
BASIC SCHOOL FOR NEW MAGISTRATES

WEEK 1

JULY 23 - 27, 2012

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.

COURSE SCHEDULE

MONDAY, JULY 23

9:00	Welcome <i>Dona Lewandowski, School of Government</i>	2401
9:30	Involuntary Commitment <i>Mark Botts, School of Government</i>	2401
10:30	Break	
10:45	IVC, cont'd <i>Mark Botts, School of Government</i>	2401
12:15	Lunch	Dining Room
1:00	IVC, cont'd <i>Mark Botts, School of Government</i>	2401
2:00	Welcome to the Job <i>Dona Lewandowski, School of Government</i>	2401
2:45	Break	
3:00	Introduction to Civil Law <i>Dona Lewandowski, School of Government</i>	2401
4:15	Break	
4:30	Ethics <i>Dona Lewandowski, School of Government</i>	2401
5:30	Recess	

TUESDAY, JULY 24

9:00	Small Claims Procedure <i>Dona Lewandowski, School of Government</i>	2401
10:30	Break	
10:45	Small Claims Procedure, cont'd <i>Dona Lewandowski, School of Government</i>	2401
12:30	Lunch	Dining Room
1:15	Contracts <i>Dona Lewandowski, School of Government</i>	2401
2:30	Break	
2:45	Contracts, cont'd <i>Dona Lewandowski, School of Government</i>	2401
4:00	Break	
4:15	Torts <i>Dona Lewandowski, School of Government</i>	2401
5:15	Recess	

WEDNESDAY, JULY 25

9:00	Landlord-Tenant <i>Dona Lewandowski, School of Government</i>	2401
10:30	Break	
10:45	Landlord-Tenant, cont'd <i>Dona Lewandowski, School of Government</i>	2401
12:30	Lunch	Dining Room
1:15	Landlord-Tenant, cont'd <i>Dona Lewandowski, School of Government</i>	2401
2:30	Break	
2:45	Landlord-Tenant, cont'd <i>Dona Lewandowski, School of Government</i>	2401
4:00	Break	
4:15	Landlord-Tenant, cont'd <i>Dona Lewandowski, School of Government</i>	2401
5:15	Recess	

THURSDAY, JULY 26

9:00	Legal Issues in Domestic Violence <i>Dona Lewandowski, School of Government</i>	2401
10:30	Break	
10:45	Small Claims: Actions to Recover Personal Property <i>Dona Lewandowski, School of Government</i>	2401
12:30	Lunch	Dining Room
1:15	Small Claims Practice <i>Dona Lewandowski, School of Government</i>	2401
2:30	Break	
2:45	The Struggle Toward Fairness: What Does It Mean to Think Like a Judge? <i>Dona Lewandowski, School of Government</i>	2401
4:15	Break	
4:30	Contempt <i>Dona Lewandowski, School of Government</i>	2401
5:15	Recess	

FRIDAY, JULY 27

9:00	Handling Money <i>The Administrative Office of the Courts</i>	2401
10:00	Understanding Domestic Violence <i>Chief District Court Judge Julius Corpening</i>	2401
12:00	Marriage <i>Dona Lewandowski, School of Government</i>	2401
12:45	Lunch	Dining Room

1:30
1:45

Evaluations
Test on Week 1 Material

2401 & 2321

BASIC SCHOOL FOR NEW MAGISTRATES: COURSE OBJECTIVES FOR WEEK 1

1. □ To provide information and an opportunity for students to discuss and explore how the office of magistrate fits into the larger court system.
2. □ To identify, and to support students in their acquisition of, characteristics demonstrating the magistrate's role as an independent, neutral, and detached judicial official.
3. □ To familiarize students with provisions of the Code of Judicial Conduct applicable to magistrates and support their application of these provisions to their individual life circumstances.
4. □ To enable students to develop a clear statement of their objectives in relation to small claims court.
5. □ To equip students with the ability to appropriately and accurately respond to inquiries from citizens involving private disputes.
6. □ To provide students with sufficient information, including identification of available resources, to enable them to substantially comply with procedural rules and correctly apply basic legal principles in the event of unanticipated assignment to in small claims court.
7. □ To provide students with information about law and procedure related to involuntary commitment, accompanied by an opportunity to practice and receive feedback on essential skills, thereby enabling students to perform this responsibility competently.
8. □ To facilitate students' exploration of the process of judicial decision-making, to acquaint them with the potential impact of implicit bias on judicial decisions, and to inform them of strategies demonstrated by scientific research to minimize the impact of bias on the decision-making process.
9. □ To minimize the impact of implicit bias on decision-making related to domestic violence by providing (1) factual information about the dynamics of domestic violence, (2) experiential exercises designed to increase empathic understanding of the behavior of victims of domestic violence, and (3) a structured opportunity to increase awareness by identifying personal biases related to domestic violence.

10. To provide information allowing students to correctly apply the law in responding appropriately to requests by citizens for ex parte domestic violence protective orders.
11. To identify, and provide an opportunity to practice, the correct application of legal principles to allegations of the crime of violation of a DVPO.
12. To provide information about the law of contempt, and equip students to use identified alternatives when feasible.
13. To explain the magistrate's responsibility for the funds they receive, describe the process for submitting funds to the CSC office, create an understanding of how to use and manage the manual receipt book according to AOC policy, and explain when and why an IRS Form 8300 is required.
14. To train magistrates to perform marriages in a manner consistent with law and correct procedure.

CLASS ROSTER

Tab: Day 1

SCHEDULE FOR TODAY

9:00	Welcome <i>Dona Lewandowski, School of Government</i>	2401
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5:30	Recess	

OUR OBJECTIVES FOR TODAY

Today you'll begin to get to know one another, and learn what to expect for the first week of the school.

You'll learn to identify the legal criteria for involuntary commitment.

You'll have an opportunity to apply the legal criteria to facts presented to you in a petition for commitment.

You'll be able to follow the required procedure for completing and issuing a custody order.

You'll think and talk about what it means to be a magistrate and further define your own professional identity.

You'll explore how the role of the magistrate fits into the larger court system, and examine the role of civil law: where it comes from, how to find it, and what key principles underlie its application.

You'll become familiar with the specific provisions of the Code of Judicial Conduct that apply to magistrates.

You'll be able to identify the primary ethical principles that guide the behavior of judicial officials.

You'll analyze specific fact situations and determine appropriate behavior by applying these Code provisions and ethical principles.

WELCOME TO YOUR JOB!

ACTIVITY: WHAT HAVE YOU BEEN TOLD?

Introduce yourself to your tablemates, and take about 2 minutes to tell them what you've been told—formally or informally—about the job of magistrate. If someone has given you advice about how best to do the job, share that, as well as whether or not you agree with it. Pick one person at your table to summarize what is said to share with the rest of the class.

GROUND RULES FOR BASIC SCHOOL

1. Be considerate of others. Turn your cell phone off, or put it on vibrate if it's important for others to reach you. If you're using a laptop, be careful that the screen doesn't obstruct other people's view.
2. Be appropriately assertive. If something is happening that's interfering with your ability to learn, take action. If the actions of another student are disturbing you, either speak to the student directly or speak to the instructor. Don't wait until the end of the week to mention a problem.
3. Side conversations between students are distracting to other students, and sometimes to instructors too. Try to keep these to a minimum.
4. We will begin, end, and take breaks as scheduled. Be sure to be here on time.
5. If you have to be absent from class, clear it with Dona.

6. □ Your participation helps everyone learn –and stay awake! During in-class discussion, please raise your hand so that everyone can hear what you say. If you have a question, ask it—others probably are wondering the same thing. If you have a question that’s not immediately relevant to the topic, put it in the Question Box.

7. □ During discussion at your table, be certain that everyone has an opportunity to talk.

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.

**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?)

INFORMATION TO OBTAIN FOR CONSIDERING AN INVOLUNTARY COMMITMENT

I. BEHAVIORS

- A. hostile vs. passive -- acting out in destructive ways vs. withdrawn, quiet, apathetic
- B. erratic, excitable -- sensitive to slight irritation, unpredictable, agitated
- C. combative, violent -- destructive, physically and/or verbally abusive
- D. incontinence -- poor control of urine and feces
- E. inappropriate social judgment -- behaviors usually considered in poor taste and usually rejected or found offensive by other people

II. MOVEMENTS

- A. overactivity, restlessness, agitation -- parts of body in constant motion, repetitive, activity beyond reasonable level
- B. involuntary movements -- parts of body jerk, shake or activated without apparent reason
- C. underactivity -- immobile, stuporous, sluggish
- D. general muscle tension -- parts of body held taut (e.g., clenched teeth), possibly small tremors, rigid posture or walking stance

III. SPEECH

- A. overtalkative vs. mute -- constant talking vs. unresponsive, "pressure of speech"
- B. unusual speech -- strange words, "word salad," disconnected speech
- C. assaultive/suicidal content -- words that suggest harmful intent

IV. EMOTIONS

- A. flat or inappropriate emotions -- little change in expression or expression that doesn't fit occasion (e.g., happy but angry, crying when happy)
- B. mood swings -- dramatic changes from dejection to elation
- C. general overapprehension -- anxiety in most areas of life
- D. depression, apathy, hopelessness -- withdrawal and minimal interest in activities of daily life
- E. euphoric -- grandiose and unrealistic feelings, often of feeling indestructible

V. THOUGHTS

- A. disturbed awareness -- unaware of self or others or time or place
- B. disturbed memory -- impairment of short term and/or long term memory
- C. disturbed reasoning/judgment -- impaired logic or decisions not tied to common thinking
- D. confused thoughts -- inconsistent and/or combination of unrelated thoughts

- E. poor concentration and/or attention
- F. low intellectual functioning
- G. slow mental speed

VI. ABNORMAL MENTAL TRENDS

- A. false perceptions (hallucinations) -- experiences in visual, hearing, smelling, tasting or skin sensations without real basis
- B. false beliefs (delusions) -- usually persecutory or grandiose thoughts without real basis
- C. paranoid ideas -- involves suspiciousness or belief that one is persecuted or unfairly treated
- D. body delusion -- delusion involving body functions (e.g., "my brain is rotting," a 60 year-old insisting she is pregnant)
- E. feelings of unreality or depersonalization -- sense of own reality is temporarily lost, so body parts distorted or sensing self from a distance
- F. repetitious behaviors/thoughts/speech
- G. extreme fears -- especially when seriously impairing activities of daily life

VII. PREVIOUS EVIDENCE

- A. psychiatric assessments or treatment
- B. prior petitions or associated legal difficulties

VIII. COURSE OR DISTURBANCE

- A. chronic
- B. gradual onset
- C. C. acute episode

Involuntary Commitment—Case Studies
January 2012

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 or others or mentally ill and in need of treatment in order to prevent further disability and deterioration that would predictably result in dangerousness.” The facts upon which the physician’s opinion is based, according to the petition, are: “Patient behaving in a bizarre manner. Confused. Poor judgment. Unclear if suicidal.”

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

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

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

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

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

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

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

Is Jane dangerous to herself? Why or why not?

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

Is Mary dangerous to herself? Why or why not?

7. David was found sitting on the edge of a busy airport runway. He had been observed in the woods with a rope around his neck and cutting his arm with a knife. He kept an iron pipe and hatchet under his bed and threatened his mother three days ago by forcing her to sit in one chair and not move for two hours while he was screaming, shouting, and cursing. He threatened to "bust" his mother's head if she called anybody. He complained of demons and of feeling that his bones were being pulled out.

Is David dangerous? Why or why not?



North Carolina Involuntary Commitment Process

Layperson petition
Layperson completes petition in front of magistrate

Magistrate reviews petition & issues custody order

Officer transports respondent

Hospital ER or LME facility (1st exam)

Officer transports respondent

Clinician petition
Clinician completes petition & exam form (1st exam), then faxes to magistrate

Magistrate reviews petition & issues custody order

Officer transports respondent

24-hour facility (2nd exam)

Emergency petition*
Clinician completes exam form & emergency certificate (1st exam), submits to clerk of court for 24-hr. facility & local officer

Officer transports respondent pursuant to emergency certificate

District court judge reviews examination form

Hearing: Court orders release, outpatient, inpatient, or substance abuse commitment

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



What Happens After a Magistrate Issues a Custody and Transportation Order

Source: Administration of Justice Bulletin, September 2007

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

1. A law enforcement officer or other person designated in the custody order must take the respondent into custody within 24 hours. If the respondent cannot be found within 24 hours, a new custody order will be required to take the respondent into custody. Custody is not for the purpose of arrest, but for the respondent's own safety and the safety of others, and to determine if the respondent needs treatment.
2. Without unnecessary delay after assuming custody, the law enforcement officer or other individual designated to provide transportation must take the respondent to a physician or eligible psychologist for examination.
3. The respondent must be examined as soon as possible, and in any event within 24 hours, after being presented for examination. The examining physician or psychologist will recommend either outpatient commitment, inpatient commitment, substance abuse commitment, or termination of these proceedings.
 - *Inpatient commitment:* If the examiner finds the respondent meets the criteria for inpatient commitment, the examiner will recommend inpatient commitment. The law enforcement officer or other designated person must take the respondent to a 24-hour facility.
 - *Outpatient commitment:* If the examiner finds the respondent meets the criteria for outpatient commitment, the examiner will recommend outpatient commitment and identify the proposed outpatient treatment physician or center in the examination report. The person designated in the order to provide transportation must return the respondent to the respondent's regular residence or, with the respondent's consent, to the home of a consenting individual located in the originating county. The respondent must be released from custody.
 - *Substance abuse commitment:* If the examiner finds the respondent meets the criteria for substance abuse commitment, the examiner must recommend commitment and whether the respondent should be released or held at a 24-hour facility pending a district court hearing. Depending upon the physician's recommendation, the law enforcement officer or other designated individual will either release the respondent or take him or her to a 24-hour facility.
 - *Termination:* If the examiner finds the respondent meets neither of the criteria for commitment, the respondent must be released from custody and the proceedings terminated. If the custody order was based on the finding that the respondent was probably mentally ill, then the person designated in the order to provide transportation must return the respondent to the respondent's regular residence or, with the respondent's consent, to the home of a consenting individual located in the originating county.
4. If the law enforcement officer transports the respondent to a 24 hour facility, another evaluation must be performed within 24 hours of arrival. This evaluator has the same options as indicated in step 3 above. If the respondent is not released, the respondent will be given a hearing before a district court judge within 10 days of the date the respondent was taken into custody.

Memorandum to Magistrates
2009 Change to Commitment Law and Magistrate Practice

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

New Law

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

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

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

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

A Practice to be Avoided

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

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

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

File No.

STATE OF NORTH CAROLINA

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

Date Of Birth

Drivers License No. Of Respondent

State

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

(Check all that apply)

- 1. mentally ill and dangerous to self or others or mentally ill and in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness.
in addition to being mentally ill, respondent is also mentally retarded.
2. a substance abuser and dangerous to self or others.

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

Name And Address Of Nearest Relative Or Guardian

Name And Address Of Person Other Than Petitioner Who May Testify

Home Telephone No.

Business Telephone No.

Home Telephone No.

Business Telephone No.

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

SWORN/AFFIRM AND SUBSCRIBED TO BEFORE ME

Signature Of Petitioner

Date

Signature

Name And Address Of Petitioner (Type Or Print)

- Deputy CSC Assistant CSC Clerk Of Superior Court Magistrate

Notary (use only with physician or psychologist petitioner)

Date Notary Commission Expires

SEAL

County Where Notarized

Relationship To Respondent

Home Telephone No.

Business Telephone No.

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

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)

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**

G.S. 122C-261, -263, -281, -283

Social Security No. Of Respondent

Date Of Birth

Drivers License No. Of Respondent

State

I. FINDINGS

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

(Check all that apply)

- 1. mentally ill and dangerous to self or others or mentally ill and in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness.
 - In addition to being mentally ill, the respondent probably is also mentally retarded.
- 2. a substance abuser and dangerous to self or others.

CUSTODY ORDER

TO ANY LAW ENFORCEMENT OFFICER:

The Court ORDERS you to take the above named respondent into custody

- 1. and take the respondent for examination by a person authorized by law to conduct the examination. (A COPY OF THE EXAMINER'S FINDINGS SHALL BE TRANSMITTED TO THE CLERK OF SUPERIOR COURT IMMEDIATELY.)
 - IF the examiner finds that the respondent IS NOT a proper subject for involuntary commitment, then you shall take the respondent home or to a consenting person's home in the originating county and release him/her.
 - IF the examiner finds that the respondent IS mentally ill and a proper subject for outpatient commitment, then you shall take the respondent home or to a consenting person's home in the originating county and release him/her.
 - IF the examiner finds that the respondent IS mentally ill and a proper subject for inpatient commitment, then you shall transport the respondent to the 24-hour facility named below for temporary custody, examination and treatment pending a district court hearing.
 - IF the examiner finds that the respondent IS a substance abuser and subject to involuntary commitment, the examiner must recommend whether the respondent be taken to a 24-hour facility or released, and then you shall either release him/her or transport the respondent to the 24-hour facility named below for temporary custody, examination and treatment pending a district court hearing.
- 2. and transport the respondent directly to the 24-hour facility named below, for temporary custody, examination and treatment pending a district court hearing. (FOR PHYSICIAN/PSYCHOLOGIST PETITIONERS ONLY.)

Name Of 24-Hour Facility For Mentally Ill

Date

Or following facility designated by area authority:

Time

AM PM

Name Of 24-Hour Facility For Substance Abuser

Signature

Or following facility designated by area authority:

- Deputy CSC
- Assistant CSC
- Clerk Of Superior Court
- Magistrate

NOTE TO MAGISTRATE OR CLERK:

If the respondent is mentally retarded in addition to being mentally ill, you must contact the area authority before issuing a custody order to determine the facility to which the respondent will be taken. If the area mental health authority where the respondent resides has a single portal plan, you must call the area authority to determine the appropriate 24-hour facility or other treatment before issuing any custody order.

NOTE TO ANY LAW ENFORCEMENT OFFICER:

You shall take the respondent into custody within 24 hours after the date this Order is signed. Without unnecessary delay after assuming custody, you shall take the respondent to an area facility for examination by a person authorized by law to conduct the examination; if an authorized examiner is not immediately available in the area facility, you shall take the respondent to any authorized examiner locally available. If an authorized examiner is not available, you may temporarily detain the respondent in an area facility if one is available; if an area facility is not available, you may detain the respondent under appropriate supervision, in the respondent's home, in a private hospital or clinic, or in a general hospital, but not in a jail or other penal facility. **Complete the Return Of Service on the reverse and return to the Clerk of Superior Court immediately.**

II. 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	<input type="checkbox"/> AM	<input type="checkbox"/> PM
Name Of Law Enforcement Officer		Signature Of Law Enforcement Officer		

A. PATIENT DELIVERY TO LOCAL EVALUATION SITE

- 1. The respondent was presented to an authorized examiner locally available as shown below.
- 2. The respondent was temporarily detained at the facility named below until the respondent could be examined by an authorized examiner locally available.

Date Presented	Time	<input type="checkbox"/> AM	<input type="checkbox"/> PM	Name Of Examiner
Name Of Local Facility		Name Of Law Enforcement Officer	Signature Of Law Enforcement Officer	

B. FOR USE AFTER PRELIMINARY EXAMINATION

- 1. Upon examination, the examiner named above found that the respondent is mentally ill and meets the criteria for outpatient commitment, or is a substance abuser and meets the criteria for commitment and the examiner recommends release pending a hearing. I returned the respondent to his/her regular residence or the home of a consenting person.
- 2. Upon examination, the examiner named above found that the respondent is mentally ill and meets the criteria for inpatient commitment, or is a substance abuser and meets the criteria for commitment and the examiner recommends that the respondent be held pending the district court hearing.
 - I transported the respondent and placed the respondent in the temporary custody of the facility named below for observation and treatment.
 - I placed the respondent in the custody of the agency named below for transportation to the 24-hour facility.
- 3. Upon examination, the examiner named above found that the respondent did not meet the criteria for inpatient or outpatient commitment. I returned the respondent to his/her regular residence or the home of a consenting person.

The examiner's written statement is attached. will be forwarded.

Name Of 24-Hour Facility	Date Delivered	Time Delivered	<input type="checkbox"/> AM	<input type="checkbox"/> PM	Date Of Return
Name Of Transporting Agency		Signature Of Law Enforcement Official			

C. FOR USE WHEN PETITIONER IS PHYSICIAN/PSYCHOLOGIST

(NOTE: Section II above **MUST** be completed. Sections A and B should **NOT** be completed.)

I transported the respondent directly to and placed him/her in the temporary custody of the facility named below.

Name Of 24-Hour Facility	Date Delivered	Time Delivered	<input type="checkbox"/> AM	<input type="checkbox"/> PM	Date Of Return
Name Of Transporting Agency		Signature Of Law Enforcement Official			

D. FOR USE WHEN ANOTHER AGENCY TRANSPORTS THE RESPONDENT

I took custody of the respondent from the officer named above, transported the respondent and placed him/her in the temporary custody of the facility named below for observation and treatment.

Name Of 24-Hour Facility	Date Delivered	Time Delivered	<input type="checkbox"/> AM	<input type="checkbox"/> PM	Date Of Return
Name Of Person Taking Custody of Respondent		Signature Of Person Taking Custody Of Respondent			

E. FOR USE WHEN STATE FACILITY TRANSFERS WITHOUT ADMISSION

Pursuant to G.S. 122C-261(f), I took custody of the respondent from the state 24-hour facility named above, where he/she was not admitted, and transported the respondent and placed him/her in the temporary custody of the facility named below for observation and treatment.

Name Of Facility To Which Transferred	Date Delivered	Time Delivered	<input type="checkbox"/> AM	<input type="checkbox"/> PM	Date Of Return
Name Of Transporting Agency		Signature Of Law Enforcement Or State Facility Official			

County _____

File # _____

Client Record # _____

Film # _____

**EXAMINATION AND RECOMMENDATION TO
 DETERMINE
 NECESSITY FOR INVOLUNTARY COMMITMENT**

Name of Respondent:	Age	DOB	Sex	Race	M.S.
Address (Street, Box Number, City, State, Zip (use facility address after 1 year in facility):			County:		
			Phone:		
Legally Responsible Person <input type="checkbox"/> Next of Kin (Name and Address)			Relationship:		
			Phone:		
Petitioner (Name and address)			Relationship:		
			Phone		

The above-named respondent was examined on _____, 20__ at _____ o'clock ____.M. at _____
 _____ OR, I examined the respondent via telemedicine technology on _____ 20__ at
 _____ o'clock ____.M. Included in the examination was an assessment of the respondent's: (1) current and previous mental illness or
 mental retardation including, if available, previous treatment history; (2) dangerousness to self or others as defined in G.S. 122C-3 (11*); (3)
 ability to survive safely without inpatient commitment, including the availability of supervision from family, friends, or others; and (4) capacity to
 make an informed decision concerning treatment. (1) current and previous substance abuse including, if available, previous treatment history;
 and (2) dangerousness to himself or others as defined in G.S. 122C-3 (11*). The following findings and recommendations are made based on
 this examination. For telemedicine evaluations only: I certify to a reasonable degree of medical certainty that the results of the examination
 via telemedicine were the same as if I had been personally present with the respondent OR The respondent needs to be taken to a facility for
 a face to face evaluation. (*Statutory Definitions are on reverse side)

SECTION I - CRITERIA FOR COMMITMENT

Inpatient. It is my opinion that the respondent is: mentally ill; dangerous to self; dangerous to others
 (1st Exam – Physician or Psychologist) in addition to being mentally ill is also mentally retarded
 (2nd Exam – Physician only) none of the above

Outpatient. It is my opinion that: the respondent is mentally ill
 (Physician or Psychologist) the respondent is capable of surviving safely in the community with available supervision
 based upon the respondent's treatment history, the respondent is in need of treatment in order
 to prevent further disability or deterioration which would predictably result in dangerousness
 as defined by G.S. 122C-3 (11*)
 the respondent's current mental status or the nature of his illness limits or negates his/her
 ability to make an informed decision to seek treatment voluntarily or comply with
 recommended treatment
 none of above

Substance Abuse. It is my opinion that the respondent is: a substance abuser
 (1st Exam – Physician or Psychologist; 2nd Exam – If 1st dangerous to himself or others
 exam done by Physician, 2nd exam may be done by Qual. Prof.) none of the above

SECTION II – DESCRIPTION OF FINDINGS

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

over

Notable Physical Conditions:

Current Medications (medical and psychiatric)

Impression/Diagnosis:

SECTION III - RECOMMENDATION FOR DISPOSITION

- Inpatient Commitment for _____ days (respondent must be mentally ill **and** dangerous to self or others)
- Outpatient Commitment (respondent must meet **ALL** of the first four criteria outlined in Section I, **Outpatient**)
- Proposed Outpatient Treatment Center or Physician: (Name) _____
(Address and Phone Number) _____
- LME notified of appointment: (Name of LME and date) _____
- Substance Abuse Commitment (respondent must meet both criteria outlined in Section I, **Substance Abuse**)
 - Release respondent pending hearing - Referred to: _____
 - Hold respondent at 24-hour facility pending hearing – Facility: _____
- Respondent does not meet the criteria for commitment but custody order states that the respondent was charged with a violent crime, including a crime involving assault with a deadly weapon, and that he was found not guilty by reason of insanity or incapable of proceeding: therefore, the respondent will not be released until so ordered following the court hearing.
- Respondent or Legally Responsible Person Consented to Voluntary Treatment
- Release Respondent and Terminate Proceedings (insufficient findings to indicate that respondent meets commitment criteria)
- Respondent was held 7 days from issuance of custody order but continues to meet commitment criteria. A new petition will be filed.
- Other (*Specify*) _____

<p style="text-align: right;">_____ M.D.</p> <p style="text-align: center;">Physician Signature</p> <hr/> <p style="text-align: center;">Signature/Title – Eligible Psychologist/Qualified Professional</p> <hr/> <p style="text-align: center;">Print Name of Examiner</p> <hr/> <p style="text-align: center;">Address or Facility</p> <hr/> <p style="text-align: center;">City and State</p> <hr/> <p style="text-align: center;">Telephone Number</p>	<p>This is to certify that this is a true and exact copy of the Examination and Recommendation for Involuntary Commitment</p> <hr/> <p style="text-align: center;">Original Signature – Record Custodian</p> <hr/> <p style="text-align: center;">Title</p> <hr/> <p style="text-align: center;">Address or Facility</p> <hr/> <p style="text-align: center;">Date</p> <p>NOTE: Only copies to be introduced as evidence need to be certified</p>
--	--

CC: Clerk of Superior Court where petition was initiated (initial hearing only)
 Clerk of Superior Court where 24-hour facility is located or where outpatient treatment is supervised
 Respondent or Respondent’s Attorney and State’s Attorneys, when applicable
 Proposed Outpatient Treatment Center or Physician (Outpatient Commitment); Area Program / Physician (Substance Abuse Commitment)
 NOTE: If it cannot be reasonably anticipated that the clerk will receive the copies within 48 hours of the time that it was signed, the physician or eligible psychologist/qualified professional shall communicate his findings to the clerk by telephone.

***STATUTORY DEFINITIONS**

“Dangerous to self”. Within the relevant past: (a) the individual has acted in such a way as to show: (1) that he would be unable without care, supervision, and the continued assistance of others not otherwise available, to exercise self-control, judgment, and discretion in the conduct of his daily responsibilities and social relations or to satisfy his need for nourishment, personal or medical care, shelter, or self-protection and safety; and (2) that there is a reasonable probability of his suffering serious physical debilitation within the near future unless adequate treatment is given. A showing of behavior that is grossly irrational, of actions that the individual is unable to control, of behavior that is grossly inappropriate to the situation, or of other evidence of severely impaired insight and judgment shall create a **prima facie** inference that the individual is unable to care for himself; or (b) the individual has attempted suicide or threatened suicide and that there is a reasonable probability of suicide unless adequate treatment is given; or (c) the individual has mutilated himself or attempted to mutilate himself and that there is a reasonable probability of serious self-mutilation unless adequate treatment is given. NOTE: Previous episodes of dangerousness to self, when applicable, may be considered when determining reasonable probability of physical debilitation, suicide, or self-mutilation.

“Dangerous to others”. Within the relevant past, the individual has inflicted or attempted to inflict or threatened to inflict serious bodily harm on another, or has acted in such a way as to create a substantial risk of serious bodily harm to another, or has engaged in extreme destruction of property; and that there is a reasonable probability that this conduct will be repeated. Previous episodes of dangerousness to others, when applicable, may be considered when determining reasonable probability of future dangerous conduct.

