abuse* information is provided courtesy of Kim Eyer of rhiannon3.net

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

Domestic Violence

The dynamics of domestic violence relationships

Agenda

- What acts constitute Domestic Violence?
- How does he control her?
- Why does she stay?
- What can you do?

What is Domestic Violence?

- Domestic Violence is when two people get into an intimate relationship and one person uses a pattern of coercion and control against the other person during the relationship and/or after the relationship has terminated. It often includes physical, sexual, emotional, or economic abuse.
- Source: NCCADV web site

Definition G.S. 50B-1

- Read the definition of Domestic Violence found in G.S. 50B-1.

What acts constitute DV?

Based on these definitions, in small groups brainstorm the answers to the following questions:

What acts do you qualify as "domestic violence"?
What frustrates you about dealing with DV cases?

We will hear and record ideas from each group.

Power and Control - Abusers believe they have a right to control their partners by:

- Making rules and expecting obedience (the rules can change)
- Using force to maintain power and control over partners
- Feeling their partners have no right to challenge their rules
- Feeling justified making the victim comply
- Blaming the abuse on the partner and not accepting responsibility for wrongful acts

Tactics used by Batterers

- Isolation
- Emotional abuse
- Economic abuse
- Intimidation
- Using children or pets
- Using privilege
- Sexual abuse
- Threats
- Physical abuse

Case Study Questions

- In your group, identify **two** tactics used by the batterer in this case study that exemplify your assigned area of the Power and Control Wheel.
- You will need a spokesperson from your group.

Why does she stay?

Use the clicker to decide what you would do in the following situations. You will be asked to make your own choices about what you will do when your partner becomes violent. Listen to the scenario. Then click on button that aligns with what you would do in this situation if YOU were the woman in these situations.

Situation 1 Honeymoon

- At the end of the week, you have returned to NC.
- **Now, make a decision:** Stay or Go

Situation 2 - If you stayed

It is three weeks later. Tony comes home from work and seems to be in a bad mood. You ask how his day was and he gives you a slight shove and walks past you. He doesn't speak to you the rest of the night and you have no idea why. Every time you try to talk, he simply ignores you.

Situation 3 – If you left

Tony has called every day . . . He loves you dearly . . . Parents invested in wedding . . . Mother is disappointed . . . Since your leaving was mostly meant to be a wake-up call to Tony, why don't you be a good wife and try to work things out?

In addition to leaving, what else would you do?

1. Call the police
2. File for a DVPO
3. Call crisis center
4. Tell your parents
5. Talk to a trusted friend

What happened?

- **Think about what just happened. In small groups discuss:**
- If you left where did you see yourself going?
- Each time you stayed or left, what did you base your decision on?
- How hard was it to decide what to do?
- Did you ever say to yourself, “I’m being abused or battered”?
- What insights did you gain?

What can you do?

- Read these handouts on Do’s and Don’ts.
- In pairs, name one thing you will do differently in your work with DV cases in the future based on what you have learned today.
- You will be asked to share your answers with the large group.

Class Summary

- DV is prevalent in the US and in NC
  - Almost 20 people per minute physically abused by partner (more than 10 million per year)
- DV is a pattern of abusive and coercive behavior to maintain power and control
- There are many misconceptions about DV
- Stranger and Domestic Violence are similar, but experienced differently by perpetrator, victim, and the community.

A word about trauma

- One of the original ACE's questions
- Present in every case
- What does trauma do?
  - To the victim?
  - To you?
- Self care

Resources for your trauma

- The Body Keeps Score, by Bessel Van Der Kolk, M.D.
- What Happened to You, by Bruce Perry and Oprah Winfrey
- iChill app
- "Caring for You" handouts
  - Virus Fatigue Workgroup, Covid-19 Task Force
  - www.nccourts.org

Judicial employees can send a powerful message by:

- Focusing on the trauma
- Focusing on children's needs.
- Prioritizing safety.
- Having a supportive demeanor.
- Taking the violence seriously.
- Recommending women to community resources.
- Refusing to joke or bond with violent men.

But Remember

- Recanting/minimizing is normal and often a survival technique.
- Certain members of the case may be impacting the victim's ability to speak freely.
- We will probably NEVER understand the motives/situations of either perpetrator or victim.
- Try to be patient. You may save a life!

CARING FOR YOU

SELF-CARE SUGGESTIONS

BE AWARE

Be upfront about how you're doing. Despite your best efforts, you may find yourself experiencing symptoms or signs of stress.

Signs of Stress

Irritation or Anger	Trouble Concentrating
Anxious/Nervous	Sad or Depressed
Overwhelmed	Lack of Motivation
Lack of Energy	Feeling Uncertain
Trouble Sleeping	Denial

Work-Related Factors

Concern of Exposure
Personal & Family Needs
Managing New Duties
Guilt
Adapting to New Processes/ Technologies/Work space

BE ENGAGED

Here are some ways to take care of you, to de-stress.

Body	Mind	Spirit
Sleep	Purpose	Draw on Your Belief System
Physical Activity/Exercise	Routine	Set Priorities
Eating Healthy	Stay busy	Make Connections
Avoid Tobacco/Alcohol/Drugs	Limit Media	Support Others
Relax & Recharge	Positive Thoughts	
	Remember You Matter	

GET HELP

When these signs and symptoms last for several days, make you miserable, or cause problems in your daily life, it's time to ask for help.

Employee Assistance Program (EAP)

Deer Oaks EAP Services	
Phone Number	866-327-2400
Website	deeroakseap.com
User & Password	NCAOC

North Carolina Resources

NC 2-1-1	Simply Dial 2-1-1
NC HopeLine	877-235-4525

National Suicide Prevention Lifeline

800-273-8255

juno.nccourts.org/human-resources/employee-assistance-program

CARING FOR YOU

SELF-CARE SUGGESTIONS

No one alive today has lived through a time like this COVID-19 pandemic. **Everyone** is affected in some way, and everyone is subject to stressors at a time like this. Stressors can come from anywhere and everywhere. For example, being overworked; having no work; being isolated; having too much family time with no breathing room; feeling anxious about having to deal with the public; having personal or family health concerns; money concerns; and loss of hope for the future are all potential sources of stress. African Americans, and other friends and colleagues of color, are faced with the compounded stressors of health disparities and structural inequities. Everyone is different, but no one is immune. Even the people who cheerfully say, "I'm fine," are affected, as well.

During this time, it helps to remember two things. First, the justice system will survive and come through this pandemic, hopefully as a stronger and more equitable institution. Second, your role in making that happen is critical; the work you do matters. It helps us preserve a system of justice that everyone counts on, whether they use it or not. Thank you for doing this work.

Whatever your personal situation, you should be engaging in some self-care. There are many aspects of this situation that cannot be controlled. Practicing self-care is not one of them.

During this pandemic, it is critical that you recognize what stress looks like, take steps to build your resilience and manage job stress, and know where to go if you need additional help. In addition to increased stress, anxiety, fear, sadness, and loneliness are common. And mental health disorders, including anxiety and depression, can develop or worsen.

This document provides some strategies to help promote resiliency and wellness. The material is based on documents prepared by the Mayo Clinic and the Centers for Disease Control and Prevention (CDC). Links to materials from both sources, as well as other helpful resources, are included.

COMMON SIGNS OF STRESS

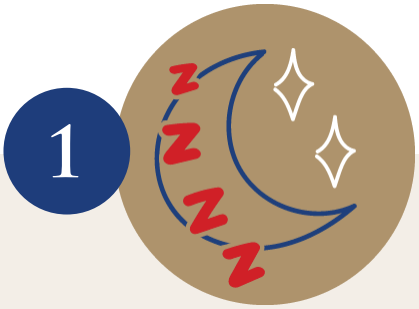
- Feeling irritation, anger, or being in denial
- Feeling uncertain, nervous, or anxious
- Lacking motivation
- Feeling tired, overwhelmed, or burned out
- Feeling sad or depressed
- Having trouble sleeping
- Having trouble concentrating

WORK-RELATED STRESS FACTORS

- Concern about the risk of being exposed to COVID-19 at work
- Need to take care of new personal and family needs while working
- Managing new duties
- Lack of access to the safety equipment
- Feeling that you are not doing your part or guilt because others have to be on frontlines
- Having to learn new technologies
- Adapting to a different workspace and/or work schedule

Suggestions for Self Care

TAKE CARE OF **YOUR BODY**



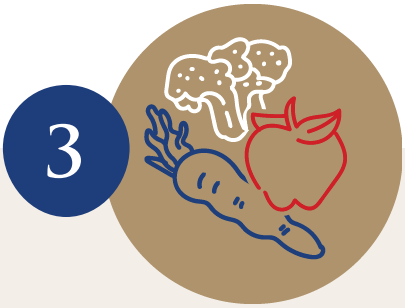
GET ENOUGH SLEEP.

Go to bed and get up at the same times each day. Stick close to your typical schedule, even if you're staying at home.

LIMIT SCREEN TIME.

Turn off electronic devices for some time each day, including 30 minutes before bedtime.

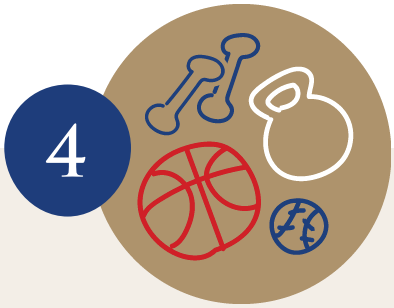
Make a conscious effort to spend less time in front of a screen — television, tablet, computer, and phone.



EAT HEALTHY.

Choose a well-balanced diet. Avoid loading up on junk food and refined sugar.

Limit caffeine as it can aggravate stress and anxiety.



PARTICIPATE IN REGULAR PHYSICAL ACTIVITY.

Regular physical activity and exercise can help reduce anxiety and improve mood.

Find an activity that includes movement, such as dance or exercise apps. Get outside in an area that makes it easy to maintain social and physical distancing. It can be as simple as walking.

Suggestions for Self Care

TAKE CARE OF **YOUR BODY**

AVOID TOBACCO, ALCOHOL AND DRUGS.

Because COVID-19 affects the lungs, the risk to smokers and vapers is increased.

Using alcohol to try to cope can make matters worse and reduce your coping skills.

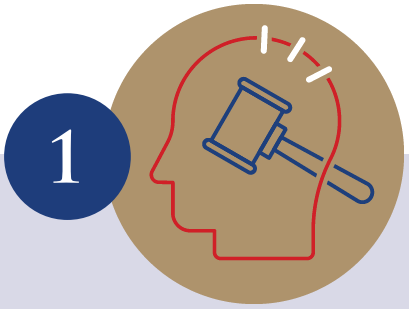
Avoid taking drugs to cope, unless your doctor prescribed medications for you.

RELAX AND RECHARGE.

Set aside time for yourself. Even a few minutes of quiet time can be refreshing and help to quiet your mind and reduce anxiety. Many people benefit from practices such as deep breathing, tai chi, yoga, or meditation.

Soak in a bubble bath, listen to music, or read or listen to a book — whatever helps you relax. Select a technique that works for you and practice it regularly. There are many sources online for meditation to assist you in starting some of these practices.

TAKE CARE OF **YOUR MIND**



REMEMBER THE REASONS YOU WORK IN THE JUSTICE SYSTEM.

The work you do is vital to the functioning of our state. Without a justice system, a democracy cannot function. The importance of your work hasn't changed. And this crisis will end.

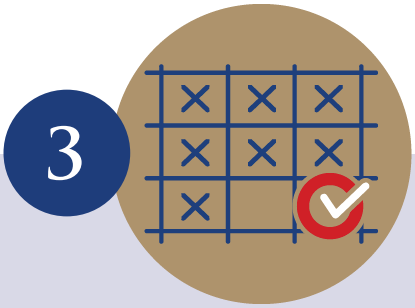
What you do matters, no matter how stressful it is right now; it is helpful to remind yourself of that.

LIMIT EXPOSURE TO NEWS MEDIA.

Constant news about COVID-19 from all types of media can heighten fears about the disease. Limit social media that may expose you to rumors and false information. Limit reading, hearing, or watching other news, but keep up to date on national and local recommendations. Look for reliable sources of authority such as the NC DHHS or the CDC.

Suggestions for Self Care

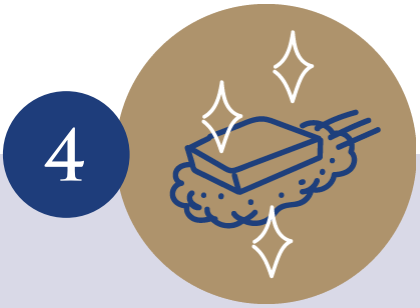
TAKE CARE OF **YOUR MIND**



KEEP YOUR REGULAR ROUTINE.

Maintaining a regular schedule is important to your mental health. In addition to sticking to a regular bedtime routine, keep consistent times for meals, bathing and getting dressed, work or study schedules, and exercise.

Set aside time for activities you enjoy. Predictability can make you feel more in control.



STAY BUSY.

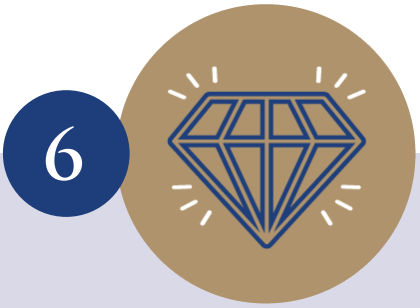
A distraction can get you away from the cycle of negative thoughts that feed anxiety and depression.

Enjoy hobbies that you can do at home, identify a new project, or clean out that infamous closet or drawer.

USE YOUR MORAL COMPASS OR SPIRITUAL LIFE FOR SUPPORT.

If you are part of a faith community or tradition, seek out the sources of comfort and support it provides.

If you draw strength from a belief system, let it bring you comfort during difficult times.



FOCUS ON POSITIVE THOUGHTS.

Choose to focus on the positive things in your life, instead of dwelling on how bad you feel.

Consider starting each day by listing things you are thankful for. Ask yourself, “What else is true?” Maintain a sense of hope, work to accept changes as they occur, and try to keep problems in perspective.

Suggestions for Self Care

TAKE CARE OF **YOUR MIND**

SET PRIORITIES.

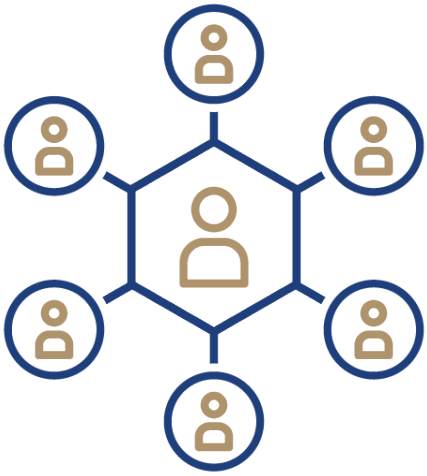
Don't become overwhelmed by your to-do list. Set reasonable and achievable goals each day.

Give yourself credit for positive steps and recognize that some days will be better than others.

CONNECT WITH OTHERS

MAKE CONNECTIONS.

If you need to stay at home and distance yourself from others, avoid social isolation. Find time each day to make virtual connections by email, texts, phone, or FaceTime or similar apps. If you're working remotely from home, ask your co-workers how they're doing and share coping tips. Enjoy virtual socializing and talking to those in your home.



DO SOMETHING FOR OTHERS.

Find purpose in helping the people around you. For example, email, text, or call to check on your friends, family members, and neighbors — especially those who are elderly. If you know someone who can't get out, ask if there's something needed, such as groceries or a prescription picked up, for instance. But be sure to follow guidelines on social distancing and group meetings.

SUPPORT A FAMILY MEMBER OR FRIEND.

If a family member or friend needs to be isolated for safety reasons or gets sick and needs to be quarantined, come up with ways to stay in contact—electronically, by phone, or by mail.

Suggestions for Self Care

GET HELP IF YOU NEED IT

Despite your best efforts, you may find yourself feeling helpless, sad, angry, irritable, hopeless, anxious, or afraid. You may have trouble concentrating on typical tasks, changes in appetite, body aches and pains, or difficulty sleeping, or you may struggle to face routine chores.

When these signs and symptoms last for several days in a row, make you miserable, and cause problems in your daily life so that you find it hard to carry out normal responsibilities, it's time to ask for help.

Hoping mental health problems such as anxiety or depression will go away on their own can lead to worsening symptoms.

If you have concerns or if you experience worsening of mental health symptoms, ask for help when you need it, and be upfront about how you're doing. To get help you may want to:

Contact the Employee Assistance Program provided by the Administrative Office of the Courts through Deer Oaks EAP Services, available 24 hours a day, seven days a week. Contact information is provided below.

Call or use social media to contact a close friend or loved one — even though it may be hard to talk about your feelings.