“Mental illness”. (a) when applied to an adult, an illness which so lessens the capacity of the individual to use self-control, judgment, and discretion in the conduct of his affairs and social relations as to make it necessary or advisable for him to be under treatment, care, supervision, guidance or control; and (b) when applied to a minor, a mental condition, other than mental retardation alone, that so lessens or impairs the youth’s capacity to exercise age adequate self-control and judgment in the conduct of his activities and social relationships so that he is in need of treatment.

“Substance abuser”. An individual who engages in the pathological use or abuse of alcohol or other drugs in a way or to a degree that produces an impairment in personal, social, or occupational functioning. Substance abuse may include a pattern of tolerance and withdrawal.

_____ 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
- Clerk Of Superior Court

- Assistant CSC
- 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.*

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: _____

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.*

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.

TO LAW ENFORCEMENT: See back side for Return of Service

RETURN OF SERVICE			
<input type="checkbox"/> Respondent WAS NOT taken into custody for the following reason:			
<input type="checkbox"/> I certify that this Order was received and served as follows:			
<i>Date Respondent Taken into Custody</i>	<i>Time</i>		
	<input type="checkbox"/> AM <input type="checkbox"/> PM		
<i>Name of 24-Hour Facility</i>	<i>Date Delivered</i>	<i>Time Delivered</i>	<i>Date of Return</i>
		AM <input type="checkbox"/> PM <input type="checkbox"/>	
<i>Name of Transporting Agency</i>	<i>Signature of Law Enforcement Official</i>		

THE OFFICE OF MAGISTRATE

HISTORY:

How did you get here?

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

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

Magistrates are officers of the district court division and are thus supervised by the chief district court judge. In many counties, a “chief magistrate” assists the chief judge with scheduling and other administrative duties.

Initial term of office: _____

Appointed to vacancy? _____

Term expires: _____

Procedure for removal from office (GS 7A-173)

1. “Sworn, written charges” are filed in clerk’s office.
 2. Chief district court judge determines that these charges, if true, constitute grounds for removal. This determination allows chief to suspend magistrate with pay pending final determination.
 3. Superior court judge conducts public hearing on the charges. “If he finds that grounds for removal exist, he shall enter an order permanently removing the magistrate from office, and terminating his salary. “
 4. A magistrate may be removed from office for the same reasons as a judge:
 - willful misconduct in office,
 - willful and persistent failure to perform the judge's duties
 - habitual intemperance
 - conviction of a crime involving moral turpitude
 - or conduct prejudicial to the administration of justice that brings the judicial office into disrepute
-
-
-
-

Continuing education requirements

Magistrates are required to complete 12 hours of continuing education each biennium. A biennium begins on January 1 of odd-numbered years and ends on December 31 of even-numbered years. This course satisfies your continuing ed requirement through 12/31/2012.

WHAT DOES IT MEAN TO BE A MAGISTRATE?

ACTIVITY: WHAT WILL THEY SAY ABOUT YOU WHEN YOU'RE GONE?

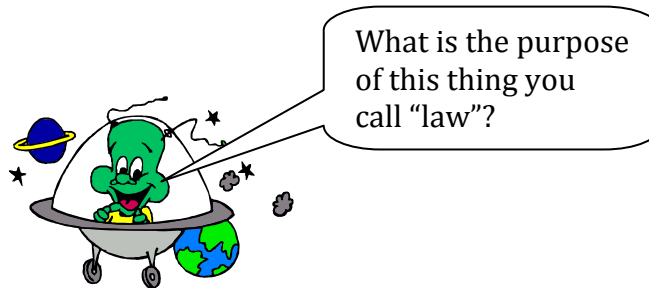
Imagine that you have reached the end of a long career serving as magistrate. List three words that you hope will be used most frequently – or by the people whose opinion is most important to you -- to describe your work as a magistrate:

(1) _____

(2) _____

(3) _____

INTRODUCTION TO LAW



Key principles of legal system: _____

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

ACTIVITY: PUT THIS IN YOUR OWN WORDS:

What determines whether a defendant in a civil lawsuit has received “due process”? What is the defendant entitled to, specifically?

WHERE DOES LAW COME FROM?

STATUTES

§ 42-46. Authorized fees.

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

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

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

CASES

IN THE COURT OF APPEALS

671

FRIDAY v. UNITED DOMINION REALTY TR., INC.

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

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

No. COA02-283

(Filed 21 January 2003)

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

A NOTE ON FINDING LEGAL RESOURCES:

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

G.S. is an abbreviation standing for _____.

Can you guess what NCGS stands for? _____

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

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

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

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

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

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

Statutes are easy to find online; just go to

<http://www.ncleg.net/gascripts/Statutes/Statutes.asp>.

Using the official website makes it more likely that you're reading the current version of the statute.

The citation for the case shown above is Friday v. United Dominion Realty, Inc., 155 N.C. App. 671 (2003).

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

What is the plaintiff's name? _____

What sort of entity is the defendant? _____

When was the case decided? _____



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

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

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

ETHICS

Magistrates are prohibited from engaging in willful misconduct (obviously) and from conduct “prejudicial to the administration of justice that brings the judicial office into disrepute.”

ACTIVITY: PUT IN YOUR OWN WORDS:

What does it mean to prohibit conduct—other than willful misconduct—“that brings the judicial office into disrepute?”

North Carolina Code of Judicial Conduct

Preamble

An independent and honorable judiciary is indispensable to justice in our society, and to this end and in furtherance thereof, this Code of Judicial Conduct is hereby established. *A violation of this Code of Judicial Conduct may be deemed conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or willful misconduct in office, or otherwise as grounds for disciplinary proceedings. . . .*

Canon 1

A judge should uphold the integrity and independence of the judiciary.

Canon 2

A judge should avoid impropriety in all his activities.

Canon 3

A judge should perform the duties of his office impartially and diligently.

Canon 4

A judge may participate in cultural or historical activities or engage in activities concerning the legal, economic, educational, or governmental system, or the administration of justice.

Canon 5

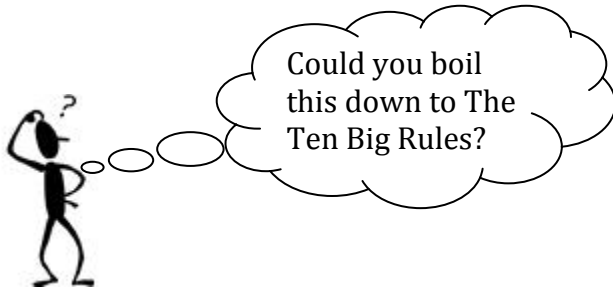
A judge should regulate his extra-judicial activities to ensure that they do not prevent him from carrying out his judicial duties.

Canon 6

A judge should regularly file reports of compensation received for quasi-judicial and extra-judicial activities.

Canon 7

A judge may engage in political activity consistent with his status as a public official.



THE TEN BIG RULES¹

1. □ When it comes to behaving honorably, a magistrate is a magistrate 24 hours day.
2. □ A magistrate's judicial duties must be given priority over all other activities.
3. □ An ethical magistrate is patient, dignified, and courteous to all those with whom he comes into contact with in the course of performing his responsibilities.

4. □ A magistrate must avoid ex parte communication with parties interested in a proceeding except when such communication is authorized by law.
5. □ A magistrate should avoid participating as a judicial official in a proceeding in which his or her impartiality might reasonably be questioned.

¹ Dona's paraphrase, offered for the purpose of structuring in-class discussion. The Ten Big Rules are certainly not to be relied upon instead of, or as a definitive restatement of, the Code of Judicial Conduct, which may be found in its entirety in the Appendix.

- 6. A magistrate should not allow his or her family, social, or personal relationships to influence his or her judicial conduct or judgment.
- 7. A magistrate may engage in civic and charitable activities and other public service, including teaching, writing, and public speaking, so long as (a) the magistrate does not raise funds for the organization; and (b) his or her activities do not raise doubt about the magistrate's ability to be impartial in performing the duties of the judicial office.
- 8. Neither a magistrate nor any member of the magistrate's family should accept a gift or other benefit given in connection with the magistrate's office.
- 9. A magistrate should never engage in direct fund-raising.
- 10. A magistrate should not endorse any particular candidate for office.

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-

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).

North Carolina Code of Judicial Conduct

Adopted April 2003

The North Carolina Code of Judicial Conduct is hereby amended to read as follows:

Preamble

An independent and honorable judiciary is indispensable to justice in our society, and to this end and in furtherance thereof, this Code of Judicial Conduct is hereby established. A violation of this Code of Judicial Conduct may be deemed conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or willful misconduct in office, or otherwise as grounds for disciplinary proceedings pursuant to Article 30 of Chapter 7A of the General Statutes of North Carolina. No other code or proposed code of judicial conduct shall be relied upon in the interpretation and application of this Code of Judicial Conduct.

Canon 1

A judge should uphold the integrity and independence of the judiciary.

A judge should participate in establishing, maintaining, and enforcing, and should himself observe, appropriate standards of conduct to ensure that the integrity and independence of the judiciary shall be preserved.

Canon 2

A judge should avoid impropriety in all his activities.

A. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge should not allow his family, social or other relationships to influence his judicial conduct or judgment. He should not lend the prestige of his office to advance the private interest of others; nor should he convey or permit others to convey the impression that they are in a special position to influence him. A judge may, based on personal knowledge, serve as a personal reference or provide a letter of recommendation. He should not testify voluntarily as a character witness.

C. A judge should not hold membership in any organization that practices unlawful discrimination on the basis of race, gender, religion or national origin.

Canon 3

A judge should perform the duties of his office impartially and diligently.

The judicial duties of a judge take precedence over all his other activities. His judicial duties include all the duties of his office prescribed by law. In the performance of these duties, the following standards apply.

A. Adjudicative responsibilities.

(1) A judge should be faithful to the law and maintain professional competence in it. He should be unswayed by partisan interests, public clamor, or fear of criticism.

(2) A judge should maintain order and decorum in proceedings before him.

(3) A judge should be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom he deals in his official capacity, and should require similar conduct of lawyers, and of his staff, court officials and others subject to his direction and control.

(4) A judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law, and, except as authorized by law, neither knowingly initiate nor knowingly consider *ex parte* or other communications concerning a pending proceeding. A judge, however, may obtain the advice of a disinterested expert on the law applicable to a proceeding before him.

(5) A judge should dispose promptly of the business of the court.

(6) A judge should abstain from public comment about the merits of a pending proceeding in any state or federal court dealing with a case or controversy arising in North Carolina or addressing North Carolina law and should encourage similar abstention on the part of court personnel subject to his direction and control. This subsection does not prohibit a judge from making public statements in the course of official duties; from explaining for public information the proceedings of the Court; from addressing or discussing previously issued judicial decisions when serving as faculty or otherwise participating in educational courses or programs; or from addressing educational, religious, charitable, fraternal, political, or civic organizations.

(7) A judge should exercise discretion with regard to permitting broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto during civil or criminal sessions of court or recesses between sessions, pursuant to the provisions of Rule 15 of the General Rules of Practice for the Superior and District Courts.

B. Administrative responsibilities.

(1) A judge should diligently discharge his administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.

(2) A judge should require his staff and court officials subject to his direction and control to observe the standards of fidelity and diligence that apply to him.

(3) A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware.

(4) A judge should not make unnecessary appointments. He should exercise his power of appointment only on the basis of merit, avoiding nepotism and favoritism. He should not approve compensation of appointees beyond the fair value of services rendered.

C. Disqualification.

(1) On motion of any party, a judge should disqualify himself in a proceeding in which his impartiality may reasonably be questioned, including but not limited to instances where:

(a) He has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceedings;

(b) He served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

(c) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(d) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) Is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) Is acting as a lawyer in the proceeding;

(iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

(iv) Is to the judge's knowledge likely to be a material witness in the proceeding.

(2) A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.

(3) For the purposes of this section:

(a) The degree of relationship is calculated according to the civil law system;

(b) "Fiduciary" includes such relationships as executor, administrator, trustee and guardian;

(c) "Financial interest" means ownership of a substantial legal or equitable interest (*i.e.*, an interest that would be significantly affected in value by the outcome of the subject legal proceeding), or a relationship as director or other active participant in the affairs of a party, except that:

(i) ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;

(ii) an office in an educational, cultural, historical, religious, charitable, fraternal or civic organization is not a "financial interest" in securities held by the organization.

D. Remittal of disqualification.

Nothing in this Canon shall preclude a judge from disqualifying himself from participating in any proceeding upon his own initiative. Also, a judge potentially disqualified by the terms of Canon 3C may, instead of withdrawing from the proceeding, disclose on the record the basis of his potential disqualification. If, based on such disclosure, the parties and lawyers, on behalf of their clients and independently of the judge's participation, all agree in writing that the judge's basis for potential disqualification is immaterial or insubstantial, the judge is no longer disqualified, and may participate in the proceeding. The agreement, signed by all lawyers, shall be incorporated in the record of the proceeding. For purposes of this section, *pro se* parties shall be considered lawyers.

Canon 4

A judge may participate in cultural or historical activities or engage in activities concerning the legal, economic, educational, or governmental system, or the administration of justice.

A judge, subject to the proper performance of his judicial duties, may engage in the following quasi-judicial activities, if in doing so he does not cast substantial doubt on his capacity to decide impartially any issue that may come before him:

A. He may speak, write, lecture, teach, participate in cultural or historical activities, or otherwise engage in activities concerning the economic, educational, legal, or governmental system, or the administration of justice.

B. He may appear at a public hearing before an executive or legislative body or official with respect to activities permitted under Canon 4A or other provision of this Code, and he may otherwise consult with an executive or legislative body or official.

C. He may serve as a member, officer or director of an organization or governmental agency concerning the activities described in Canon 4A, and may participate in its management and investment decisions. He may not actively assist such an organization in raising funds but may be

listed as a contributor on a fund-raising invitation. He may make recommendations to public and private fund-granting agencies regarding activities or projects undertaken by such an organization.

Canon 5

A judge should regulate his extra-judicial activities to ensure that they do not prevent him from carrying out his judicial duties.

A. Avocational activities. A judge may write, lecture, teach, and speak on legal or non-legal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not substantially interfere with the performance of his judicial duties.

B. Civic and charitable activities. A judge may participate in civic and charitable activities that do not reflect adversely upon his impartiality or interfere with the performance of his judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal or civic organization subject to the following limitations.

(1) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before him.

(2) A judge may be listed as an officer, director or trustee of any cultural, educational, historical, religious, charitable, fraternal or civic organization. He may not actively assist such an organization in raising funds but may be listed as a contributor on a fund-raising invitation.

(3) A judge may serve on the board of directors or board of trustees of such an organization even though the board has the responsibility for approving investment decisions.

C. Financial activities.

(1) A judge should refrain from financial and business dealings that reflect adversely on his impartiality, interfere with the proper performance of his judicial duties, exploit his judicial position or involve him in frequent transactions with lawyers or persons likely to come before the court on which he serves.

(2) Subject to the requirements of subsection (1), a judge may hold and manage his own personal investments or those of his spouse, children, or parents, including real estate investments, and may engage in other remunerative activity not otherwise inconsistent with the provisions of this Code but should not serve as an officer, director or manager of any business.

(3) A judge should manage his investments and other financial interests to minimize the number of cases in which he is disqualified.

(4) Neither a judge nor a member of his family residing in his household should accept a gift from anyone except as follows:

(a) A judge may accept a gift incident to a public testimonial to him; books supplied by publishers on a complimentary basis for official or academic use; or an invitation to the judge and his spouse to attend a bar-related function, a cultural or historical activity, or an event related to the economic, educational, legal, or governmental system, or the administration of justice;

(b) A judge or a member of his family residing in his household may accept ordinary social hospitality; a gift, favor or loan from a friend or relative; a wedding, engagement or other special occasion gift; a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges; or a scholarship or fellowship awarded on the same terms applied to other applicants;

(c) Other than as permitted under subsection C.(4)(b) of this Canon, a judge or a member of his family residing in his household may accept any other gift only if the donor is not a party presently before him and, if its value exceeds \$500, the judge reports it in the same manner as he reports compensation in Canon 6C.

(5) For the purposes of this section "member of his family residing in his household" means any relative of a judge by blood or marriage, or a person treated by a judge as a member of his family, who resides in his household.

(6) A judge is not required by this Code to disclose his income, debts or investments, except as provided in this Canon and Canons 3 and 6.

(7) Information acquired by a judge in his judicial capacity should not be used or disclosed by him in financial dealings or for any other purpose not related to his judicial duties.

D. Fiduciary activities. A judge should not serve as the executor, administrator, trustee, guardian or other fiduciary, except for the estate, trust or person of a member of his family, and then only if such service will not interfere with the proper performance of his judicial duties. "Member of his family" includes a spouse, child, grandchild, parent, grandparent or any other relative of the judge by blood or marriage. As a family fiduciary a judge is subject to the following restrictions:

(1) He should not serve if it is likely that as a fiduciary he will be engaged in proceedings that would ordinarily come before him, or if the estate, trust or ward becomes involved in adversarial proceedings in the court on which he serves or one under its appellate jurisdiction.

(2) While acting as a fiduciary a judge is subject to the same restrictions on financial activities that apply to him in his personal capacity.

E. Arbitration. A judge should not act as an arbitrator or mediator. However, an emergency justice or judge of the Appellate Division designated as such pursuant to Article 6 of

Chapter 7A of the General Statutes of North Carolina, and an Emergency Judge of the District Court or Superior Court commissioned as such pursuant to Article 8 of Chapter 7A of the General Statutes of North Carolina may serve as an arbitrator or mediator when such service does not conflict with or interfere with the justice's or judge's judicial service in emergency status. A judge of the Appellate Division may participate in any dispute resolution program conducted at the Court of Appeals and authorized by the Supreme Court.

F. Practice of law. A judge should not practice law.

G. Extra-judicial appointments. A judge should not accept appointment to a committee, commission, or other body concerned with issues of fact or policy on matters other than those relating to cultural or historical matters, the economic, educational, legal or governmental system, or the administration of justice. A judge may represent his country, state or locality on ceremonial occasions or in connection with historical, educational or cultural activities.

Canon 6

A judge should regularly file reports of compensation received for quasi-judicial and extra-judicial activities.

A judge may receive compensation, honoraria and reimbursement of expenses for the quasi-judicial and extra-judicial activities permitted by this Code, subject to the following restrictions:

A. Compensation and honoraria. Compensation and honoraria should not exceed a reasonable amount.

B. Expense reimbursement. Expense reimbursement should be limited to the actual cost of travel, food and lodging reasonably incurred by the judge and, where appropriate to the occasion, by his spouse. Any payment in excess of such an amount is compensation.

C. Public reports. A judge shall report the name and nature of any source or activity from which he received more than \$2,000 in income during the calendar year for which the report is filed. Any required report shall be made annually and filed as a public document as follows: The members of the Supreme Court shall file such reports with the Clerk of the Supreme Court; the members of the Court of Appeals shall file such reports with the Clerk of the Court of Appeals; and each Superior Court Judge, regular, special, and emergency, and each District Court Judge, shall file such report with the Clerk of the Superior Court of the county in which he resides. For each calendar year, such report shall be filed, absent good cause shown, not later than May 15th of the following year.

Canon 7

A judge may engage in political activity consistent with his status as a public official.

The provisions of Canon 7 are designed to strike a balance between two important but competing considerations: (1) the need for an impartial and independent judiciary and (2) in light of the continued requirement that judicial candidates run in public elections as mandated by the Constitution and laws of North Carolina, the right of judicial candidates to engage in constitutionally protected political activity. To promote clarity and to avoid potentially unfair application of the provisions of this Code, subsection B of Canon 7 establishes a safe harbor of permissible political conduct.

A. Terminology. For the purposes of this Canon only, the following definitions apply.

(1) A “candidate” is a person actively and publicly seeking election to judicial office. A person becomes a candidate for judicial office as soon as he makes a public declaration of candidacy, declares or files as a candidate with the appropriate election authority, authorizes solicitation or acceptance of contributions or public support, or sends a letter of intent to the chair of the Judicial Standards Commission. The term “candidate” has the same meaning when applied to a judge seeking election to a non-judicial office.

(2) To “solicit” means to directly, knowingly and intentionally make a request, appeal or announcement, public or private, oral or written, whether in person or through the press, radio, television, telephone, Internet, billboard, or distribution and circulation of printed materials, that expressly requests other persons to contribute, give, loan or pledge any money, goods, labor, services or real property interest to a specific individual’s efforts to be elected to public office.

(3) To “endorse” means to knowingly and expressly request, appeal or announce publicly, orally or in writing, whether in person or through the press, radio, television, telephone, Internet, billboard or distribution and circulation of printed materials, that other persons should support a specific individual in his efforts to be elected to public office.

B. Permissible political conduct. A judge or a candidate may:

(1) attend, preside over, and speak at any political party gathering, meeting or other convocation, including a fund-raising function for himself, another individual or group of individuals seeking election to office and the judge or candidate may be listed or noted within any publicity relating to such an event, so long as he does not expressly endorse a candidate (other than himself) for a specific office or expressly solicit funds from the audience during the event;

(2) if he is a candidate, endorse any individual seeking election to any office or conduct a joint campaign with and endorse other individuals seeking election to judicial office, including the solicitation of funds for a joint judicial campaign;

(3) identify himself as a member of a political party and make financial contributions to a political party or organization; provided, however, that he may not personally make financial contributions or loans to any individual seeking election to office (other than himself) except as part of a joint judicial campaign as permitted in subsection B(2);

(4) personally solicit campaign funds and request public support from anyone for his own campaign or, alternatively, and in addition thereto, authorize or establish committees of responsible persons to secure and manage the solicitation and expenditure of campaign funds;

(5) become a candidate either in a primary or in a general election for a judicial office provided that he should resign his judicial office prior to becoming a candidate either in a party primary or in a general election for a non-judicial office;

(6) engage in any other constitutionally protected political activity.

C. Prohibited political conduct. A judge or a candidate should not:

(1) solicit funds on behalf of a political party, organization, or an individual (other than himself) seeking election to office, by specifically asking for such contributions in person, by telephone, by electronic media, or by signing a letter, except as permitted under subsection B of this Canon or otherwise within this Code;

(2) endorse a candidate for public office except as permitted under subsection B of this Canon or otherwise within this Code;

(3) intentionally and knowingly misrepresent his identity or qualifications.

D. Political conduct of family members. The spouse or other family member of a judge or a candidate is permitted to engage in political activity.

Limitation of Proceedings

Disciplinary proceedings to redress alleged violations of Canon 7 of this Code must be commenced within three months of the act or omission allegedly giving rise to the violation. Disciplinary proceedings to redress alleged violations of all other provisions of this Code must be commenced within three years of the act or omission allegedly giving rise to the violation; provided, however, that disciplinary proceedings may be instituted at any time against a judge convicted of a felony during his tenure in judicial office.

Scope and Effective Date of Compliance

The provisions of Canon 7 of this Code shall apply to judges and candidates for judicial office. The other provisions of this Code shall become effective as to a judge upon the administration of the judge's oath to the office of judge; provided, however, that it shall be permissible for a newly installed judge to facilitate or assist in the transfer of his prior duties as legal counsel but he may not be compensated therefor.

EVALUATION FOR DAY 1

Instructor: Mark Botts

Topics: Involuntary Commitment

	Strongly Agree	Neither Agree Nor Disagree	Strongly Disagree		
1. The instructor made the subject matter interesting.	[5]	[4]	[3]	[2]	[1]
2. The instructor seemed to be concerned about whether students learned the material.	[5]	[4]	[3]	[2]	[1]
3. The instructor presented material in a clear manner.	[5]	[4]	[3]	[2]	[1]
4. The instructor was prepared for class.	[5]	[4]	[3]	[2]	[1]
5. This instructor's session(s) helped me gain useful knowledge and skills.	[5]	[4]	[3]	[2]	[1]

Instructor: Dona Lewandowski

Topics: Introduction to Your Job; Introduction to Civil Law; Ethics

	Strongly Agree	Neither Agree Nor Disagree	Strongly Disagree		
1. The instructor made the subject matter interesting.	[5]	[4]	[3]	[2]	[1]
2. The instructor seemed to be concerned about whether students learned the material.	[5]	[4]	[3]	[2]	[1]
3. The instructor presented material in a clear manner.	[5]	[4]	[3]	[2]	[1]
4. The instructor was prepared for class.	[5]	[4]	[3]	[2]	[1]
5. This instructor's session(s) helped me gain useful knowledge and skills.	[5]	[4]	[3]	[2]	[1]

SPECIFIC SESSIONS

Your responses to this part of the evaluation will allow us to make changes in content and our approach to teaching these subjects. For example, was the material too basic, or not basic enough? Did you wish there were more (or fewer) exercises and opportunities to practice? These are just examples—any feedback you provide will be helpful.

Introduction to the Job:

Introduction to Civil Law:

Ethics:

WHAT YOU'D LIKE US TO KNOW BEFORE TOMORROW

Use this section to tell us about anything that would make your experience more enjoyable or help you learn. (Example: we now have a hole-puncher in the classroom because students requested that change.) If you're having trouble hearing, or you're too cold, or you'd appreciate more frequent, shorter breaks—tell us about that here, and we'll see what we can do.

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August 17, 2011

Do You Suffer From Decision Fatigue?

By JOHN TIERNEY

Three men doing time in Israeli prisons recently appeared before a parole board consisting of a judge, a criminologist and a social worker. The three prisoners had completed at least two-thirds of their sentences, but the parole board granted freedom to only one of them. Guess which one:

Case 1 (heard at 8:50 a.m.): An Arab Israeli serving a 30-month sentence for fraud.

Case 2 (heard at 3:10 p.m.): A Jewish Israeli serving a 16-month sentence for assault.

Case 3 (heard at 4:25 p.m.): An Arab Israeli serving a 30-month sentence for fraud.

There was a pattern to the parole board's decisions, but it wasn't related to the men's ethnic backgrounds, crimes or sentences. It was all about timing, as researchers discovered by analyzing more than 1,100 decisions over the course of a year. Judges, who would hear the prisoners' appeals and then get advice from the other members of the board, approved parole in about a third of the cases, but the probability of being paroled fluctuated wildly throughout the day. Prisoners who appeared early in the morning received parole about 70 percent of the time, while those who appeared late in the day were paroled less than 10 percent of the time.

The odds favored the prisoner who appeared at 8:50 a.m. — and he did in fact receive parole. But even though the other Arab Israeli prisoner was serving the same sentence for the same crime — fraud — the odds were against him when he appeared (on a different day) at 4:25 in the afternoon. He was denied parole, as was the Jewish Israeli prisoner at 3:10 p.m., whose sentence was shorter than that of the man who was released. They were just asking for parole at the wrong time of day.

There was nothing malicious or even unusual about the judges' behavior, which was reported earlier this year by Jonathan Levav of Stanford and Shai Danziger of Ben-Gurion University. The judges' erratic judgment was due to the occupational hazard of being, as George W. Bush once put it, "the decider." The mental work of ruling on case after case, whatever the individual merits, wore them down. This sort of decision fatigue can make quarterbacks prone to dubious choices late in

the game and C.F.O.'s prone to disastrous dalliances late in the evening. It routinely warps the judgment of everyone, executive and nonexecutive, rich and poor — in fact, it can take a special toll on the poor. Yet few people are even aware of it, and researchers are only beginning to understand why it happens and how to counteract it.

Decision fatigue helps explain why ordinarily sensible people get angry at colleagues and families, splurge on clothes, buy junk food at the supermarket and can't resist the dealer's offer to rustproof their new car. No matter how rational and high-minded you try to be, you can't make decision after decision without paying a biological price. It's different from ordinary physical fatigue — you're not consciously aware of being tired — but you're low on mental energy. The more choices you make throughout the day, the harder each one becomes for your brain, and eventually it looks for shortcuts, usually in either of two very different ways. One shortcut is to become reckless: to act impulsively instead of expending the energy to first think through the consequences. (Sure, tweet that photo! What could go wrong?) The other shortcut is the ultimate energy saver: do nothing. Instead of agonizing over decisions, avoid any choice. Ducking a decision often creates bigger problems in the long run, but for the moment, it eases the mental strain. You start to resist any change, any potentially risky move — like releasing a prisoner who might commit a crime. So the fatigued judge on a parole board takes the easy way out, and the prisoner keeps doing time.

Decision fatigue is the newest discovery involving a phenomenon called ego depletion, a term coined by the social psychologist Roy F. Baumeister in homage to a Freudian hypothesis. Freud speculated that the self, or ego, depended on mental activities involving the transfer of energy. He was vague about the details, though, and quite wrong about some of them (like his idea that artists “sublimate” sexual energy into their work, which would imply that adultery should be especially rare at artists' colonies). Freud's energy model of the self was generally ignored until the end of the century, when Baumeister began studying mental discipline in a series of experiments, first at Case Western and then at Florida State University.