Contact a minister, spiritual leader, or someone in your faith community.

Call your primary care provider or mental health professional to ask about appointment options to talk about your anxiety or depression and get advice and guidance.

Contact organizations such as the National Alliance on Mental Illness (NAMI) or the Substance Abuse and Mental Health Services Administration (SAMHSA) for help and guidance.

FURTHER INFORMATION

In the United States, call the **National Suicide Prevention Lifeline at 1-800-273-TALK (1-800-273-8255)** or use its webchat at suicidepreventionlifeline.org/chat.

If you're feeling suicidal or thinking of hurting yourself, seek help. Contact your primary care provider or a mental health professional. Or call a suicide hotline.

Continue your self-care strategies.
Sometimes symptoms may take as long as 9-12 months to show up after the initial event

And, stress won't disappear from your life when the health crisis of COVID-19 ends.

Self-care is a life-long activity.

Centers for Disease Control and Prevention (CDC)
cdc.gov/coronavirus/2019-ncov/community/mental-health-non-healthcare.html

https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/racial-ethnic-minorities.html

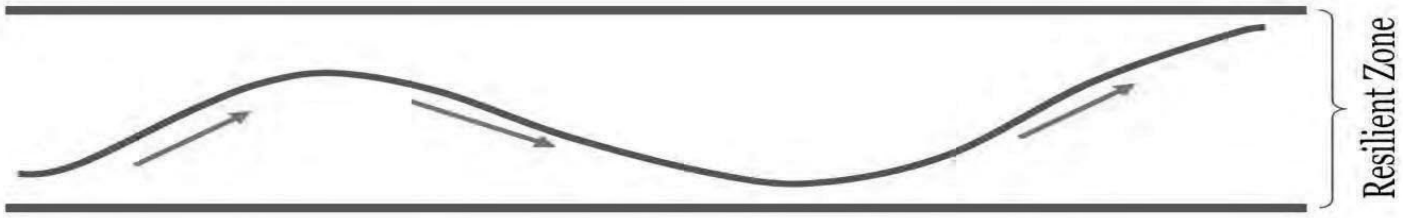
Mayo Clinic
mayoclinichealthsystem.org/hometown-health/speaking-of-health/self-care-tips-during-the-COVID-19-pandemic

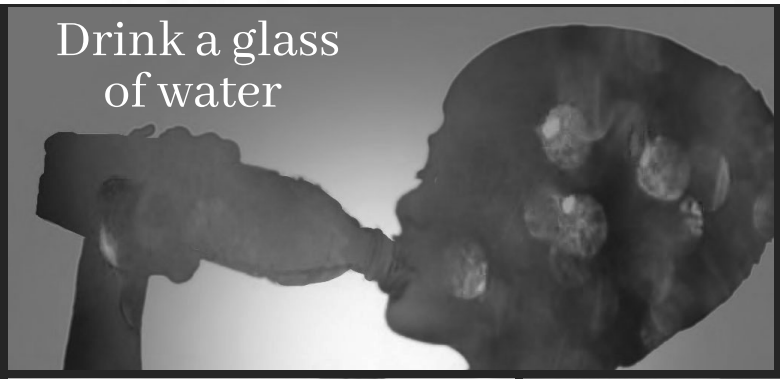
NCAOC Employee Assistance Program (EAP)
juno.nccourts.org/human-resources/employee-assistance-program

Administered by Deer Oaks EAP Services. In addition to website resources, in-person consultation is available 24 hours a day, seven days a week for Judicial Branch employees.

American Bar Association (ABA) Lawyer Assistance Program
americanbar.org/groups/lawyer_assistance/resources/COVID-19--mental-health-resources/

Help Now!





TORTS

A tort is a civil wrong.

- Torts are divided into two big classes: intentional and negligent. (Also note "strict liability")
- Most – but not all – intentional torts involve behavior that is also a crime.
- The same action may be both a crime and a tort. (Remember the rule: "either, neither, or both.")
- Each intentional tort has different essential elements (just like a crime does).

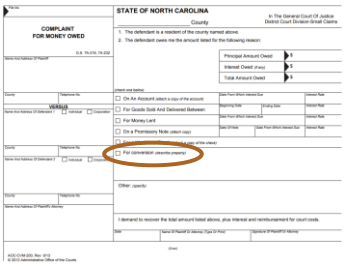
There are LOTS of intentional torts. And they each have their own essential elements.

- Assault
- Battery
- False Imprisonment
- Conversion
- Trespass to Real Property
- Trespass to Personal Property (aka Trespass to Chattel)
- Fraud
- Unfair or deceptive trade practices
- Defamation (Libel & Slander)
- Criminal Conversation
- Alienation of Affection
- Abuse of Process
- Malicious Prosecution
- Wrongful Discharge
- Destruction of property
- Intentional Infliction of Emotional Distress

Intentional Torts

Plaintiff must prove:

1. **Defendant committed an act,**
2. **With intent to commit the act, and**
3. **The act caused harm to Plaintiff.**



COMPLAINT
FOR MONEY OWED

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 $

VENUE

(check one below)

☐ On An Account (attach a copy of the account)
☐ For Goods Sold And Delivered Between
☐ For Money Lent
☐ On a Promissory Note (attach copy)
☐ 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)

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CONVERSION

ESSENTIAL ELEMENTS

1. Plaintiff=Owner or Lawful Possessor
2. Defendant wrongfully took or wrongfully retained property after demand
3. FMV of property at time it was taken or retained

ASSAULT AND BATTERY

ASSAULT-ESSENTIAL ELEMENTS

1. Defendant, by an intentional act or display of force or violence, threatened the plaintiff with imminent bodily harm.
2. The act caused the plaintiff to have a reasonable apprehension that harmful or offensive contact was imminent.

BATTERY-ESSENTIAL ELEMENTS

1. Defendant intentionally caused bodily contact with the Plaintiff.
2. The bodily contact actually offended a reasonable sense of personal dignity or caused physical pain and injury.
3. The bodily contact occurred without the plaintiff's consent.

UNFAIR OR DECEPTIVE PRACTICES

ESSENTIAL ELEMENTS

1. **Unfair or deceptive act or practice**
2. **Act or practice affects commerce**
3. **Actual injury to Plaintiff**

NCGS 75-1.1

Traditional negligence analysis

Did defendant have a duty of reasonable care to the plaintiff?

Did defendant breach that duty (i.e., was defendant negligent)?

Was defendant's negligence the proximate cause of injury to plaintiff or plaintiff's property?

What damages did plaintiff suffer?

ELEMENTS OF NEGLIGENCE

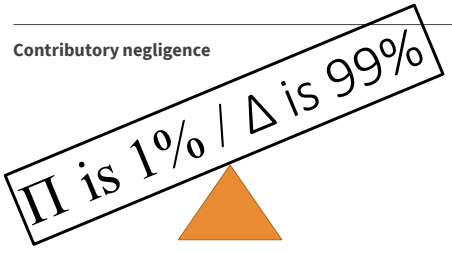
1. Duty=exercise amount of care that would be taken by a reasonably prudent person under the same or similar circumstances
2. Breach=violates duty standard
3. Causation
   a) Actual=but for defendant's negligence, plaintiff would not have been injured
   b) Proximate=defendant should have foreseen plaintiff might be harmed if defendant did not exercise reasonable care
4. Damages=actual physical injury or property damage or out-of-pocket loss

Test for negligence

What would a reasonably prudent person, acting with due care and diligence, do under the same circumstances?

Most common defense

Contributory negligence



But Wait…Don't forget about Last Clear Chance

- **An exception to Contributory Negligence**
- **Applies if plaintiff can prove:**
  1. **Plaintiff's negligence put plaintiff in a position of peril from which plaintiff could not escape;**
  2. **Defendant knew, or by the exercise of reasonable care should have recognized, the plaintiff's position of peril and inability to escape from it;**
  3. **Defendant had the time and the means to avoid injuring the plaintiff and failed to use reasonable care to do so; and**
  4. **That failure proximately caused plaintiff's injury or damage.**

Statute of Limitations

CAUSE OF ACTION	STATUTE OF LIMITATION
NEGLIGENCE	3 YEARS
MOST INTENTIONAL TORTS	3 YEARS
LIBEL AND SLANDER	1 YEAR

Three last things to remember:

- Vicarious Liability
- Measure of Damages
- Collateral Source Rule

Vicarious liability, aka "When I die, I hope it's because I got hit by a Walmart truck."

Vicarious Liability

- **Liability based not on a person's own wrongdoing, but rather on that person's relationship to the wrongdoer**
- **Parents are liable for the willful and intentional torts of their children up to $2,000 (G.S. 1-538.1)**
- **Employer may be responsible for acts of employees**
- **Owner of a car may be responsible for acts of driver**

MEASURE OF DAMAGES

- COMPENSATORY DAMAGES
  - Effort to make plaintiff whole
  - Personal injury damages include medical expenses, pain and suffering and lost wages
  - Damage to property damages include diminution in value and intrinsic value
- PUNITIVE DAMAGES
  - Only for intentional torts
  - Clear and convincing evidence
  - Willful and wanton, fraudulent, or malicious tortious conduct
- PRE-JUDGMENT INTEREST

Collateral Source Rule, aka "My church didn't hold a fundraiser for YOU!"

Collateral Source Rule

- **Wrongdoer's liability should not be reduced by compensation plaintiff receives from an independent source**
- **Defendant prohibited from even introducing evidence that plaintiff has received payment from some other source**

Tort Law Summary for Small Claims Magistrates

1. A tort is a "civil wrong." It may be intentional or negligent behavior. A criminal charge is intended to protect society as a whole from conduct judged to be criminal, but civil liability for a tort is intended to recompense the victim for wrong done to him or her.

2. **Intentional torts** require the plaintiff to prove (1) that the defendant committed an act, (2) that he or she did so intentionally, and (3) that the act caused the plaintiff harm. It is important to note that the defendant only has to intend the act not that the defendant intended the resultant harm.

   How many intentional torts can you list? _____
   _____
   _____
   _____
   _____
   _____

3. AOC-CVM 200, a *Complaint for Money Owed*, is the appropriate form for a tort action. Unless the action is one for conversion, the specific tort (that is, the wrong complained of) should be listed in the "Other" section.

4. **Conversion** is one of the intentional torts often heard in small claims court. The essential elements of an action for conversion are:
   1) The plaintiff owns the property, or is a lawful possessor entitled to immediate possession;
   2) The defendant either wrongfully took the property, or wrongfully retained the property after a demand for its return; and
   3) The FMV of the property at the time it was wrongfully taken or retained.

5. **Assault and battery** are two separate intentional torts requiring different elements, although they are often spoken of as one. The torts of assault and battery should not be confused with criminal assault which encompasses aspects of both assault and battery. The essential elements of **assault** are:
   1) Defendant, by an intentional act or display of force or violence, threatened the plaintiff with imminent bodily harm.
   2) The act caused the plaintiff to have a reasonable apprehension that harmful or offensive contact was imminent.

   The essential elements of **battery** are:
   1) Defendant intentionally caused bodily contact with the Plaintiff.

2) The bodily contact actually offended a reasonable sense of personal dignity or caused physical pain and injury.
3) The bodily contact occurred without the plaintiff's consent.

6. An intentional tort that you may see more of is **unfair or deceptive practices** (GS 75-1.1). This law prohibits "unfair or deceptive acts or practices in or affecting commerce."

A. The essential elements of this tort are:
   1) The defendant committed an unfair or deceptive act or practice;[1]
   2) The act or practice was in or affecting commerce; and
   3) The act caused actual injury to the plaintiff.

B. A plaintiff who proves liability for this tort is entitled to **triple damages** (which is the amount in controversy). In addition, the plaintiff is entitled to recover a reasonable **attorney fee** if the court finds that the defendant's act was willful and that the defendant had without good reason refused to "fully resolve the matter." GS 75-16.1.

7. The second broad category of torts consists of actions asserting that the defendant was **negligent.** The law says that a person who fails to use reasonable to care to avoid causing foreseeable injury to another is responsible for compensating the injured person for damages caused by his or her conduct. Whether conduct is negligent is determined by whether a reasonable person in the same circumstances would have behaved differently. In making this determination, one doctrine the judge may consider is the **sudden emergency doctrine**: this doctrine simply means that a person suddenly confronted with an emergency not of his own making is not necessarily held to the same level of care as a person under circumstances allowing ample time for thoughtful consideration—the time and circumstances should be taken into consideration.

The elements of a negligence claim are:
1. Duty=exercise amount of care that would be taken by a reasonably prudent person under the same or similar circumstances
2. Breach=violates duty standard
3. Causation

[1] "A trade practice is "unfair," as required to recover for an unfair and deceptive trade practice, when it offends established public policy as well as when the practice is immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers. " Walker v. Fleetwood Homes of North Carolina, Inc., 653 S.E.2d 393 (N.C. 2007)." A party is guilty of an unfair act or practice when it engages in conduct which amounts to an inequitable assertion of its power or position. Pittmann v. Hyatt Coin & Gun, Inc., 735 S.E.2d 856 (N.C. Ct. App. 2012).

a) Actual=but for defendant's negligence, plaintiff would not have been injured
b) Proximate=defendant should have foreseen plaintiff might be harmed if defendant did not exercise reasonable care

4. Damages=actual physical injury or property damage or out-of-pocket loss

8. The most common defense to a tort action is **contributory negligence**. If the plaintiff's own negligence contributed to the injury, even in the slightest degree, the defendant is excused from liability. An exception to the rule about contributory negligence is the doctrine of **last clear chance**: this doctrine arises when the defendant could or should have recognized the plaintiff's perilous position, had the opportunity to act to avoid harm, and failed to do so.

9. The measure of damages in a tort action may be of two types: compensatory and punitive.

A. **Compensatory damages** are an effort to make the plaintiff "whole," or in other words to come as close as possible to putting the plaintiff in the position s/he would have occupied had the injury not occurred.

1) If the plaintiff has suffered personal injury, the typical damage items are medical expenses, pain and suffering, and lost wages.
2) If the action involves damage to property, there are two possible measures of damages: diminution in value (difference in FMV of property before and after injury, sometimes indicated by cost of repair) and intrinsic value (for property without market value—defined as value to owner).

B. **Punitive damages** are awardable only in actions for intentional torts and only if plaintiff proves by clear and convincing evidence that defendant's tortious conduct was willful and wanton, fraudulent, or malicious.

C. **Pre-judgment interest** in a tort action is calculated beginning on the date the action is filed. Notice this is a different rule than the rule for contract actions (in which pre-judgment interest begins to run at date of breach).

10. Miscellaneous

A. **Acts of children**
1) Negligence: Children under 7 are incapable of negligence. Children 7-14 are presumed incapable, rebuttable by showing child failed to use reasonable care compared to other children of comparable age.

2) Intentional torts: Parents are responsible for up to $2000 worth of damages under GS 1-538 .1 unless custody has been removed or altered. See Small Claims Law by Brannon, p. 116.
3) Parents may also be responsible for their own independent tort of negligent supervision.

B. **Acts of animals**
1) The owner or keeper of a vicious animal is responsible for injury caused by vicious behavior of animal if owner/keeper had knowledge. "Vicious" in this context means dangerous to others, not ill-tempered or malicious. NOTE: Unclear whether this is a strict liability rule in NC.
2) Negligent failure to control animal.
3) Violation of a safety statute.
4) GS 67-4.1 (Dangerous Dog Statute)

C. Negligence actions against **bailee** (e.g., dry cleaner). Plaintiff is not required to demonstrate specific act of negligence, but rather that property was damaged while in possession of bailee. Burden then shifts to defendant to show absence of negligence.

D. **Negligence per se**. Violation of safety statute relieves plaintiff of requirement of showing defendant behaved negligently.

E. **Vicarious liability**. One person is held legally responsible for negligent (and sometimes intentional) acts of another. Examples include parent/child (discussed above), employer/employee, owner of car present when driver behaves negligently, and owner of car pursuant to Family Purpose Doctrine.

F. **Collateral source rule.** The fact that plaintiff has received compensation for damages from some other source (such as his or her own insurance company or employer) may not be used to reduce damages paid by defendant.

Language Across Services

Language Access Services

Frequently Asked Questions for Judicial Officials

Who is entitled to a court interpreter?
The Judicial Branch is committed to removing barriers that hinder equal access to justice by individuals with limited English proficiency (LEP). The court should require an interpreter for any court proceeding involving a party in interest who speaks a language other than English as the primary language and has a limited ability to read, speak, or understand English.