These experiments demonstrated that there is a finite store of mental energy for exerting self-control. When people fended off the temptation to scarf down M&M's or freshly baked chocolate-chip cookies, they were then less able to resist other temptations. When they forced themselves to remain stoic during a tearjerker movie, afterward they gave up more quickly on lab tasks requiring self-discipline, like working on a geometry puzzle or squeezing a hand-grip exerciser. Willpower turned out to be more than a folk concept or a metaphor. It really was a form of mental energy that could be exhausted. The experiments confirmed the 19th-century notion of willpower being like a muscle that was fatigued with use, a force that could be conserved by avoiding temptation. To

study the process of ego depletion, researchers concentrated initially on acts involving self-control — the kind of self-discipline popularly associated with willpower, like resisting a bowl of ice cream. They weren't concerned with routine decision-making, like choosing between chocolate and vanilla, a mental process that they assumed was quite distinct and much less strenuous. Intuitively, the chocolate-vanilla choice didn't appear to require willpower.

But then a postdoctoral fellow, Jean Twenge, started working at Baumeister's laboratory right after planning her wedding. As Twenge studied the results of the lab's ego-depletion experiments, she remembered how exhausted she felt the evening she and her fiancé went through the ritual of registering for gifts. Did they want plain white china or something with a pattern? Which brand of knives? How many towels? What kind of sheets? Precisely how many threads per square inch?

"By the end, you could have talked me into anything," Twenge told her new colleagues. The symptoms sounded familiar to them too, and gave them an idea. A nearby department store was holding a going-out-of-business sale, so researchers from the lab went off to fill their car trunks with simple products — not exactly wedding-quality gifts, but sufficiently appealing to interest college students. When they came to the lab, the students were told they would get to keep one item at the end of the experiment, but first they had to make a series of choices. Would they prefer a pen or a candle? A vanilla-scented candle or an almond-scented one? A candle or a T-shirt? A black T-shirt or a red T-shirt? A control group, meanwhile — let's call them the nondeciders — spent an equally long period contemplating all these same products without having to make any choices. They were asked just to give their opinion of each product and report how often they had used such a product in the last six months.

Afterward, all the participants were given one of the classic tests of self-control: holding your hand in ice water for as long as you can. The impulse is to pull your hand out, so self-discipline is needed to keep the hand underwater. The deciders gave up much faster; they lasted 28 seconds, less than half the 67-second average of the nondeciders. Making all those choices had apparently sapped their willpower, and it wasn't an isolated effect. It was confirmed in other experiments testing students after they went through exercises like choosing courses from the college catalog.

For a real-world test of their theory, the lab's researchers went into that great modern arena of decision making: the suburban mall. They interviewed shoppers about their experiences in the stores that day and then asked them to solve some simple arithmetic problems. The researchers politely asked them to do as many as possible but said they could quit at any time. Sure enough, the shoppers who had already made the most decisions in the stores gave up the quickest on the math problems. When you shop till you drop, your willpower drops, too.

Any decision, whether it's what pants to buy or whether to start a war, can be broken down into what psychologists call the Rubicon model of action phases, in honor of the river that separated Italy from the Roman province of Gaul. When Caesar reached it in 49 B.C., on his way home after conquering the Gauls, he knew that a general returning to Rome was forbidden to take his legions across the river with him, lest it be considered an invasion of Rome. Waiting on the Gaul side of the river, he was in the "predecisional phase" as he contemplated the risks and benefits of starting a civil war. Then he stopped calculating and crossed the Rubicon, reaching the "postdecisional phase," which Caesar defined much more felicitously: "The die is cast."

The whole process could deplete anyone's willpower, but which phase of the decision-making process was most fatiguing? To find out, Kathleen Vohs, a former colleague of Baumeister's now at the University of Minnesota, performed an experiment using the self-service Web site of Dell Computers. One group in the experiment carefully studied the advantages and disadvantages of various features available for a computer — the type of screen, the size of the hard drive, etc. — without actually making a final decision on which ones to choose. A second group was given a list of predetermined specifications and told to configure a computer by going through the laborious, step-by-step process of locating the specified features among the arrays of options and then clicking on the right ones. The purpose of this was to duplicate everything that happens in the postdecisional phase, when the choice is implemented. The third group had to figure out for themselves which features they wanted on their computers and go through the process of choosing them; they didn't simply ponder options (like the first group) or implement others' choices (like the second group). They had to cast the die, and that turned out to be the most fatiguing task of all. When self-control was measured, they were the one who were most depleted, by far.

The experiment showed that crossing the Rubicon is more tiring than anything that happens on either bank — more mentally fatiguing than sitting on the Gaul side contemplating your options or marching on Rome once you've crossed. As a result, someone without Caesar's willpower is liable to stay put. To a fatigued judge, denying parole seems like the easier call not only because it preserves the status quo and eliminates the risk of a parolee going on a crime spree but also because it leaves more options open: the judge retains the option of paroling the prisoner at a future date without sacrificing the option of keeping him securely in prison right now. Part of the resistance against making decisions comes from our fear of giving up options. The word "decide" shares an etymological root with "homicide," the Latin word "caedere," meaning "to cut down" or "to kill," and that loss looms especially large when decision fatigue sets in.

Once you're mentally depleted, you become reluctant to make trade-offs, which involve a

particularly advanced and taxing form of decision making. In the rest of the animal kingdom, there aren't a lot of protracted negotiations between predators and prey. To compromise is a complex human ability and therefore one of the first to decline when willpower is depleted. You become what researchers call a cognitive miser, hoarding your energy. If you're shopping, you're liable to look at only one dimension, like price: just give me the cheapest. Or you indulge yourself by looking at quality: I want the very best (an especially easy strategy if someone else is paying). Decision fatigue leaves you vulnerable to marketers who know how to time their sales, as Jonathan Levav, the Stanford professor, demonstrated in experiments involving tailored suits and new cars.

The idea for these experiments also happened to come in the preparations for a wedding, a ritual that seems to be the decision-fatigue equivalent of Hell Week. At his fiancée's suggestion, Levav visited a tailor to have a bespoke suit made and began going through the choices of fabric, type of lining and style of buttons, lapels, cuffs and so forth.

"By the time I got through the third pile of fabric swatches, I wanted to kill myself," Levav recalls. "I couldn't tell the choices apart anymore. After a while my only response to the tailor became 'What do you recommend?' I just couldn't take it."

Levav ended up not buying any kind of bespoke suit (the \$2,000 price made that decision easy enough), but he put the experience to use in a pair of experiments conducted with Mark Heitmann, then at Christian-Albrechts University in Germany; Andreas Herrmann, at the University of St. Gallen in Switzerland; and Sheena Iyengar, of Columbia. One involved asking M.B.A. students in Switzerland to choose a bespoke suit; the other was conducted at German car dealerships, where customers ordered options for their new sedans. The car buyers — and these were real customers spending their own money — had to choose, for instance, among 4 styles of gearshift knobs, 13 kinds of wheel rims, 25 configurations of the engine and gearbox and a palette of 56 colors for the interior.

As they started picking features, customers would carefully weigh the choices, but as decision fatigue set in, they would start settling for whatever the default option was. And the more tough choices they encountered early in the process — like going through those 56 colors to choose the precise shade of gray or brown — the quicker people became fatigued and settled for the path of least resistance by taking the default option. By manipulating the order of the car buyers' choices, the researchers found that the customers would end up settling for different kinds of options, and the average difference totaled more than 1,500 euros per car (about \$2,000 at the time). Whether the customers paid a little extra for fancy wheel rims or a lot extra for a more powerful engine depended on when the choice was offered and how much willpower was left in the customer.

Similar results were found in the experiment with custom-made suits: once decision fatigue set in, people tended to settle for the recommended option. When they were confronted early on with the toughest decisions — the ones with the most options, like the 100 fabrics for the suit — they became fatigued more quickly and also reported enjoying the shopping experience less.

Shopping can be especially tiring for the poor, who have to struggle continually with trade-offs. Most of us in America won't spend a lot of time agonizing over whether we can afford to buy soap, but it can be a depleting choice in rural India. Dean Spears, an economist at Princeton, offered people in 20 villages in Rajasthan in northwestern India the chance to buy a couple of bars of brand-name soap for the equivalent of less than 20 cents. It was a steep discount off the regular price, yet even that sum was a strain for the people in the 10 poorest villages. Whether or not they bought the soap, the act of making the decision left them with less willpower, as measured afterward in a test of how long they could squeeze a hand grip. In the slightly more affluent villages, people's willpower wasn't affected significantly. Because they had more money, they didn't have to spend as much effort weighing the merits of the soap versus, say, food or medicine.

Spears and other researchers argue that this sort of decision fatigue is a major — and hitherto ignored — factor in trapping people in poverty. Because their financial situation forces them to make so many trade-offs, they have less willpower to devote to school, work and other activities that might get them into the middle class. It's hard to know exactly how important this factor is, but there's no doubt that willpower is a special problem for poor people. Study after study has shown that low self-control correlates with low income as well as with a host of other problems, including poor achievement in school, divorce, crime, alcoholism and poor health. Lapses in self-control have led to the notion of the "undeserving poor" — epitomized by the image of the welfare mom using food stamps to buy junk food — but Spears urges sympathy for someone who makes decisions all day on a tight budget. In one study, he found that when the poor and the rich go shopping, the poor are much more likely to eat during the shopping trip. This might seem like confirmation of their weak character — after all, they could presumably save money and improve their nutrition by eating meals at home instead of buying ready-to-eat snacks like Cinnabons, which contribute to the higher rate of obesity among the poor. But if a trip to the supermarket induces more decision fatigue in the poor than in the rich — because each purchase requires more mental trade-offs — by the time they reach the cash register, they'll have less willpower left to resist the Mars bars and Skittles. Not for nothing are these items called impulse purchases.

And this isn't the only reason that sweet snacks are featured prominently at the cash register, just when shoppers are depleted after all their decisions in the aisles. With their willpower reduced,

they're more likely to yield to any kind of temptation, but they're especially vulnerable to candy and soda and anything else offering a quick hit of sugar. While supermarkets figured this out a long time ago, only recently did researchers discover why.

The discovery was an accident resulting from a failed experiment at Baumeister's lab. The researchers set out to test something called the Mardi Gras theory — the notion that you could build up willpower by first indulging yourself in pleasure, the way Mardi Gras feasters do just before the rigors of Lent. In place of a Fat Tuesday breakfast, the chefs in the lab at Florida State whipped up lusciously thick milkshakes for a group of subjects who were resting in between two laboratory tasks requiring willpower. Sure enough, the delicious shakes seemed to strengthen willpower by helping people perform better than expected on the next task. So far, so good. But the experiment also included a control group of people who were fed a tasteless concoction of low-fat dairy glop. It provided them with no pleasure, yet it produced similar improvements in self-control. The Mardi Gras theory looked wrong. Besides tragically removing an excuse for romping down the streets of New Orleans, the result was embarrassing for the researchers. Matthew Gailliot, the graduate student who ran the study, stood looking down at his shoes as he told Baumeister about the fiasco.

Baumeister tried to be optimistic. Maybe the study wasn't a failure. Something had happened, after all. Even the tasteless glop had done the job, but how? If it wasn't the pleasure, could it be the calories? At first the idea seemed a bit daft. For decades, psychologists had been studying performance on mental tasks without worrying much about the results being affected by dairy-product consumption. They liked to envision the human mind as a computer, focusing on the way it processed information. In their eagerness to chart the human equivalent of the computer's chips and circuits, most psychologists neglected one mundane but essential part of the machine: the power supply. The brain, like the rest of the body, derived energy from glucose, the simple sugar manufactured from all kinds of foods. To establish cause and effect, researchers at Baumeister's lab tried refueling the brain in a series of experiments involving lemonade mixed either with sugar or with a diet sweetener. The sugary lemonade provided a burst of glucose, the effects of which could be observed right away in the lab; the sugarless variety tasted quite similar without providing the same burst of glucose. Again and again, the sugar restored willpower, but the artificial sweetener had no effect. The glucose would at least mitigate the ego depletion and sometimes completely reverse it. The restored willpower improved people's self-control as well as the quality of their decisions: they resisted irrational bias when making choices, and when asked to make financial decisions, they were more likely to choose the better long-term strategy instead of going for a quick payoff. The ego-depletion effect was even demonstrated with dogs in two studies by Holly Miller

and Nathan DeWall at the University of Kentucky. After obeying sit and stay commands for 10 minutes, the dogs performed worse on self-control tests and were also more likely to make the dangerous decision to challenge another dog's turf. But a dose of glucose restored their willpower.

Despite this series of findings, brain researchers still had some reservations about the glucose connection. Skeptics pointed out that the brain's overall use of energy remains about the same regardless of what a person is doing, which doesn't square easily with the notion of depleted energy affecting willpower. Among the skeptics was Todd Heatherton, who worked with Baumeister early in his career and eventually wound up at Dartmouth, where he became a pioneer of what is called social neuroscience: the study of links between brain processes and social behavior. He believed in ego depletion, but he didn't see how this neural process could be caused simply by variations in glucose levels. To observe the process — and to see if it could be reversed by glucose — he and his colleagues recruited 45 female dieters and recorded images of their brains as they reacted to pictures of food. Next the dieters watched a comedy video while forcing themselves to suppress their laughter — a standard if cruel way to drain mental energy and induce ego depletion. Then they were again shown pictures of food, and the new round of brain scans revealed the effects of ego depletion: more activity in the nucleus accumbens, the brain's reward center, and a corresponding decrease in the amygdala, which ordinarily helps control impulses. The food's appeal registered more strongly while impulse control weakened — not a good combination for anyone on a diet. But suppose people in this ego-depleted state got a quick dose of glucose? What would a scan of their brains reveal?

The results of the experiment were announced in January, during Heatherton's speech accepting the leadership of the Society for Personality and Social Psychology, the world's largest group of social psychologists. In his presidential address at the annual meeting in San Antonio, Heatherton reported that administering glucose completely reversed the brain changes wrought by depletion — a finding, he said, that thoroughly surprised him. Heatherton's results did much more than provide additional confirmation that glucose is a vital part of willpower; they helped solve the puzzle over how glucose could work without global changes in the brain's total energy use. Apparently ego depletion causes activity to rise in some parts of the brain and to decline in others. Your brain does not stop working when glucose is low. It stops doing some things and starts doing others. It responds more strongly to immediate rewards and pays less attention to long-term prospects.

The discoveries about glucose help explain why dieting is a uniquely difficult test of self-control — and why even people with phenomenally strong willpower in the rest of their lives can have such a hard time losing weight. They start out the day with virtuous intentions, resisting croissants at

breakfast and dessert at lunch, but each act of resistance further lowers their willpower. As their willpower weakens late in the day, they need to replenish it. But to resupply that energy, they need to give the body glucose. They're trapped in a nutritional catch-22:

1. In order not to eat, a dieter needs willpower.
2. In order to have willpower, a dieter needs to eat.

As the body uses up glucose, it looks for a quick way to replenish the fuel, leading to a craving for sugar. After performing a lab task requiring self-control, people tend to eat more candy but not other kinds of snacks, like salty, fatty potato chips. The mere expectation of having to exert self-control makes people hunger for sweets. A similar effect helps explain why many women yearn for chocolate and other sugary treats just before menstruation: their bodies are seeking a quick replacement as glucose levels fluctuate. A sugar-filled snack or drink will provide a quick improvement in self-control (that's why it's convenient to use in experiments), but it's just a temporary solution. The problem is that what we identify as sugar doesn't help as much over the course of the day as the steadier supply of glucose we would get from eating proteins and other more nutritious foods.

The benefits of glucose were unmistakable in the study of the Israeli parole board. In midmorning, usually a little before 10:30, the parole board would take a break, and the judges would be served a sandwich and a piece of fruit. The prisoners who appeared just before the break had only about a 20 percent chance of getting parole, but the ones appearing right after had around a 65 percent chance. The odds dropped again as the morning wore on, and prisoners really didn't want to appear just before lunch: the chance of getting parole at that time was only 10 percent. After lunch it soared up to 60 percent, but only briefly. Remember that Jewish Israeli prisoner who appeared at 3:10 p.m. and was denied parole from his sentence for assault? He had the misfortune of being the sixth case heard after lunch. But another Jewish Israeli prisoner serving the same sentence for the same crime was lucky enough to appear at 1:27 p.m., the first case after lunch, and he was rewarded with parole. It must have seemed to him like a fine example of the justice system at work, but it probably had more to do with the judge's glucose levels.

It's simple enough to imagine reforms for the parole board in Israel — like, say, restricting each judge's shift to half a day, preferably in the morning, interspersed with frequent breaks for food and rest. But it's not so obvious what to do with the decision fatigue affecting the rest of society. Even if we could all afford to work half-days, we would still end up depleting our willpower all day long, as Baumeister and his colleagues found when they went into the field in Würzburg in central

Germany. The psychologists gave preprogrammed BlackBerrys to more than 200 people going about their daily routines for a week. The phones went off at random intervals, prompting the people to report whether they were currently experiencing some sort of desire or had recently felt a desire. The painstaking study, led by Wilhelm Hofmann, then at the University of Würzburg, collected more than 10,000 momentary reports from morning until midnight.

Desire turned out to be the norm, not the exception. Half the people were feeling some desire when their phones went off — to snack, to goof off, to express their true feelings to their bosses — and another quarter said they had felt a desire in the past half-hour. Many of these desires were ones that the men and women were trying to resist, and the more willpower people expended, the more likely they became to yield to the next temptation that came along. When faced with a new desire that produced some I-want-to-but-I-really-shouldn't sort of inner conflict, they gave in more readily if they had already fended off earlier temptations, particularly if the new temptation came soon after a previously reported one.

The results suggested that people spend between three and four hours a day resisting desire. Put another way, if you tapped four or five people at any random moment of the day, one of them would be using willpower to resist a desire. The most commonly resisted desires in the phone study were the urges to eat and sleep, followed by the urge for leisure, like taking a break from work by doing a puzzle or playing a game instead of writing a memo. Sexual urges were next on the list of most-resisted desires, a little ahead of urges for other kinds of interactions, like checking Facebook. To ward off temptation, people reported using various strategies. The most popular was to look for a distraction or to undertake a new activity, although sometimes they tried suppressing it directly or simply toughing their way through it. Their success was decidedly mixed. They were pretty good at avoiding sleep, sex and the urge to spend money, but not so good at resisting the lure of television or the Web or the general temptation to relax instead of work.

We have no way of knowing how much our ancestors exercised self-control in the days before BlackBerrys and social psychologists, but it seems likely that many of them were under less ego-depleting strain. When there were fewer decisions, there was less decision fatigue. Today we feel overwhelmed because there are so many choices. Your body may have dutifully reported to work on time, but your mind can escape at any instant. A typical computer user looks at more than three dozen Web sites a day and gets fatigued by the continual decision making — whether to keep working on a project, check out TMZ, follow a link to YouTube or buy something on Amazon. You can do enough damage in a 10-minute online shopping spree to wreck your budget for the rest of the year.

The cumulative effect of these temptations and decisions isn't intuitively obvious. Virtually no one has a gut-level sense of just how tiring it is to decide. Big decisions, small decisions, they all add up. Choosing what to have for breakfast, where to go on vacation, whom to hire, how much to spend — these all deplete willpower, and there's no telltale symptom of when that willpower is low. It's not like getting winded or hitting the wall during a marathon. Ego depletion manifests itself not as one feeling but rather as a propensity to experience everything more intensely. When the brain's regulatory powers weaken, frustrations seem more irritating than usual. Impulses to eat, drink, spend and say stupid things feel more powerful (and alcohol causes self-control to decline further). Like those dogs in the experiment, ego-depleted humans become more likely to get into needless fights over turf. In making decisions, they take illogical shortcuts and tend to favor short-term gains and delayed costs. Like the depleted parole judges, they become inclined to take the safer, easier option even when that option hurts someone else.

“Good decision making is not a trait of the person, in the sense that it's always there,” Baumeister says. “It's a state that fluctuates.” His studies show that people with the best self-control are the ones who structure their lives so as to conserve willpower. They don't schedule endless back-to-back meetings. They avoid temptations like all-you-can-eat buffets, and they establish habits that eliminate the mental effort of making choices. Instead of deciding every morning whether or not to force themselves to exercise, they set up regular appointments to work out with a friend. Instead of counting on willpower to remain robust all day, they conserve it so that it's available for emergencies and important decisions.

“Even the wisest people won't make good choices when they're not rested and their glucose is low,” Baumeister points out. That's why the truly wise don't restructure the company at 4 p.m. They don't make major commitments during the cocktail hour. And if a decision must be made late in the day, they know not to do it on an empty stomach. “The best decision makers,” Baumeister says, “are the ones who know when *not* to trust themselves.”

John Tierney (tierneylab@nytimes.com) is a science columnist for The Times. His essay is adapted from a book he wrote with Roy F. Baumeister, “Willpower: Rediscovering the Greatest Human Strength,” which comes out next month.

Editor: Aaron Retica (a.retica-MagGroup@nytimes.com)

(excerpts from) In Tiny Courts of N.Y., Abuses of Law and Power

By WILLIAM GLABERSON (New York Times, 9/25/06)

Some of the courtrooms are not even courtrooms: tiny offices or basement rooms without a judge's bench or jury box. Sometimes the public is not admitted, witnesses are not sworn to tell the truth, and there is no word-for-word record of the proceedings.

Nearly three-quarters of the judges are not lawyers, and many — truck drivers, sewer workers or laborers — have scant grasp of the most basic legal principles. Some never got through high school, and at least one went no further than grade school.

But serious things happen in these little rooms all over New York State. People have been sent to jail without a guilty plea or a trial, or tossed from their homes without a proper proceeding. In violation of the law, defendants have been refused lawyers, or sentenced to weeks in jail because they cannot pay a fine. Frightened women have been denied protection from abuse.

These are New York's town and village courts, or justice courts, as the 1,250 of them are widely known. In the public imagination, they are quaint holdovers from a bygone era, handling nothing weightier than traffic tickets and small claims. They get a roll of the eyes from

lawyers who amuse one another with tales of incompetent small-town justices.

A woman in Malone, N.Y., was not amused. A mother of four, she went to court in that North Country village seeking an order of protection against her husband, who the police said had choked her, kicked her in the stomach and threatened to kill her. The justice, Donald R. Roberts, a former state trooper with a high school diploma, not only refused, according to state officials, but later told the court clerk, "Every woman needs a good pounding every now and then."

A black soldier charged in a bar fight near Fort Drum became alarmed when his accuser described him in court as "that colored man." But the village justice, Charles A. Pennington, a boat hauler and a high school graduate, denied his objections and later convicted him. "You know," the justice said, "I could understand if he would have called you a Negro, or he had called you a nigger."

And several people in the small town of Dannemora were intimidated by their longtime justice, Thomas R. Buckley, a phone-company repairman who cursed at defendants and jailed them without bail or a trial, state disciplinary officials found. Feuding with a neighbor over her dog's running loose, he threatened to jail her and ordered the dog killed.

"I just follow my own common sense," Mr. Buckley, in an interview, said of his 13 years on the bench. "And the hell with the law."

The New York Times spent a year examining the life and history of this

largely hidden world, a constellation of 1,971 part-time justices, from the suburbs of New York City to the farm towns near Niagara Falls. . . .

The examination found overwhelming evidence that decade after decade and up to this day, people have often been denied fundamental legal rights. Defendants have been jailed illegally. Others have been subjected to racial and sexual bigotry so explicit it seems to come from some other place and time. People have been denied the right to a trial, an impartial judge and the presumption of innocence.

In 2003 alone, justices disciplined by the state included one in Montgomery County who had closed his court to the public and let prosecutors run the proceedings during 20 years in office. Another, in Westchester County, had warned the police not to arrest his political cronies for drunken driving, and asked a Lebanese-American with a parking ticket if she was a terrorist. A third, in Delaware County, had been convicted of having sex with a mentally retarded woman in his care.

New York is one of about 30 states that still rely on these kinds of local judges, descendants of the justices who kept the peace in Colonial days, when lawyers were scarce. Many states, alarmed by mistakes and abuse, have moved in recent decades to rein in their authority or require more training. Some, from Delaware to California, have overhauled the courts, scrapped them entirely or required that local judges be lawyers.

But New York has no such requirement. It demands more schooling for licensed manicurists and hair stylists.

And it has left its justices with the same powers — more than in many states — even though governors, blue-ribbon commissions and others have been denouncing the courts as outdated and unjust since as far back as 1908, when a justice in Westchester County set up a roadside speed trap, fining drivers for whatever cash they were carrying.

Nearly a century later, a 76-year-old Elmira man who contested a speeding ticket in Newfield, outside Ithaca, was jailed without even a warning for three days in 2003 because he called the sheriff's deputy a liar.

"I thought, this is not America," said the man, Michael J. Pronti, who spent two years and \$8,000 before a state appeals court ruled that he had been improperly jailed.

'Justice in the Dark'

It is tempting to view the justice courts as weak and inconsequential because the bulk of their business is traffic violations. Yet among their 2.2 million cases, the courts handle more than 300,000 criminal matters a year. Justices can impose jail sentences of up to two years. Even in the smallest cases, some have wielded powers and punishments far beyond what the law allows.

The reason is plain: Many do not know or seem to care what the law is. Justices are not screened for competence, temperament or even reading ability. The only requirement is that they be elected. But voters often have little inkling of the justices' power or their sometimes tainted records.

For the nearly 75 percent of justices who are not lawyers, the only initial training is six days of state-administered classes, followed by a true-or-false test so rudimentary that the official who runs it said only one candidate since 1999 had failed. A sample question for the justices: "Town and village justices must maintain dignity, order and decorum in their courtrooms" — true or false?

The result, records and interviews show, is a second-class system of justice.

Some 1,140 justices have received some sort of reprimand over the last three decades — an average of about 40 a year, either privately warned, publicly rebuked or removed. They are seriously disciplined at a steeper rate than their higher-court colleagues. . . .

Certainly, there are worthy justices, and defenders of the system say the good far outnumber the bad. Those supporters, chiefly the justices themselves and the local political leaders who often select them, contend that hometown judges know the hometown problems — and the problem people — and can tailor common-sense solutions.

And, they have argued, putting lawyers in charge of all the courts could cost the state tens of millions of dollars.

"It is the most efficient, low-cost method of ensuring that the people of the state receive justice," said Thomas R. Dias, a town justice in Columbia County who is president of the State Magistrates Association, the justices' organization.

But the record shows otherwise in hundreds of disciplinary cases — most of them unknown to the public.

In the Catskills, Stanley Yusko routinely jailed people awaiting trial for longer than the law allows — in one case for 64 days because he thought the defendant had information about vandalism at the justice's own home, said state officials, who removed him as Coxsackie village justice in 1995. Mr. Yusko was not even supposed to be a justice; he had actually failed the true-or-false test.

Outside Rochester, in Le Roy, a justice who is still in office concocted false statements, state officials said, to help immigration officials deport a Hispanic migrant worker in 2003. Although the man had pleaded not guilty to trespassing, the town justice, Charles E. Dusen, issued a court order saying he had been convicted. In an interview, Justice Dusen said he tried to right his wrong after the worker's lawyer complained. But the man was still deported.

Last December, disciplinary officials disclosed that in a five-year period, a Rochester-area justice had mistakenly imposed \$170,000 in traffic fines beyond what the law allowed. And in June, a justice in western New York was disciplined for threatening to jail a man — and warning him to "bring a couple thousand in bail money" — over a complaining phone message the man had left him.

In Mount Kisco, people who asked for the court's sympathy were treated to sarcasm: Justice Joseph J. Cerbone would pull out a nine-inch violin and threaten to play. Mr. Cerbone phoned one woman and talked her out of pressing abuse charges against the son of former clients, state records show. But it took eight years, and evidence that he

had taken money from an escrow account, before the State Court of Appeals removed him in 2004 after a quarter-century in office. . . .

The commission twice disciplined the town justice, Paul F. Bender of Marion, for deriding women in abuse cases. Arraigning one man on assault charges, he asked the police investigator whether the case was “just a Saturday night brawl where he smacks her and she wants him back in the morning.”

‘I’m Not a Lawyer’

A 17-year-old girl had stayed out all night, then fought with her family and wound up facing a harassment charge in court in Alexandria Bay, a busy tourist village on the St. Lawrence River. The justice, Charles A. Pennington, a boat hauler with 23 years on the bench, took her not-guilty plea on a Sunday in 2003.

But when told that the girl had no place to go, the judge did not send her to a women’s shelter or alert social service officials, as local justices typically do. He took her home.