Who pays for the court interpreter?
The Judicial Branch will provide a court interpreter at state expense and at no cost to the party in the following types of court proceedings:

- All court proceedings heard before the magistrate
- All court proceedings heard before the clerk of superior court
- All court proceedings heard before the district court judge
- All court proceedings heard before the superior court judge

Who is considered a party in interest?
Parties in interest in a court proceeding can be any of the following: a party; a victim; a witness; the parent, legal guardian or custodian of a minor party; the legal guardian or custodian of an adult party.

How do I determine whether a person has limited English proficiency and needs a court interpreter?
To help determine whether to require a court interpreter, the court should conduct a voir dire that asks open-ended questions that cannot be answered with a simple yes or no. Sample questions include, "What kind of work do you do?" or "Why are you here in court today?"

What types of interpreting services are available?
The Judicial Branch offers a number of language access services to meet the needs of LEP individuals, including staff court interpreters, contract court interpreters, telephone interpreting, remote interpreting, translation, and transcription-translation services. Certified staff court interpreters provide Spanish interpreting services in 9 counties: Alamance, Buncombe, Chatham, Durham, Forsyth, Guilford, Mecklenburg, Orange and Wake.

The court proceeding is scheduled for today, but no court interpreter has been scheduled. Is it possible to find an interpreter on such short notice?
The request process set forth in the Standards requires a completed *Request for Spoken Foreign Language Court Interpreter* be submitted by counsel, if applicable, or court personnel to the local Language Access Coordinator at least 10 days in advance of the court date or as soon as the matter is placed on the calendar, whichever occurs first. Court

interpreters are often scheduled well in advance of the court date, so last-minute coverage is unlikely outside of staff court interpreter districts. Attorneys should be instructed to submit a request for a future court date. Court personnel should assist with submitting the request on behalf of self-represented litigants.

If parties bring friends or family with them to interpret, may we use those friends or family as court interpreters?
No. Only court interpreters approved by OLAS may provide interpreting services during a court proceeding. Friends and family may help parties communicate with court staff outside the courtroom, but they *may not serve as court interpreters.*

May court personnel who speak other languages serve as court interpreters in court proceedings?
No. Court personnel who speak other languages may help parties communicate with court staff *outside* the courtroom, but they *may not serve as court interpreters* in court proceedings. Additionally, law enforcement officers, corrections officers, and attorneys may *not serve as court interpreters* in court proceedings.

May I use telephone interpreting to conduct a trial?
The telephone interpreting services may be used for brief matters before the judicial official, such as continuances or first appearances. However, a telephone interpreter should not be used for trials or any other types of evidentiary hearings in district court. Telephone interpreting services are not available in superior court.

What if one of the parties needs an interpreter outside of the court proceeding?
The Judicial Branch will provide an interpreter for out-of-court communications on behalf of the district attorney, Guardian ad Litem Program, and, pursuant to a memorandum of understanding between NCAOC and the Office of Indigent Defense Services (IDS), on behalf of public defenders, assigned counsel, and guardians ad litem representing indigent parties for IDS.

The Judicial Branch does not provide interpreting services to facilitate communications between private counsel and clients, witnesses or other parties *outside of the court proceeding*. Language access services required for all out-of-court communications involving private counsel, including all interviews, investigations, and other aspects of general case preparation, are outside the scope of services provided or funded by the Judicial Branch.

Will the court interpreter maintain the confidentiality of what is said between attorney and client?
Yes. The court interpreter is ethically bound to maintain the confidentiality of any information disclosed between attorney and client.

Where should I direct questions about language access services?
If you have questions about language access services, contact OLAS at 919-890-1407 or OLAS@nccourts.org.

Office of Language Access Services (OLAS)

Spoken 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 spoken language court interpreters are provided to the courts
- Administering court interpreter training and certification testing for court interpreters provided by the National Center for State Courts

NCAOC offers a number of language access services to meet the needs of LEP individuals including certified staff court interpreters in 9 counties (Alamance, Buncombe, Chatham, Durham, Forsyth, Guilford, Mecklenburg, Orange, and Wake), contract court interpreters, telephone interpreting, remote interpreting, translation, and transcription - translation services. Learn more at http://www.NCcourts.gov.

Terms

- LOTS – Language(s) other than Spanish
- Limited English Proficient (LEP) individual – a person who speaks a language other than English as his or her primary language and has a limited ability to read, speak, write, or understand English
- Interpretation – the accurate and complete unrehearsed transmission of an oral message from one language to an oral message in another language
- Translation – the accurate and complete transmission of written text from one language into written text in another language

Proper Role of Court Interpreter

- The interpreter's job is to render everything said in court from the source language into the target language
  - Accurately without any distortion of meaning
  - Without omissions and additions
  - Without changes to style or register
  - With as little delay or interference as possible

- The interpreter's job is NOT
  - To explain anything to anybody
  - To fill out forms
  - To serve as a "go between"

- Interpreters have an ethical obligation to ask for repetition if speech is unclear
- In order to conserve impartiality and confidentiality, the interpreter should not be asked to be alone with any of the parties
- Interpreters may sight translate a form for an LEP individual, but may not advise the individual on how to complete the form or answer the individual's questions

Do not use untrained bilingual individuals to interpret during court proceedings

- Using an untrained bilingual speaker to interpret during court proceedings creates potential conflicts of interest and may have a negative impact on the case
- Bilingual speakers who are not trained court interpreters are not aware of the role, the demand, the modes of interpreting, the ethics or rules of professionalism required of the court interpreter and therefore cannot interpret accurately and completely, which can significantly impact equal access to justice for the LEP individual

Tips for working with court interpreters

- Speak to the LEP individual directly just as you would an English speaker – e.g., "What time did you call the police?"
- Use plain English, avoid jargon, and do not use acronyms
- Speak slowly and clearly with regular pauses between complete thoughts
- Ask one question at a time
- Do not ask interpreter to explain or summarize what is said
- Provide the interpreter with information about the case; the more information an interpreter has about a case, the better he or she can prepare and perform
- Do not ask the interpreter if the LEP individual understands what you are saying; the interpreter's role is to serve as a language conduit, not to assess understanding
- In order to ensure the accuracy of the interpreting services provided throughout the proceeding, provide a team of two interpreters for any proceeding lasting two hours or more
- Interpreters must be given a break every 20 – 30 minutes to maintain accuracy

Early identification of cases in which an interpreter is needed

- Early identification of the need for interpreting services in an individual case allows for efficient assignment, reduces the number of continuances for lack of an interpreter, and maximizes the possibility that litigants will understand what to do next in their case

- Use interpreter resources efficiently – share interpreters between criminal and civil courtroom calendars and schedule an interpreter only for the time the interpreter is needed; do not request interpreters "just in case" because their services are often needed in another county
- Failure to provide sufficient time to secure a qualified interpreter may result in a delay or postponement of the court proceeding if a qualified interpreter is not available

How to Request a Court Interpreter

The request process for both Spanish and LOTS interpreters is consistent statewide. A **Request for Spoken Foreign Language Court Interpreter** must be submitted to the Language Access Coordinator (LAC) for the county where the case is set to be heard at least 10 days in advance of the court appearance to ensure adequate coverage. More advance notice may be required for LOTS interpreters who are located out of state. The request form can be accessed at https://www.nccourts.gov/request-for-spoken-foreign-language-court-interpreter.

Failure to cancel scheduled services with notice of more than 24 hours will result in cancellation fees. Alert the interpreter and LAC immediately if it is determined services will not be needed.

Contact

OLAS Main: 919-890-1407
OLAS Email: OLAS@nccourts.org
Website: www.NCcourts.gov

Language Access Bench Card

POLICY NOTE: The North Carolina Judicial Branch is committed to removing barriers that hinder equal access to justice by individuals with limited English proficiency (LEP). This bench card addresses the language access services provided by the N.C. Judicial Branch in accordance with the Standards for Language Access Services in North Carolina state courts.

When should the court require an interpreter?

The court should require a qualified interpreter for any court proceeding that involves a party in interest who speaks a language other than English as the primary language and has a limited ability to read, speak, or understand English.

Who is a party in interest?

Parties in interest may be any of the following:

- A party
- A victim
- A witness
- The parent, legal guardian,or custodian of a minor party
- The legal guardian or custodian of an adult party

Who pays for the interpreter?

The Judicial Branch provides interpreters at state expense in all civil and criminal court proceedings before a magistrate, clerk of superior court, district court judge, superior court judge, the Court of Appeals, or the Supreme Court of North Carolina.

The costs for interpreting services shall not be charged to the parties.

The Judicial Branch will provide an interpreter at state expense for child custody mediation, permanency mediation, and child planning conferences.

The Judicial Branch will not provide an interpreter at state expense for probation and parole functions, and for private mediations and arbitrations.

Language access services provided by the North Carolina Administrative Office of the Courts Office of Language Access Services (OLAS)

- In-person interpreting for court proceedings — Judicial Branch staff court interpreters in nine counties: Alamance, Buncombe, Chatham, Durham, Forsyth, Guilford, Mecklenburg, Orange, and Wake; and contract court interpreters
- Telephone interpreting service — use for brief routine matters in district court; use by magistrates and DAs; use in public access areas in clerks' and family court offices
- Translation of court forms and vital court documents
- Transcription-translation of audio / visual evidence for district attorneys and public defenders or assigned counsel (court interpreters are prohibited by their ethics from interpreting audio / visual recordings; upon request to OLAS, all audio / visual recordings must be transcribed and translated *prior to the court proceeding*)

1 Evaluating the need for a court interpreter

To help determine whether to require a court interpreter, the court should ask open-ended questions that cannot be answered with a simple yes or no. For example:

- "Please tell me about your country of origin."
- "What kind of work do you do?"
- "What is the purpose of your court hearing today?"

2 Assignment of a court interpreter

If the court determines that the party has limited English proficiency (LEP), the court should require a court interpreter. Any doubts should be resolved in favor of the LEP individual, and an interpreter should be required.

- The court should only allow a Judicial Branch authorized court interpreter to provide interpreting services in court
- The court should never allow family or friends to interpret in court
- Judicial officials or court personnel should not serve as interpreters

3 Obtaining a court interpreter

A Request for Spoken Foreign Language Court Interpreter should be submitted electronically to the local Language Access Coordinator (LAC) at least 10 business days prior to the scheduled proceeding, or as soon as the proceeding is placed on the court calendar, whichever occurs first.

Counsel is responsible for submitting the request form for their LEP clients or witnesses. Court personnel should assist self-represented litigants with submitting the request form.

Language Access Bench Card

POLICY NOTE: The North Carolina Judicial Branch is committed to removing barriers that hinder equal access to justice by individuals with limited English proficiency (LEP). This bench card addresses the language access services provided by the N.C. Judicial Branch in accordance with the Standards for Language Access Services in North Carolina state courts.

Clarifying the Interpreter's Role to the Jury*

This court seeks a fair trial for all regardless of the language they speak and regardless of how well they may or may not speak English. Bias against or for persons who have little or no proficiency in English is not allowed. Therefore, do not allow the fact that the party requires an interpreter to in any way influence you.

**There is no pattern jury instruction on this matter. This form is recommended for your consideration.*

Clarifying the Interpreter's Role to the Witness

I want you to understand the role of the interpreter. The interpreter is here only to interpret the proceedings. The interpreter will say only what is said in your language and will not add, omit, or summarize anything. The interpreter will say in English everything that you say in your language, so do not say anything you do not want everyone to hear. If you do not understand a question asked of you, request clarification from the person who asked it. Do not ask the interpreter.

You are giving testimony to this court; therefore please speak directly to the attorney or to me (the court). Do not ask the interpreter for advice. Speak in a loud clear voice. If you do not understand the interpreter, please tell me. If you need the interpreter to repeat, please make your request to me, not to the interpreter. Please wait until the entire statement has been interpreted before you answer. Do you have any questions?

Use of Interpreter Outside of Court Proceeding

Judicial Branch funds are provided for interpreting services for out-of-court communications on behalf of the district attorney, Guardian ad Litem Program, and, pursuant to a memorandum of understanding between the Judicial Branch and the Office of Indigent Defense Services (IDS), on behalf of public defenders, assigned counsel, and guardians ad litem representing indigent parties for IDS.

- Staff court interpreters are prohibited from providing services out of court.
- Authorized Spanish interpreters are listed on the Registry of Spoken Foreign Language Court Interpreters.
- Authorized LOTS interpreters will be assigned upon the submission of a Request for Spoken Foreign Language Court Interpreter electronically.

Language access services required for all out-of-court communications involving private counsel, including all interviews, investigations, and other aspects of general case preparation, are outside the scope of services provided or funded by the Judicial Branch.

To ensure equal access to justice, private counsel are encouraged to privately retain the services of a Judicial Branch registered and qualified court interpreter by contacting directly a contract interpreter from the Registry of Spoken Foreign Language Court Interpreters.

The Interpreter's Oath**

Do you solemnly swear or affirm that you will interpret accurately, completely, and impartially, using your best skill and judgment in accordance with the standards prescribed by law and the Code of Professional Responsibility for Court Interpreters, follow all official guidelines established by the North Carolina Administrative Office of the Courts for legal interpreting and translating, and discharge all of the solemn duties and obligations of legal interpretation and translation?

***There is no statutory or judicially approved oath. This form is recommended for your consideration.*

Quick Guide

- Evaluate the need for an interpreter.
- Require an authorized court interpreter approved by OLAS.
- Allow the interpreter to meet with the LEP individual briefly prior to the proceeding to confirm the ability to communicate, and to view the court file prior to the proceeding to become familiar with case terminology, names, and dates.
- Allow the interpreter to review any documents that will need to be sight translated during the proceeding.
- Make sure that the interpreter is located in a position that allows the interpreter to see and hear everything that happens in the courtroom.
- Administer the interpreter's oath.
- Have the interpreter state his / her name and qualifications on the record.
- Explain the role of the interpreter to the parties, witnesses, and the jury on the record.
- Advise witnesses to speak clearly and at a moderate pace.
- Emphasize that the record produced by the court reporter or court recorder is the official record of the proceeding.
- Provide breaks every 30 minutes for the interpreter or require a team of two interpreters for proceedings expected to last longer than two hours.
- Observe the interpreter's conduct, communication, and interaction with participants; if problems arise, use a sidebar conference with attorneys and the interpreter or a recess to address and correct the problems.
- Keep in mind that the interpreter may be needed in other courtrooms.

Obtaining a Spoken Foreign Language Court Interpreter for Court Proceedings – Courts

The Judicial Branch **will provide** an interpreter at state expense in all civil and criminal court proceedings before a magistrate, clerk of superior court, district court judge, superior court judge, the Court of Appeals, or the Supreme Court. The Judicial Branch will provide an interpreter at state expense for child custody mediation, permanency mediation, and child planning conferences.

The Judicial Branch **will provide** an interpreter at state expense to facilitate communication involving the district attorney, indigent defendants or respondents and appointed counsel, or the Guardian ad Litem Program.

The Judicial Branch **will not provide** an interpreter at state expense for out-of-court communications between privately retained counsel and their civil clients, privately retained counsel and their non-indigent criminal defendants and respondents, for settlement negotiations between the parties, for probation and parole functions, and for private mediations and arbitrations.

All Spoken Foreign Language Court Interpreters	Submit a *Request for Spoken Foreign Language Court Interpreter** at least 10 business days prior to the scheduled proceeding, or as soon as the proceeding is placed on the court calendar. Requests should be submitted electronically from the website at http://www.NCcourts.gov. The Language Access Coordinator (LAC) for each county can be contacted by sending an email to an address using the following naming convention: County.Interpreter@nccourts.org. For example, Wake.Interpreter@nccourts.org and NewHanover.Interpreter@nccourts.org.
IMPORTANT	➢ **Failure to provide sufficient time to secure a qualified interpreter likely will result in a delay or postponement of the court proceeding if a qualified interpreter is not available.** ➢ **Once services are requested, if it is determined before the court date that the case will not go forward as scheduled, please notify the local LAC and the scheduled interpreter so services can be cancelled in a timely manner (no less than 24 hours) to avoid unnecessary cancellation charges.**

Obtaining a Spoken Foreign Language Court Interpreter for Court Proceedings – Attorneys

The Judicial Branch **will provide** an interpreter at state expense in all civil and criminal court proceedings before a magistrate, clerk of superior court, district court judge, superior court judge, the Court of Appeals, or the Supreme Court.

The Judicial Branch **will provide** an interpreter at state expense for child custody mediation, permanency mediation, and child planning conferences.

The Judicial Branch **will not provide** an interpreter at state expense for out-of-court communications between privately retained counsel and their civil clients, privately retained counsel and their non-indigent criminal defendants, for settlement negotiations, for probation and parole functions, and for private mediations and arbitrations.