“I left the court kind of in shock,” a police officer later testified. “I’ve never heard of anything like this before.”

The girl’s mother, Keitha Rogers, said in an interview that she was appalled to find her daughter at the home of the justice, then 61, as he sat drinking with another man. “Sure, he can tell the difference between the stern and the bow,” Ms. Rogers said. “But what does that have to do with making major judgments about people’s lives?”

The judicial conduct commission, which ordered Justice Pennington’s removal last fall for this and other lapses, ruled that while there was no evidence he had made any improper advances toward the girl, who left after about an hour, he had shown “extraordinarily poor judgment.”

And while Mr. Pennington argued that he had not been drinking, he did not entirely disagree with the findings. “Granted, there is mistakes,” said the justice, who resigned before the commission ruled. “I’m not a lawyer.”

Neither are most of his peers. . . . Though the justices’ pay is often meager — as little as \$850 a year — they can set bail, a basic legal safeguard. They hold crucial preliminary hearings in felony cases and conduct trials on misdemeanors. They preside over civil cases with claims of up to \$3,000, and landlord-tenant disputes with no dollar limit, including commercial cases involving hundreds of thousands of dollars.

And then there are the powers they simply take.

In what the Commission on Judicial Conduct called “a shocking abuse of judicial power,” Justice Roger C. Maclaughlin single-handedly went after a man he decided was violating local codes on the keeping of livestock in Steuben, near Utica. The justice interviewed witnesses, tipped off the code-enforcement officer, lobbied the town board to deny the man approval to run a trailer park, then jailed him for 10 days without bail — or even a chance to defend himself, the commission said.

An Essex County town justice, Richard H. Rock, jailed two 16-year-olds overnight without a trial, saying he wanted “to teach them a lesson.” They had been accused of spitting at two other people and charged with harassment. Then he sent them back for 10 more days, the commission said, without ever advising them they had a right to a lawyer. . . .

In Alexandria Bay, where Justice Pennington presided at a metal desk in a tiny room inside the police building, a quarter-century in office did not seem to deepen his understanding of his role. Just three days after he took home the 17-year-old girl, another case raised fresh questions about his familiarity with the law, or even the world outside his court.

Eric D. Bailey, a 21-year-old black soldier from nearby Fort Drum, was facing a disorderly conduct charge after a tussle with a white bar bouncer. Sitting three feet from Mr. Bailey, the bouncer identified him as “that colored man.” Mr. Bailey’s jaw dropped.

The soldier, who did not have a lawyer, told the judge that the term was offensive. But Justice Pennington said that while certain other words were racist, “colored” was not. “For years we had no colored people here,” he said.

The commission had heard worse. After arraigning three black defendants arrested in a college disturbance in 1994, a justice in the Finger Lakes region said in court, “Oh, it’s been a rough day — all those blacks in here.” A few years before that, a Catskill justice reminisced in court that it was safe for young

women to walk around “before the blacks and Puerto Ricans moved here.”

In an interview, Justice Pennington said the commission had treated him unfairly. But he may not have helped his case when he told the commission that “colored” was an acceptable description.

“I mean, to me,” he testified, “colored doesn’t preferably mean black. It could be an Indian, who’s red. It could be Chinese, who’s considered yellow.”

Basic Training

In Delaware, where the appointed local magistrates have less authority than New York’s justices, the state screens candidates with academic and psychological tests, and starts them off with 11 weeks of training. “It is a reflection of the view that when we’re dealing with people’s livelihood, when we’re dealing with people’s freedom, we’re going to take this seriously,” said the chief magistrate, Alan G. Davis, a lawyer.

In New York, . . . the amount of training for justices has not changed. Those without law degrees must take six days of classes at the start. Lawyers do not have to attend, but all justices must take a 12-hour refresher course once a year.

At training’s end, justices must score at least 70 percent on a test of 50 questions, all true or false. Those who fail can retake the course, and the test. “We don’t decide whether they’re qualified to be a judge,” Ms. Dobiell said. “The people who have elected them have already made that decision.”

The real test comes on the bench.

Several justices have threatened to arrest litigants in small-claims cases, showing they do not understand the difference between civil and criminal cases. Others have told the judicial conduct commission that they disagreed with the constitutional guarantee that a defendant is entitled to a lawyer.

John D. Cox, a quarry manager in Le Ray, near Watertown, summarily jailed people who were unable to pay fines, the commission said. But he received the lightest public penalty, an admonition, in 2002 after he explained that in 22 years in office, he had never been taught that state law allows defendants a new hearing and a lawyer when they say they cannot pay their fine.

Power and Prejudice

Few people who came to his court ever told Donald R. Roberts he was wrong. A strapping former state trooper, he was working as a gas-company truck driver when he was appointed village justice in Malone, near the Canadian border, in 1993. When he was removed five years later, the Commission on Judicial Conduct dispatched him with a stinging description: "a biased, mean-spirited, bullying judge."

It was Justice Roberts who declared that women needed "a good pounding." He had already battled with the county district attorney over his resistance to granting orders of protection.

When a village resident asked that the dentist suing him be forced to come to court to prove his case, Justice Roberts told the man, who had a Hispanic surname: "You're not from around here, and that's not the way we do things

around here." The justice did not mention that the plaintiff was his own dentist.

A common argument in favor of New York's justice courts is that local judges know the people and problems that come before them. But that can be a problem itself when justices use those prejudices to favor friends and ride herd over others.

"They have their own little fiefdoms," said Laurie Shanks, an Albany Law School professor. "Some are benevolent despots, but despots nonetheless."

Again and again, the commission's records show, justices have failed to remove themselves from cases involving their own families.

In this department, Pamela L. Kadur may hold a record. As town justice in Root, west of Schenectady, she presided over at least seven cases involving relatives, who often received lenient treatment, the commission said when it ordered her removal in 2003. Justice Kadur heard a speeding case against her son in her own kitchen, then tried to cover up their family relationship in record books, the commission said, by misspelling his last name.

One longtime town justice near Albany let a friend who owned a driving school sit with him at the bench; when the justice ordered anyone to take a driver-training course, only the friend's school was acceptable. Another justice, in Rensselaer County, told a trucker charged with drunken driving that he would not suspend his license because "I can't do that to a fellow truck driver."

Historically, large numbers of the justices have been former law enforcement officers, and lawyers complain that many have unfairly favored the police and prosecutors.

Some justices, unsure of the law, have also come to rely too much on the authorities. Elaine M. Rider, who presided in Waterville, near Utica, fretted that she did not “really have the time to puzzle this out” when a criminal defendant argued that evidence had been seized illegally. So she had the prosecutor write her decision, the commission said. . . .

In 20 years in office in Haverstraw, north of New York City in Rockland County, Justice Ralph T. Romano drew attention for his opinions on women, state files show. Arraigning a man in 1997 on charges that he had hit his wife in the face with a telephone, he laughed and asked, “What was wrong with this?” Arraigning a woman on charges that she had sexually abused a 12-year-old boy, the justice asked his courtroom, “Where were girls like this when I was 12?”

Across the Hudson, Joseph Cerbone, the Mount Kisco justice with the miniature violin, persuaded a young woman to drop her abuse case against the son of a couple he had done legal work for. She told the commission that while she did not believe the justice’s claim that the son was “a decent guy” who had “made a mistake,” she had no choice.

“I kind of felt I had no one behind me, no support,” she said. “And by getting a phone call from a judge, I felt that maybe I was making a mistake by going through with these charges.”

But the human damage can be much worse in the small communities where the justice is often the most powerful local official.

In 11 years as justice in Dannemora, in the North Country, Thomas R. Buckley had his own special treatment for defendants without much money: Even if they were found not guilty, he ordered them to perform community service work to pay for their court-appointed lawyers, although defense lawyers and the district attorney had reminded him for years that the law guaranteed a lawyer at no cost.

“The only unconstitutional part,” he told the commission before it removed him in 2000, “is for these freeloaders to expect a free ride.”

He twice jailed David Velie, a 19-year-old charged with a misdemeanor, even though the law required him to set bail. In an interview, Mr. Buckley explained that the young man had been a troublemaker “ever since he was born.”

Like many small-town justices, he said many of his decisions were down-to-earth solutions. “You’ve got to use your own judgment,” he said. “That’s why they call us judges. The law is not always right.”

Some residents say that without the law to protect them, they lived in fear. Debra E. Bordeau, the justice’s neighbor, said she went into hiding after he threatened to jail her in a dispute over her dog, which he ordered destroyed.

And Carson F. Arnold Sr., a contractor from a nearby town, was jailed for five days after a woman who knew Justice

Buckley complained that Mr. Arnold had threatened her, the commission said. There was no trial. The justice simply told Mr. Arnold to shut up, then sentenced him without bail.

“How many years did he treat people like this?” Mr. Arnold asked in an interview. “How many people did this affect?”

A Culture of Secrets

When someone does appeal, the law requires that justices write a summary of the case. Justices said in interviews that their decisions were rarely appealed, anyway, and even more rarely overturned.

Jo Craven McGinty contributed reporting.

(excerpts from) Delivering Small-Town Justice With a Mix of Trial and Error

By WILLIAM GLABERSON (New York Times 9/26/06)

DUANE, N.Y. — Gary Betters thought he understood the law as well as any average American. A school psychologist, he wanted \$1,588.60 he said the nearby village of Malone owed him for helping run a summer recreation program. When he brought a small claim in Duane Town Court, he expected that the judge would listen to both sides, then rule.

Like many others who go to court across New York State, he got a crash course in the strange ways of small-town justice.

Although no one showed up to defend the village, Justice William J. Gori started the trial anyway. Although the judge had Mr. Betters testify at length, he neglected to have him swear to tell the truth. And although Justice Gori told Mr. Betters he had another week to submit more evidence, the judge went ahead and decided the case anyway.

Mr. Betters received the news in a letter from the court: his case had been dismissed. No reason was given. “I cannot understand how a defendant can win when they don’t even show up,” he said in an interview.

The State Commission on Judicial Conduct figured out how. Justice Gori, it seems, had gone to the village offices in Malone before the trial, interviewed the village’s chief witness, then informed the village lawyer that he had decided to throw out the case.

Justice Gori told the commission that he had never heard of the elementary legal rule that bars a judge, except in the most extraordinary circumstances, from secret contact with one side of a case. “It’s not even explained in my manual,” he said.

An unfamiliarity with basic legal principles is remarkably common in what are known as the justice courts, legacies of the Colonial era that survive in more than 1,000 New York towns and villages. . . .

The county’s justices have repeatedly drawn the attention of state judicial conduct officials, with 15 publicly disciplined since the late 1970’s, some twice. Justice Gori’s errors pale in comparison with those of some others: One justice freed a rape suspect on bail

as a favor to a friend. Another sentenced a welfare recipient to 89 days in jail after she failed to pay a \$1.50 cab fare. Franklin County justices have presided drunk, fixed cases and denied lawyers to defendants. One failed to appoint a lawyer for a 19-year-old mentally retarded alcoholic.

Here in Duane, a speck of a town in the center of the county, Justice Gori is in many ways a typical small-town New York justice.

A bricklayer and a former dog trainer with a high school education, he is an approachable man of 59, in jeans hitched up with suspenders. On Thursday nights he ambles down to the volunteer firehouse to hold court, such as it is. His grasp of the law is somewhat shaky. His temper sometimes gets the better of him.

He has no judge's bench, few law books and no court clerk. He is something of an accidental judge, occupying the position for nearly a decade largely because no one else wants it, people here say. Although state officials have reprimanded him twice for fundamental lapses in the conduct of his job, few Duane voters seemed to know or care. "Nobody's ever asked a question about it," Justice Gori said.

He seems well-intentioned enough. Like many justices, he describes his job as public service, and he says he studies the law for several hours every week.

A Night in Court

"Town of Duane Justice Court is now in session," Justice Gori announced.

Four bare fluorescent bulbs provided the only light in the roughly finished meeting room that becomes a court every few weeks. There was a portable bar against one wall, and a glimpse of the firehouse kitchen, with its jumble of old soda bottles and coffeepots. The American flag tacked to the wall had to be pulled back to allow the judge to get at the thermostat on this icy winter night.

At two pushed-together folding tables sat a nervous teenager, in court to answer speeding tickets, next to his clenched-jawed father. A state trooper, there as chief witness against the teenager, doubled as the court security officer.

And behind a battered wooden desk was Justice Gori. Fleshy, with eyes that water at sentimental moments, he was wearing an open brown shirt, his T-shirt visible at the neck.

The court computer that he bought with his own money was at home; it took him two months to figure out how to turn the thing on, he said. He had no judge's robe. They are too expensive, he said. His judicial salary is \$3,750 a year.

"There are certain things that are lacking," he said.

He moved to Duane, population 159, from Saratoga County in his 40's after a divorce, enticed by the chance to hunt with his dogs.

"If you look at the laws, it's all common sense," he said.

Most of his work, since his first election in 1997, has been traffic cases. If there were many serious crimes in Duane, he

said, they may have gone unnoticed out in the vast Adirondack nights. "Either we're a nice, quiet town or two people duked it out and one won and one lost, they got up and shook hands and nobody knows about it," he said.

There have been a handful of serious cases, the first phases of some felony prosecutions. Once, state troopers tracked him down on a bricklaying job. They said a local man was growing marijuana, and wanted a warrant to search his property. In the dust and cement, it fell to William Gori, dog trainer and mason, to put aside his tools and measure the rights guaranteed under the Constitution. "I sat down," he said. "Read everything. Looked at all the pictures." The troopers got their warrant.

In the makeshift courtroom on this winter night, he was warmly sympathetic to a woman who had forgotten to put the registration sticker on her windshield. Case dismissed.

But the teenager with the speeding tickets saw the stern Justice Gori. The boy had tickets in a half-dozen Franklin County towns, and his lawyer proposed combining the cases in another court.

No way. "What happens in the town of Duane," Justice Gori declared, "stays in the town of Duane."

That is not always true. The other case that drew the attention of the Commission on Judicial Conduct involved Lucille K. Millett, a Mohawk woman from the reservation that straddles the county's border with Canada. She was outside the Duane court one night in 2004 waiting for her sister, whom she had driven there for a

traffic case. Justice Gori summoned Ms. Millett inside, asked for her driver's license and called the state police to run it through their computer.

In an interview, Ms. Millett said she was frightened and embarrassed; no one else was asked for a license. The only sense the sisters could make of it, she said, was that they were the only American Indians in court.

She filed a complaint with the commission, which ruled last year that Justice Gori had no right to demand anything of someone outside his court who faced no charges.

Asked about the case, Justice Gori denied that he harbored any prejudice. He said he thought he was acting within his authority.

"You learn by mistakes," he said. "They say this is improper, I don't do it again."
...

Still, he is convinced that he and the other justices across New York are honest people trying to do right. "Economicwise," he added, "you couldn't get the job done any cheaper."

A County at the Edges

The troubles of Mr. Gori and his fellow justices are nothing new. In 1973, the State Commission of Investigation arrived in the Franklin County village of Saranac Lake to examine the work of one justice, a maintenance worker and vacuum-cleaner salesman, whose "inept and mangled handling," it said, had bungled a felony grand larceny case.

What investigators found alarmed them. Money was missing. Records were sloppy. A pile of cash from fines sat in an unlocked drawer. The justice's relationship with the police seemed far too close, and one of his law books was 44 years old.

Astonished, the investigators widened their inquiry to include all the justice courts in the county and then expanded it across New York. Calling for statewide reform, they concluded that "such deficiencies and ineptitude" in the justice courts "simply must not be tolerated."

Last November, one longtime village justice, Roy H. Kristoffersen, a salesman, resigned after officials began investigating charges, which he denied, that he "rendered favorable dispositions" for the son of the other village justice — in Saranac Lake, the same place that touched off the investigation 33 years ago.

Another justice, Marie A. Cook, a school-bus driver who is still on the town bench in Chateaugay, not only fixed a speeding ticket at the request of a fellow justice, but she was so oblivious to ethical rules, the commission said last fall, that she made an official record of the fix: "Reduced in the interest of Justice Danny LaClair."

Yet another, the town justice who released a rape suspect on bail as a favor to a friend, tried to explain things to the commission: "Maybe you are not familiar with what goes on in the North Country, but we are all more or less friends up there."

Such cases may only hint at the dimensions of the problem in Franklin's courts. A review for this article of rarely seen appeals files in Franklin County Court showed a disturbing trail of legal blunders and judicial ignorance over the last five years.

One justice seemed not to fully understand that criminal charges must be proved beyond a reasonable doubt, wrote the county court judge, Robert G. Main Jr. Another justice skipped over the matter of the constitutional guarantee of a lawyer. Immediately after a woman charged with fraud said she could not afford an attorney, Judge Main said, the village justice took her guilty plea instead of appointing a lawyer.

Such problems are hardly news to many lawyers who make the rounds of Franklin County's justice courts. Some say they avoid the courts because the justices often have trouble following their arguments.

In a place as poor and remote as Franklin County, the failings of modest courts can loom large. Cases too minor to draw much interest from the rest of the legal system — evictions, misdemeanor charges, disputes between neighbors, driving infractions and applications for bail — come with real consequences for small-town residents who may have little money or access to a lawyer.

Alexander Lesyk, the Franklin County public defender for 15 years until a few months ago, said that while he had some successes for poor clients before local justices, "I don't believe any of them has enough training to handle a trial, to handle constitutional issues, to stand up

to and control an attorney on either side when they need to.”

But challenging a justice can be bad for business, some lawyers said.

The district attorney, Mr. Champagne, said that when his office hears about justices who stray from the law, it has to be careful. “We’re not going to get into a confrontation with a judge we may have to go in front of next week on a very serious preliminary hearing in a murder case,” he said.

A Case of Confusion

When Gary Betters got the letter from Justice Gori in March 1999 saying that his claim for back pay had been dismissed, he was very confused. The message was a single paragraph, and garbled at that. Even the date on it was wrong.

But that was only the start of his troubles.

He wrote to Justice Gori, asking for a mistrial. The justice never replied.

Mr. Betters decided to appeal in county court. But he could not persuade any lawyer to take the case; several, he said, told him it would not be in their interest to take on a town justice.

On his own, Mr. Betters filed a complaint with the Commission on Judicial Conduct, and the truth emerged: The commission’s investigators discovered that Justice Gori had gone to the Malone village offices before the trial and interviewed the defense’s chief witness, the village treasurer, who told him that Mr. Betters was owed nothing.

Justice Gori told the village attorney that he need not show up for the trial because he had already decided to dismiss the case. The attorney was amazed. “A lot of bells and whistles went off,” he told the commission.

But when Justice Gori explained himself to the commission in a closed hearing, he said he had never heard of the rule against contacting one side of a case to discuss the evidence. Further, the commission’s lawyer argued, a legal motion filed by the village had completely bewildered Justice Gori, even after he made several calls to the state’s help line for town justices.

“The whole concept I didn’t understand,” Justice Gori testified.

It was a damaging admission, but nothing compared with the case made by his own lawyer, John A. Piasecki. He said his client’s error-riddled handling of Mr. Betters’s suit was an indictment of the system, which put laymen on the bench, gave them little training and left them to interpret the law.

Mr. Piasecki asked whether the state had ever checked Justice Gori’s reading comprehension. (It had not.) He even tried to cross-examine the Malone village attorney to show what he argued was the obvious difference between Justice Gori and someone who actually understood the law.

Mr. Piasecki, a Franklin County lawyer himself, urged a “long-overdue correction” for the justice court system, which he said “undermines confidence in the integrity of the judiciary.”

The commission was not moved. Justice Gori, it said, had a duty to learn the law. “Town justices wield enormous power in civil and criminal cases,” the commission said, “and it is not unreasonable to expect them to know and follow basic statutory procedures.”

Yet Justice Gori received the lightest public penalty the commission can issue, an admonition.

As for Mr. Betters, he never found a lawyer to take his appeal. Today, he still feels that his education in Franklin County law cost him a lot more than \$1,588.60.

“It broke down my belief in the justice system,” he said.

“I really feel the justice courts are the courts closest to the people,” [Judge Gori] said, and being a lawyer might interfere with that. “At times, lawyers get hung up in certain things, so that maybe you wouldn’t get true justice in certain cases.”

But a state police report from last year suggested that in Duane, true justice — and empathy for the people — might be works in progress.

It seems that Brandon L. Lucas, a scrawny 19-year-old from the next county, was trying to pay a ticket he had received in Duane for fishing with the wrong kind of bait. Since the firehouse court was empty, as it often is, Mr. Lucas went down the road to Justice Gori’s house.

Soon, Mr. Lucas was in the back of a state trooper’s car in handcuffs, and in tears. An angry Justice Gori had berated

him and called the police, the young man recalled when a reporter tracked him down. He had evidently not seen the sign on the judge’s garage: “If you proceed past this point, you are subject to various trespass rules and regulations.”

The district attorney decided not to prosecute. And Mr. Lucas made his own decision about wandering into the jurisdiction of Duane Town Court: Don’t.

“I’ll never go fishing up there again,” he said

Tab: Day 2

SCHEDULE FOR TODAY

9:00	Small Claims Procedure <i>Dona Lewandowski, School of Government</i>	2401
10:30	Break	
10:45	Small Claims Procedure, cont'd <i>Dona Lewandowski, School of Government</i>	2401
12:30	Lunch	Dining Room
1:15	Contracts <i>Dona Lewandowski, School of Government</i>	2401
2:30	Break	
2:45	Contracts, cont'd <i>Dona Lewandowski, School of Government</i>	2401
4:00	Break	
4:15	Torts <i>Dona Lewandowski, School of Government</i>	2401
5:15	Recess	

YOUR OBJECTIVES FOR TODAY

You'll become sufficiently familiar with basic small claims procedure to respond appropriately to the most common questions raised by citizens.

You'll learn enough about the procedure involved in holding small claims court to be able to muddle through should you someday suddenly find yourself a small claims judge.

You'll know how to analyze the most common disputes arising out of breach of contract and how to correctly apply the law to resolve the dispute.

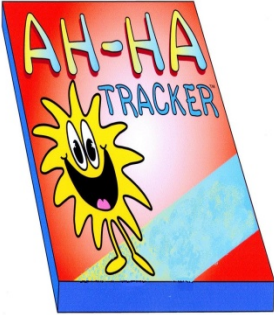
You'll be able to recognize "quicksand": those disputes involving special rules that may require additional research to resolve.

You'll know what a "tort" is, be familiar with the essential elements of torts frequently litigated in small claims court, and be able to identify common defenses.

ACTIVITY: CHECKING-IN

Take a moment to meet your tablemates. Write their names down below:

_____	_____
_____	_____



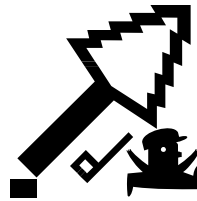
Thinking About Yesterday:

SMALL CLAIMS PROCEDURE

Citizen Question

My neighbor has a big old oak tree, and part of it is hanging over my driveway. I want to cut off the part that's on my side. Can I do that?

Your Answer



My neighbor has a big old oak tree, and part of it is hanging over my driveway. I want him to either take care of it, or reimburse me if I take care of it. If I go to small claims court, can the judge order him to do that?

My neighbor has a big old oak tree, and part of it is hanging over my driveway. A big limb fell on my car and damaged it. Can I sue him for that? Do I have to hire a lawyer?

A CASE IS ELIGIBLE FOR SMALL CLAIMS COURT IF:

- The amount in controversy is not more than \$5,000.
- The relief sought is either summary ejection, recovery of personal property, money, or enforcement of a motor vehicle lien.
- At least one defendant lives in the county.

MORE QUESTIONS & ANSWERS

I want to file a case in small claims court. How do I do that?

I just got these papers saying I'm being sued. What do I do?

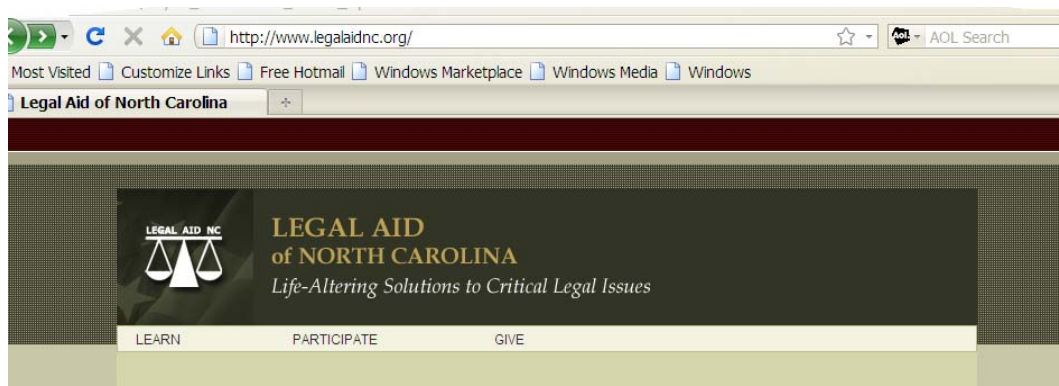
Should I sue, or take out criminal charges?

If I DO sue, how will I get my money?

CAN YOU GUESS THE #1 RULE FOR ANSWERING QUESTIONS?

My guess is _____.

There are two excellent online guides for citizens seeking information about small claims court in North Carolina. The first, published by Legal Services, is available free of charge in many clerks' offices and may be downloaded by going to www.legalaidnc.org, clicking on "Learn," and then scrolling down to "Publications."



Publications
View some of the many LANC publications including brochures, pamphlets, "The Guide to Small Claims Court", "LANC News" and "The Law and You".

The second, published by the NC Attorney General's Office, is most easily found by going to www.ncdoj.gov and typing "small claims" in the search box at the top of the page. A copy of this short guide appears in the Appendix section.



PLAINTIFF: "I WON! BUT WHAT DID I WIN?"

When a party is considering bringing an action in small claims court, perhaps the most important consideration is the degree to which success is possible: what is the cost, and what is the potential benefit? The following information may be helpful in assisting the citizen's decision:

As of 1/1/2012, the cost of bringing a small claims action is \$96. The additional cost for service of process by the sheriff is \$30 for each defendant. If the plaintiff wins in small claims court, he may be able to recover these costs from the defendant.

If the plaintiff wins in small claims court, additional action is required in order to enforce the judgment. The plaintiff must wait 10 days before taking the first step toward enforcing the judgment. If the judgment awards possession of personal or rental property, the procedure is straight-forward: following the 10-day period, the plaintiff obtains a writ of possession from the clerk's office for a fee of \$55 (which includes a \$30 charge for enforcement of the writ by the sheriff). The sheriff then obtains the property from the defendant and hands it over to the plaintiff.

If the judgment awards money, many plaintiffs mistakenly believe they'll be able to collect the amount owed on the spot. In reality, unless the defendant voluntarily pays, the collection procedure is far more complex.¹ A judgment is enforceable for ten years, and may be renewed for an additional 10-year-period, collecting interest all the while. It serves as a lien upon some of the debtor's property, and will adversely affect the debtor's credit rating. Sometimes a debtor unexpectedly acquires property, and so the fact that a defendant is "judgment proof" when a judgment is entered is not necessarily the end of the matter. Nevertheless, many potential plaintiffs choose not to bring suit upon learning of the costs, delay, and uncertainty sometimes involved in enforcing a judgment.

¹ In the Appendix is a document titled "What Happens After Small Claims Court." Many magistrates provide citizens with a copy of this document rather than attempt to answer questions directly.



Surprise!

You're a Small Claims Judge!