Spanish Court Interpreter	If you represent a limited English proficient (LEP) party in interest in a court proceeding covered at Judicial Branch expense, submit a *Request for Spoken Foreign Language Court Interpreter* * at least 10 business days prior to the scheduled proceeding, or as soon as the proceeding is placed on the court calendar, whichever occurs first.
Language Other Than Spanish (LOTS) Court Interpreter	Submitting the online request form using the Submit button at the bottom of the form will ensure your request is sent to the appropriate Language Access Coordinator (LAC) and/or OLAS personnel. TIP: Tab, do not scroll, between data fields and use the Preview button to ensure information entered is correct. Instructions for contacting the LAC for Spanish requests and OLAS for LOTS requests are included in the auto-reply confirmation sent upon successful submission of the request form.
IMPORTANT	➢ **Failure to provide sufficient time for the LAC or OLAS to secure a qualified interpreter likely will result in a delay or postponement of the court proceeding if a qualified interpreter is not available.** ➢ **Once services are requested, if it is determined before the court date that the case will not go forward as scheduled, you must notify the local LAC and assigned interpreter so services can be cancelled in a timely manner (no less than 24 hours) to avoid unnecessary cancellation charges.**

For further assistance, please contact The NCAOC Office of Language Access Services at (919) 890-1407 or OLAS@nccourts.org. 1/2021

Obtaining a Spoken Foreign Language Court Interpreter for Out of Court Communication Needs - Attorneys

LANGUAGE	Spanish Court Interpreter	Language Other Than Spanish (LOTS) Court Interpreter
District Attorney or Assistant District Attorney	If a DA/ADA needs to communicate with a Spanish speaking LEP victim or witness outside of the actual court proceeding, the DA/ADA should access the *Registry of Spoken Foreign Language Court Interpreters* for direct contact information for authorized Spanish court interpreters.	If a DA/ADA needs to communicate with an LEP victim or witness who speaks a language other than Spanish (LOTS) outside of the actual court proceeding, the DA/ADA should submit a *Request for Spoken Foreign Language Court Interpreter* electronically from the website at www.NCcourts.gov.
Public Defender, Assistant Public Defender, Assigned Counsel, or GAL for an adult LEP party	If a PD/APD, assigned counsel, or a GAL for an adult LEP party represented by IDS needs to communicate with a Spanish speaking client or witness outside of the actual court proceeding, the PD/APD, assigned counsel, or GAL should access the *Registry of Spoken Foreign Language Court Interpreters* for direct contact information for authorized Spanish court interpreters.	If a PD/APD, assigned counsel, or a GAL for an adult LEP party represented by IDS needs to communicate with an LEP client or witness who speaks a language other than Spanish (LOTS) outside of the actual court proceeding, the PD/APD, assigned counsel, or GAL should submit a *Request for Spoken Foreign Language Court Interpreter* electronically from the website at www.NCcourts.gov.
GAL PROGRAM **GAL Program Attorney or GAL Program Volunteer**	If a GAL needs to communicate with a Spanish speaking LEP juvenile or family member outside of the actual court proceeding, the GAL should access the *Registry of Spoken Foreign Language Court Interpreters* for direct contact information for authorized Spanish court interpreters.	If a GAL needs to communicate with an LEP juvenile or family member who speaks a language other than Spanish (LOTS) outside of the actual court proceeding, the GAL should submit a *Request for Spoken Foreign Language Court Interpreter* electronically from the website at www.NCcourts.gov.
Civil Attorneys and Retained Criminal Attorneys for Non-Indigent Defendants	The Judicial Branch does **not** bear the cost of interpreting services necessary to communicate with civil and non-indigent criminal LEP clients or their witnesses outside of that which occurs during the actual court proceeding before the judicial official, including settlement negotiations between the parties. For Spanish language needs, attorneys are encouraged to hire a certified court interpreter or team of interpreters from the *Registry of Spoken Foreign Language Court Interpreters*. For LOTS needs, attorneys are encouraged to contact OLAS for a list of interpreters for the language needed. Email: OLAS@nccourts.org	

This guide assists literate individuals who are not proficient in English to identify a preferred language.

Homeland Security

Language Identification Guide for DHS Personnel and Others

As employees of the Department of Homeland Security you may encounter a broad range of persons in the course of your work, including individuals who have limited English proficiency (LEP). DHS is both committed and legally obligated to take reasonable steps to provide meaningful access for these individuals. The DHS Office for Civil Rights and Civil Liberties (CRCL) offers this “I Speak” guide and similar posters as practical ways to identify which language an individual speaks so that you can obtain the necessary assistance. Consult your office or component for resources, such as translation or over-the-phone interpretation.

Executive Order 13166 requires DHS to take reasonable steps to provide meaningful access for persons with limited English proficiency and - as also required by Title VI of the Civil Rights Act of 1964 - to ensure that recipients of federal financial assistance do the same.

Contact the DHS Office for Civil Rights and Civil Liberties' CRCL Institute at CRCLTraining@dhs.gov for digital copies of this guide or an "I Speak" poster.

Download copies of the DHS LEP plan and guidance to recipients of financial assistance at www.dhs.gov/crcl.

I speak ...

A

Amharic

እኔ አማረኛ ነው ምናገረው.

Arabic

أنا أتحدث اللغة العربية

Armenian

Ես խոսում եմ հայերեն

B

Bengali

আমী ঝংলা কথা ঝেলতে পারী

Bosnian

Ja govorim bosanski

Bulgarian

Аз говоря български

ကျွန်တော်/ကျွန်မ မြန်မာ လို ပြောတတ် ပါတယ်၊

C

Cambodian

ខ្ញុំនិយាយភាសាខ្មែរ

Cantonese

我講廣東話 (Traditional)

我讲广东话 (Simplified)

Catalan

Parlo català

Croatian

Govorim hrvatski

Czech

Mluvím česky

D

Danish
Jeg taler dansk

Dari
من دری حرف می زنم

Dutch
Ik spreek het Nederlands

E

Estonian
Ma räägin eesti keelt

F

Finnish
Puhun suomea

French
Je parle français

G

German
Ich spreche Deutsch

Greek
Μιλώ τα ελληνικά

Gujarati
હુ ગુજરાતી બોલુ છુ

H

Haitian Creole

M pale kreyòl ayisyen

Hebrew

אני מדבר עברית

Hindi

मैं हिंदी बोलता हूँ ।

Hmong

Kuv has lug Moob

Hungarian

Beszélek magyarul

I

Icelandic

Èg tala íslensku

Ilocano

Agsaonak ti Ilokano

Indonesian

syay bisa berbahsa Indonesia

Italian

Parlo italiano

J

Japanese

私は日本語を話す

K

Kackchiquel

Quin chagüic´ká chábal´ ruin´ rí tzújon cakchiquel

Korean

한국어 합니다

Kurdish

man Kurdii zaanim

Kurmanci

man Kurmaanjii zaanim

L

Laotian

ຂ້ອຍປາກພາສາລາວ

Latvian

Es runâju latviski

Lithuanian

Að kal bu lietuviš kai

M

Mandarin

我講國語 (Traditional)

我讲国语/普通话 (Simplified)

Mam

Bán chiyola tuj kíyol mam

Mon

N

Norwegian

Jeg snakker norsk

P

Persian

من فارسی صحبت می کنم.

Polish

Mówię po polsku

Portuguese

Eu falo português do Brasil
(for Brazil)

Eu falo português de Portugal
(for Portugal)

Punjabi

ਮੈਂ ਪੰਜਾਬੀ ਬੋਲਦਾ/ਬੋਲਦੀ ਹਾਂ।

Q

Qanjobal

Ayin tí chí walq´ anjob´ al

Quiche

In kinch´aw k´uin ch´e quiche

R

Romanian

Vorbesc româneşte

Russian

Я говорю по-русски

S

Serbian

Ја говорим српски

Sign Language (American)

Slovak

Hovorím po slovensky

Slovenian

Govorim slovensko

Somali

Waxaan ku hadlaa af-Soomaali

Spanish

Yo hablo español

Swahili

Ninaongea Kiswahili

Swedish

Jag talar svenska

T

Tagalog

Marunong akong mag-Tagalog

Tamil

நான் தமிழ் பேசுவேன்

Thai

พูดภาษาไทย

Turkish

Türkçe konuşurum

U

Ukrainian

Я розмовляю українською мовою

Urdu

میں اردو بولتا ہوں

V

Vietnamese

Tôi nói tiêng Việt

W

Welsh

X

Xhosa

Ndithetha isiXhosa

Y

Yiddish

איך רעד יידיש

Yoruba

Mo nso Yooba

Z

Zulu

Ngiyasikhuluma isiZulu

Agrupación Lingüística	Variante Lingüística	Frase en español	Frase en lengua
chichimeo jonaz	chichimeco jonaz	yo hablo chichimeca	ikáuj úza' ér~í
mazateco	mazateco del norte	yo hablo mazateco Hablo la lengua de Santa María Chilchotla	Cha'ña enná Cha'ña énn nda xo
maya	maya	Yo hablo maya	teen k-in t'aan maya
mixe	mixe bajo	Yo hablo mixe	Madyakpiëch ayuuk
	mixe alto, de Tlahuitoltpec	Yo hablo mixe	Xaamkëjxpët ayuujk ëts nkajpyxypy
mixteco	mixteco del oeste de la costa	yo hablo mixteco	Yuu kain se'en savi ñu ñundua

Agrupación Lingüística	Variante Lingüística	Frase en español	Frase en lengua
náhuatl	náhuatl de la huasteca veracruzana (se entiende junto con Ve racruz y San Luis Potosí)	yo hablo náhuatl	Na nitlajtowa náhuatl
tojolabal	tojolabal	yo hablo tojolabal	Ja´ke´ni wala kúmaniyon tojol-abál
triqui	triqui de la baja	yo hablo triqui	‘unj a’mii xna’ ánj nu’ a
tseltal	tseltal (variante unificada)	Yo hablo tseltal	Te jo’one ja k’op te bats’il k’op tseltal
tsotsil	tseltal (variante unificada)	Yo hablo tsotsil	Vu’une jna’xi k’ opoj ta bats’i k’op
zapoteco	zapoteco de la planicie costera	yo hablo zapoteco	Naa riné’ diidxazá
chinanteco	chinanteco del sureste medio	yo hablo chinanteco	Jnea lo’n jujmií kiee ’ dsa mo’ kuöo

Limited English Proficiency Resources

www.lep.gov

"I Speak" is provided by the Department of Homeland Security Office for Civil Rights and Civil Liberties (CRCL). Special thanks to the Department of Justice Bureau of Justice Assistance and the Ohio Office of Criminal Justice Services, for inspiration and permission to use their "I Speak" guide as the initial source.

Office for Civil Rights and Civil Liberties

www.dhs.gov/crcl

Toll Free: 1-866-644-8360
Toll Free TTY: 1-866-644-8361
Email: crcl@dhs.gov

Guide to Using the Telephone Interpreting Service

- Dial **844-340-2763**

- You will hear an automated system answer and say "For Spanish press 1, for all other languages press 8." If you select 8, the system will ask you to state the language needed.

- The call will then be connected to your interpreter who will ask for the **six digit access code** assigned to your office. The interpreter will then be ready to assist you.

  IMPORTANT NOTE: To the extent possible, preschedule telephonic appointments. Call the above number to preschedule. Unforeseen nationwide surges may create longer queue times than desired.

TIPS FOR WORKING WITH TELEPHONE INTERPRETERS

1. Brief interpreter prior to conversation
2. The interpreter is there to only interpret what is being said
3. Ask interpreter not to change or alter any part of the conversation
4. Speak clearly and in a normal tone
5. Allow more time for interpreted communication
6. Be aware of cultural factors
7. Refrain from using metaphors, acronyms, slang, or idioms
8. Remember to pause between sentences
9. Speak directly to the non-English speaker, not the interpreter
10. Permit only one person to speak at a time
11. Treat interpreter as a professional

NEED SUPPORT?

Tim Bernal
Project Manager
Toll-Free 888.983.5352 | Direct: 503.535.2178
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FROM THE BENCH

Cultural Competence in the Courtroom: *A Judge's Insight*

By Hon. Gail S. Tusan
& Sharon Obialo

In the wake of the confirmation of Justice Sonia Sotomayor as the first Hispanic and only third female to serve on the U.S. Supreme Court since its founding in 1789, many questions have arisen as to how important cultural sensitivity is in adjudicating justly and fairly. For example, what can a "wise Latina" bring to the bench in terms of cultural background, life experience and global understanding? Are American courts adequately serving their diverse communities? Is justice truly achieved when cultural differences are ignored and misunderstood during legal proceedings?

A Global Courtroom

Certain fundamental practices followed in courtrooms throughout America may prove problematic for individuals who did not grow up in this country. For example, our longstanding practice of requiring a witness to raise his or her hand while swearing to tell the truth prior to testifying is a Judeo-Christian tradition, which inadvertently may be at odds with certain cultural norms adhered to by foreign-born persons. While it is not unusual for a lawyer to point a finger or shake a fist during an argument or lock eyes with a witness during examination, many cultures find it rude to point at others. In East Asia and certain Muslim countries, lack of eye contact toward an authority figure signifies respect and deference. Thus, a prosecutor's argument that a defendant's failure to make eye contact with law enforcement signifies guilt might in truth indicate something very different if the defendant is foreign-born.

The diverse landscape of American culture necessitates an expanded framework of understanding within the legal community. Lawyers, judges and court personnel alike must ensure that we have our global antenna up. We must be tuned in to the increasing cultural nuances underlying today's court filings. Consider the following excerpt from a custody hearing. The Algerian father[1] is reacting to the American mother's request that the court permit her to withhold the children's passports from him because she fears that the father will take the kids back to his native county, without her knowledge:

Mr. Sayad: "OK, but please, your honor, please. Make sure you consider the passport. I'm not a kidnapper, ma'am."

The Court: "I understand."

Mr. Sayad: "I'm not a kidnapper."

The Court: "Sir, I heard you, I did not say you were. Did I suggest you were a kidnapper?"

Mr. Sayad: "No, no. Because of my language, people always treat me like a terrorist."

The Court: "Have I treated you like a terrorist?"

Mr. Sayad: "No, you treat me nothing but the best. I appreciate that. I really do."

The Court: "In our court, we do our best to treat everyone equally and with respect."

The foregoing colloquy highlights the court's need for sensitivity when interacting with individuals who perceive themselves to be members of targeted religious or ethnic groups. In particular, a judge must not inadvertently reward a parent's goal of culturally alienating a child from the other parent. Most important, the court itself must work hard to ensure that there is no appearance of personal hostility or cultural bias emanating from the bench.

Framing the Discussion on Culture

To begin a discussion on cultural competence, it is important to establish definitional clarity. Culture is "a dynamic value system of learned elements, with assumptions, conventions, beliefs and rules permitting members of a group to relate to each other and to the world, to communicate and to develop their creative potential."[2] Language, food, customs, religion, clothing and other outward expressions make up a group's culture, in addition to unspoken values and beliefs. There are four key components involved in cultural competence: (1) awareness of one's own cultural worldview; (2) attitude towards cultural differences; (3) knowledge of different cultural practices and worldviews; and (4) cross-cultural communication.

Take, for instance, a divorce and child custody case involving an Indian couple who appeared in the Fulton County Superior Court Family Division. The facts exemplify how a judge's lack of knowledge of certain cultural practices could result in an erroneous conclusion. In this case, the husband testified that his wife was hysterical, claiming that she worshiped blocks of blood and practices voodoo. Casting commonplace Hindu practices in a seemingly negative light was the husband's tactic to persuade the court that his wife was emotionally unstable and unfit to parent the child. It would, however, be a grave error to rely on him as the authority on the significance of the alleged religious practices of his wife. We must be aware of our own cultural assumptions and stereotypes, and avoid letting these beliefs influence our judgment about others. Additionally, we must educate ourselves about others' cultural differences and

practices when they surface in cases in order to maximize our preparedness for assessing testimony and facilitating communication. Indeed, this situation shows how cultural competence can be pertinent in rendering fair decisions in the court.

With the changing faces of cities, communities and courtrooms all over the country, we must recognize and strive towards a greater depth of perspective. The Atlanta metropolitan region,[3] for example, has witnessed remarkable changes in its social demographics over the last several years, which directly illustrate this necessary shift in perspective. According to the 2000 census, approximately 11.7 percent of the Atlanta population is foreign-born, with the largest communities hailing (in descending order) from Mexico, India, Vietnam, Korea, China, Jamaica, Colombia, Nigeria, Guatemala and El Salvador.[4] As a result of this growing diversity, courthouses throughout Georgia may find that they are not as user-friendly as they need to be. Specifically, there is a lack of community education about court processes; language barriers exist for many court users; and divergent religious customs on occasion conflict with court protocol.