HOW TO MUDDLE THROUGH

- Check for service (STC)
- Read the complaint
- Swear the parties
- Locate your cheat sheet
- Hear the evidence---ALWAYS
- Ask open-ended questions until you understand the facts
- Remember the B/P
- Enter Judgment

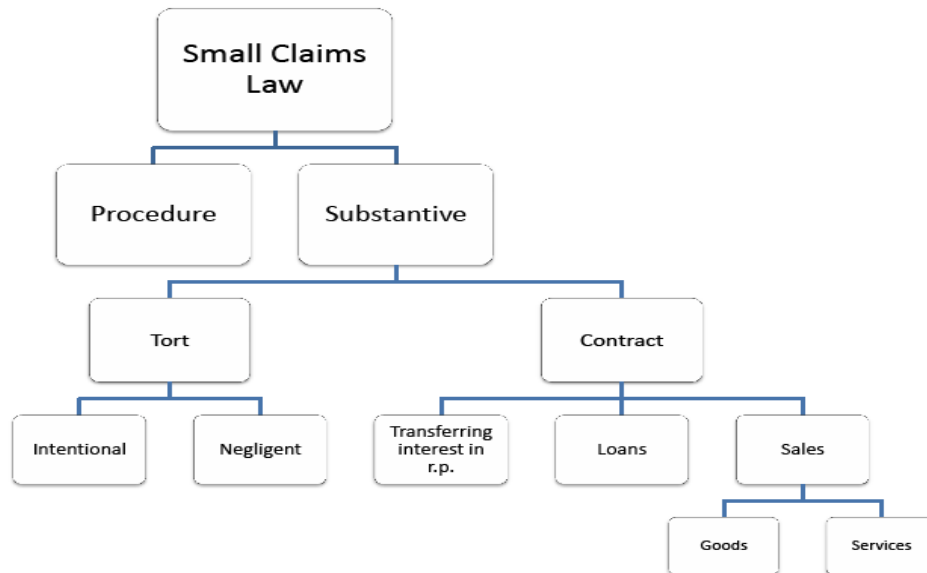
CHECK FOR SERVICE (STC)

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
	<input type="checkbox"/> AM <input type="checkbox"/> PM	Billy Bathub
<input type="checkbox"/> By delivering to the defendant named above a copy of the summons and complaint.		
<input type="checkbox"/> By leaving a copy of summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.		
<input type="checkbox"/> 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)		
<input type="checkbox"/> Other manner of service: (specify).		
<input checked="" type="checkbox"/> Defendant WAS NOT served for the following reason:		
Unable to locate.		

IMPORTANT TO REMEMBER:

- Must have service on all defendants
- Service not necessary if defendant is present in court
- Return of service presumed sufficient
- No service? Continue the case, STC
- Special rule for summary ejectment: service by posting permitted (see bottom of return), but judgment must be for possession only. No money damages.

READ THE COMPLAINT

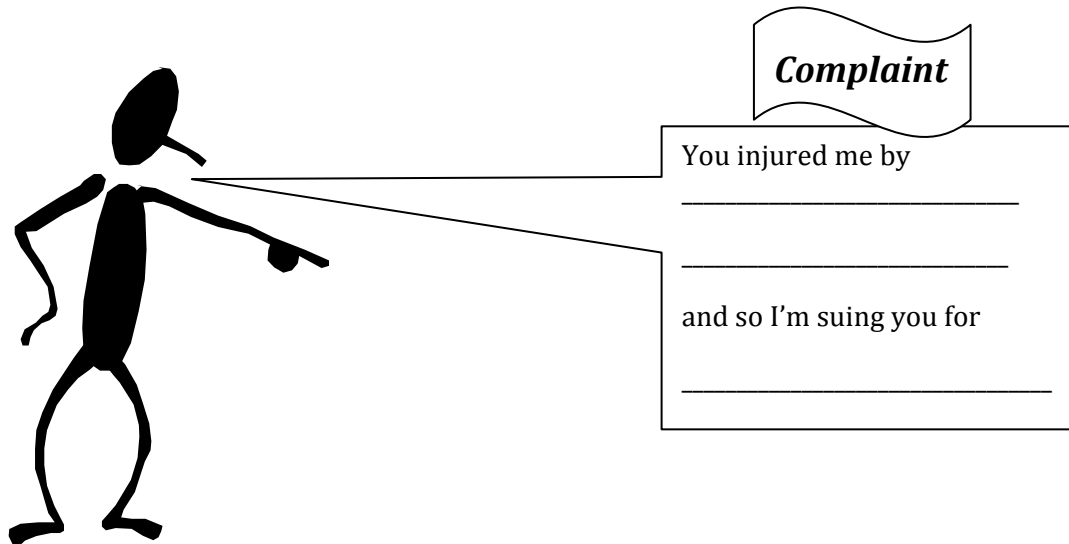


Before we allow a defendant to use the force of law to take away property belonging to another, we require every plaintiff to establish specific facts. We call these required facts

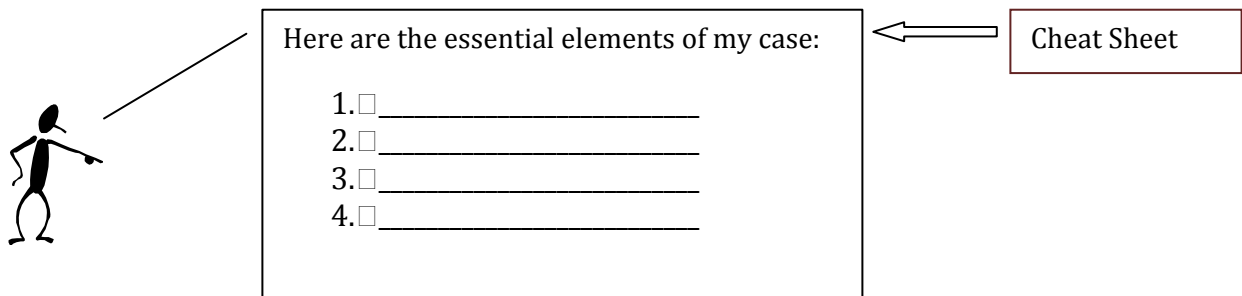
Essential Elements

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.

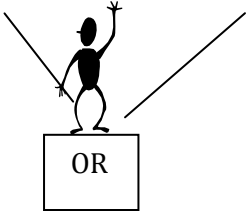
The elements that a plaintiff must prove vary. Every case begins with a plaintiff saying:



The elements –things that the plaintiff must prove –depend on the specific complaint. Let's look at an example. . . .



DEFENSE

<p>I am not responsible for your injury, because one of your essential elements is not true:</p> <p>_____</p> <p>_____</p> <p>_____</p>	 <p>OR</p>	<p>Even if everything you say is true, I'm STILL not responsible for your injury, because</p> <p>_____</p> <p>_____</p> <p>_____</p>
---	---	--

ENTER JUDGMENT

- ___ Clear division between close of evidence and judgment:
"I have heard your evidence and am ready to make my decision."

- ___ Clearly indicate which party wins, using party's name (not "plaintiff").
"Mr. Jones, I am going to rule in your favor."

- ___ State specifically what your judgment does.
"In your case for summary ejectment and money owed, I am going to award you possession of the rental premises and enter a money judgment in the amount of \$756.00."

OR

- "Mr. Smith, I am ruling in favor of Mr. Jones because I find that you have not introduced evidence sufficient to prove your case by the greater weight of the evidence. As a result, I am dismissing your case with prejudice."*
- ___ Tell them what happens next.
"Mr. Smith, you have the right to appeal my decision, either by telling me now that you want to appeal, or by going to the clerk's office within 10 days and filling out a paper giving notice of appeal." [If a party gives notice of appeal in open court, be sure to tell him or her to see the clerk to pay the costs of appeal.]
"Mr. Jones, after ten days, you can go to the clerk's office and begin the process of enforcing your judgment."

EXERCISE: FILLING OUT THE JUDGMENT FORM

You have just finished hearing a case involving money due on an account, and you have entered judgment in open court in favor of plaintiff in the amount of \$500. Fill out your judgment form. (Use the form immediately following this page in the notebook.)



You may reserve judgment for up to 10 days.

STATE OF NORTH CAROLINA
 In The General Court Of Justice
 District Court Division-Small Claims
 _____ County

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.

(Name Of Judgment Debtor(s) From Whom Amount Recovered

Principal Sum Of Judgment \$

Pre-judgment Interest Not Included \$ Judgment Announced And Signed In Open Court

Attorney's Fees Or Other Damages \$

Date

Signature Of Magistrate

TOTAL AMOUNT \$

(when appropriate)

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

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

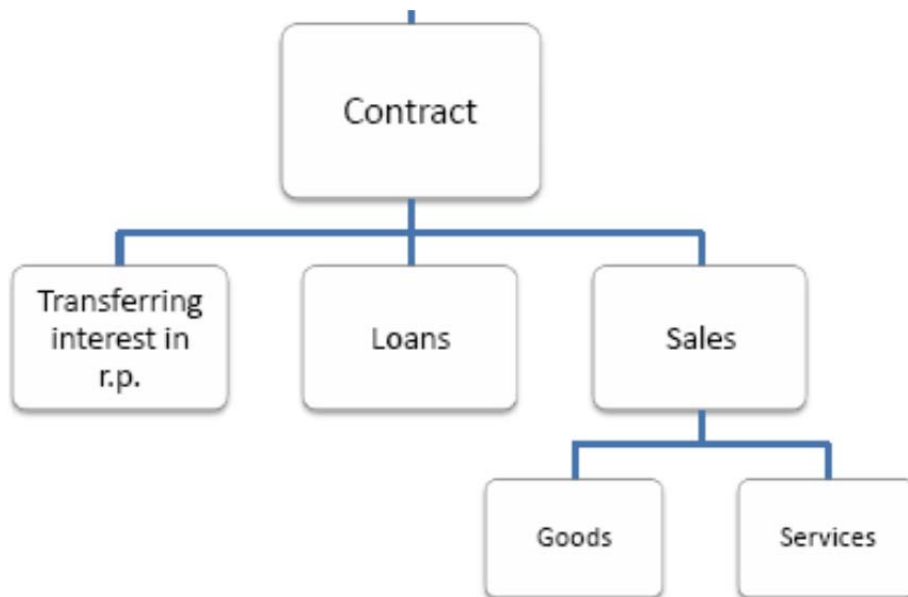
CONTRACTS

HOW TO ANALYZE A CONTRACTS CASE

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

NOTES: _____

WHAT KIND OF CONTRACT IS IT?



Examples

Sale of goods	Lease
Installment sales contract	Promissory note
Check	Security agreement
Contract for services	Option to purchase
HOA Membership	Earnest money
Implied contract	Guaranty
Agency	Bailment

Special rules may apply to particular kinds of contracts:

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

NOTES: _____

EXERCISE:

Listen closely to the testimony in this action brought by a landlord for past-due rent. Can you use the analysis on the previous page to determine what the magistrate should do? I think the magistrate should _____

IN OTHER WORDS . . .

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

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

REMEMBER DEFENSES?

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 . . .

BRAINSTORM

Missing essential elements:

Affirmative defenses:

NOTES:

WATCH OUT FOR QUICKSAND!

Special rules for special kinds of contracts:

Breach of warranty (pp. 61-65)

Installment sales contracts (pp. 81-84)

Loans (pp. 90-91, 96-97)

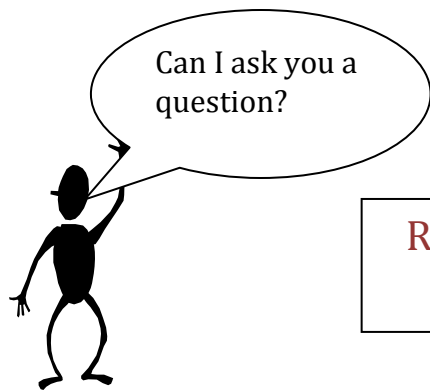
Worthless check (pp. 87-89)

Actions on security agreement (pp. 125-144)

Residential lease agreements (see numerous special provisions in Ch.VI, Landlord-Tenant Law)

Miscellaneous consumer protection provisions

The most common impact of these special rules is the revision or even removal of contract provisions inconsistent with them. For example, a landlord who contracts for a late fee that exceeds the statutory maximum loses the right to collect the fee at all.



Responding to Questions about Small Claims and Contracts

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

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

“Does a contract have to be in writing to be enforceable?”

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

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

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

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

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

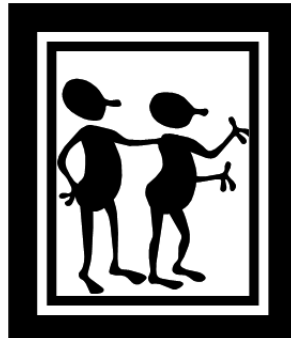
{Add your questions here:}

TORTS

A tort is a civil wrong.

Intentional

Negligent



*The Reasonable Man and
the Reasonable Woman*

Did You Know?

There are a few legal concepts, though, that are good to know about, if only because there is so much misinformation floating around.

Tree Law

General rule: A person who owns property is required to use reasonable care to avoid injury to adjoining property by unsound trees on the owner's property. A property owner is not liable for damage caused by "an act of God," however, meaning injury that was not foreseeable.

Similarly, a property owner must use reasonable care to avoid injury caused by trees on his or her property falling on to public roads. The owner is not liable, however, if the owner had no notice of the danger. An owner may be said to have "notice" if the evidence shows the owner should have known of the condition--including the situation in which an agent of the owner was informed of the condition-- even if the evidence falls short of establishing actual knowledge on the part of the owner.

Rights of adjoining landowners: NC has not decided a case raising this issue, but cases from other jurisdictions are uniform in holding that a landowner has the right to trim branches or roots extending over his or her land, and that a landowner has no right to enter his neighbor's property for the purpose of cutting down his neighbor's tree. Beyond that, courts have established varying rules for resolving these disputes.

Negligent Children:

Children under the age of seven are incapable of being negligent as a matter of law.

Children between 7 and 14 are presumed incapable of negligence, but that presumption may be rebutted by a showing that the child acted in a way that is careless even when compared to other children of the same age.

When children cause injury to person or property, whether negligently or intentionally, the child's parent(s) may be found responsible because of the parent's own negligence as a parent (negligent supervision).

NC law makes parents responsible for injury to person or property deliberately caused by their children, up to a maximum of \$2,000. (See pp. 116-117 for details.)

Vicarious Liability:

In some circumstances, the law holds a person responsible for torts committed by someone else. The most common examples are:

A employer may be held responsible for the negligent acts of an employee.

The legal owner of a car may be held responsible for the negligence of the driver, if the owner is a passenger in the car.

The legal owner of a car may be held responsible for the negligence of a driver who is a member of the driver’s household, even if the owner is NOT a passenger in the car.

Is a husband responsible for the negligence of his wife? _____

Bailment

John took his favorite suit to the dry cleaners, but when he went to pick it up, the suit was a better fit for his five-year-old than it was for him. He brings an action in small claims court, alleging that the dry cleaner’s negligence resulted in his property becoming worthless.

The dry cleaner defends as follows:

1. “John hasn’t introduced any evidence that I was negligent. In fact he hasn’t introduced any evidence at all that I ever touched the suit.” What do you think?

2. “On the pick-up ticket—and on a big sign in the store—we say that we’re not responsible for damage to property left for cleaning.” What do you think?

3. □ “John dropped off a cheap suit with a tag plainly stating, “Hand wash only. Dry cleaning may cause shrinkage.” What do you think?

This last defense is the most common, and North Carolina is one of few states that continues to recognize it as a complete defense in cases involving negligence. What’s the name of this defense?

The general rule is that it’s up to the defendant to raise this defense.

EVALUATION FOR DAY 2

INSTRUCTOR

The purpose of this part of the evaluation is to give the instructor feedback on her teaching effectiveness. In your evaluation, please consider all the sessions taught by this instructor today.

Instructor: Dona Lewandowski

Topics: Small Claims Procedure; Contracts; Torts

	Strongly Agree	Neither Agree Nor Disagree	Strongly Disagree		
1. The instructor made the subject matter interesting.	[5]	[4]	[3]	[2]	[1]
2. The instructor seemed to be concerned about whether students learned the material.	[5]	[4]	[3]	[2]	[1]
3. The instructor presented material in a clear manner.	[5]	[4]	[3]	[2]	[1]
4. The instructor was prepared for class.	[5]	[4]	[3]	[2]	[1]
5. This instructor's session(s) helped me gain useful knowledge and skills.	[5]	[4]	[3]	[2]	[1]

SPECIFIC SESSIONS

Small Claims Procedure:

Contracts:

Torts:

WHAT YOU'D LIKE US TO KNOW BEFORE TOMORROW

Use this section to tell us about anything that would make your experience more enjoyable or help you learn. (Example: we now have a hole-puncher in the classroom because students requested that change.) If you're having trouble hearing, or you're too cold, or you'd appreciate more frequent, shorter breaks—tell us about that here, and we'll see what we can do.

Tab: Day 2

SCHEDULE FOR TODAY

9:00	Landlord-Tenant <i>Dona Lewandowski, School of Government</i>	2401
10:30	Break	
10:45	Landlord-Tenant, cont'd <i>Dona Lewandowski, School of Government</i>	2401
12:30	Lunch	Dining Room
1:15	Landlord-Tenant, cont'd <i>Dona Lewandowski, School of Government</i>	2401
2:30	Break	
2:45	Landlord-Tenant, cont'd <i>Dona Lewandowski, School of Government</i>	2401
4:00	Break	
4:15	Landlord-Tenant, cont'd <i>Dona Lewandowski, School of Government</i>	2401
5:15	Recess	

OBJECTIVES FOR TODAY

You'll know how to respond to the most common questions from citizens concerning landlord-tenant situations.

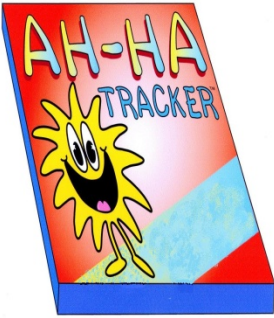
You'll become sufficiently familiar with the basic rules of summary ejection to allow you to correctly decide most small claims cases.

You'll practice using a job aid to assist you in correctly analyzing the evidence in a summary ejection action.

ACTIVITY: CHECKING-IN

Take a moment to meet your tablemates. Write their names down below:

_____	_____
_____	_____

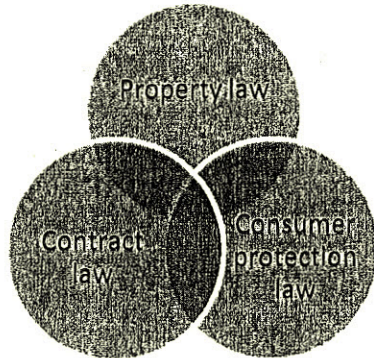


Thinking About Yesterday:

What is summary ejection?

If Larry "owns" real property (i.e., land, not personal property), what is it that he owns, exactly?

Landlord-tenant law is challenging sometimes because it's not intuitive. Present-day law is a mixture drawn from three sources, each with its own historical development, primary goals, and interests to be protected.



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

NOTES

Differences Between Commercial and Residential Leases

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

Exercise: Pretend you're a landlord.

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

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

NOTES

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

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

No matter what the complaint says, it works best to begin in every case by determining whether the lease contains a forfeiture clause (i.e., **a lease condition for which re-entry is specified**).

Exercise: Find the forfeiture clause.

Next, find the trigger.

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

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

What if there is no forfeiture clause? If the breach is failure to pay rent, the landlord may be able to rely on that ground to regain possession. This ground is only available if there is no forfeiture clause in the lease. Because the purpose of the law is to avoid a situation in which a tenant is able to occupy rental property for a prolonged period without paying rent, the landlord must meet an additional requirement: the landlord must make a demand that the tenant pay rent and must give the tenant at least ten days from the date of demand before filing an action for summary ejectment. The landlord has the burden of showing compliance with this requirement as part of a prima facie case.

Holding over ("The lease has ended, but the tenant's still there!")

There are three ways a lease can end:

- (1) the parties agree at the beginning on the end-date ("This lease for one year begins on Sept. 1, 2011, and ends on August 31, 2012.")
- (2) the parties agree at the beginning on a procedure for ending the lease ("The landlord will provide the tenant 45 days advance written notice prior to the termination date.")
- (3) the parties did not agree about when or how the lease would end, resulting in termination based on statute:
 - a. lease for 7 days: 2 days notice

- b. lease for one month: 7 days notice
- c. lease for one year: 30 days notice
- d. lease for mobile home space: 60 days notice

NOTE: This notice operates to terminate lease as of end of rental period. For example, in a month-to-month lease, with rent payable on the first day of the month, the landlord may give notice as early as Sept. 1, or as late as Sept. 23, in order to terminate the lease as of Sept. 30.

Criminal activity

If the lease itself states that criminal activity is a trigger for a forfeiture clause, the ground for summary ejection is actually "breach of a lease condition . . ." (see pp. 182-184 for discussion).

G.S. 42-59 to -73 sets out the statutory procedure for eviction based on criminal activity when the lease does not make that available. The statute is long and complex, and a magistrate should not hear a summary ejection action based on the statute before studying pp. 178-184 of Small Claims Law.

The most important aspect of making correct decisions in summary ejection actions is identifying the grounds and then applying the rules associated with that ground.

Steps in Resolving Summary Ejectment Cases:

Step 1: Check for service.

No service: Is defendant present?

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

Step 2: Ask for copy of lease.

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

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

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

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

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

Consider possible defenses: Waiver? Unconscionability?

Step 5: Determine what kind of lease it is.

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

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

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

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

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

ACTIVITY: LISTENING FOR ESSENTIAL ELEMENTS IN A SUMMARY EJECTMENT ACTION

BREACH OF A LEASE CONDITION

Plaintiff/LL must prove:

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

Most common defenses: failure to follow proper procedure, waiver

FAILURE TO PAY RENT

Plaintiff/LL must prove:

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

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

HOLDING OVER

Plaintiff/LL must prove:

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

Most common defenses: waiver, improper notice.

Questions

“My tenant moved out and left a bunch of stuff—looks like garbage mostly. Can I go in and clean it out?”

Answer: _____

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

Answer: _____

“My landlord turned off the power. Can he do that?”

Answer: _____

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

Answer: _____

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

Answer: _____

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

Answer: _____

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

Answer: _____

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

Answer: _____

“I have a rent-to-own contract with this guy, and he’s stopped paying rent. Should I go criminal, or is that a civil kind of thing?”

Answer: _____

The Residential Rental Agreements Act (and Other Tenants' Rights Statutes)

The Residential Rental Agreements Act is set out in G.S. Chapter 42, Sections 38 to 44. This law, which was passed in 1977, re-wrote the common law to provide that landlords must maintain residential rental premises to be fit to live in, and to make clear that a tenant's right to such housing cannot be waived. Prior law had followed the rule of *caveat emptor* ("let the buyer beware").

What Does the Law Provide?

The law imposes 8 distinct obligations on a landlord:

1. He must comply with building and housing codes.
2. He must keep premises in a fit and habitable condition.
3. He must keep common areas in safe condition
4. He must maintain and promptly repair electrical, plumbing, heating, and other supplied facilities and appliances.
5. He must install a smoke detector and keep it in good repair.
6. He must install a carbon monoxide detector and keep it in good repair.
7. He must notify the tenant if water the landlord charges to provide exceeds a certain contaminant level.
8. He must repair within a reasonable time any "imminently dangerous condition" listed in the statute:
 - a. Unsafe wiring.
 - b. Unsafe flooring or steps.
 - c. Unsafe ceilings or roofs.
 - d. Unsafe chimneys or flues.
 - e. Lack of potable water.
 - f. Lack of operable locks on all doors leading to the outside.
 - g. Broken windows or lack of operable locks on all windows on the ground level.
 - h. Lack of operable heating facilities capable of heating living areas to 65 degrees Fahrenheit when it is 20 degrees Fahrenheit outside from November 1 through March 31.
 - i. Lack of an operable toilet.
 - j. Lack of an operable bathtub or shower.
 - k. Rat infestation as a result of defects in the structure that make the premises not impervious to rodents.
 - l. Excessive standing water, sewage, or flooding problems caused by plumbing leaks or inadequate drainage that contribute to mosquito infestation or mold.

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

Notice Requirements

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

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

Waiver

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

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

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

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

Procedure:

The Act states that a tenant may enforce his rights under the Act by civil action, including "recoupment, counterclaim, defense, setoff, and any other proceeding, including an action for possession." Thus, a magistrate may be confronted with applying the Act in any of the following circumstances:

1. The landlord brings an action for possession and/or money damages, and the tenant defends by contending that the landlord violated the Act.
2. The landlord brings an action for possession and/or money damages, and the tenant brings a counterclaim for rent abatement based on the landlord's violation of the Act.
3. The landlord brings an action for money damages, and the tenant responds by arguing that the landlord's damages should be reduced ("set-off") because of his violation of the Act.
4. The tenant files an action for rent abatement.

Damages

The tenant is entitled to the difference between the FRV (fair rental value) of the property as warranted and the FRV of the property as it actually is, plus any incidental damages (for example, the tenant had to buy a space heater when the furnace stopped working). NOTE: A tenant may only recover up to the amount of rent he actually paid. If he lived in the property and paid no rent, for example, he is not entitled to also recover money damages.

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

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

Retaliatory Eviction

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

What are those events?

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

Remedy

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

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

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

Rebuttal by the Landlord

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

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

Self-Help Eviction

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

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

--Note: This rule applies only to *residential tenancies*. Self-help eviction is perfectly permissible in commercial lease situations.

--Note also the reference to “constructively . . . removed.” The law applies not only to actual removal of a tenant from rental premises, but also to actions taken by a landlord to make continued occupancy unpleasant: turning off utilities would be the most common example.

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

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

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

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

Tenant’s Remedies

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

“entitled to recover possession or to terminate his lease and the . . . landlord. . . . shall be liable to the tenant for damages caused by the tenant’s removal or attempted removal.”

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

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

Other Tenants’ Rights Statutes

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

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

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

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

North Carolina Residential Lease Agreement

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

WITNESSETH:

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

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

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

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

1. **TERM.** Landlord leases to Tenant and Tenant leases from Landlord the above described Premises together with any and all appurtenances thereto, for a term of 1 year, such term beginning on Jan. 1, 2011 and ending at 11:59 PM on December, 31, 2011.
2. **RENT.** The total rent for the term hereof is the sum of \$8,640 DOLLARS payable on the 1st day of each month of the term, in equal installments of \$720 DOLLARS, first and last installments to be paid upon the due execution of this Agreement, the second installment to be paid on Feb. 1, 2011. All such payments shall be made to Landlord at Landlord's address as set forth in the preamble to this Agreement on or before the due date and without demand.
3. **DAMAGE DEPOSIT.** Upon the due execution of this Agreement, Tenant shall deposit with Landlord the sum of \$1000 DOLLARS receipt of which is hereby acknowledged by Landlord, as security for any damage caused to the Premises during the term hereof. Such deposit shall be returned to Tenant, without interest, and less any set off for damages to the Premises upon the termination of this Agreement.
4. **USE OF PREMISES.** The Premises shall be used and occupied by Tenant and Tenant's immediate family, exclusively, as a private single family dwelling, and no part of the Premises shall be used at any time during the term of this Agreement by Tenant for the purpose of carrying on any business, profession, or trade of any kind, or for any purpose other than as a private single family dwelling. Tenant shall not allow any other person, other than Tenant's immediate family or transient relatives and friends who are guests of Tenant, to

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

5. **CONDITION OF PREMISES.** Tenant stipulates, represents and warrants that Tenant has examined the Premises, and that they are at the time of this Lease in good order, repair, and in a safe, clean and tenable condition.
6. **ASSIGNMENT AND SUB-LETTING.** Tenant shall not assign this Agreement, or sub-let or grant any license to use the Premises or any part thereof without the prior written consent of Landlord. A consent by Landlord to one such assignment, sub-letting or license shall not be deemed to be a consent to any subsequent assignment, sub-letting or license. An assignment, sub-letting or license without the prior written consent of Landlord or an assignment or sub-letting by operation of law shall be absolutely null and void and shall, at Landlord's option, terminate this Agreement.
7. **ALTERATIONS AND IMPROVEMENTS.** Tenant shall make no alterations to the buildings or improvements on the Premises or construct any building or make any other improvements on the Premises without the prior written consent of Landlord. Any and all alterations, changes, and/or improvements built, constructed or placed on the Premises by Tenant shall, unless otherwise provided by written agreement between Landlord and Tenant, be and become the property of Landlord and remain on the Premises at the expiration or earlier termination of this Agreement.
8. **NON-DELIVERY OF POSSESSION.** In the event Landlord cannot deliver possession of the Premises to Tenant upon the commencement of the Lease term, through no fault of Landlord or its agents, then Landlord or its agents shall have no liability, but the rental herein provided shall abate until possession is given. Landlord or its agents shall have thirty (30) days in which to give possession, and if possession is tendered within such time, Tenant agrees to accept the demised Premises and pay the rental herein provided from that date. In the event possession cannot be delivered within such time, through no fault of Landlord or its agents, then this Agreement and all rights hereunder shall terminate.
9. **HAZARDOUS MATERIALS.** Tenant shall not keep on the Premises any item of a dangerous, flammable or explosive character that might unreasonably increase the danger of fire or explosion on the Premises or that might be considered hazardous or extra hazardous by any responsible insurance company.
10. **UTILITIES.** Tenant shall be responsible for arranging for and paying for all utility services required on the Premises.
11. **MAINTENANCE AND REPAIR; RULES.** Tenant will, at its sole expense, keep and maintain the Premises and appurtenances in good and sanitary condition and repair during the term of this Agreement and any renewal thereof. Without limiting the generality of the foregoing, Tenant shall:

- (a) Not obstruct the driveways, sidewalks, courts, entry ways, stairs and/or halls, which shall be used for the purposes of ingress and egress only;
- (b) Keep all windows, glass, window coverings, doors, locks and hardware in good, clean order and repair;
- (c) Not obstruct or cover the windows or doors;
- (d) Not leave windows or doors in an open position during any inclement weather;
- (e) Not hang any laundry, clothing, sheets, etc. from any window, rail, porch or balcony nor air or dry any of same within any yard area or space;
- (f) Not cause or permit any locks or hooks to be placed upon any door or window without the prior written consent of Landlord;
- (g) Keep all air conditioning filters clean and free from dirt;
- (h) Keep all lavatories, sinks, toilets, and all other water and plumbing apparatus in good order and repair and shall use same only for the purposes for which they were constructed. Tenant shall not allow any sweepings, rubbish, sand, rags, ashes or other substances to be thrown or deposited therein. Any damage to any such apparatus and the cost of clearing stopped plumbing resulting from misuse shall be borne by Tenant;
- (i) And Tenant's family and guests shall at all times maintain order in the Premises and at all places on the Premises, and shall not make or permit any loud or improper noises, or otherwise disturb other residents;
- (j) Keep all radios, television sets, stereos, phonographs, etc., turned down to a level of sound that does not annoy or interfere with other residents;
- (k) Deposit all trash, garbage, rubbish or refuse in the locations provided therefor and shall not allow any trash, garbage, rubbish or refuse to be deposited or permitted to stand on the exterior of any building or within the common elements;
- (l) Abide by and be bound by any and all rules and regulations affecting the Premises or the common area appurtenant thereto which may be adopted or promulgated by the Condominium or Homeowners' Association having control over them.