Lack of Community Education About Court Processes

Many foreign-born litigants, particularly non-English speakers, have limited access to information about our court system. In many foreign countries, the rule of law and the court systems are more closely associated with corruption than with fairness and justice. Thus, diverse litigants might regard seeking legal relief as futile, particularly if they believe that persons without financial means will not have influence with the judge.[5] Further, if such individuals do decide to seek legal redress, residual feelings of distrust of the court system can lead parties to falter in providing information in advance, frustrating the goals of discovery and due process.

The goal should be to cultivate greater confidence in our legal system. Targeting certain underserved groups through community outreach by judges and court personnel in order to provide direct communication about court rules, procedures and available resources is the most effective approach to educating and preparing these persons for navigating [the] halls of justice.

Language Barriers

Perhaps some of the greatest handicaps for foreign and minority litigants are the language barriers that they often face in attempting to communicate with court personnel and during a court proceeding. We must practice patience, offer a discerning ear and keep an open mind while interacting with those who have limited English proficiency.

Bilingual Documents/Signs

There are also concrete measures that a court can implement to facilitate greater access for non-English speakers. In many states, , , , the international diversity of our communities necessitates the expansion of bilingual personnel and resources in the court. Bilingual directional signs are underutilized in many of our courthouses even though such tools are critical navigational aids for non-English speakers. Moreover, bilingual written materials and forms are not helpful if the persons for whom they are intended cannot find them. Making one's way through a courthouse is difficult enough for the average English-speaking person. The added hurdle of language difficulties makes the process of entering the courthouse burdensome and frightening for those who are non-English speakers. Thus, it is important to consider how much more daunting communicating is for someone whose cultural background or nationality is foreign to the court personnel encountered in the search for justice.

To address this issue of community education, the Superior Court of Fulton County has implemented the Court Ambassador Academy. This program trains citizens (of all ethnic backgrounds and ages) interested in volunteering in the court to act as ambassadors and liaisons to their own communities and throughout the courthouse. These volunteers speak a variety of difference languages and have been successful in raising awareness about the county judicial system and its processes.

Certified Court Interpreters

Additionally, the value of having qualified interpreters in the courtroom cannot be overstated. For court interpreters, bilingualism is not sufficient. Many litigants attempt to use family and friends as interpreters for financial reasons, but an interpreter must be certified or, in certain instances, court-registered. Certified interpreters must undergo training and pass examinations that equip them with the skills to "transfer all of the meaning heard from the source language into a target language [without] … editing, summarizing, adding meaning, or omitting," in just a few seconds.[6]

It is a common misconception that the court is only required to provide interpreters in criminal cases, yet according to the Supreme Court of Georgia's Uniform Rule for Interpreter

Programs, all non-English speakers must be provided with various resources to secure an appropriate interpreter. If the litigant presents a valid pauper's affidavit, the court is required to provide an interpreter at no cost as long as there is a bona fide need.[7] To be sure, a judicial decision based on an evidentiary hearing involving a non-English speaker that is conducted without a certified or court-registered interpreter is not only subject to legal challenges, it also compromises our deeply rooted principle of providing equal access and fairness to all who appear before us.

Conflicts Between Religious Practices and Court Protocol

Although the American legal system was established based on Judeo-Christian values, customs and traditions, with the increasing diversity of religions practiced in this country, we must acknowledge that our Constitution protects an individual's religious freedom. Therefore, a rigid adherence to certain historical practices makes a collision of cultures inevitable. At present, various individuals whose traditions espouse divergent practices are increasingly challenged on an explicit level.

To illustrate, consider the tradition among Muslim women of wearing a headscarf or *hijab*. In December 2008, a woman in Douglasville was held in contempt and arrested for refusal to remove her headscarf in the court. In this instance, the tradition of prohibiting head coverings in the courtroom directly conflicted with this woman's religious obligations and beliefs, and the judicial decision to arrest her created a huge uproar from the Muslim community and advocates, such as the Anti-Defamation League, the Council on American-Islamic Relations and the American Civil Liberties Union. As a result of the press and attention surrounding this incident, in July 2009, the Judicial Council of Georgia made a determination to permit religious attire such as the *hijab* in courtrooms.[8]

The personal decision to appear in court wearing other religious clothing items such as the *burka* (an outer cloth worn in the Islamic tradition, which covers the entire body with the exception of the eyes), however, fuels debate among judges and lawyers as to whether a witness's choice of clothing might violate a party's right to confrontation or whether a trier of fact can assess the credibility of a witness is she is entirely cloaked. While it remains to be determined how these legal issues will be resolved, at present each judge has a responsibility to determine how best to run his or her courtroom in a fair and unbiased manner. In doing so, the judge should proceed thoughtfully in light of the considerations raised in this article.

Serving as a Gatekeeper to Minimize Cultural Bias and Achieve Fairness

An important part of combating communication challenges is identifying cultural biases and stereotypes, which might be sources of perceived hostility. Often, these biases and assumptions exist at unconscious levels, but they still affect our everyday verbal and non-verbal communication in the workplace. Interestingly, 91 percent of minority attorneys believe that racial bias exists, whereas 54 percent of non-minority attorneys do not believe that such a problem exists.[9] Behavioral psychologists will attest to the power of cultural stereotypes on the human mind – stereotypes that are fueled and reinforced by long-held beliefs, messages from the media and selective information in our environments.

Awareness and acknowledgement of others' cultural differences as well as our own assumptions are the critical components in ensuring competence and impartiality while interacting with diverse litigants. Jack Glaser, a professor at the Goldman School of Public Policy, has created several strategies for maximizing objectivity.[10]

- Engage in an intentional thought process
- Use specific communication strategies
- Be conscious of diversity and the differences in people
- Increase accountability
- Allow ample time for judgments
- Confront stereotypes
- Renew the drive to be fair and accurate.

For judges, court officials and the legal community at large, following these steps will collectively contribute to making the experience of foreign-born and diverse litigants in the court equitable. And while becoming aware of and countering the latent biases is not an easy task, the evolving nature of our global community demands that our courtrooms become more primed to cultural cues through education and communication.

My tenure as a judge presiding in the Family Division of the Superior Court of Fulton County has provided me with first-hand experience in adjudicating cases where a battle of culture has been at the forefront, and my perspective as an American judge has been enriched by exposure to and

(Continued on page 44)

education about cultures different from my own. Regardless of the cultural background of the parties before me, however, my judicial responsibility remains absolute – to listen to and understand both sides of a case, apply the law and make a fair decision in the end.

Endnotes

1 Name and country of origin have been changed to protect the litigant's privacy.

2 Canadian Commission for UNESCO, *A Working Definition of "Culture,"* in Cultures 78-83 (1977).

3 The Atlanta region includes 10 counties: Cherokee, Cobb, Gwinnett, DeKalb, Fulton, Douglas, Fayette, Clayton, Henry and Rockdale counties. Statistics available at http://www.atlantaregional.com/html/196.aspx.

4 *2000 Census: Foreign Born by Place of Birth*, available at http://www.stlantaregional.com/html/196.aspx. Other large foreign-born populations include individuals from the United Kingdom, Canada and Germany.

5 Interview with Aparna Bhattacharyya, Director of Raksha, Inc. (Aug. 26, 2009).

6 Roxana Cardenas, "*You Don't Have to Hear, Just Interpret*!" *How Ethnocentrism in the California Courts Impedes Equal Access to the Courts for Spanish Speakers*, 38 Ct. Rev. 24-31 (2001).

7 Ga. Sup. Ct. R. App. A, Uniform Rule for Interpreter Programs.

8 Jim Galloway, *Muslim Headscarves to be Allowed in Georgia Courtrooms*, Atlanta J.-Const., July 24, 2009.

9 Ga. Sup. Ct. Comm'n, *Report on Racial and Ethnic Bias in the Court System* (1995), *available at* http://www.ncsconline.org/Projects_Initiatives/REFI/GA1REB.htm#Culture.

10 Jack Glaser, *The Social Psychology of Intergroup Bias* (2007), *available at* http://calswec.berkeley,edu/CalSWEC/2007_FE_SocialPscyhPrejudice.pdf.

Hon. Gail S. Tusan has served on the Superior Court of Fulton County since her appointment in 1995. Currently she is chair of the Access to Justice and Fairness in the Courts Committee, the Council of Superior Court Judges and the Judicial Section of the Atlanta Bar Association. Tusan also serves as a faculty member of the National Judicial College.

Sharon Obialo graduated from Duke University in 2008. Post-graduation she spent four months in Berlin, Germany, studying minority and human rights issues, as a fellow with the Humanity in Action Foundation. She currently serves as a judicial intern in the Fulton County Superior Court and will be attending law school in the fall of 2010.

Guide to Interpreter Language Needed and Interpreter Used Indicators

This document is designed to assist with the use of the interpreter language needed and interpreter used indicators in the following systems: eCITATION, NCAWARE, ACIS, CCIS-CC, CCIS-DA, VCAP, and JWise. These indicators should be used to indicate spoken foreign language interpreting services and sign language interpreting services for the deaf and hard of hearing. The interpreter language needed and interpreter used indicators should be used for managing cases that need or use an interpreter, and should not be used solely for scheduling interpreters.

Use of Interpreter Indicators
If a case is coded as interpreter language needed, an interpreter should not automatically be scheduled for every setting of that case. Judicial officials, attorneys, and court personnel always should check the case file to determine who needs the interpreter and if an interpreter actually will be needed for the proceeding. For example, the victim in a criminal case who needed an interpreter during a trial may not be present during the defendant's subsequent probation violation hearing, so the court would not schedule an interpreter for the subsequent proceeding. Courts should use interpreter resources efficiently by sharing interpreters between criminal and civil courtroom calendars, scheduling an interpreter only for the time the interpreter is needed and not requesting interpreters "just in case," as their services are often needed in another courtroom or county.

What is a court proceeding?
A court proceeding is any hearing, trial, or other appearance before any North Carolina state court in an action, appeal, or other proceeding, including any matter conducted by a judicial official.

Who is a judicial official?
A judicial official is a clerk, judge, magistrate, or justice of the General Court of Justice.

Interpreter Language Needed Data

- Interpreter language needed indicates that an interpreter is needed for a limited English proficient (LEP) individual in a case. Once it is turned on, it should never be turned off unless it was entered in the system incorrectly.
- Once the language is selected for the case, it should never be changed unless it was set incorrectly
- Use the *I Speak* cards to assist you in identifying the language needed
- Indicate the language needed and corresponding 3-digit code (see pg. 2) in the system
- The language information will appear on calendars generated from the automated systems
- If you are not able to update the interpreter language needed indicator, or if the system is down, please use the Interpreter Indicator Request Form to request that the clerk update the interpreter information in the appropriate system

- Note to DA: please use the Interpreter Indicator Request Form to request that the clerk update the interpreter information in ACIS / CCIS-CC or JWise
- Note to CaseWise users: please use the Interpreter Indicator Request Form to request that the clerk update the interpreter information in VCAP

- This information may be used to identify the need for an interpreter at any point during the life of the case

Interpreter Used Data

- Interpreter used indicates that an interpreter was used in any court proceeding for an LEP individual in a case at some time. Once it is turned on, it should never be turned off unless it was entered in the system incorrectly.
- Indicate that an interpreter was used in the case by selecting Yes / Y
- A blank field or No / N indicates that an interpreter was never used in the case
- This applies to live, distance and telephone interpreting
- If you are not able to update the interpreter used indicator, or if the system is down, please use the Interpreter Indicator Request Form to request that the clerk update the interpreter information in the appropriate system
  - Note to DA: please use the Interpreter Indicator Request Form to request that the clerk update the interpreter information in ACIS / CCIS-CC or JWise
  - Note to CaseWise users: please use the Interpreter Indicator Request Form to request that the clerk update the interpreter information in VCAP

Language Access Codes

Spanish	spa
Vietnamese	vie
Russian	rus
French	fra
Mandarin (Chinese)	cmn
Arabic	arb
Portuguese	por
Korean	kor
Hmong	hnj
Burmese	mya
Amharic	amh
Bosnian	bos
Bu Nong (Montagnard)	cmo
Cantonese (Chinese)	yue
Chatino	cly
Chuukese	chk
Czech	ces

Farsi (Persian)	pes
Gujarati	guj
Haitian Creole	hat
Hakka (Chinese)	hak
Hausa	hau
Hindi	hin
Hindko	hnd
Igbo (Ibo)	ibo
Indonesian	ind
Japanese	jpn
Jarai (Montagnard)	jra
Karen (Karen Languages)	kar
Khmer (Cambodian)	khm
Krahn	kqo
Kru (Kru Languages)	klu
Lao	lao
Marshallese	mah

Mnong (Montagnard)	mng
Nepali	nep
Pashto (Pushto)	pbt
Polish	pol
Punjabi (Panjabi, Punjabi)	pan
Rhade (Montagnard)	rad
Serbian	srp
Swahili	swh
Tagalog	tgl
Thai	tha
Tigrinya	tir
Urdu	urd
American Sign Language	ase
Undetermined	und
Other	999

Reference Charts
The following charts are intended to assist with determining when use the indicators.

Event	Indicator	May I change the indicator after the initial entry?
An interpreter will be needed for a limited English proficient (LEP) individual in a case	YES – Indicate the language needed	NO – unless it was entered in the system incorrectly
An interpreter was used in any court proceeding for an LEP individual in a case at some time	YES – Interpreter used	NO – unless it was entered in the system incorrectly

If an interpreter is needed / was used:	Do I set the indicator?	Is the cost of the interpreter currently covered at state expense?*
First appearances	Yes	Yes
All criminal / traffic proceedings	Yes	Yes
Criminal non-Support / show cause proceedings	Yes	Yes
Juvenile delinquency proceedings	Yes	Yes
Abuse / neglect / dependency proceedings (includes child planning conferences)	Yes	Yes
Chapter 50B proceedings	Yes	Yes
Chapter 50C proceedings	Yes	Yes
Child Custody proceedings	Yes	Yes
Civil commitment proceedings before a judicial official	Yes	Yes
Incompetency proceedings	Yes	Yes
Estate / adoption hearing before the clerk	Yes	Yes
Initial appearance before a magistrate	Yes	Yes
Any district or superior court pretrial hearing / conference presided over by a judicial official	Yes	Yes
VWLA conversation with victim outside of court proceeding	No	Yes
GAL home visit	No	Yes
Clerk answers a question about a court date outside of court proceeding	No	Yes
Probation home / office visit	No	No

**This column applies only to spoken foreign language court interpreters and not to services for the deaf and hard of hearing.*

FAQ
For additional information, please see *Frequently Asked Questions: Interpreter Needed and Interpreter Used Indicators*.

Contact
For procedural questions on the use of the interpreter indicators, please contact the Office of Language Access Services at 919 890-1407 or OLAS@nccourts.org.

Frequently Asked Questions: Interpreter Needed and Used Indicators

When do I use the interpreter language needed indicator?
If an interpreter will be needed for any court proceedings for any limited-English proficient individual, select the appropriate language from the interpreter needed section.

For example, if the state's witness to a criminal case speaks Korean, indicate that a Korean interpreter will be needed by selecting Korean from the languages available under the interpreter language needed section.

When do I use the interpreter used indicator?
If an interpreter was used at any point during a court proceeding for any limited-English proficient individual, select Yes / Y from the interpreter used section.

For example, if a magistrate used the telephone interpreting service to conduct an initial appearance, the magistrate would indicate that an interpreter was used during that proceeding. But, if a clerk used the telephone interpreting service to answer a general question about a court date, the clerk would not indicate that an interpreter was used because it was not during a court proceeding.

What is a court proceeding?
A court proceeding is any hearing, trial, or other appearance before any North Carolina court in an action, appeal, or other proceeding, including any matter conducted by a judicial official.

Who is a party in interest?
A party in interest is a party to a case; a victim; a witness; the parent, legal guardian, or custodian of a minor party, or the legal guardian or custodian of an adult party.

Who is a judicial official?
A judicial official is a clerk, judge, magistrate, or justice of the General Court of Justice.

How do I use the indicators?
The interpreter language needed and interpreter used indicators should be used for managing cases that need or use an interpreter, and should not be used solely for scheduling interpreters. Judicial officials, attorneys, and court personnel always should check the case file to determine who needs the interpreter and if an interpreter actually will be needed for the proceeding.

For example, the victim in a criminal case who needed an interpreter during a trial may not be present during the defendant's subsequent probation violation hearing, so the court would not schedule an interpreter for the subsequent proceeding. Courts should use interpreter resources efficiently by sharing

interpreters between criminal and civil courtroom calendars, scheduling an interpreter only for the time the interpreter is needed and not requesting interpreters "just in case," as their services are often needed in another courtroom or county.

May I change the indicators?
No. Once the case has been indicated as interpreter needed or interpreter used, do not change the indicators *unless it was entered into the system incorrectly.*

For example, if a law enforcement officer incorrectly indicates in eCITATION that a Spanish interpreter is needed, but the court determines that the defendant speaks Portuguese, not Spanish, the language needed indicator may be changed to Portuguese.