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

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

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

14. **SUBORDINATION OF LEASE.** This Agreement and Tenant's interest hereunder are and shall be subordinate, junior and inferior to any and all mortgages, liens or encumbrances now or hereafter placed on the Premises by Landlord, all advances made under any such mortgages, liens or encumbrances (including, but not limited to, future advances), the interest payable on such mortgages, liens or encumbrances and any and all renewals, extensions or modifications of such mortgages, liens or encumbrances.
15. **TENANT'S HOLD OVER.** If Tenant remains in possession of the Premises with the consent of Landlord after the natural expiration of this Agreement, a new tenancy from month-to-month shall be created between Landlord and Tenant which shall be subject to all of the terms and conditions hereof except that rent shall then be due and owing at whatever amount is established at the sole discretion of the landlord upon written notice to the tenant and except that such tenancy shall be terminable upon thirty (30) days written notice served by either party
16. **SURRENDER OF PREMISES.** Upon the expiration of the term hereof, Tenant shall surrender the Premises in as good a state and condition as they were at the commencement of this Agreement, reasonable use and wear and tear thereof and damages by the elements excepted.
17. **ANIMALS.** Tenant shall be entitled to keep no more than two (2) domestic dogs, cats or birds; however, at such time as Tenant shall actually keep any such animal on the Premises, Tenant shall pay to Landlord a pet deposit of \$150 DOLLARS which shall be non-refundable and shall be used upon the termination or expiration of this Agreement for the purposes of cleaning the carpets of the building.
18. **QUIET ENJOYMENT.** Tenant, upon payment of all of the sums referred to herein as being payable by Tenant and Tenant's performance of all Tenant's agreements contained herein and Tenant's observance of all rules and regulations, shall and may peacefully and quietly have, hold and enjoy said Premises for the term hereof.
19. **INDEMNIFICATION.** Landlord shall not be liable for any damage or injury of or to the Tenant, Tenant's family, guests, invitees, agents or employees or to any person entering the Premises or the building of which the Premises are a part or to goods or equipment, or in the structure or equipment of the structure of which the Premises are a part, and Tenant

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

22. **LATE CHARGE.** In the event that any payment required to be paid by Tenant hereunder is not made within five (5) calendar days of when due, Tenant shall pay to Landlord, in addition to such payment or other charges due hereunder, a "late fee" in the amount of \$108 DOLLARS.
24. **ABANDONMENT.** If at any time during the term of this Agreement Tenant abandons the Premises or any part thereof, Landlord may, at Landlord's option, obtain possession of the Premises in the manner provided by law, and without becoming liable to Tenant for damages or for any payment of any kind whatever. Landlord may, at Landlord's discretion, as agent for Tenant, relet the Premises, or any part thereof, for the whole or any part thereof, for the whole or any part of the then unexpired term, and may receive and collect all rent payable by virtue of such reletting, and, at Landlord's option, hold Tenant liable for any difference between the rent that would have been payable under this Agreement during the balance of the unexpired term, if this Agreement had continued in force, and the net rent for such period realized by Landlord by means of such reletting. If Landlord's right of reentry is exercised following abandonment of the Premises by Tenant, then Landlord shall consider any personal property belonging to Tenant and left on the Premises to also have been abandoned, in which case Landlord may dispose of all such personal property in any manner Landlord shall deem proper and Landlord is hereby relieved of all liability for doing so.
25. **ATTORNEYS' FEES.** Should it become necessary for Landlord to employ an attorney to enforce any of the conditions or covenants hereof, including the collection of rentals or gaining possession of the Premises, Tenant agrees to pay all expenses so incurred, including a reasonable attorneys' fee.
26. **RECORDING OF AGREEMENT.** Tenant shall not record this Agreement on the Public Records of any public office. In the event that Tenant shall record this Agreement, this Agreement shall, at Landlord's option, terminate immediately and Landlord shall be entitled to all rights and remedies that it has at law or in equity.
25. **GOVERNING LAW.** This Agreement shall be governed, construed and interpreted by, through and under the Laws of the State of North Carolina.
26. **SEVERABILITY.** If any provision of this Agreement or the application thereof shall, for any reason and to any extent, be invalid or unenforceable, neither the remainder of this Agreement nor the application of the provision to other persons, entities or circumstances shall be affected thereby, but instead shall be enforced to the maximum extent permitted by law.
27. **BINDING EFFECT.** The covenants, obligations and conditions herein contained shall be binding on and inure to the benefit of the heirs, legal representatives, and assigns of the parties hereto.

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

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

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

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

LANDLORD: Sign: Mark Reynolds - Agent for West End Prop. Co
Print: Mark Reynolds Agent SE MAP Date: 11-20-11

TENANT: Sign: Townes Van Zandt
Print: TOWNES VAN ZANDT Date: 1/1/2011

EVALUATION FOR DAY 3

INSTRUCTORS

Instructor: Dona Lewandowski
Topic: Landlord-Tenant Law

	Strongly Agree	Neither Agree Nor Disagree	Strongly Disagree		
1. The instructor made the subject matter interesting.	[5]	[4]	[3]	[2]	[1]
2. The instructor seemed to be concerned about whether students learned the material.	[5]	[4]	[3]	[2]	[1]
3. The instructor presented material in a clear manner.	[5]	[4]	[3]	[2]	[1]
4. The instructor was prepared for class.	[5]	[4]	[3]	[2]	[1]
5. This instructor's session(s) helped me gain useful knowledge and skills.	[5]	[4]	[3]	[2]	[1]

SPECIFIC SESSIONS

Landlord-Tenant Law

Tab: Day 4

SCHEDULE FOR TODAY

9:00	Legal Issues in Domestic Violence <i>Dona Lewandowski, School of Government</i>	Room 2401
10:30	Break	
10:45	Small Claims: Actions to Recover Personal Property <i>Dona Lewandowski, School of Government</i>	Room 2401
12:30	Lunch	
1:15	Small Claims Practice <i>Dona Lewandowski, School of Government</i>	Room 2401
2:30	Break	
2:45	The Struggle Toward Fairness: What Does It Mean to Think Like a Judge? <i>Dona Lewandowski, School of Government</i>	Room 2401
4:15	Break	
4:30	Contempt <i>Dona Lewandowski, School of Government</i>	Room 2401
5:15	Recess	

OBJECTIVES FOR TODAY

You'll develop a plan for providing practical helpful information to victims of domestic violence, particularly about how to access resources available through the court system in your county.

You'll be provided with resources enabling you to follow correct procedure in issuing ex parte DVPOs, if you are so authorized.

You'll become acquainted with the criminal offense of violation of a DVPO, and practice applying the essential elements of the crime to specific fact situations.

You'll become proficient in using the 48-hour hold chart to determine whether that special rule applies to various criminal offenses, given specific fact situations.

You'll be able to differentiate between the two types of actions to recover property and correctly apply the rules for each.

You'll have an opportunity to practice being a small claims judge.

You'll explore how your experiences might influence your perceptions and behavior as a judge, and learn effective ways of combating the influence of implicit bias on your decisions.

You'll learn the most significant factors in assessing credibility of witnesses—and what doesn't work, as well.

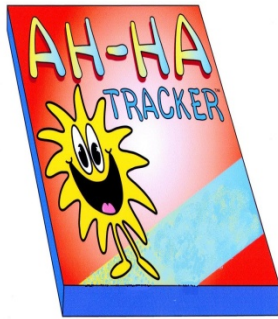
You'll be able to identify and effectively make use of alternatives to contempt when confronted with contemptuous behavior.

You'll be able to identify the circumstances required to constitute direct criminal contempt and follow correct procedure in holding a person in contempt.

ACTIVITY: CHECKING-IN

Take a moment to meet your tablemates. Write their names down below:

_____	_____
_____	_____



Thinking About Yesterday:

LEGAL ISSUES IN DOMESTIC VIOLENCE

SOME BASIC INFORMATION ABOUT DOMESTIC VIOLENCE PROTECTIVE ORDERS¹

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

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

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

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

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

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

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

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

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

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

- current or former spouses
- persons of the opposite sex who live together or have lived together
- parents and children,¹ and grandparents and grandchildren. NOTE: no DVPO may issue under this section against a child under the age of 16.
- persons having a child in common
- current or former household members
- persons of the opposite sex who are or have been in a dating relationship.²

¹ Including those acting *in loco parentis* to a minor child.

² A dating relationship is defined as a relationship in which the parties are romantically involved over time and on a continuous basis over the course of the relationship.

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

--He tried to cause physical injury;

--He intentionally caused physical injury;

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

-- He behaved in a way that caused the plaintiff, a member of her family, or a member of her household, to be afraid that defendant will continue to terrorize that person to such a degree that the person experiences significant mental suffering. This behavior must be intentional on the part of the defendant, and it must have no legitimate purpose.³ The statute refers to this behavior as **harassment**.

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

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

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

³ 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 against a person.
- 2) The defendant has a pattern of prior conduct involving the use or threatened use of violence with a firearm against a person.
- 3) The defendant has made threats to seriously injure or kill the plaintiff or minor child.
- 4) The defendant has threatened suicide.
- 5) The defendant has inflicted serious injuries on the plaintiff or minor child.

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

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

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

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

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

ANSWERING QUESTIONS ABOUT DVPO'S

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

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

and

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

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

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

11. _____
12. _____
13. _____

In many counties, the clerk's office or local agency offering assistance to domestic violence has prepared brochures or other handouts providing victims with answers to these

questions. In every case, the magistrate should be certain that the citizen is informed that **there are no court costs** associated with seeking a DVPO , and that an attorney is not necessary to access these services.

PRACTICE EXERCISE

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

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

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)*

<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>

Other Protected Persons/DOB:

<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>

VERSUS

RESPONDENT/DEFENDANT

First Middle Last

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

Respondent's/Defendant's Address

RESPONDENT/DEFENDANT IDENTIFIERS

Sex	Race	DOB	HT	WT
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Eyes	Hair	Social Security Number		
<input type="text"/>	<input type="text"/>	<input type="text"/>		
Drivers License No.		State	Expiration Date	
<input type="text"/>		<input type="text"/>	<input type="text"/>	

Distinguishing Features

CAUTION:
 Weapon Involved

THE COURT HEREBY FINDS THAT:
 This matter was heard by the undersigned district court judge. magistrate. The court has jurisdiction over the subject matter.

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

THE COURT HEREBY ORDERS THAT:
 The above named Respondent/Defendant shall not commit any further acts of domestic violence or make any threats of domestic violence (G.S. 50B-1).
 The above named Respondent/Defendant shall have no contact with the Petitioner/Plaintiff. No contact includes any defendant-initiated contact, 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.

ADDITIONAL FINDINGS

1. As indicated by the check block under Respondent/Defendant's name on Page 1, the parties are or have been in a personal relationship.
2. That on *(date of most recent conduct)* _____, the defendant
- a. attempted to cause intentionally caused bodily injury to the plaintiff the child(ren) living with or in the custody of the plaintiff
 - b. placed in fear of imminent serious bodily injury the plaintiff a member of the plaintiff's family a member of the plaintiff's household
 - c. placed in fear of continued harassment that rises to such a level as to inflict substantial emotional distress the plaintiff a member of plaintiff's family a member of plaintiff's household
 - d. committed an act defined in G.S. 14- 27.2 (1st deg. rape) 27.3 (2nd deg. rape) 27.4 (1st deg. sexual off.) 27.5 (2nd deg. sexual off.) 27.5A (sexual battery) 27.7 (sexual activity by substitute parent) against the plaintiff a child(ren) living with or in the custody of the plaintiff by
(describe defendant's conduct)

3. The defendant is in possession of, owns or has access to firearms, ammunition, and gun permits described below. *(Describe all firearms, ammunition, gun permits and give identifying number(s) if known, and indicate where defendant keeps firearms)*

4. The defendant
- a. used threatened to use a deadly weapon against the plaintiff minor child(ren) residing with or in the custody of the plaintiff
 - b. has a pattern of prior conduct involving the use threatened use of violence with a firearm against persons
 - c. made threats to seriously injure or kill the plaintiff minor child(ren) residing with or in the custody of the plaintiff
 - d. made threats to commit suicide
 - e. inflicted serious injuries upon the plaintiff minor child(ren) residing with or in the custody of the plaintiff in that *(state facts)*:

5. The parties are the parents of the following child(ren) under the age of eighteen (18). The child(ren) are presently in the physical custody of the plaintiff. defendant. The plaintiff has submitted an "Affidavit As To The Status Of The Minor Child."
NOTE TO JUDGE: *A copy of AOC-CV-609 for each child must be attached to the order.*

Name	Sex	Date Of Birth	Name	Sex	Date Of Birth

6. The minor child(ren) is exposed to a substantial risk of physical or emotional injury or sexual abuse in that:
7. It is in the best interest of and necessary for the safety of the minor child(ren) that defendant stay away from the minor child(ren) that the defendant return the minor child(ren) to plaintiff and that the defendant not remove the minor child(ren) from plaintiff in that:
8. *(Check block only if plaintiff is entitled to physical care of child(ren).)* It is in the best interest of the minor child(ren) that defendant have contact with the minor child(ren) in that:
9. The defendant plaintiff is presently in possession of the parties' residence at _____

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:
- | | |
|---|--|
| <input type="checkbox"/> a. the place where the plaintiff works. [04] . | <input type="checkbox"/> b. any school(s) the child(ren) attend. [04] |
| <input type="checkbox"/> c. the place where the child(ren) receives day care. [04] | <input type="checkbox"/> d. the plaintiff's school. [04] |
| <input type="checkbox"/> 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.)*
- | |
|---|
| <input type="checkbox"/> a. and the defendant is ordered to stay away from the minor child(ren). |
| <input type="checkbox"/> b. and the defendant is ordered to immediately return the minor child(ren) to the care of the plaintiff. |
| <input type="checkbox"/> 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	<input type="checkbox"/> District Court Judge <input type="checkbox"/> Designated Magistrate
------	-----------	---

NOTE TO PLAINTIFF: If the judge signs this Order and gives it to you, take it to the Clerk's office immediately. If the magistrate signs this Order and gives it to you, follow the magistrate's directions.

NOTE TO CLERK: Give or mail a copy of this Order to the plaintiff and to the appropriate local law enforcement agency. Send copies to sheriff with Notice Of Hearing, Complaint and Summons for service on defendant. Send extra copies to the sheriff if required to deliver copy(ies) to the child(ren)'s school.

NOTICE TO PARTIES

TO THE DEFENDANT:

1. **If this Order prohibits you from possessing, receiving or purchasing a firearm and you violate or attempt to violate that provision, you may be charged with a Class H felony pursuant to North Carolina G.S. 14-269.8 and may be imprisoned for up to 30 months.**
2. **If you have been ordered to surrender firearms, ammunition, and gun permits and you fail to surrender them as required by this Order, or if you failed to disclose to the Court all information requested about possession of these items or provide false information about any of these items you may be charged with a Class H felony and may be imprisoned for up to 30 months.** If you surrendered your firearms, ammunition, and permits, you may file a motion for the return of weapons with the clerk of court in the county in which this Order was entered when the protective order is no longer in effect, except if at the time this Order expires criminal charges, in either state or federal court, are pending against you alleged to have been committed against the person who is protected by this order, you may not file for return of the firearms until final disposition of the criminal charges. The form, "Motion For Return Of Weapons Surrendered Under Domestic Violence Protective Order" AOC-CV-319, is available from the clerk of court's office. The motion must be filed **not later than 90 days after the expiration of the Order that requires you to surrender the firearms or if you have pending criminal charges alleged to have been committed against the person who is protected by the domestic violence protection order, the motion must be filed not later than 90 days after final disposition of the criminal charges.** At the time you file the motion, the clerk will schedule a hearing before the district court for a judge to determine whether to return the weapons to you. The sheriff cannot return your weapons unless the Court orders the sheriff to do so. You must pay the sheriff's storage fee before the sheriff returns your weapons. If you fail to file a motion for return of the weapons within 90 days after the expiration of this Order, or the final disposition of criminal charges pending at the time this Order expired, or if you fail to pay the storage fees **within 30 days after the Court enters an order to return your weapons**, the sheriff may seek an order from the Court to dispose of your weapons.

TO THE PLAINTIFF:

1. You should keep a copy of this order on you at all times and should make copies to give to your friends and family. If you move to another county or state, you may wish to give a copy to the law enforcement agency where you move, but you are not required to do so.
2. The court or judge is the only one that can make changes to this order. If you wish to change any of the terms of this order, you must come back into court to have the judge modify the order.
3. If the defendant violates any provision of this order, you may call a law enforcement officer or go to a magistrate to charge the defendant with the crime of violating a protective order. You also may go to the Clerk of Court's office in the county where the protective order was issued and ask to fill out form AOC-CV-307, Motion For Order To Show Cause Domestic Violence Protective Order, to have an order issued for the defendant to appear before a district court judge to be held in contempt for violating the order.

Name Of Defendant File No.

CERTIFICATION

I certify this order is a true copy.

Date Signature Of Clerk Deputy CSC Assistant CSC
 Clerk of Superior Court

RETURN OF SERVICE

NOTE: To be used when Magistrate issues ex parte protective order and order will be served on defendant separate from the complaint and civil summons. If complaint and summons are served with order, return on summons covers order.

I certify that this Ex Parte Domestic Violence Order of Protection was received and served as follows:

Date Served Time Served AM PM Name Of Defendant

- By delivering to the defendant named above a copy of the order.
- By leaving a copy of the order at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.

Name And Address Of Person With Whom Copies Left

- Other manner of service on the defendant (specify)

- Defendant WAS NOT served for the following reason.

Date Received Signature Of Deputy Sheriff Making Return

Date Of Return Name Of Sheriff (Type Or Print)

County Of Sheriff

ENFORCEMENT OF DVPO'S

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

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

KEY POINTS ABOUT ENFORCEMENT

- 1. Immediate arrest is mandatory if an officer has probable cause to believe that the defendant knowingly has violated a valid protective order
 - a) excluding the defendant from the residence or household occupied by a victim of domestic violence or
 - b) directing the defendant to refrain from threatening, abusing, or following the plaintiff, harassing the plaintiff, including by telephone, visiting the home or workplace, or other means, or otherwise interfering with plaintiff.
- 2. Arrest without a warrant is discretionary for any other violation of G.S. 50B-4.1.

3. An officer, who has probable cause, may arrest even though the defendant has left the premises by the time the officer arrives. The officer need not actually see the violation himself or herself if the officer has probable cause to believe that the defendant violated the provisions of a domestic violence protective order. However, the officer may not enter defendant's home without consent to arrest unless officer gets arrest warrant and may not enter the home of another person to arrest defendant without consent unless the officer gets an arrest warrant for the defendant and a search warrant for the premises.
4. In determining the validity of an out-of-state order, a law enforcement officer may rely upon a copy of the protective order issued by another state that is provided to the officer and on the statement of the person protected by the order that to the best of that person's knowledge the order is presently in effect as written. [G.S. 50B-4(d)] The officer can also rely on any other information in determining that the defendant has violated a valid protective order.

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

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

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

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

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

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

- Name and address of the defendant
- Offense—"Violation of a civil domestic violence protective order, G.S. 50B-4.1"

- Order of Commitment– Check block that says “produce him/her at the first session of district or superior court held in this county after the entry of this Order or, if no session is held before (*enter date and time 48 hours after arrest*) _____, produce him/her before a magistrate of this county at that time to determine conditions of pretrial release.”

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

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

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

If judge hasn’t set bond with 48 hours, defendant must be brought back before magistrate on duty. Cannot wait until next morning or day.⁴

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

⁴ *State v. Thompson*, 349 N.C. 483, 508 S.E.2d 277 (1998) (upheld constitutionality of statute but said unconstitutional as applied to defendant who was not taken before a judge at 9:30 in the morning when court opened but was held until 2:30 that afternoon).

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

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

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

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

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

- Defendant is charged with the crime of willful violation of a valid domestic violence protective order under GS 50B-4.1. This offense applies if the relationship between the defendant and victim is a “personal relationship.” but the magistrate does not even need to inquire because that must be the relationship for the protective order to have been issued in the first place.
- Defendant is charged with any felony under Art. 7A of Chapter 14—rape or sexual offense—on a spouse or former spouse or on a person with whom the defendant lives or has lived as if married.
- Defendant is charged with any felony under Art. 8 of Chapter 14—assaults, which were already covered, castration, maiming, throwing of corrosive acid—on a spouse or former spouse or on a person with whom the defendant lives or has lived as if married.
- Defendant is charged with any felony under Art. 10 of Chapter 14—kidnapping, abduction of children, felonious restraint—on a spouse or former spouse or on a person with whom the defendant lives or has lived as if married.
- Defendant is charged with any felony under Art. 15 of Chapter 14—arson and other burnings—on a spouse or former spouse or on a person with whom the defendant lives or has lived as if married.

ISSUES THAT ARISE IN ENFORCING VIOLATIONS

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

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

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

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

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

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

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

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

A: Yes. G.S. 50B-4(d) provides that valid protective orders entered by the courts of another state or the courts of an Indian tribe shall be accorded full faith and credit

by the courts of North Carolina as if they were orders issued by North Carolina courts. It does not matter whether the order is registered in North Carolina. It is enforced like any NC issued protective order-by charging a person who violates the out-of-state issued order in North Carolina with the crime of violating the protective order or by the victim filing a motion for the clerk to issue a show cause order for contempt.

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

CONDITIONS ON PRETRIAL RELEASE/VIOLATIONS

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

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

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

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

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

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

WHAT CONSTITUTES DOMESTIC VIOLENCE FOR CRIME VICTIM'S RIGHTS LAW

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

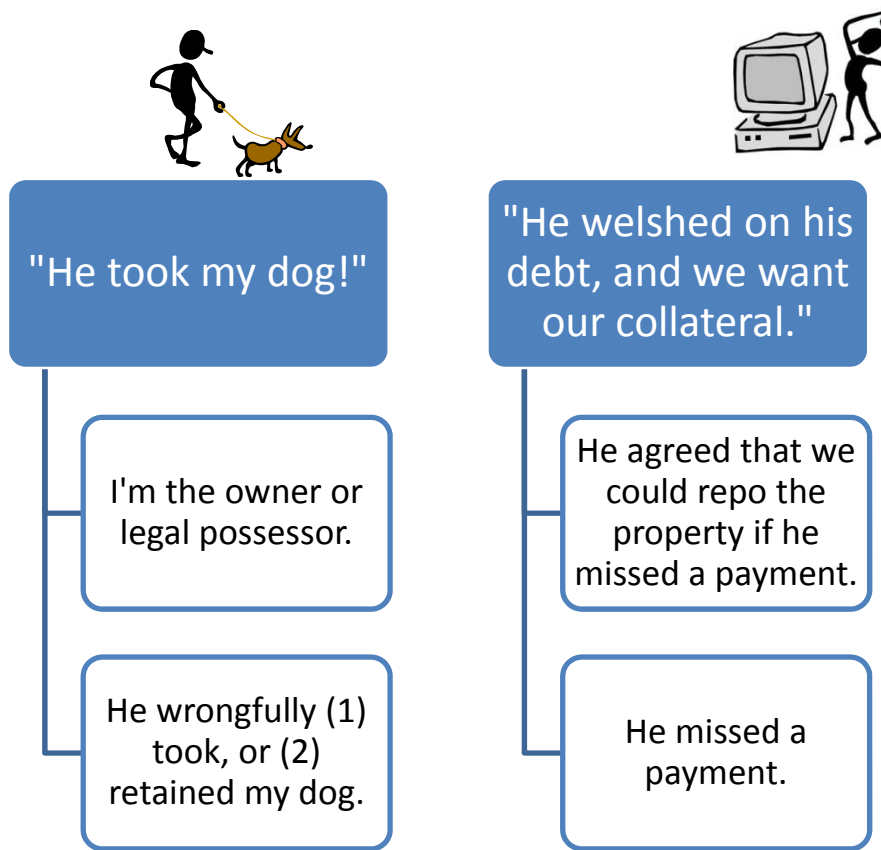
For the most part, victims are persons against whom violent felonies were committed, but the law also applies to the following misdemeanors when the victim and defendant have a personal relationship as defined by the G.S. 50B-1.

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

The category of domestic violence victims covered by the Crime Victim's Rights Act is broader than the category of those covered by the special pretrial release rules. A magistrate issuing an arrest warrant in one of these covered misdemeanors must note on the process that it is a Crime Victim's Rights Act crime and record the victim's name, address, and telephone number electronically or on a form separate from the warrant and

send to the clerk. The automated system has pop up questions if one of these offenses is charged and will electronically send required information. Magistrates not using automated system must mark on the process that the case is Crime Victim's Rights case and must note information about victim on form separate from the criminal process.

ACTIONS TO RECOVER PERSONAL PROPERTY



These are two entirely different lawsuits. Only the remedy is the same.

FREQUENTLY-ASKED QUESTIONS

HE TOOK MY DOG:

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

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

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

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

WE WANT TO REPO THE COLLATERAL:

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

“What do you mean by ‘breach of the peace’?”

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

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

SECURED TRANSACTIONS: LEARNING THE LINGO

Friendly Furniture sells bedroom furniture, and Connie Consumer would like to purchase some. Connie doesn't have the money to pay the entire purchase price, though. So FF offers to sell her the furniture on an installment plan—in other words, to "finance" her purchase. Of course, there's a possibility that Connie will take the furniture but not finish paying for it. If that happened, FF could certainly sue Connie for breach of contract. But there's a good chance that Connie might turn out to be "judgment-proof," and even if she isn't, it would involve a lot of effort and expense on FF's part to collect. An alternative, which helps FF feel more secure, and thus more interested in selling to low-income customers, is for FF and Connie to enter into another contract saying that if Connie misses a payment, FF can repossess the furniture. FF doesn't even have to come to court, unless its effort to retrieve the furniture might cause a breach of the peace.

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

As you know, a business deal is often referred to as a transaction, and this special type of two-contracts-in-one is called a _____
 _____. To create a secured transaction, the debtor must sign a
 written, dated _____ that describes the
 property involved specifically enough so that it may be identified. The parties to this
 agreement are Connie, the *debtor*, and FF, the _____.
 The term for the property that secures the transaction is _____.
 Rather than saying that FF and Connie entered into a security agreement in which FF
 obtained the right to repossess the collateral if Connie doesn't pay, it's easier to simply say
 that FF took a _____ in the property. The
 legal term for Connie's failure to pay, which triggers FF's right to repossess, is
 _____.

The rules about what FF does after repossessing the property are complex. If FF
 sells the property, it is required to conduct the sale in a _____.
 _____. 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

Secured party

deficiency

Security interest

SECURED TRANSACTION

default

EXERCISE: FILLING OUT THE JUDGMENT FORM

You have just finished hearing a case involving an action to recover possession. You have decided to rule in favor of the plaintiff. Study the complaint that follows (and make the assumption that the plaintiff actually filled it out correctly), and then complete the judgment form.

STATE OF NORTH CAROLINA
 In The General Court Of Justice
 District Court Division-Small Claims
 _____ County

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.