If there are multiple LEP parties in interest to a case, for whom do I indicate that an interpreter is needed / was used?
Because our current technology only allows for indicators at the case level (not by each event or party), indicate that an interpreter is needed based on the first request or indication that you received that an interpreter will be needed for the court proceeding for any party in interest. Indicate that an interpreter was used at the first court proceeding in which an interpreter was used for any party in interest.

Who should set the interpreter indicators?
Any person with update capability to the data systems that currently have the interpreter indicators (eCITATION, NCAWARE, ACIS, CCIS-CC, CCIS-DA, VCAP, JWise) should set the interpreter language needed indicator at the time of the first request or indication received that an interpreter will be needed for the court proceeding for any party in interest.

Any person with update capability to the data systems that currently have the interpreter indicators (eCITATION, NCAWARE, ACIS, CCIS-CC, CCIS-DA, VCAP, JWise) should set the interpreter used indicator at the first court proceeding in which an interpreter was used for any party in interest.

Do the indicators also apply to services for the deaf and hard of hearing?
Yes. If interpreting services will be needed for someone who is deaf or hard of hearing, indicate that by selecting American Sign Language (ASE) or by selecting Other and indicate the language accommodation that will be needed. If interpreting services or accommodations were provided to someone who is deaf or hard of hearing during a court proceeding, indicate that an interpreter was used.

TAB:

Handling Funds

Basic School for Magistrates

Receipting and Handling Funds

Winter 2023

Objectives

- Safeguarding Funds
- Receipt Books and Receipts
- Collecting Payments
- Submitting Funds to the Clerk
- IRS Form 8300
- Resources

Safeguarding Funds

Magistrates *are personally responsible* for the funds they receipt until both

1. The funds are transferred to the Clerk of Superior Court (CSC) office
   AND
2. The receipt(s) from the CSC office are in-hand to document the transfer(s)

Funds collected by magistrates should never ever be "co-mingled" with personal funds. Such action is reportable to the State Bureau of Investigation (SBI) and subject to an audit finding.

Safeguarding Funds

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

Safeguarding Funds

- Recommended Cash Holding Locations:
  - Locking bank bag
  - Locking cash box
  - Safe
  - Locking file cabinet
  - Locking desk drawer

Receipt Books

- The CSC issues receipt books to magistrates, which must be documented in the CSC Manual Receipt Book Log, AOC-FS-3700.
- Magistrates are required to sign the receipt book log to document all issued receipt books.
- Magistrates should have no more than two receipt books at any given time.
- Once all receipts in a receipt book have been used, the book should be returned to the CSC's office and signed-in to the magistrate receipt book log.
- If a receipt book is lost, the CSC should be notified immediately.

(Note: steps that should be taken for a lost receipt book are detailed in the Financial Procedures Manual on Juno)

Receipt Books

- Only write receipts from a receipt book issued to you - Do not share receipt books.
- Never remove the yellow audit copy.
- Keep receipt books in a secure location at all times.
  - Receipts can be negotiated as payment tendered or “cash.”
- Each receipt book must be completely used before beginning a new one.

Manual Receipts

- 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 Receipts

- Complete receipts in numerical order – Never skip receipts.
- Make receipts legible for cashiers.
- Immediately notify CSC office of any ‘lost’ receipts.
- NEVER throw away a receipt or any part of a receipt, even if voided.

Manual Receipts

- Complete all relevant information on the receipt, including:
  - Date
  - County
  - Name
  - File number
  - Address when applicable
  - Received of/by
  - Amounts in the correct accounts

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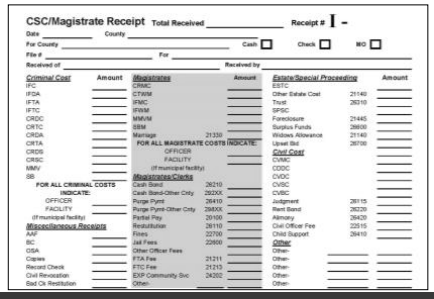
Manual Receipts – Current Form



CSC/Magistrate Receipt Total Received _____ Receipt # I –

Date _____ County _____

For County _____ Cash ☐ Check ☐ M.O. ☐

File # _____ For _____

Received of _____ Received by _____

Criminal Cost	Amount
IFC	
IFSA	
IFTA	
IFTC	
CRDC	
CRTC	
CRDA	
CRTA	
CRDS	
CRSC	
MMV	
SB	
FOR ALL CRIMINAL COSTS INDICATE:	
OFFICER	
FACILITY	
(If municipal facility)	
Miscellaneous Receipts	
AAF	
BC	
DSA	
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 262XX	
Purge Pymt 26410	
Purge Pymt-Other Cnty 264XX	
Partial Pay 26100	
Restitution 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		
CVSC		
Judgment	26115	
Rent Bond	26220	
Alimony	26420	
Civil Officer Fee	22515	
Child Support	26410	
Other		
Other-		
Other-		
Other-		
Other-		

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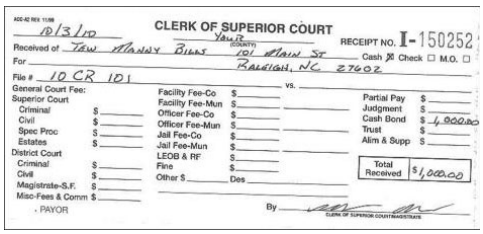
Manual Receipts – Old Version



CLERK OF SUPERIOR COURT

10/3/10 Yadkin (COUNTY) RECEIPT NO. I-150252

Received of Tew Manly Bills 101 Main St Cash ☒ Check ☐ M.O. ☐

For Raleigh, NC 27602

File # 10 CR 101 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	$	Partial Pay	$
Facility Fee-Mun	$	Judgment	$
Officer Fee-Co	$	Cash Bond	$ 4,000.00
Officer Fee-Mun	$	Trust	$
Jail Fee-Co	$	Alim & Supp	$
Jail Fee-Mun	$		
LEOB & RF	$	Total Received	$1,000.00
Fine	$		
Other $ _____	Des		

By _____ CLERK OF SUPERIOR COURT/MAGISTRATE

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Manual Receipts – How to Void

- Unused or partially completed receipts must be voided.
- To void a receipt:
  - Write 'VOID' largely across all four copies of the receipt.
  - Leave the green, pink, and yellow copies in the book. If one has already been removed, staple it back to the copies that remain in the book.
  - Staple the white copy to the Magistrate Off-Site Daily Cash Report.

Collecting Payments

- Acceptable forms of payment:
  - US currency (cash)
  - Money Orders
  - Certified checks
  - Traveler's checks

Collecting Payments

Tips for collecting money:

- Always count funds more than once.
- Don't let customer impatience distract you.
- Use a counterfeit detection pen to test all bills of $10 or more.
- Do not put cash away until transaction is complete and payor is satisfied with change received

Collecting Payments – Cash Bonds

If the payor is the defendant:

- The 'Received of' line should include:
  - Defendant's name
- The 'For' line should include:
  - Defendant's address

If the payor is anyone other than the defendant:

- The 'Received of' line should include:
  - Payor's name
  - Payor's address
- The 'For' line should include:
  - Defendant's name

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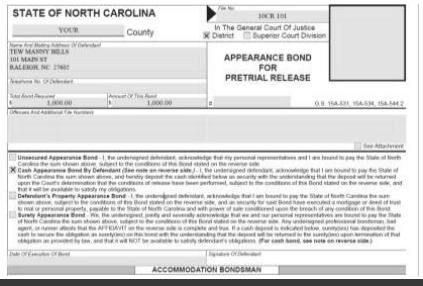
Collecting Payments – Cash Bonds

- **Important Notes:**
  - Cash bonds will be refunded to the defendant or surety as indicated on the Appearance Bond for Pretrial Release form (AOC-CR-201), ***irrespective of who the manual receipt is issued to***.
  - For the bond to be refunded to a surety, the surety must sign the Appearance Bond for Pretrial Release form (AOC-CR-201).

17

Collecting Payments – Appearance Bond Form

Cash Deposited By Defendant:


STATE OF NORTH CAROLINA

YOUR County

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

APPEARANCE BOND FOR PRETRIAL RELEASE

ACCOMMODATION BONDSMAN

18

Collecting Payments – Appearance Bond Form
Cash Deposited By Defendant:

Date Defendant Released | Name Of Custodian (type or print) | Signature Of Custodian | Sheriff | Deputy Sheriff | Other

NOTES ON CASH BONDS:

(1) ***To Official Taking The Bond.*** *Use this form for all cash bonds. Complete this form as follows:*

When Cash Deposited By Defendant Or By Another Person Who Intends For The Cash To Be Used To Satisfy The Defendant's Obligations. *Enter defendant's name, address and telephone number at the top of Side One. Check "Cash Appearance Bond By Defendant." Have defendant sign. Do no more. No other person's name should appear on this form. Enter your name, sign and enter receipt number under "Complete If Cash Deposited." Make receipt out to DEFENDANT, not to any other person.*

When Cash Deposited By Another Person Who Does NOT Intend For The Cash To Be Used To Satisfy The Defendant's Obligations. *Enter defendant's name, address and telephone number at the top of Side One. Check "Surety Appearance Bond." Have defendant sign. Enter name, address and telephone number of person depositing cash under "Accommodation Bondsman." Have that person sign under "Signature Of Surety." Complete notarization for that person. Enter your name, sign and enter receipt number under "Complete If Cash Deposited." Make receipt out to person depositing the cash.*

(2) ***To Bookkeeper.*** *If case disposed without forfeiture, disburse cash as follows: (1) If "Cash Appearance Bond By Defendant" checked on Side One, disburse to defendant or apply to defendant's obligations if court so orders. (2) If "Surety Appearance Bond" is checked on Side One, disburse only to the person(s) named under "Accommodation Bondsman."*

(3) ***Bond By Insurance Company Or Professional Bondsman As Surety Is Same As Cash Except In Child Support.*** *G.S. 15A-531(4) provides that an appearance bond executed by an insurance company or a professional bondsman (or a bail agent or runner on behalf of one of those sureties) is considered the same as a cash deposit, except in child support contempt proceedings for which only cash may satisfy a cash bond requirement.*

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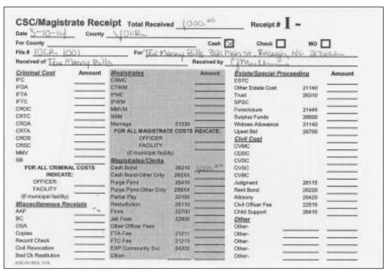
Collecting Payments – Manual Receipt
Cash Deposited By Defendant:



CSC/Magistrate Receipt Total Received 1000.00 Receipt # I –

Date 3-10-14 County YOUR

For County Cash ☒ Check ☐ MO ☐

File # 10CR 1001 For The Manny Bills 321 Main St, Raleigh, NC

Received of The Manny Bills Received by

Criminal Cost	Amount	Magistrates		Amount	Estate/Special Proceeding		Amount
IFC		CRMC			ESTC		
IFDA		CTWM			Other Estate Cost	21140	
IFTA		IFMC			Trust	26010	
IFTC		IFWM			SPSC		
CRDC		MMVM			Foreclosure	21445	
CRTC		SRM			Surplus Funds	26600	
CRDA		Marriage	21330		Widows Allowance	21140	
CRTA		FOR ALL MAGISTRATE COSTS INDICATE:			Upset Bid	26700	
CRDS		OFFICER			Civil Cost		
CRSC		FACILITY			CVMC		
MMV		(If municipal facility)			CDDC		
SB		Magistrates/Clerks			CVDC		
FOR ALL CRIMINAL COSTS INDICATE:		Cash Bond	26210	1000.00	CVSC		
		Cash Bond-Other Cnty	262XX		CVBC		
OFFICER		Purge Pymt	28410		Judgment	26115	
FACILITY		Purge Pymt-Other Cnty	284XX		Rent Bond	26220	
(If municipal facility)		Partial Pay	20100		Alimony	26420	
Miscellaneous Receipts		Restitution	28150		Civil Officer Fee	22515	
AAF		Fines	22700		Child Support	26410	
BC		Jail Fees	22800		Other		
OSA		Other Officer Fees			Other-		
Copies		FTA Fee	21211		Other-		
Record Check		FTC Fee	21213		Other-		
Civil Revocation		EXP Community Svc	24202		Other-		
Bad Ck Restitution		Other-			Other-		

Collecting Payments – Appearance Bond Form
Cash Deposited By Surety:

STATE OF NORTH CAROLINA

YOUR County

File No. 10CR 101

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

HUGH BADMAN
101 MAIN ST
RALEIGH, NC

APPEARANCE BOND FOR PRETRIAL RELEASE

$ 1,000.00 $ 1,000.00

G.S. 15A-531, 15A-534, 15A-544.2

ACCOMMODATION BONDSMAN

RAINA BADMAN
100 SOUTH ST
RALEIGH, NC

PROFESSIONAL BONDSMAN

Collecting Payments – Appearance Bond Form

Cash Deposited By Surety:

Date Defendant Released	Name Of Custodian (type or print)	Signature Of Custodian	Sheriff / Deputy Sheriff / Other

NOTES ON CASH BONDS:

(1) ***To Official Taking The Bond.*** *Use this form for all cash bonds. Complete this form as follows:*

When Cash Deposited By Defendant Or By Another Person Who Intends For The Cash To Be Used To Satisfy The Defendant's Obligations. *Enter defendant's name, address and telephone number at the top of Side One. Check "Cash Appearance Bond By Defendant." Have defendant sign. Do no more. No other person's name should appear on this form. Enter your name, sign and enter receipt number under "Complete If Cash Deposited." Make receipt out to DEFENDANT, not to any other person.*

When Cash Deposited By Another Person Who Does NOT Intend For The Cash To Be Used To Satisfy The Defendant's Obligations. *Enter defendant's name, address and telephone number at the top of Side One. Check "Surety Appearance Bond." Have defendant sign. Enter name, address and telephone number of person depositing cash under "Accommodation Bondsman." Have that person sign under "Signature Of Surety." Complete notarization for that person. Enter your name, sign and enter receipt number under "Complete If Cash Deposited." Make receipt out to person depositing the cash.*

(2) ***To Bookkeeper.*** *If case disposed without forfeiture, disburse cash as follows: (1) If "Cash Appearance Bond By Defendant" checked on Side One, disburse to defendant or apply to defendant's obligations if court so orders. (2) If "Surety Appearance Bond" is checked on Side One, disburse only to the person(s) named under "Accommodation Bondsman."*

(3) ***Bond By Insurance Company Or Professional Bondsman As Surety Is Same As Cash Except In Child Support.*** *G.S. 15A-531(4) provides that an appearance bond executed by an insurance company or a professional bondsman (or a bail agent or runner on behalf of one of those sureties) is considered the same as a cash deposit, except in child support contempt proceedings for which only cash may satisfy a cash bond requirement.*

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Collecting Payments – Manual Receipt

Cash Deposited By Surety:

CSC/Magistrate Receipt Total Received 1,000.00 Receipt # I –
Date 3-10-14 County Wake
For County Cash [X] Check [ ] MO [ ]
File # 10 CR 101 For Hugh Badman
Received of Rock Badman 300 South St. Raleigh, NC 27603 Received by D. Mullen

Criminal Cost	Amount	Magistrates		Amount	Estate/Special Proceeding		Amount
IFC		CRMC			ESTC		
IFDA		CTWM			Other Estate Cost	21140	
IFTA		IFMC			Trust	26310	
IFTC		IFWM			SPSC		
CRDC		MMVM			Foreclosure	21445	
CRTC		SSM			Surplus Funds	29900	
CRDA		Marriage	21330		Widows Allowance	21140	
CRTA		FOR ALL MAGISTRATE COSTS INDICATE:			Upset Bid	26700	
CRDS		OFFICER			Civil Cost		
CRSC		FACILITY			CVMC		
MMV		(if municipal facility)			CDDC		
SB		Magistrates/Clerks			CVDC		
FOR ALL CRIMINAL COSTS INDICATE:		Cash Bond	26210	1000.00	CVSC		
		Cash Bond-Other Cnty	292XX		CVBC		
OFFICER		Purge Pymt	26410		Judgment	26115	
FACILITY		Purge Pymt-Other Cnty	296XX		Rent Bond	26220	
(if municipal facility)		Partial Pay	20100		Alimony	26420	
Miscellaneous Receipts		Restitution	26110		Civil Officer Fee	22515	
AAF		Fines	22700		Child Support	26410	
BC		Jail Fees	22800		Other		
OSA		Other Officer Fees			Other-		
Copies		FTA Fee	21211		Other-		
Record Check		FTC Fee	21213		Other-		
Civil Revocation		EXP Community Svc	24202		Other-		
Bad Ck Restitution		Other-			Other-		

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Collecting Payments – Appearance Bond Form

Other County/Cash Deposited By Defendant:

STATE OF NORTH CAROLINA
ANOTHER County

File No. 10CR 301
In The General Court Of Justice
[X] District [ ] Superior Court Division

APPEARANCE BOND FOR PRETRIAL RELEASE

Name And Mailing Address Of Defendant
HUGH BADMAN
100 MAIN ST
RALEIGH, NC

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

Offense2 [ ] 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.
[X] **Cash Appearance Bond By Defendant** ***(See note on reverse side.)*** - I, the undersigned defendant, acknowledge that I am bound to pay the State of North Carolina the sum shown above, and hereby deposit the cash identified below as security with the understanding that the deposit will be returned upon the Court's determination that the conditions of release have been performed, subject to the conditions of this Bond stated on the reverse side, and that it will be available to satisfy my obligations.
[ ] **Defendant's Property Appearance Bond** - I, the undersigned defendant, acknowledge that I am bound to pay the State of North Carolina the sum shown above, subject to the conditions of this Bond stated on the reverse side, and as security for said Bond have executed a mortgage or deed of trust to real or personal property, payable to the State of North Carolina and with power of sale conditioned upon the breach of any condition of this Bond.
[ ] **Surety Appearance Bond** - We, the undersigned, jointly and severally acknowledge that we and our personal representatives are bound to pay the State

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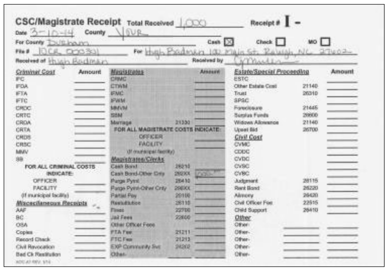
Collecting Payments – Manual Receipt
Other County/Cash Deposited By Defendant:


CSC/Magistrate Receipt Total Received 1,000 Receipt # I -

Date 3-10-14 County

For County Durham Cash ☒ Check ☐ MO ☐

File # For

Received of Received by

Criminal Cost Amount | Magistrates Amount | Estate/Special Proceeding Amount

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Collecting Payments – Cash Bonds
(Old Form)

If checked, **only the defendant** is eligible to receive the bond

For the surety to be eligible to receive the bond these two boxes must be checked, AND

the surety **must** sign

The AOC-CR-201 is a required, legally binding contract which dictates who is entitled to receive the bond funds if the bond isn't forfeited.


APPEARANCE BOND FOR PRETRIAL RELEASE

Social Security No. | Telephone No. Of Defendant

Total Bond Required $ | Amount Of This Bond $

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

SIGNATURE

Signature Of Surety | Signature Of Surety

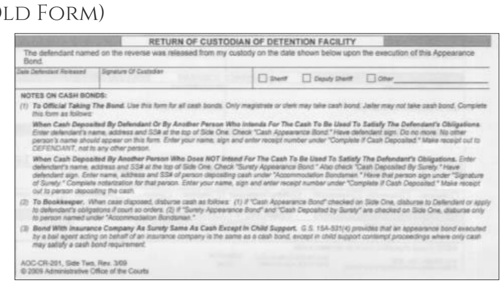
SWORN AND SUBSCRIBED TO BEFORE ME | **SWORN AND SUBSCRIBED TO BEFORE ME**

Date | Signature | Date | Signature

☐ Magistrate ☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court ☐ Custodian Of Detention Facility [G.S. 15A-537(c)]

26

Collecting Payments – Cash Bonds
(Old Form)


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 notarization for that person. Enter your name, sign and enter receipt number under "Complete If Cash Deposited." Make receipt out to person depositing the cash.*

(2) ***To Bookkeeper.*** *When case disposed, 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.*

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Collecting Payments - Purge Payments

- A show cause is issued for a defendant/plaintiff who has failed to comply with a monetary obligation in a court order (*e.g.*, payment of child support arrearages).
- At the hearing, a judge enters an adjudication of civil contempt and a commitment order, which specifies action the contemnor can take to "purge" the contempt and be released from the commitment. *E.g.*, for child support contempt, this is the Commitment Order of Civil Contempt of Child Support (AOC-CV-603) which establishes an amount needed to purge.

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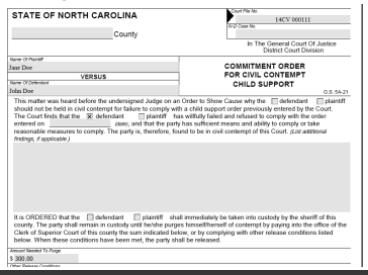
Collecting Payments - Purge Payments

- The defendant/plaintiff may be released upon fulfilling the conditions of the civil contempt order (including receipting a purge payment).
- The case number should be listed on the 'File #' line, the amount receipted should be recorded on the Purge Payment line, and the total amount line of the manual receipt.
- A release order should not be prepared. The contempt order is the commitment order that authorizes the Sheriff to hold the contemnor and release the party when conditions have been met.

29

Collecting Payments - Purge Payments

Civil Contempt Order:



STATE OF NORTH CAROLINA

County

In The General Court Of Justice
District Court Division

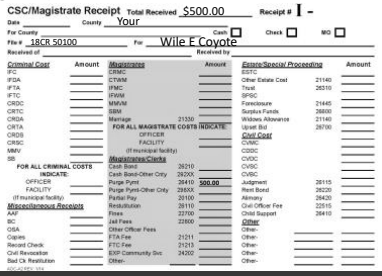
VERSUS

**COMMITMENT ORDER
FOR CIVIL CONTEMPT
CHILD SUPPORT**

30

Collecting Payments - Purge Payment

Manual Receipt:



CSC/Magistrate Receipt Total Received $500.00 Receipt # I –

Date _____ County Your

For County _____ Cash ☐ Check ☐ MO ☐

File # 18CR 50100 For Wile E Coyote

Received of _____ Received by _____

Criminal Cost	Amount
IFC	
IFDA	
IFTA	
IFTC	
CRDC	
CRTC	
CRDA	
CRTA	
CRDB	
CRBC	
MWV	
SB	
FOR ALL CRIMINAL COSTS INDICATE:	
OFFICER	
FACILITY (If municipal facility)	
Miscellaneous Receipts	
AAF	
BC	
DSA	
Copies	
Record Check	
Civil Revocation	
Bad Ck Restitution	

Magistrates	Amount
CRMC	
CTWM	
IFMC	
IFWM	
MWVM	
SBM	
Marriage 21330	
FOR ALL MAGISTRATE COSTS INDICATE:	
OFFICER	
FACILITY (If municipal facility)	
Magistrates Clerks	
Cash Bond 26210	
Cash Bond-Other Cnty 26205	
Purge Pymt 26410	500.00
Purge Pymt-Other Cnty 28555	
Partial Pay 20100	
Restitution 26110	
Fines 22700	
Jail Fees 22600	
Other Officer Fees	
FTA Fee 21211	
FTC Fee 21213	
EXP Community Svc 24202	
Other-	

Estate/Special Proceeding		Amount
BSTC		
Other Estate Cost	21140	
Trust	26310	
BPSC		
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-		

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Collecting Payments - Cash Bond vs Purge

- What if the OFA (criminal process) states that defendant must make a purge payment (in the 'Other' section of the OFA)?
- Is there a civil contempt order specifying that same purge condition?
  - Yes – Receipt as purge payment
  - No – Treat the arrest the same as you would for service of an OFA in a criminal case. Set conditions of release on a Release Order (AOC-CR-200). If cash is posted to satisfy the monetary condition of release, process as a cash bond and complete the Appearance Bond for Pretrial Release (AOC-CR-201)

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Collecting Payments – Waivable Offenses

- A waivable offense can be receipted by a magistrate upon *full payment* of the monetary obligations.
- The defendant will sign the citation or form AOC-CR-202 stating he or she is pleading guilty/responsible for the charge.
- Use the most recent waiver lists and related codes in order to collect the correct amounts.
- The total amount of the costs can be listed by the related code receipt line on the manual receipt.

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Collecting Payments

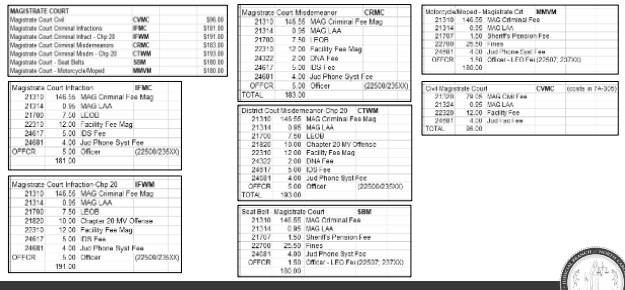
- Items Requiring Special Attention
  - 20-day (FTA) or 40-day (FTC) fees
    - FTA – 21211 $200.00
    - FTC – 21213 $50.00
  - Officer Fees
    - Highway Patrol, Sheriff, DMV are all considered as 'County' Officers
    - City Officers have different receipt codes specific to each municipality
  - Facility Fees
    - County seat and other county owned facilities
    - Magistrate offices in a city owned facility have different receipt codes specific to each municipality

Collecting Payments

- Multiple charges on a single citation (waiving)
  - Collect highest amount owed for costs
  - Collect highest amount owed for fines
- Court cost change
  - Collect new court costs if FTA is to be assessed (i.e. citation is still "waiverable"')
  - Collect old court costs if waiving before FTA attaches
  - Collect adjudicated amount if there is a judgment (i.e. if FTC has attached)

Note: Prior Court Costs Charts are located at https://www.nccourts.gov/ > Help Topics > Fees and Payments > Prior Court Costs and Waiver Lists

Collecting Payments – Magistrate Related Codes



MAGISTRATE COURT		
Magistrate Court Civil	CVMC	$96.00
Magistrate Court Criminal Infractions	IFMC	$181.00
Magistrate Court Criminal Infract - Chp 20	IFWM	$191.00
Magistrate Court Criminal Misdemeanors	CRMC	$183.00
Magistrate Court Criminal Misdm - Chp 20	CTWM	$193.00
Magistrate Court - Seat Belts	SBM	$180.00
Magistrate Court - Motorcycle/Moped	MWVM	$180.00

Magistrate Court Infraction		IFMC
21310	146.55	MAG Criminal Fee Mag
21314	0.95	MAG LAA
21760	7.50	LEOB
22310	12.00	Facility Fee Mag
24617	5.00	IDS Fee
24681	4.00	Jud Phone Syst Fee
OFFCR	5.00	Officer (22508/23530X)
	181.00	

Magistrate Court Infraction Chp 20		IFWM
21310	146.55	MAG Criminal Fee Mag
21314	0.95	MAG LAA
21760	7.50	LEOB
21920	10.00	Chapter 20 MV Offense
22310	12.00	Facility Fee Mag
24617	5.00	IDS Fee
24681	4.00	Jud Phone Syst Fee
OFFCR	5.00	Officer (22508/23530X)
	191.00	

Magistrate Court Misdemeanor		CRMC
21310	146.55	MAG Criminal Fee Mag
21314	0.95	MAG LAA
21760	7.50	LEOB
22310	12.00	Facility Fee Mag
24322	2.00	DNA Fee
24617	5.00	IDS Fee
24681	4.00	Jud Phone Syst Fee
OFFCR	5.00	Officer (22508/23530X)
TOTAL	183.00	

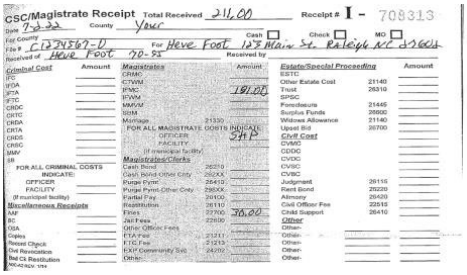
District Court Misdemeanor Chp 20		CTWM
21310	146.55	MAG Criminal Fee Mag
21314	0.95	MAG LAA
21700	7.50	LEOB
21920	10.00	Chapter 20 MV Offense
22310	12.00	Facility Fee Mag
24322	2.00	DNA Fee
24617	5.00	IDS Fee
24681	4.00	Jud Phone Syst Fee
OFFCR	5.00	Officer (22508/23530X)
TOTAL	193.00	

Seat Belt - Magistrate Court		SBM
21156	146.55	MAG Criminal Fee
21314	0.95	MAG LAA
21707	1.50	Sheriff's Pension Fee
22709	25.50	Fines
24681	4.00	Jud Phone Syst Fee
OFFCR	1.50	Officer - LEO Fee (23507, 23730X)
	180.00	

Motorcycle/Moped - Magistrate Crt		MWVM
21310	146.55	MAG Criminal Fee
21314	0.95	MAG LAA
21707	1.00	Sheriff's Pension Fee
22709	25.50	Fines
24681	4.00	Jud Phone Syst Fee
OFFCR	1.50	Officer - LEO Fee (23507, 23730X)
	180.00	

Civil Magistrate Court		CVMC	(costs in 7A-305)
21709	79.05	MAG Civil Fee	
21324	0.95	MAG LAA	
22329	12.00	Facility Fee	
24681	4.00	Jud Fund Fee	
TOTAL	96.00		

Collecting Payments – County/SHP



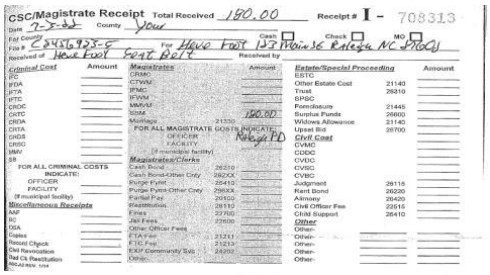
CSC/Magistrate Receipt Total Received 211.00 Receipt # I - 708313
Date 7-3-22 County Wake
For Court
File # CR276567-D For Steve Foot 123 Main St. Raleigh NC 27603
Received of Steve Foot 70-53 Received by
Cash ☐ Check ☐ MO ☐

Criminal Cost — Amount
FC
IFTA
JPTA
FTC
CROC
CRTC
CRDA
CRTA
CRDS
CRSC
MMV
SR
FOR ALL CRIMINAL COSTS INDICATE: OFFICER FACILITY (If municipal facility)
Miscellaneous Receipts
AAF
BC
CBA
Copies
Record Check
Civil Revocation
Bad Ck Restitution
MISCADJV 1704

Magistrates — Amount
CRMC
CTVM
IFMC 191.00
IFVM
MMVF
SDM
Marriage 21330
FOR ALL MAGISTRATE COSTS INDICATE: OFFICER SHP FACILITY (If municipal facility)
Magistrates/Clerks
Cash Bond 26210
Cash Bond-Other Cnty 26220
Purge Fyint 26410
Purge Fyint-Other Cnty 26XXX
Partial Pay 26100
Restitution 26110
Fines 22700 20.00
Jail Fees 22600
Other Officer Fees
FTA Fee 21211
FTC Fee 21213
EKP 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

Collecting Payments – Municipality



CSC/Magistrate Receipt Total Received 180.00 Receipt # I - 708313
Date 7-5-22 County Wake
For Court
File # CR276923-C For Steve Foot 123 Main St Raleigh NC 27603
Received of Steve Foot Seat Belt Received by
Cash ☐ Check ☐ MO ☐

Criminal Cost — Amount
FC
IFTA
JPTA
FTC
CROC
CRTC
CRDA
CRTA
CRDS
CRSC
MMV
SR
FOR ALL CRIMINAL COSTS INDICATE: OFFICER FACILITY (If municipal facility)
Miscellaneous Receipts
AAF
BC
CBA
Copies
Record Check
Civil Revocation
Bad Ck Restitution
MISCADJV 1704

Magistrates — Amount
CRMC
CTVM
IFMC
IFVM
MMVF
SDM 180.00
Marriage 21330
FOR ALL MAGISTRATE COSTS INDICATE: OFFICER Raleigh PD FACILITY (If municipal facility)
Magistrates/Clerks
Cash Bond 26210
Cash Bond-Other Cnty 26220
Purge Fyint 26410
Purge Fyint-Other Cnty 26XXX
Partial Pay 26100
Restitution 26110
Fines 22700
Jail Fees 22600
Other Officer Fees
FTA Fee 21211
FTC Fee 21213
EKP 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

Collecting Payments – Other FMS Codes and Fees

Civil Service		
22515	30.00	Officer Fees
(could be a city code (23XXX) if CPD performs service)		
Performing marriage ceremony		
21330	50.00	
Hearing petition for Year's allowance		
21330	20.00	(Magistrate's only)
Taking a deposition		
21330	10.00	(Magistrate's only)
Proof of execution or acknowledgment of any instrument		
21330	2.00	
Performing an other stautory function not incident to civil or criminal		
21330	2.00	

Submitting Funds to CSC

- What to submit
  - Funds with receipt copies
  - Off-Site Daily Cash Report (AOC-FS-3731)
  - Paperwork
- When to submit
  - End of business day but no later than the close of the next business day.