(Name Of Judgment Debtor(s) From Whom Amount Recovered

Principal Sum Of Judgment \$ _____

Pre-judgment Interest Not Included \$ _____ Judgment Announced And Signed In Open Court

Attorney's Fees Or Other Damages \$ _____
 (when appropriate)

Date _____
 Signature Of Magistrate

Name Of Party Announcing Appeal In Open Court

TOTAL AMOUNT \$ \$ _____

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

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

STRUGGLING TOWARD FAIRNESS

MOST OF US SHARE TWO ASSUMPTIONS:

- 1) That we accurately perceive the world around us; and
- 2) That we are consciously aware—and thus in control—of internal influences on our behavior. That is, we know why we think what we think, and do what we do.

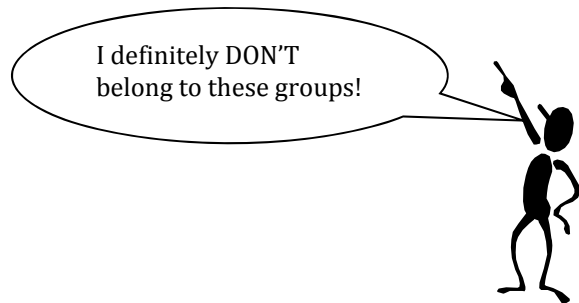
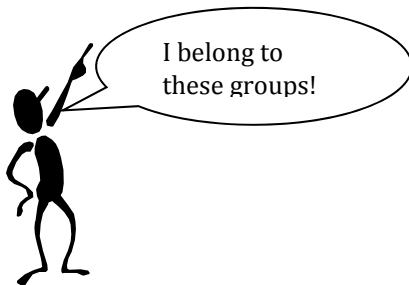
EXERCISE:

How many passes did you count? _____

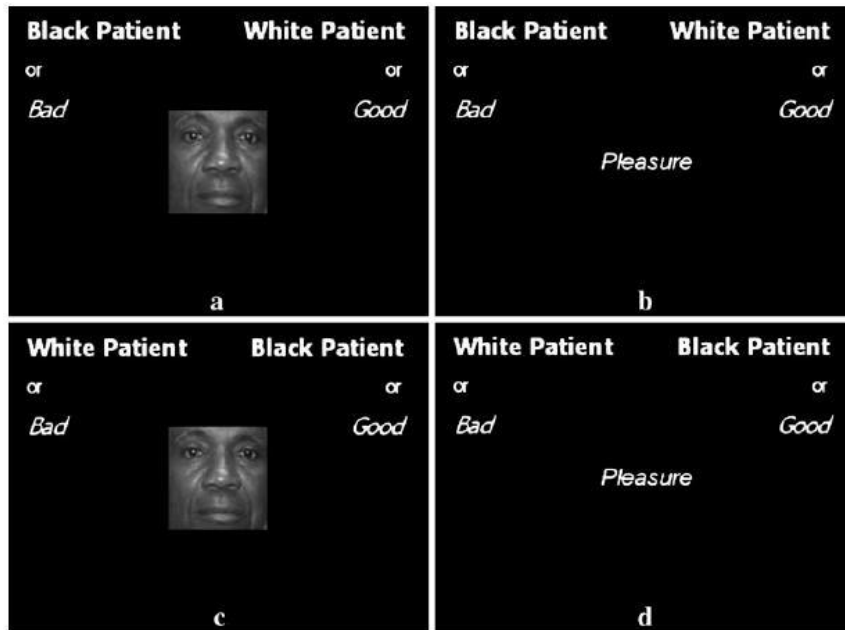
EXERCISE: INTERVIEW A STRANGER

Notes: _____

Talking About Groups



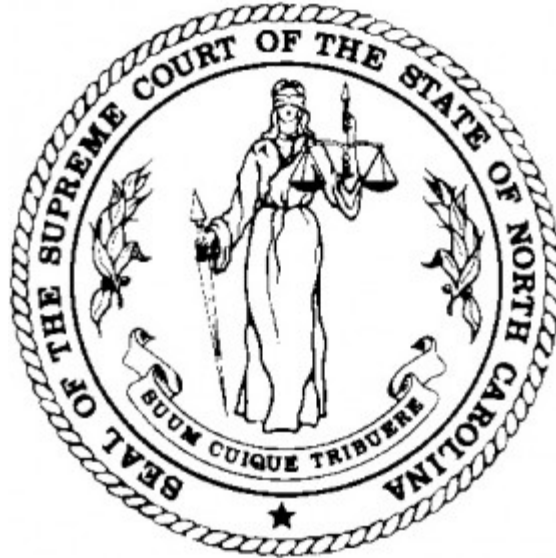
IMPLICIT ASSOCIATION TEST



<https://implicit.harvard.edu/implicit/>

**WHAT FIRES
TOGETHER. . .
... WIRES
TOGETHER.**

“When I think of marshmallows, I also think of _____, and
_____, and
_____.”



Why is she blindfolded?

WHAT YOU NEED TO KNOW TO MINIMIZE THE IMPACT OF IMPLICIT BIAS ON YOUR DECISIONS AS A MAGISTRATE

- 1) Heighten awareness of differences, and remind yourself that differences increase the risk of out-group bias.
- 2) Remember that the brain relies on automatic processing when you are
 - a. In a hurry
 - b. Tired
 - c. Upset
 - d. Stressed
 - e. Angry

Slowing down and recognizing how you feel makes a big difference in what you think and do.

- 3) Think about your thinking. Specifically identify categories that you have negative associations to. Be alert to circumstances in which those associations may be triggered. Combat them by pausing to consciously break the associational link.
- 4) Keep learning. Take the IAT. Check out the resources listed in the Appendix. Invite a colleague to watch and discuss one of the online videos with you.

DIRECT CRIMINAL CONTEMPT

EXERCISE ON CONTEMPT: SHARE WITH YOUR TABLEMATES. . .

Have you been confronted with contemptuous behavior? How did you handle it?

ESSENTIAL ELEMENTS:

- Willful behavior
- Committed within the sight or hearing of the judge
- Either in your courtroom or in immediate proximity to your courtroom
- While you are “conducting court”
- Which tends to either interrupt or interfere with the proceedings

ALTERNATIVES TO CONSIDER:

- (1) _____
- (2) _____
- (3) _____
- (4) _____

PROCEDURE:

- Use AOC Form CR-390
- Inform the defendant of the charges
- Inform the defendant that the crime of contempt is punishable by a fine of up to \$500 and/or imprisonment of up to 30 days
- Allow the defendant an opportunity to respond
- Find facts beyond a reasonable doubt, identifying specifically what the defendant did
- Set a punishment
- Inform the defendant that s/he has a right to appeal
- If defendant appeals, set conditions of release.

NOTES

SEE APPENDIX FOR:

- Detailed outline entitled “Criminal Contempt for Magistrates,” with case examples
- Job Aid for Contempt

EVALUATION FOR DAY 4

INSTRUCTORS

In your evaluation, please consider all the sessions taught by this instructor today.

Instructor: Dona Lewandowski

Topics: Legal Issues in Domestic Violence; Actions to Recover Personal Property; The Struggle Toward Fairness; Contempt

	Strongly Agree	Neither Agree Nor Disagree	Strongly Disagree		
1. The instructor made the subject matter interesting.	[5]	[4]	[3]	[2]	[1]
2. The instructor seemed to be concerned about whether students learned the material.	[5]	[4]	[3]	[2]	[1]
3. The instructor presented material in a clear manner.	[5]	[4]	[3]	[2]	[1]
4. The instructor was prepared for class.	[5]	[4]	[3]	[2]	[1]
5. This instructor's session(s) helped me gain useful knowledge and skills.	[5]	[4]	[3]	[2]	[1]

SPECIFIC SESSIONS

Legal Issues in Domestic Violence

Actions to Recover Personal Property

Small Claims Practice

The Struggle Toward Fairness

Contempt

Anything else you'd like to tell us:

Tab: Day 5

SCHEDULE FOR TODAY

9:00	Handling Money <i>The Administrative Office of the Courts</i>	Room 2401
10:00	Understanding Domestic Violence <i>Chief District Court Judge Julius Corpening</i>	Room 2401
12:00	Marriage <i>Dona Lewandowski, School of Government</i>	Room 2401
12:45	Lunch	
1:30	Evaluations	Room 2401
1:45	Test on Week 1 Material	Room 2401 & 2321

OUR OBJECTIVES FOR TODAY

To explain the magistrate's responsibility for the funds they receive, describe the process for submitting funds to the CSC office, create an understanding of how to use and manage the manual receipt book according to AOC policy, and explain when and why an IRS Form 8300 is required.

You'll learn basic factual information about common behaviors displayed by both victims and perpetrators of domestic violence.

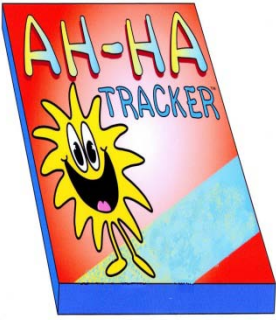
You'll participate in exercises designed to increase empathy and understanding of typical victim behavior.

You'll explore and identify your potential preconceptions and stereotypic beliefs about domestic violence so as to be better able to fulfill your responsibility as an impartial, detached judicial official.

You'll learn how to avoid some of the most frequent problems likely to arise in performing marriages.

ACTIVITY: CHECK-IN

Take a moment to meet your tablemates. Write their names down below:




Thinking About Yesterday:


 NORTH CAROLINA
 ADMINISTRATIVE OFFICE
of the COURTS

Basic School for Magistrates




Money Handling Policy


 NORTH CAROLINA
 ADMINISTRATIVE OFFICE
of the COURTS
2

Money Handling Policy

- _____
- _____

- _____


 NORTH CAROLINA
 ADMINISTRATIVE OFFICE
of the COURTS
3

Collection/Receipting Procedures – Cash Bonds

- [Placeholder text]
- [Placeholder text]
- [Placeholder text]
- [Placeholder text]
- [Placeholder text]

NORTH CAROLINA ADMINISTRATIVE OFFICE OF THE COURTS 13

Turn to Pages Day 5 - Page 8 thru Day 5 - Page 14

Collection/Receipting Procedures – Cash Bonds

[Placeholder text]

- [Placeholder text]
- [Placeholder text]
- [Placeholder text]
- [Placeholder text]

NORTH CAROLINA ADMINISTRATIVE OFFICE OF THE COURTS 14

Collecting/Receipting Procedures – Court Costs

[Placeholder text]

- [Placeholder text]
- [Placeholder text]
- [Placeholder text]
- [Placeholder text]
- [Placeholder text]
- [Placeholder text]

NORTH CAROLINA ADMINISTRATIVE OFFICE OF THE COURTS 15

Turn to Pages Day 5 - Page 15 thru Day 5 - Page 16

Notes on Cash Bonds

RETURN OF CUSTODIAN OF DETENTION FACILITY	
The defendant named on the reverse was released from my custody on the date shown below upon the execution of this Appearance Bond.	
Date Defendant Released	Signature Of Custodian
	<input type="checkbox"/> Sheriff <input type="checkbox"/> Deputy Sheriff <input type="checkbox"/> 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.	
AOC-CR-201, Side Two, Rev. 3/09 © 2009 Administrative Office of the Courts	

 **Update is ready to install** 
Click here for details.



Appearance Bond From

STATE OF NORTH CAROLINA		File No. 10CR 101
YOUR _____ County _____		In The General Court Of Justice <input type="checkbox"/> District <input type="checkbox"/> Superior Court Division
APPEARANCE BOND FOR PRETRIAL RELEASE		
Name And Mailing Address Of Defendant TEW MANNY BILLS 101 MAIN ST RALEIGH, NC 27602		
Social Security No. XXX-XX-XXXX	Telephone No. Of Defendant	
Total Bond Required \$ 1,000.00	Amount Of This Bond \$ 1,000.00	#
G.S. 15A-531, 15A-534, 15A-544.2		
Offenses And Additional File Numbers		
<input type="checkbox"/> 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. <input checked="" type="checkbox"/> 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. <input type="checkbox"/> 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. <input type="checkbox"/> 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. <input type="checkbox"/> (Professional bondsman, Bail Agent and Runners) - The "Affidavit" on the reverse side of this Bond is complete and true. <input type="checkbox"/> 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	



Cash Deposited By Defendant

ADC-42 REV. 11/99

Received of 10/3/10 YARR (COUNTY) 101 MAIN ST RECEIPT NO. I-150252
TEW MANNY BILLS RALIGH, NC 27602 Cash Check M.O.
 For 10 CR 101
 File # 10 CR 101

General Court Fee:					
Superior Court					
Criminal	\$	Facility Fee-Co	\$	Partial Pay	\$
Civil	\$	Facility Fee-Mun	\$	Judgment	\$
Spec Proc	\$	Officer Fee-Co	\$	Cash Bond	\$ <u>1,000.00</u>
Estates	\$	Officer Fee-Mun	\$	Trust	\$
District Court		Jail Fee-Co	\$	Alim & Supp	\$
Criminal	\$	Jail Fee-Mun	\$		
Civil	\$	LEOB & RF	\$		
Magistrate-S.F.	\$	Fine	\$		
Misc-Fees & Comm	\$	Other \$	Des		

Total Received \$1,000.00

By [Signature] CLERK OF SUPERIOR COURT/MAGISTRATE



Appearance Bond From

File No. 10CR 101

STATE OF NORTH CAROLINA

YOUR _____ County

In The General Court Of Justice
 District Superior Court Division

HUGH BADMAN
 101 MAIN ST
 RALEIGH, NC 27602

APPEARANCE BOND
 FOR
 PRETRIAL RELEASE

Social Security No. XXX-XX-XXXX Telephone No. Of Defendant

Total Bond Required \$ 1,000.00 Amount Of This Bond \$ 1,000.00 #

Offenses And Additional File Numbers G.S. 15A-531, 15A-534, 15A-544.2

Unsecured Appearance Bond - I, the undersigned defendant, acknowledge that my personal representatives and I are bound to pay the State of North Carolina the sum shown above, subject to the conditions of this Bond stated on the reverse side.

Cash Appearance Bond (See note on reverse side.) - I, the undersigned defendant, acknowledge that I am bound to pay the State of North Carolina the sum shown above, and hereby deposit the cash identified below as security with the understanding that the deposit will be returned upon the Court's determination that the conditions of release have been performed, subject to the conditions of this Bond stated on the reverse side, and that it will be available to satisfy my obligations.

Defendant's Property Appearance Bond - I, the undersigned defendant, acknowledge that I am bound to pay the State of North Carolina the sum shown above, subject to the conditions of this Bond stated on the reverse side, and as security for said Bond have executed a mortgage or deed of trust to real or personal property, payable to the State of North Carolina and with power of sale conditioned upon the breach of any condition of this Bond.

Surety Appearance Bond - We, the undersigned, jointly and severally acknowledge that we and our personal representatives are bound to pay the State of North Carolina the sum shown above, subject to the conditions of this Bond stated on the reverse side.

(Professional bondsman, Bail Agent and Runners) - The "Affidavit" on the reverse side of this Bond is complete and true.

Cash Deposited By Surety (See note on reverse side.) - We have deposited the cash identified below to secure our obligations as sureties on this bond with the understanding that the deposit will be returned to us upon the Court's determination that the conditions of pretrial release have been performed, and that it will NOT be available to satisfy defendant's obligations.

Date Of Execution Of Bond _____ Signature Of Defendant _____

ACCOMMODATION BONDSMAN

See Page Two for additional accommodation bondsman executing this bond.

Name And Address Of Accommodation Bondsman
 RAISA BADMAN
 201 MAIN ST
 RALEIGH, NC 27602

Name And Address Of Accommodation Bondsman

Social Security No. XXX-XX-XXXX Telephone No. _____

Social Security No. _____ Telephone No. _____



Cash Deposited By Surety

ADC-92 REV. 11/88

RECEIPT NO. **I-150252**
 Received of RAISA BADMAN (COUNTY) 201 MAIN ST Cash Check M.O.
 For HUGH BADMAN RALEIGH, NC 27602

File # 10 CR 101 vs. _____

General Court Fee:			
Superior Court			
Criminal	\$	Facility Fee-Co	\$
Civil	\$	Facility Fee-Mun	\$
Spec Proc	\$	Officer Fee-Co	\$
Estates	\$	Officer Fee-Mun	\$
District Court		Jail Fee-Co	\$
Criminal	\$	Jail Fee-Mun	\$
Civil	\$	LEOB & RF	\$
Magistrate-S.F.	\$	Fine	\$
Misc-Fees & Comm	\$	Other \$	Des

Partial Pay \$
 Judgment \$
 Cash Bond \$ 4,000.00
 Trust \$
 Alim & Supp \$

Total Received	\$ <u>1,200.00</u>
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By [Signature] CLERK OF SUPERIOR COURT/MAGISTRATE



NORTH CAROLINA ADMINISTRATIVE OFFICE of the COURTS

Appearance Bond From

STATE OF NORTH CAROLINA		File No. 10CR 101
ANOTHER		In The General Court Of Justice
Name And Mailing Address Of Defendant		<input checked="" type="checkbox"/> District <input type="checkbox"/> Superior Court Division
HUGH BADMAN 101 MAIN ST RALEIGH, NC 27602		APPEARANCE BOND FOR PRETRIAL RELEASE
Social Security No.	Telephone No. Of Defendant	G.S. 15A-531, 15A-534, 15A-544.2
XXX-XX-XXXX		
Total Bond Required	Amount Of This Bond	<input type="checkbox"/> See Attachment
\$ 1,000.00	\$ 1,000.00	
Offenses And Additional File Numbers		
<p><input type="checkbox"/> 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.</p> <p><input checked="" type="checkbox"/> 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.</p> <p><input type="checkbox"/> 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.</p> <p><input type="checkbox"/> 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.</p> <p><input type="checkbox"/> (Professional bondsman, Bail Agent and Runners) - The "Affidavit" on the reverse side of this Bond is complete and true.</p> <p><input type="checkbox"/> 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.</p>		
Date Of Execution Of Bond		Signature Of Defendant



Bond For Another County

AD-C-12 REV. 11/99
 RECEIPT NO. **I-150251**

CLERK OF SUPERIOR COURT
 ANOTHER (COUNTY)

Cash Check M.O.

Received of HUGH BADMAN

For 100 Main St Raleigh, NC 27602

File # 10 CR 301

vs.

General Court Fee: \$
 Superior Court \$
 Criminal \$
 Civil \$
 Spec Proc \$
 Estates \$
 District Court \$
 Criminal \$
 Civil \$
 Magistrate-S.F. \$
 Misc-Fees & Comm \$

Facility Fee-Co \$
 Facility Fee-Mun \$
 Officer Fee-Co \$
 Officer Fee-Mun \$
 Jail Fee-Co \$
 Jail Fee-Mun \$
 LEOB & RF \$
 Fine \$
 Other \$ 1,000.00 Des Bond For ANOTHER County

Partial Pay \$
 Judgment \$
 Cash Bond \$
 Trust \$
 Alim & Supp \$

Total Received	\$ 1,000.00
----------------	-------------

By [Signature]
 CLERK OF SUPERIOR COURT/MAGISTRATE

PAYOR



Court Cost - County

ADP-12 REV. 11/99
 RECEIPT NO. **I-150251**
 Received of HEVEE FOOTE (COUNTY) YOUR
 For 123 MAIN ST RALEIGH, NC 27602 Cash Check M.O.
70-55

File # C 1234567-0 vs. _____
 General Court Fee: \$ 12.00
 Superior Court
 Criminal \$ _____
 Civil \$ _____
 Spec Proc \$ _____
 Estates \$ _____
 District Court
 Criminal \$ 97.50
 Civil \$ _____
 Magistrate-S.F. \$ _____
 Misc-Fees & Comm \$ _____

Facility Fee-Co \$ _____
 Facility Fee-Mun \$ _____
 Officer Fee-Co \$ 5.00
 Officer Fee-Mun \$ _____
 Jail Fee-Co \$ _____
 Jail Fee-Mun \$ _____
 LEOB & RF. \$ 7.50
 Fine \$ 30.00
 Other \$ 3.00 IDA Des Fedoo Jus Phone Fee
\$2.00 LEO TRNG \$10.00 G.S. 70
 Partial Pay \$ _____
 Judgment \$ _____
 Cash Bond \$ _____
 Trust \$ _____
 Alim & Supp \$ _____

By [Signature] CLERK OF SUPERIOR COURT/MAGISTRATE
 Total Received \$ 171.00



Court Cost – Municipality

REC-27 (REV. 11/99) **10/3/10** RECEIPT NO. **I-150252**

Received of HEVON FORTA YVLA (client) Cash Check M.O.

For 123 MAIN ST RALEIGH, NC 27602 VS. MRS HILL

File # C 12345

General Court Fee:	Facility Fee-Co	\$	Partial Pay	\$
Superior Court	Facility Fee-Mun	\$ 12.00	Judgment	\$
Criminal	Officer Fee-Co	\$	Cash Bond	\$
Civil	Officer Fee-Mun	\$ 5.00	Trust	\$
Spec Proc	Jail Fee-Co	\$	Allim & Supp	\$
Estates	Jail Fee-Mun	\$		
District Court	LEGB & RF	\$ 7.50		
Criminal	Fine	\$ 30.00		
Civil	Other \$ 3.00 DA Des 4.00 Juror Bank Fee			
Magistrate-S.F.	<u>2.00 16.7806 12.00 6.20</u>			
Misc-Fees & Comm				

Total Received **\$ 171.00**

BY [Signature] Clerk of Superior Court (Municipality)

What is considered cash?

- [Redacted]
- [Redacted] **less** [Redacted]
- [Redacted]

What is NOT considered cash?

- [Redacted] **not** [Redacted]
- [Redacted]

Offenses that require a Form 8300

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

What information is required for Form 8300?

- Name of the payor
- Address of the payor
- Social Security Number of the payor
- Date of birth of the payor
- Taxpayer Identification Number of the payor
- Other identifying information

Identifying the payor

- Name of the payor
- Address of the payor
- Social Security Number of the payor
- Date of birth of the payor
- Taxpayer Identification Number of the payor
- Other identifying information

Financial Management Analysts (FMAs)

- Name of the payor
- Address of the payor
- Social Security Number of the payor
- Date of birth of the payor
- Taxpayer Identification Number of the payor
- Other identifying information


NCAOC Financial Services Division (FSD)

- [Financial Services Division](#) [Financial Services Division](#)
- [Financial Services Division](#) [Financial Services Division](#)
- [Financial Services Division](#) [Financial Services Division](#)
- [Financial Services Division](#) [Financial Services Division](#)

NORTH CAROLINA ADMINISTRATIVE OFFICE of the COURTS 28

NORTH CAROLINA ADMINISTRATIVE OFFICE of the COURTS

[Financial Services Division](#)



Understanding Domestic Violence

Chapter 50B.
Domestic Violence.

§ 50B-1. Domestic violence; definition.

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

- (1) Attempting to cause bodily injury, or intentionally causing bodily injury; or
- (2) Placing the aggrieved party or a member of the aggrieved party's family or household in fear of imminent serious bodily injury or continued harassment, as defined in G.S. 14-277.3A, that rises to such a level as to inflict substantial emotional distress; or
- (3) Committing any act defined in G.S. 14-27.2 through G.S. 14-27.7.

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

- (1) Are current or former spouses;
- (2) Are persons of opposite sex who live together or have lived together;
- (3) Are related as parents and children, including others acting in loco parentis to a minor child, or as grandparents and grandchildren. For purposes of this subdivision, an aggrieved party may not obtain an order of protection against a child or grandchild under the age of 16;
- (4) Have a child in common;
- (5) Are current or former household members;
- (6) Are persons of the opposite sex who are in a dating relationship or have been in a dating relationship. For purposes of this subdivision, a dating relationship is one wherein the parties are romantically involved over time and on a continuous basis during the course of the relationship. A casual acquaintance or ordinary fraternization between persons in a business or social context is not a dating relationship.

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



DOMESTIC ABUSE INTERVENTION PROJECT

202 East Superior Street
Duluth, Minnesota 55802
218-722-2781
www.duluth-model.org

Power and Control Wheel Enactments

Power and Control

Abusers believe they have a right to control their partners by:

- Telling them what to do and expecting obedience
- Using force to maintain power and control over partners
- Feeling their partners have no right to challenge their desire for power and control
- Feeling justified making the victim comply
- Blaming the abuse on the partner and not accepting responsibility for wrongful acts.

The characteristics shown in the wheel are examples of how this power and control are demonstrated and enacted against the victim.

Isolation

- Limiting outside involvement
- Making another avoid people/friends/family by deliberately embarrassing or humiliating them in front of others
- Expecting another to report every move and activity
- Restricting use of the car
- Moving residences

Emotional Abuse

- Putting another down/name-calling
- Ignoring or discounting activities and accomplishments
- Withholding approval or affection
- Making another feel as if they are crazy in public or through private humiliation
- Unreasonable jealousy and suspicion
- Playing mind games

Economic Abuse

- Preventing another from getting or keeping a job
- Withholding funds
- Spending family income without consent and/or making the partner struggle to pay bills
- Not letting someone know of or have access to family/personal income
- Forcing someone to ask for basic necessities

Intimidation

- Driving recklessly to make another feel threatened or endangered
- Destroying property or cherished possessions
- Making another afraid by using looks/actions/gestures
- Throwing objects as an expression of anger to make another feel threatened
- Displaying weapons

Using Children or Pets

- Threatening to take the children away
- Making the partner feel guilty about the children
- Abusing children or pets to punish the partner
- Using the children to relay messages

Power and Control Wheel Enactments

Using Privilege

- Treating another like a servant
- Making all the big decisions
- Being the one to define male and female roles
- Acting like the master or queen of the castle

Sexual Abuse

- Sex on demand or sexual withholding
- Physical assaults during sexual intercourse
- Spousal rapes or non-consensual sex
- Sexually degrading language
- Denying reproductive freedom

Threats

- Threats of violence against significant third parties
- Threats to commit physical or sexual harm
- Threats to commit property destruction
- Threats to commit suicide or murder

Physical Abuse

- Biting/scratching
- Slapping/punching
- Kicking/stomping
- Throwing objects at another
- Locking another in a closet or utilizing other confinement
- Sleep interference and/or deliberately exhausting the partner with unreasonable demands and lack of rest
- Deprivation of heat or food
- Shoving another down steps or into objects
- Assaults with weapons such as knives/guns/other objects

Case Study

I have been married to my husband for ten years. I became pregnant with my first child shortly after we were married. We now have three children, ages nine, seven and six. Even from the beginning, my husband has made all of the decisions for our family. He told me that my job was to be a good wife—to take care of the children and to cook and clean for him.

The first time he hit me was when I was pregnant with my first child. We had come home from my mother's house and he was angry about something. I think I had forgotten to buy a kind of food item that he wanted, and then he slapped me. I thought it was just an isolated event. I never thought he would do it again.

Since then, he has hit, kicked, choked, slapped and burned me. He does not hurt me physically that often, though, maybe only once a month. Mainly, when I do something he doesn't like, such as visiting my mother or talking on the phone to a friend, he calls me a prostitute and other bad names, and tells me that he will take the children and go to his mother's home if I am not a good wife. He refuses to let me take a job, even though all of our children are in school, and I would be qualified for many different kinds of jobs. He does not let me have any money, except for a little for grocery shopping.

He is very jealous and possessive. A few months ago, he became very angry because I was late getting home from the store. He accused me of seeing another man and punched a hole in the door between the kitchen and the living room. My sons were there and saw this, and he yelled at them to go to their rooms. I recently overheard him talking to my seven-year-old son. He was asking if my son ever saw me talking to "other men." He told my son that I was crazy and that my son should watch me and tell him if I did anything strange.

Another time, we went to a party given by a friend of his from work. I met the wife of one of the people my husband works with. We spent a long time talking. After some time, my husband came up to me, grabbed my arm so tightly it hurt and left bruises, and whispered in my ear, "We're leaving." Just by the look he gave me, I knew he was angry that I spent so much time talking with the woman, and that he would likely beat me when we got home. When we got home, he smashed a framed picture I have of myself with a group of my friends at the university, before I was married, by throwing it at the wall near where I was standing. He told me that I "knew" what would happen if I continued to disobey him.

A few months ago, my husband came home late with friends and made me get up to cook them food. He started joking with his friends about how much I weighed, and that I was like all other women who let themselves go once they got married. He called me many bad names. After his friends left, he woke me up again and forced me to have sex with him, even though I didn't want to and was feeling sick.

Recently, I tried to talk to my husband about the abuse. He got very angry. He said he doesn't hurt me any more than is to be expected of a husband and that in fact he thinks that he is too nice to me. He said that if he did happen to be a bit harsh with me sometimes, it was my fault anyway for not being a good wife and letting myself become so unattractive.