Submitting Funds to CSC - Magistrate Off-Site Daily Cash Report

- Information to Capture:
  - Magistrate name
  - County
  - 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

Submitting Funds to CSC – Magistrate Off-Site Daily Cash Report

STATE OF NORTH CAROLINA

MAGISTRATE OFF-SITE DAILY CASH REPORT

CODE/ACCOUNT NO.	ACCOUNT DESCRIPTION	QUANTITY	TOTAL COLLECTED
21330	Special Fees: Marriage		
25210	Cash Bond		
25010	Cash Bond – Other County CNTY		
26410	Purge Payment		
26810	Purge Payment – Other County CNTY		
CRMC	Criminal Costs CNTY CITY		
CTRM	Civil Traffic Ind. CNTY CITY		
IRMC	Infraction Costs CNTY CITY		
IFTC	Infraction/Traffic Ind. CNTY CITY		
MMCM	Moped/Motorcycle Violation		
5999	Installment		
21750	Fines		
C1MC	Small Claims Filing Fees CNTY CITY		
21140	Hearing Petition for Year's Allowance		
21400	Miscellaneous Special Fees		
22500	Other Service Fees - County		
22600	Jail Fees		
22520	Other Service Fees - City Other Details		
26160	Partial Pay		
26140	Restitution		
21231	PTA Fee		
21233	PTC Fee		
34202	Expanded Community Service		
	Other		

RECEIPT NUMBERS USED	TOTAL COLLECTED	$
Beginning:	Total Cash	$
Ending:	Total Bank Checks	$
	Total Money Orders	$
	TOTAL REMITTED	$

Submitting Funds to CSC

- The CSC's office is required to complete the Manual Receipt Log as a way to track receipts and the timeline of when receipts are submitted.
- 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 are subject to review by NCAOC and the NC State Bureau of Investigation (SBI).

Submitting Funds to CSC

- A head cashier or cashier should verify the funds in the presence of the magistrate.
- If the magistrate cannot submit funds in person, funds should be counted in the presence of two people prior to securing in a locking bank bag.
- Cashiers are required to have two people present when opening a magistrate's bank bag if the magistrate is not present.

Submitting Funds to CSC

- The CSC cashier cannot accept any amount other than what is showing on the receipt and will return a bag with discrepancies for the magistrate to correct.
- Magistrate should receive a receipt from the CSC for the exact amount of funds submitted.
- The MFCR receipt(s) are the magistrate's proof that funds were submitted to the CSC's office.
- NCAOC recommends magistrates retain these receipts for at least one year.

IRS Form 8300 – US Internal Revenue Code

- Section 6050I (26 United States Code) and 31 U.S.C. 5331 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.
- If a person receives bail on behalf of a clerk, the clerk is treated as receiving the bail (magistrates).
- The IRS has conducted reviews of these forms and procedures in the Clerk of Court offices.

IRS Form 8300 - Who Must File?

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.

IRS Form 8300 – When to File?

- Specific Criminal Offenses
  - Any Federal offense involving a controlled substance
  - Racketeering
  - Money laundering
  - Any State criminal offense substantially similar to the above
- Cash Received Over $10,000
- Cash Over $10,000 received in Single or Related Transactions

IRS Form 8300 – When to File?

- "Cash" more than $10,000
  - Coins and/or Currency of the United States more than $10,000.
  - Cashier's check, money order, bank draft, or traveler's check having a face amount of $10,000 or less (which would be submitted in addition to currency to make up the remainder of the payment).
- Cashier's check, money order, bank draft, or traveler's check with a face value of more than $10,000 is not considered cash because the financial institution where it was purchased must report the purchase to the IRS.
- Example:
  - Payor presents three cashiers checks each in the amount of $4,000 to pay a $12,000 cash bond

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IRS Form 8300 – When to File?

Single or Related Transactions

- One-time payment of $10,000 or more in cash
- If an individual pays bail in multiple payments, on the exact same case or offense then those payments have to be aggregated once the total (for that same case) exceeds $10,000. (*if payments are made to satisfy separate bail requirements, no aggregation is required.)*

Example - if in Month 1 a clerk receives $6,000.00 in bail for an individual charged with a specified criminal offense, and later, in Month 2, receives $7,000.00 in bail for that same individual charged with another specified criminal offense, no aggregation is required."

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IRS Form 8300 –Required Information

- Payer(s) Information Required
  - Name and Address
  - Taxpayer ID Number
  - Date of Birth
  - Occupation
  - Identifying Documentation
    - Description (e.g. Driver's License)
    - Number on ID (e.g. Driver's License Number)
    - Issuing Agency (e.g. State of NC)

IMPORTANT: The form should be completed in full prior to receiving the bond

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IRS Form 8300 –Required Information

- Defendant's Information - you may skip Part II if the individual named in Part I is conducting the transaction on his or her behalf only.
  - Name and address
  - Taxpayer ID Number
  - Occupation
  - Alien ID Information (if applicable)

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IRS Form 8300 –Required Information

- Cash Transaction Information
  - Date Received
  - Amount
  - Type(s)
- Business that Received Cash
  - Name and address
  - TIN
  - Signature

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IRS Form 8300

Form 8300 Report of Cash Payments Over $10,000 Received in a Trade or Business

► See instructions for definition of cash.

► Use this form for transactions occurring after March 31, 2026. Do not use prior versions after this date.

For Privacy Act and Paperwork Reduction Act Notice, see page 5.

1 Check appropriate box(es) if: a ☐ Amends prior report; b ☐ Suspicious transaction.

Part I Identity of Individual From Whom the Cash Was Received

2 If more than one individual is involved, check here and see instructions ►

3 Last name | 4 First name | 5 M.I. | 6 Taxpayer identification number

7 Address (number, street, and apt. or suite no.) | 8 Date of birth (see instructions) ► M M D D Y Y Y Y

9 City | 10 State | 11 ZIP code | 12 Country (if not U.S.) | 13 Occupation, profession, or business

14 Identifying document (ID) | a Describe ID ► | b Number ► | b Issued by ►

Part II Person on Whose Behalf This Transaction Was Conducted

15 If this transaction was conducted on behalf of more than one person, check here and see instructions ►

16 Individual's last name or Organization's name | 17 First name | 18 M.I. | 19 Taxpayer identification number

20 Doing business as (DBA) name (see instructions) | Employer identification number

21 Address (number, street, and apt. or suite no.) | 22 Occupation, profession, or business

23 City | 24 State | 25 ZIP code | 26 Country (if not U.S.)

27 Alien identification (ID) | a Describe ID ► | b Number ► | b Issued by ►

Part III Description of Transaction and Method of Payment

28 Date cash received M M D D Y Y Y Y | 29 Total cash received $ .00 | 30 If cash was received in more than one payment, check here. ► ☐ | 31 Total price if different from item 29 $ .00

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IRS Form 8300

Part I Description of Transaction and Method of Payment

25 Date cash received (M M D D Y Y Y Y)

29 Total cash received

30 If cash was received in more than one payment, check here

31 Total price if different from item 29

32 Amount of cash received (in U.S. dollar equivalent) (must equal item 29) (see instructions):

a U.S. currency (Amount in $100 bills or higher)

b Foreign currency (Country)

c Cashier's check(s)

d Money order(s)

e Bank draft(s)

f Traveler's check(s)

33 Type of transaction

a Personal property purchased

b Real property purchased

c Personal services provided

d Business services provided

e Intangible property purchased

f Debt obligations paid

g Exchange of cash

h Escrow or trust funds

i Bail received by court clerks

j Other (specify in item 34)

34 Specific description of property or service shown in 33. Give serial or registration number, address, docket number, etc.

Part II Business That Received Cash

35 Name of business that received cash

36 Employer identification number

37 Address (number, street, and apt. or suite no.)

Social security number

38 City

39 State

40 ZIP code

41 Nature of your business

42 Under penalties of perjury, I declare that to the best of my knowledge the information I have furnished above is true, correct, and complete.

Signature

Authorized official

Title

43 Date of signature (M M D D Y Y Y Y)

44 Type or print name of contact person

45 Contact telephone number

Form 8300 (Rev. 3-2005)

Cat. No. 62133S

FinCEN Form 8300 (Rev. 3-2005)

RESOURCES

Resources - Supplies and Forms

- See the Financial Procedures Manual Magistrates Chapter on Juno for reference, forms, policies, and more.
- See the Forms Search Page on nccourts.gov to obtain current versions of all forms.
  - Magistrate Offsite Daily Cash Report (AOC-FS-3731)
- Manual Receipt Book (AOC-A-2) – Assigned by CSC's office
- Counterfeit Detector Pen (available from NCAOC Warehouse)
- Locking bank bag – check with CSC to see if extra bank bags are available.

NCAOC Fiscal Services Division (FSD)

- Danielle Ward — Chief Fiscal Officer
  (919) 890-1017 — Danielle.J.Ward@nccourt.org
- Jordan Samuel — Internal Audit Director
  (919) 890-1016 — Jordan.Samuel@nccourts.org
- Tony McKinney — Financial Analysis and Process Manager
  828-385-3599 — Tony.A.Mckinney@nccourts.org

STATE OF NORTH CAROLINA

_____ County

File No.

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

Name And Mailing Address Of Defendant

Telephone No. Of Defendant

Total Bond Required
$

Amount Of This Bond
$

APPEARANCE BOND FOR PRETRIAL RELEASE

#

G.S. 15A-531, 15A-534, 15A-544.2

Offenses And Additional File Numbers

☐ See Attachment

☐ **Unsecured Appearance Bond** - I, the undersigned defendant, acknowledge that my personal representatives and I are bound to pay the State of North Carolina the sum shown above, subject to the conditions of this Bond stated on the reverse side.

☐ **Cash Appearance Bond By Defendant *(See note on reverse side.)*** - I, the undersigned defendant, acknowledge that I am bound to pay the State of North Carolina the sum shown above, and hereby deposit the cash identified below as security with the understanding that the deposit will be returned upon the Court's determination that the conditions of release have been performed, subject to the conditions of this Bond stated on the reverse side, and that it will be available to satisfy my obligations.

☐ **Defendant's Property Appearance Bond** - I, the undersigned defendant, acknowledge that I am bound to pay the State of North Carolina the sum shown above, subject to the conditions of this Bond stated on the reverse side, and as security for said Bond have executed a mortgage or deed of trust to real or personal property, payable to the State of North Carolina and with power of sale conditioned upon the breach of any condition of this Bond.

☐ **Surety Appearance Bond** - We, the undersigned, jointly and severally acknowledge that we and our personal representatives are bound to pay the State of North Carolina the sum shown above, subject to the conditions of this Bond stated on the reverse side. Any undersigned professional bondsman, bail agent, or runner attests that the AFFIDAVIT on the reverse side is complete and true. If a cash deposit is indicated below, surety(ies) has deposited the cash to secure the obligation as surety(ies) on this bond with the understanding that the deposit will be returned to the surety(ies) upon termination of that obligation as provided by law, and that it will NOT be available to satisfy defendant's obligations. **(For cash bond, see note on reverse side.)**

Date Of Execution Of Bond

Signature Of Defendant

ACCOMMODATION BONDSMAN

☐ See attached AOC-CR-201A for additional accommodation bondsmen executing this bond.

Name And Address Of Accommodation Bondsman

Telephone No.

Name And Address Of Accommodation Bondsman

Telephone No.

PROFESSIONAL BONDSMAN

Name Of Bondsman

License No. Of Bondsman

Telephone No.

Name Of Runner, If Applicable

License No. Of Runner

Telephone No.

INSURANCE COMPANY

Name Of Insurance Company

Power Of Appointment No. Of Bail Agent

Name Of Bail Agent

License No. Of Bail Agent

Telephone No.

SIGNATURE

Signature Of Surety

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME

Date

Signature

☐ *Magistrate* ☐ *Deputy CSC* ☐ *Assistant CSC* ☐ *Clerk Of Superior Court*
☐ *Custodian Of Detention Facility [G.S. 15A-537(c)]*

Signature Of Surety

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME

Date

Signature

☐ *Magistrate* ☐ *Deputy CSC* ☐ *Assistant CSC* ☐ *Clerk Of Superior Court*
☐ *Custodian Of Detention Facility [G.S. 15A-537(c)]*

COMPLETE IF CASH DEPOSITED

Signature Of Official Accepting Cash

Name Of Official Accepting Cash (type or print)

Receipt No.

NOTE: If cash deposited, see note on reverse side.

AOC-CR-201, Rev. 4/18

(see AOC-CR-238 if release after judgment in superior court)

Original - File
(Over)

CONDITIONS

The conditions of this Bond are that the above named defendant shall appear in the above entitled action(s) whenever required. It is agreed and understood that this Bond is effective and binding upon the defendant and each surety throughout all stages of the proceedings in the trial divisions of the General Court of Justice until the entry of judgment in the district court from which no appeal is taken or until the entry of judgment in the superior court, unless terminated earlier by operation of law or order of the court. If the defendant appears as ordered until termination of the Bond, then the bond is to be void, but if the defendant fails to appear as required, the Court will forfeit the bond pursuant to Part 2 of Article 26 of Chapter 15A of the General Statutes.

Each accommodation bondsman, by signing on the reverse or on the attached AOC-CR-201A, states: "I have reached the age of 18 years and am a bona fide resident of North Carolina. Aside from love and affection and release of the above named defendant, I have received no consideration for acting as surety. I own sufficient property over and above all liabilities, homestead and other exemptions allowed me by law to enable me to pay this Bond should it be ordered forfeited. I understand that if I sign this Bond without sufficient property, I am guilty of a crime."

AFFIDAVIT

NOTE: *"Professional bondsmen, surety bondsmen [bail agents], and runners shall file with the clerk of court having jurisdiction over the principal an affidavit on a form furnished by the Administrative Office of the Courts." G.S. 58-71-140(d). Check all options that apply.*

☐ 1. I have not, nor has anyone for my use, been promised or received any collateral, security or premium for executing this Bond.

☐ 2. I have been promised a premium in the amount shown below, which is due on the date shown below.

☐ 3. I have received a premium in the amount shown below.

☐ 4. I have been given collateral security by the person named below, of the nature and in the amount shown below.

Amount Of Premium Promised	*Date Due*	*Amount Of Premium Received*
$		**$**

Name Of Person From Whom Collateral Received	*Nature Of Collateral*	*Value*

AFFIX STAMP OR POWER OF ATTORNEY HERE

RETURN OF CUSTODIAN OF DETENTION FACILITY

The defendant named on the reverse was released from my custody on the date shown below upon the execution of this Appearance Bond.

Date Defendant Released	*Name Of Custodian (type or print)*	*Signature Of Custodian*	☐ *Sheriff* ☐ *Deputy Sheriff* ☐ *Other* _____

NOTES ON CASH BONDS:

(1) ***To Official Taking The Bond.*** *Use this form for all cash bonds. Complete this form as follows:*

When Cash Deposited By Defendant Or By Another Person Who Intends For The Cash To Be Used To Satisfy The Defendant's Obligations. *Enter defendant's name, address and telephone number at the top of Side One. Check "Cash Appearance Bond By Defendant." Have defendant sign. Do no more. No other person's name should appear on this form. Enter your name, sign and enter receipt number under "Complete If Cash Deposited." Make receipt out to DEFENDANT, not to any other person.*

When Cash Deposited By Another Person Who Does NOT Intend For The Cash To Be Used To Satisfy The Defendant's Obligations. *Enter defendant's name, address and telephone number at the top of Side One. Check "Surety Appearance Bond." Have defendant sign. Enter name, address and telephone number of person depositing cash under "Accommodation Bondsman." Have that person sign under "Signature Of Surety." Complete notarization for that person. Enter your name, sign and enter receipt number under "Complete If Cash Deposited." Make receipt out to person depositing the cash.*

(2) ***To Bookkeeper.*** *If case disposed without forfeiture, disburse cash as follows: (1) If "Cash Appearance Bond By Defendant" checked on Side One, disburse to defendant or apply to defendant's obligations if court so orders. (2) If "Surety Appearance Bond" is checked on Side One, disburse only to the person(s) named under "Accommodation Bondsman."*

(3) ***Bond By Insurance Company Or Professional Bondsman As Surety Is Same As Cash Except In Child Support.*** *G.S. 15A-531(4) provides that an appearance bond executed by an insurance company or a professional bondsman (or a bail agent or runner on behalf of one of those sureties) is considered the same as a cash deposit, except in child support contempt proceedings for which only cash may satisfy a cash bond requirement.*