I love my husband, but I do not think I can continue to live with him. He has threatened to kill me, the children, and himself if I leave him, and I don't have anywhere to go. I don't have a job or any money, and would not be able to find another place to stay even if I did leave.

This scenario is fictional. Some aspects of the scenario are based on descriptions of domestic violence contained in reports by Minnesota Advocates For Human Rights, available at <http://www.mnadvocates.org>; the Domestic Violence Centre, available at <http://www.dvc.org.nz>; and the Family Violence Prevention Fund, available at <http://www.fvpf.org>.

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Do's and Don'ts of Handling Domestic Violence Victims

DO	DON'T
<ul style="list-style-type: none">• Explain the services available in a simple and direct manner.• Prioritize the victim's needs.• Express concern for their safety and that of their children. Empower the victim with information that increases their choices.• 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.• Help the victim understand the danger and repetitiveness of the violence.• Encourage the victim to take small steps, which will promote independence and build self-confidence.• Take into consideration cultural values and beliefs.• Challenge any efforts on the victim's part to justify the abuse through religion.• 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.• Define your role as a court official; be realistic about what you can and cannot do with regards to the relationship.• Recognize that the victim's reactions and responses may change frequently and be unpredictable. Reactions will range from resistance to cooperation.• Express your concerns if the situation is lethal and take appropriate action.• Be patient and honest with the victim.• Emphasize the abuser's responsibility for his/her own choices.• Expect the "honeymoon" period to emerge following an abusive episode.• 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.• Be honest with the victim, especially about confidentiality issues.	<ul style="list-style-type: none">• Assume that battered women know about their options and the services available.• Overload the victim with services and decisions.• 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.• Impose your own values and make quick judgments. Your reaction to the victim's responses will be communicated strongly.• Expect the victim to exaggerate or invent the violence.• Try to rescue the victim.• Lump all victims into one category.• Reject the woman's religion or ignore references to religious beliefs.• Convey disappointment if the victim chooses to stay. This can elicit feelings of failure and worthlessness.• Get caught up in the role of marriage counselor, mediator and/or referee.• 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.• Ignore or minimize the potential dangerousness of the situation.• Expect instant decision-making by the victim or contribute to unrealistic expectations.• Let the victim blame themselves or other factors for the abuse.• Delay in responding to a reported incident of violence. Timing is a key factor in gathering evidentiary information.• Accept unexplained injuries accompanied by implausible reasons.• 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

MARRIAGE

TIME FOR A POP QUIZ!

True or False A magistrate can legally perform a marriage anywhere in the state of North Carolina.

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

True or False 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 or False A magistrate may not accept any money other than the \$20 fee for performing a marriage unless the magistrate has left the office and traveled to the ceremony. In that case, the magistrate may accept reimbursement of expenses.

True or False

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.

EVALUATION FOR DAY 5

INSTRUCTORS

Instructor:

Topic: Handling Money

	Strongly Agree	Neither Agree Nor Disagree	Strongly Disagree		
1. The instructor made the subject matter interesting.	[5]	[4]	[3]	[2]	[1]
2. The instructor seemed to be concerned about whether students learned the material.	[5]	[4]	[3]	[2]	[1]
3. The instructor presented material in a clear manner.	[5]	[4]	[3]	[2]	[1]
4. The instructor was prepared for class.	[5]	[4]	[3]	[2]	[1]
5. This instructor's session(s) helped me gain useful knowledge and skills.	[5]	[4]	[3]	[2]	[1]

Instructor: Judge Corpening

Topics: Understanding Domestic Violence

	Strongly Agree	Neither Agree Nor Disagree	Strongly Disagree		
1. The instructor made the subject matter interesting.	[5]	[4]	[3]	[2]	[1]
2. The instructor seemed to be concerned about whether students learned the material.	[5]	[4]	[3]	[2]	[1]
3. The instructor presented material in a clear manner.	[5]	[4]	[3]	[2]	[1]
4. The instructor was prepared for class.	[5]	[4]	[3]	[2]	[1]
5. This instructor's session(s) helped me gain useful knowledge and skills.	[5]	[4]	[3]	[2]	[1]

Instructor: Dona Lewandowski

Topic: Marriage

	Strongly Agree	Neither Agree Nor Disagree	Strongly Disagree		
1. The instructor made the subject matter interesting.	[5]	[4]	[3]	[2]	[1]
2. The instructor seemed to be concerned about whether students learned the material.	[5]	[4]	[3]	[2]	[1]
3. The instructor presented material in a clear manner.	[5]	[4]	[3]	[2]	[1]
4. The instructor was prepared for class.	[5]	[4]	[3]	[2]	[1]
5. This instructor's session(s) helped me gain useful knowledge and skills.	[5]	[4]	[3]	[2]	[1]

SPECIFIC SESSIONS

Handling Money

Understanding Domestic Violence

Marriage

THE SCHOOL AS A WHOLE

This is your opportunity to make general comments about the school as a whole. We're interested in knowing what you thought about any or all of the following topics: getting information about the school, completing the advance assignments, lodging, the schedule,

Tab: Appendix

SMALL CLAIMS GLOSSARY

(INFORMAL, UNOFFICIAL, AND JUST FOR MAGISTRATES NEW TO SMALL CLAIMS)

Action (sometimes “legal action,” “civil action,” “lawsuit,” “suit,” “claim” or “case”)

The formal procedure for seeking resolution of a dispute by the court system.

“In this _____, plaintiff seeks to recover damages in the amount of \$5,000 from defendant.”

Amount in controversy.

The dollar value of the remedy plaintiff seeks. When plaintiff is asking for money, the amount in controversy is the amount of money s/he’s seeking. When plaintiff is asking for the return of property, the value of the property is the amount in controversy.

Answer

A written response by defendant to the plaintiff’s claims. Required in most courts, but unusual in small claims court.

Complaint

The legal document that begins a lawsuit. It states the facts and explains what action the court is asked to take.

“I see by the complaint that plaintiff is seeking \$5000 as damages resulting from the defendant’s breach of contract.”

Damages (sometimes “money damages”)

May refer either to the injury plaintiff is complaining about or the monetary sum plaintiff is asking for. Money damages are the most common remedy sought by plaintiffs.

“Plaintiff suffered damages as a result of Def’s negligence,” or “Plaintiff seeks \$5,000 in damages.”

Defendant

The person being sued.

Ex parte

This term is Latin and means “by one party.” Magistrates commonly hear this term in two contexts. *Ex parte communication* refers to the unethical practice of discussing a case outside of court with one party. An *ex parte DVPO* is a temporary emergency protective order issued in domestic violence cases without notice to the other party, having the purpose of protecting the plaintiff from domestic violence during the interval until a full hearing can be scheduled.

Judgment

A final decision made by the judge after hearing and considering all the evidence.

Order

A formal ruling by the judge that is not a final decision on the case based on the evidence. The most important thing to understand about an order is that it is different from a judgment.

“The judge ordered a continuance.” “The judge ordered the action discontinued because of bankruptcy.” “The judge ordered the case dismissed when plaintiff failed to appear.”

Party

Refers to both plaintiff and defendant

"Both parties are present and the court is ready to proceed."

Plaintiff

The person who filed the lawsuit.

Pleadings

The complaint and, if there is one, the answer.

"I see by the pleadings that plaintiff says he was injured by defendant's negligence," means the same thing as

"I see by the complaint that plaintiff says . . ."

Pro Se

A party is *pro se* when she represents herself, rather than being represented by an attorney.

Process

A term that includes both the complaint and the summons given the Def

Remedy (also "**relief**," sometimes "**prayer for relief**")

What the plaintiff is asking for.

Service of process (sometimes just "**service**")

The formal legal procedure for giving a Def notice that s/he is being sued.

"It appears that Def has not yet been served."

Summons

The legal document that notifies a defendant that s/he is being sued and informs the defendant when and where the trial will be held.



Roy Cooper North Carolina Attorney General

SMALL CLAIMS COURT

North Carolina's small claims courts help people solve disputes over small amounts of money or personal property quickly, easily, and without a lawyer. These courts handle disputes involving no more than \$5,000 in cash or property. Cases are tried before special judges called magistrates, and they usually take place within a month after the case is filed.

Proceedings in small claims courts are informal, but magistrates make legally binding decisions. A few formal procedures are followed so that everyone is treated fairly. The following information can help you understand how to use small claims court.

Who Can Use Small Claims Court?

Anyone eighteen years old or over may sue or be sued in small claims court. A person under eighteen can sue if a parent or another adult is appointed by the court to act as the minor's guardian in the lawsuit. If the person you wish to sue is under eighteen or mentally incompetent, you should ask a lawyer for help.

How to Get Your Case to Court

You must file your suit in the county where the defendant lives, or if the defendant is a business, where it does business.

If the defendant is a corporation, you must use the correct name of the corporation on all court documents. You will need to know its full corporate name, and the name and address of its registered agent. Corporations doing business in North Carolina are required to register with the Secretary of State's Office in Raleigh. You can visit the Secretary of State's website at <http://www.secretary.state.nc.us/Corporations/> to look for information about the corporation, or call their office at 919-807-2000.

If the defendant is a business but not a corporation, you must name the owner (or owners) as the defendant. Anyone who does business under a name other than their own name must register the "assumed name" with the Register of Deeds in each county where they do business.

To start your case, you must file a written complaint in the office of the Clerk of Superior Court. Your complaint should say who you are suing, in what county the defendant lives or does business, what the defendant owes you, and why. You should end your complaint by explaining what you want the court to do for you.

The clerk's office has forms for several types of common complaints, but remember that the complaint form you get from the clerk is just a guide. Make sure your complaint states the facts of your case. The Clerk of Superior Court and the assistant clerks cannot practice law or give you legal advice, so don't ask them to draft your complaint.

There is a fee to file your complaint. But if you win the case, this filing fee will be added to the total amount of money awarded to you in the judgment. Currently the filing fee is \$76.

The clerk will help you set the date and time for the trial. Usually, the trial date will be no later than 30 days from the time you file your complaint.

The Summons

Each person who is being sued must receive a copy of the complaint and a summons. The summons tells the defendant that they must be in small claims court at the appointed time. You can have the complaint and summons delivered by the Sheriff's office for a small fee, or you can send these papers to the defendant by certified mail. If you send the papers by certified mail, you must send them "return receipt request" and you must take the return receipt with you when you go to court for the case.

How to Prepare for Trial

First, think carefully about what you need to prove. What contracts, receipts, sales tickets or other documents can help you prove your case? What witnesses do you need? Remember, witnesses must have first-hand knowledge of the case in order to testify.

If someone has first-hand knowledge of facts that can help you prove your claim, you should try to have that person present at the trial. Sometimes a person who could be a witness for you will not want to testify. If that happens, you can get a subpoena from the Clerk of Superior Court. The subpoena is a legal document that requires the witness to appear at the trial. The sheriff's office will serve the subpoena on the witness for a small fee. A witness who is subpoenaed is entitled to receive a payment for their appearance. If the witness comes from outside the county, they can also get travel expenses. The court usually will require the party who loses the case to pay these costs. However, you must be prepared to pay these costs before the case comes to trial.

If you find that you cannot be in court at the scheduled time, tell the magistrate at once. The magistrate may be able to set another date. If you do not appear when your case is scheduled for trial it will be dismissed, and you may not be permitted to file it again.

Settling Out of Court

If you and the person you have sued are able to settle the dispute before trial, inform the clerk's office or the magistrate that you have settled the case. The suit will then be dismissed. However, the clerk's office will not refund your filing and summons fees, so you should consider these fees when deciding upon the amount of the settlement.

The Trial

The trial proceedings are informal and simple. You, the defendant, the witnesses, and the magistrate will probably be the only persons present. There will not be a jury. The magistrate will tell you what you are expected to do.

The magistrate will ask you to take an oath and then state your case. Tell your story simply and truthfully. Present the evidence you think will help prove your case.

The magistrate may ask you some questions, and will allow the defendant to ask you questions. Then your witnesses will testify and may be questioned. The defendant's testimony will follow. The defendant's version of the facts will probably be different from yours, but the magistrate will allow you to question the defendant. The defendant will call his witnesses, and you may question those witnesses after they have testified for the defendant. Remember, you may ask only questions that are relevant to the facts of the case.

The magistrate will decide the case after hearing all witnesses. The decision may be announced immediately but the magistrate can also take up to ten days to consider the case. Neither side may present more evidence during that ten-day period.

After the Trial

If the decision is in your favor and the defendant has not complied with the judgment within ten days after the magistrate signed it, you may initiate the collection process. If the defendant is a corporation, you may pay a small fee and have the clerk's office issue a Writ of Execution, which is a court document directing the sheriff to seize and sell some of the defendant's property in order to satisfy the judgment.

If the defendant is an individual rather than a corporation, you must take additional steps before the clerk can issue the Writ of Execution. The clerk's office must issue a document known as a Notice of Rights to Have Exemptions Designated. You must then have the document served upon the defendant, either through the sheriff's office or by certified mail, return receipt requested. Judgments remain on record for ten years and are renewable for another ten.

The party who loses can appeal the decision within ten days. If there is an appeal, a new trial will be scheduled in district court. When a case is appealed to district court, the process starts over from the beginning as if there had been no previous trial. Either party may request a jury trial in district court but the request must be in writing. If neither party requests a jury trial, the judge will act as the jury.

Proceedings in district court are more formal, lengthy, and expensive, especially with a jury. If the judge requires you to file any additional legal papers, they will not be available as forms from the clerk. Many people hire an attorney for proceedings in district court, but an attorney is not required.

If you decide not to hire an attorney, you can prepare for trial in much the same way as you did for small claims court. The clerk will send you a notice telling you when to appear for trial. Be sure the clerk's office has your correct mailing address. If you do not appear, the court may enter judgment against you.

What to Do When Someone Sues You

Read the complaint against you and the summons carefully, so you will know what the case is about and when you must appear in court. Defending yourself isn't complicated or difficult, so you don't have to hire an attorney if you are sued in small claims court. If you think you can handle it by yourself, begin to prepare at once. If not, consult a lawyer immediately.

If someone is suing to collect a debt you owe, you can offer to pay the debt or arrange some way to settle the case before the trial. If you settle before trial, make sure the person suing you informs the magistrate so that the case will be dismissed.

You may respond to the complaint and present your side of the story in writing by filing an answer with the clerk before the trial. You do not have to file an answer, but the answer may help the magistrate understand your case. Even if you do file an answer, you must go to court at the time of trial. You may bring other witnesses or have them subpoenaed if they will not come voluntarily. (For more information about subpoenas, see "How To Prepare For Trial" above.)

In some cases, each side will have claims against the other side. In these cases, you can file a counterclaim. For example, a landlord may sue a tenant for unpaid rent and money for property damage, and the tenant may counterclaim for the return of a security deposit. If you have a claim of no more than \$5,000 against the person who sues you, you may file a counterclaim as part of your written answer.

It is very important that you and your witnesses appear for trial on time. If you do not appear, the magistrate may hear the case without you. If you are not able to be there at the scheduled time, contact the magistrate and ask for a postponement immediately.

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 \$96** appeal court costs to the clerk within 20 days after the magistrate ruled. 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 rare 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 is good against the defendant 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. 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 \$40 to have an execution issued--\$25 for the court and \$15 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 \$15 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 writ of possession to the sheriff. The sheriff will then remove the defendant from the premises. You will have to pay the sheriff \$15. 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. It is possible that the landlord will let you stay if you pay all the back rent that you owe, but that is between the two of you.

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

Legal Issues Related to Tenants' Personal Property

Residential Leases: Property Other Than Mobile Home and Contents.

A landlord has no authority to do anything with a residential tenant's property until the landlord has brought a summary ejectment action, won a judgment for possession, and had the sheriff execute a writ of possession to enforce the judgment. At that time, the sheriff will remove and store the property, and the landlord is required to advance the cost of removal and one month's storage, charged as costs recoverable from the tenant. If a landlord prefers, the sheriff will padlock the premises instead, leaving the tenant's property in place. Thus, the need for the landlord to deal with the tenant's property will arise only if the landlord selects the padlocking method of execution.

The law specifies the rules that apply during the ten-day period following padlocking by the sheriff:

- (1) During this time the landlord may either remove and store the property, or leave it on the premises.
- (2) If the tenant requests the property during this ten-day period, the landlord must release the property to the tenant during regular business hours or at an agreed-upon time.

At the end of the 10 days, if the property remains on the premises, the landlord has three choices: he may (1) throw it away, (2) give it away, or (3) sell it. The law does not specify any particular procedure for the first two methods of disposal, but a detailed procedure governs sale of the property.

Numerous statutory provisions govern a landlord's sale of tenant's property, but in broad terms the procedure is as follows: First, the landlord must give written notice to the tenant by first-class mail to the tenant's last known address at least seven days before the date of the sale. This notice must specify the time and place of the sale, how any surplus proceeds can be claimed by the tenant, and what happens to that sum if not claimed. At any time before the day of sale, the tenant is entitled to recover his or her property upon request. The statute does not detail a particular procedure for how the landlord must conduct the sale, or what kind of advertising, if any, is required. (It is unclear whether the court would impose some reasonableness standard on the manner of sale.) The landlord may apply the proceeds of sale to unpaid rent, other damages, storage fees, and sale costs. Any amount left over is to be given the tenant upon request, within ten days of the sale. If the tenant does not make a request for the surplus within ten days, the law requires the landlord to hand the money over to the county government of the county in which the real property is located.

Special Rule for Property Valued at Less Than \$100:

If the total value all of the personal property left on the premises is less than \$100, the property is considered abandoned five days after execution of a writ of possession. At that time the landlord may throw away or dispose of the property. If, before the five days are up, the tenant requests return of the

property, the landlord must release possession to the tenant during regular business hours or at a time agreed upon.

An Alternative Disposal Method for Property Valued at \$500 or Less

If a tenant abandons personal property with a total value of \$500 or less, or fails to remove such property at the time of execution of a writ of possession, the landlord may immediately remove the property and deliver it to a nonprofit organization. The organization must be one that regularly provides free or very low-cost clothing and household furnishings to people in need. The landlord is required to notify the tenant of the name and address of the non-profit organization to which the tenant's property was delivered by (1) posting notice at the rental premises; (2) posting notice at the place where the rent is received; and (3) by mailing a copy of the notice by first-class mail to the tenant's last known address. This disposal method is seldom used, perhaps because the law requires the nonprofit organization to agree to separately store the tenant's property for thirty days. If the tenant requests return of his property during that time, the organization must release the property to the tenant at no charge.

Residential Leases: Mobile Home and Contents.

A specific statute regulates the situation in which the rental property consists of a mobile home space, and the property left behind consists of a mobile home and its contents. The general procedure described above applies when the mobile home is of little value. But when the mobile home has a fair market value of more than \$500, and the property is titled in the name of the tenant, the landlord may acquire a landlord's lien on the mobile home and contents, as provided in G.S. 42-2(e2). For the lien to come into existence, the following requirements must be satisfied:

- (1) The landlord must get a judgment for possession and must have a writ of possession issued to enforce the judgment. (After the writ has been executed, the landlord may immediately remove the property from the land and store it.)
- (2) The tenant does not take possession of the mobile home and contents within the 21-day period following execution of the writ. (The landlord is required to release the mobile home and contents to the tenant during regular business hours, or at a time mutually agreed upon, at any point within the 21-day period.)

If these requirements are met, the landlord acquires a lien on the property for (1) the amount of rent due at the time the tenant vacated the premises; (2) for rent accruing between the time tenant vacated the premises and the date of sale (up to a maximum of 60 days); (3) for physical damages to the property beyond normal wear and tear; and (4) for reasonable costs and expenses of the sale.

To enforce this lien, the landlord must dispose of the property by selling it at a public auction. Detailed requirements govern the procedure for such a sale; these requirements are set out in G.S. 44A-4(e). For example, the statute requires the landlord to post the notice of sale at the courthouse and to advertise in a newspaper in certain instances, and to provide the tenant and other interested parties with notice of the sale. A landlord who fails to comply with the statutory procedure may be required to pay damages under G.S. 44A-4(g).

In every case involving sale of a mobile home, regardless of its value, two additional requirements apply: First, because the mobile home is a motor vehicle, the landlord may not sell the mobile home without notifying DMV and getting permission to sell the vehicle. Second, the purchaser may not move the mobile home without first getting permission from the local tax collector.

Commercial Leases

Landlord may sell property to satisfy lien:

Property left behind by commercial tenants is subject to disposal pursuant to G.S. 44A-2(e), which creates a possessory lien in favor of the landlord on furniture, furnishings, trade fixtures, equipment and other personal property. This lien, although similar to that described above, is distinct, and should not be confused with a landlord's lien on a mobile home and its contents. A brief summary of this commercial landlord's lien follows:

Under G.S. 44A-2(e) if property has been left on premises for at least 21 days after tenant vacated premises and landlord has a lawful claim for damages against tenant, the landlord may sell property. The lien is for amount of rent due at time tenant vacated and for the time, up to 60 days, from the vacating of the premises to the date of sale; for any sums necessary to repair damages to the premises caused by the tenant, except for normal wear and tear; and for the reasonable costs and expenses of selling the personal property. At any time before the expiration of the 21-day period, upon tenant's request, the landlord must return the property to tenant. If landlord sells the property, the requirements for public sale under G.S. 44A-4 must be satisfied. This lien does not have priority over any prior perfected security interests.

Landlord may remove and store property:

The landlord is authorized by G.S. 44A-4(e) to remove tenant's property from the premises and place it in storage at the earlier of two events: (1) 21 days have passed since the tenant vacated the premises, or (2) 10 days have passed after the landlord has received a judgment for possession. Remember that property placed in storage continues to belong to the tenant, and may be recovered from storage by tenant.

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

Landlord may donate property to charity:

Under G.S. 44A-2(e) if the total value of all property remaining on the rental premises is less than \$100, the landlord may remove the property and donate it to any charitable organization, provided that more than five days have passed since tenant vacated or sheriff padlocked the premises.

Note: This overview of legal provisions relevant to landlords' treatment of tenants' property remaining on rental premises has been prepared for use by North Carolina magistrates as a general summary of the law. It is not intended to be, and should not be relied upon as, a comprehensive and timely statement of all relevant legal provisions.

CRIMINAL CONTEMPT FOR MAGISTRATES

Jamie Markham
Assistant Professor, UNC School of Government
919.843.3914; markham@sog.unc.edu

A magistrate may only punish someone *summarily* for *direct criminal contempt*.

1. What is criminal contempt?

Willful behavior committed by a person during the sitting of a court—

- a. Directly tending to interrupt the court's proceedings; *or*
- b. Directly tending to impair the respect due its authority.

2. What is *direct criminal contempt*?

The contemptuous behavior must meet *all* of the following criteria to be direct:

- a. Committed within your sight or hearing; *and*
- b. Committed in, or in immediate proximity to, the room where you conduct your proceedings; *and*
- c. Likely to interrupt or interfere with matters then before you.

If someone commits an act that meets all these criteria, and you want to punish the person for contempt, you have two options. You can (1) proceed *summarily* if you follow the procedure below, or (2) direct the person (using form AOC-CR-219) to appear before a district court judge for a *plenary* proceeding. You cannot hold a plenary proceeding for contempt.

3. What are some alternatives to punishment for contempt?

- a. Disregard the behavior or give a verbal reprimand.
- b. If the person is not before you as a criminal defendant, ask them to leave.
- c. If the person is a criminal defendant making an initial appearance and is “so unruly as to disrupt and impede the proceedings,” under G.S. 15A-511(a)(3), you can have the person “confined or otherwise secured.” If you do that, be sure to provide for another initial appearance after a reasonable time.

4. When may I conduct summary proceedings?

When *all* of the following criteria are satisfied, you may conduct a summary proceeding:

- a. It is *necessary* to act now to restore order *or* maintain the court's dignity & authority; *and*
- b. You have given a clear warning that his or her behavior is improper (thereby avoiding any later dispute about whether the person's behavior was “willfully contemptuous,”); *and*
- c. You are responding “substantially contemporaneously” with the person's behavior.

Even if all of these conditions are satisfied, you are not *required* to conduct a summary proceeding. You can instead defer adjudication and order the person to appear before a district court judge at a reasonable time to show cause why he should not be held in contempt. You still must tell the person immediately following the conduct that you intend to institute contempt proceedings.

5. How do I conduct a summary proceeding?

- a. Use form AOC-CR-390.
- b. The person is not entitled to counsel (275 N.C. 503 (1969)).
- c. Give the person summary notice of the charges (“I’m charging you with contempt.”)
- d. Inform the person of the maximum punishments that could be imposed (see below).
- e. Give the person an opportunity to respond.
- f. Find facts, beyond a reasonable doubt, regarding what the person did. *Be specific.*
- g. Set a punishment—this may include a fine, imprisonment, or both.
 - i. Fines
 1. May not exceed \$500.
 2. You should probably “consider the burden that payment will impose in view of the financial resources of the defendant.” G.S. 15A-1362(a).

Next to the check-box regarding fines, a good practice would be to write that you considered the defendant’s ability to pay before imposing the fine.
 3. If the person fails to pay the fine, the law is not clear on what happens next. A *district court judge* (not a magistrate) would probably conduct a hearing at which the person would appear and show cause why he should not be imprisoned for failing to pay. The judge would consider whether the person was able to pay the fine, and whether he made a “good faith effort to obtain the necessary funds for payment.” G.S. 15A-1364(b).
 4. Given the ambiguity in the law and the difficulty of investigating the person’s ability to pay, think twice before ordering a fine for contempt.
 5. You may, at any time, remit or reduce a fine you ordered.
 - ii. Imprisonment
 1. Up to 30 days.

Be mindful of the proportionality of your sentence. Consider, for example, that active imprisonment is not even an option under Structured Sentencing for judges who sentence most Class I felonies. Balance the need to punish and maintain order with the costs of incarceration.
 2. You may, at any time, terminate or reduce any imprisonment you ordered.
- h. Inform the person that he or she may appeal your decision to the superior court.
- i. Set release conditions if the person appeals to the superior court.

6. Representative case summaries

- a. Contempt orders upheld by the appellate courts

State v. Hooker, 183 N.C. 763 (1922): The town mayor, functioning as a justice of the peace, stepped out of the office for a moment between cases “to get his spittoon,” whereupon he was “approached, abused, and assaulted” by Mr. Hooker, who said “What in the hell did you issue a warrant against my son, S.D. Hooker, for?” He then denounced the mayor, calling him a “liar, a common street loafer, a leech upon the community, and a son of a bitch,” and pushed him on the shoulder and opened his pocket knife. The

mayor coolly responded “I don’t care to have any argument. The matter can be settled in court.” Mr. Hooker followed the mayor back into his office, continuing to slander him. The mayor found Mr. Hooker in contempt of court and imposed imprisonment for 30 days and a \$200 fine. The Supreme Court upheld the imprisonment but overturned the fine, which exceeded the \$50 statutory limit in place at the time.

State v. Wheeler, 174 N.C. App. 367 (2005) (unpublished): The defendant repeatedly disrupted an initial appearance by interrupting a police officer who was testifying to the magistrate. The magistrate warned the defendant that he would be found in contempt if he continued to disrupt the proceeding, and that he could get up to 30 days for contempt. The defendant responded to the warning by saying “Go ahead and give me thirty days, give me sixty days, I don’t give a damn, give me ninety days.” The magistrate obliged, finding the defendant in contempt and ordering 30 days imprisonment and a \$500 fine. While being escorted to the jail, the defendant inquired as to whether the magistrate wanted to “kiss his ass.” The Court of Appeals upheld the order, finding that the magistrate’s repeated warnings provided the defendant with sufficient notice and opportunity to respond to the charge.

b. Contempt orders reversed by the appellate courts

1. Failure to give summary opportunity to respond

State v. Randall, 152 N.C. App. 469 (2002): A man in a courtroom didn’t obey the bailiff’s call to rise as the judge left the room for a recess. The judge said to the man, “Come on up, sir.” The defendant replied “For what?” The judge said “You’re in custody. Thirty days.” “For what?” “Contempt of court.” The Court of Appeals reversed the contempt ruling, finding that the judge failed to give the defendant a “summary opportunity to respond” as required by statute. (The Court of Appeals did note, however, that the defendant’s failure to stand when asked was, in fact, contemptuous.)

2. Insufficient evidence of contempt

State v. McGee, 66 N.C. App. 369 (1984): A magistrate sentenced a defendant to 30 days imprisonment for saying “Shut up fellow, I don’t have to hear this,” to the magistrate and for making harassing phone calls to the magistrate. The Court of Appeals reversed the order saying there was insufficient evidence to support the magistrate’s finding.

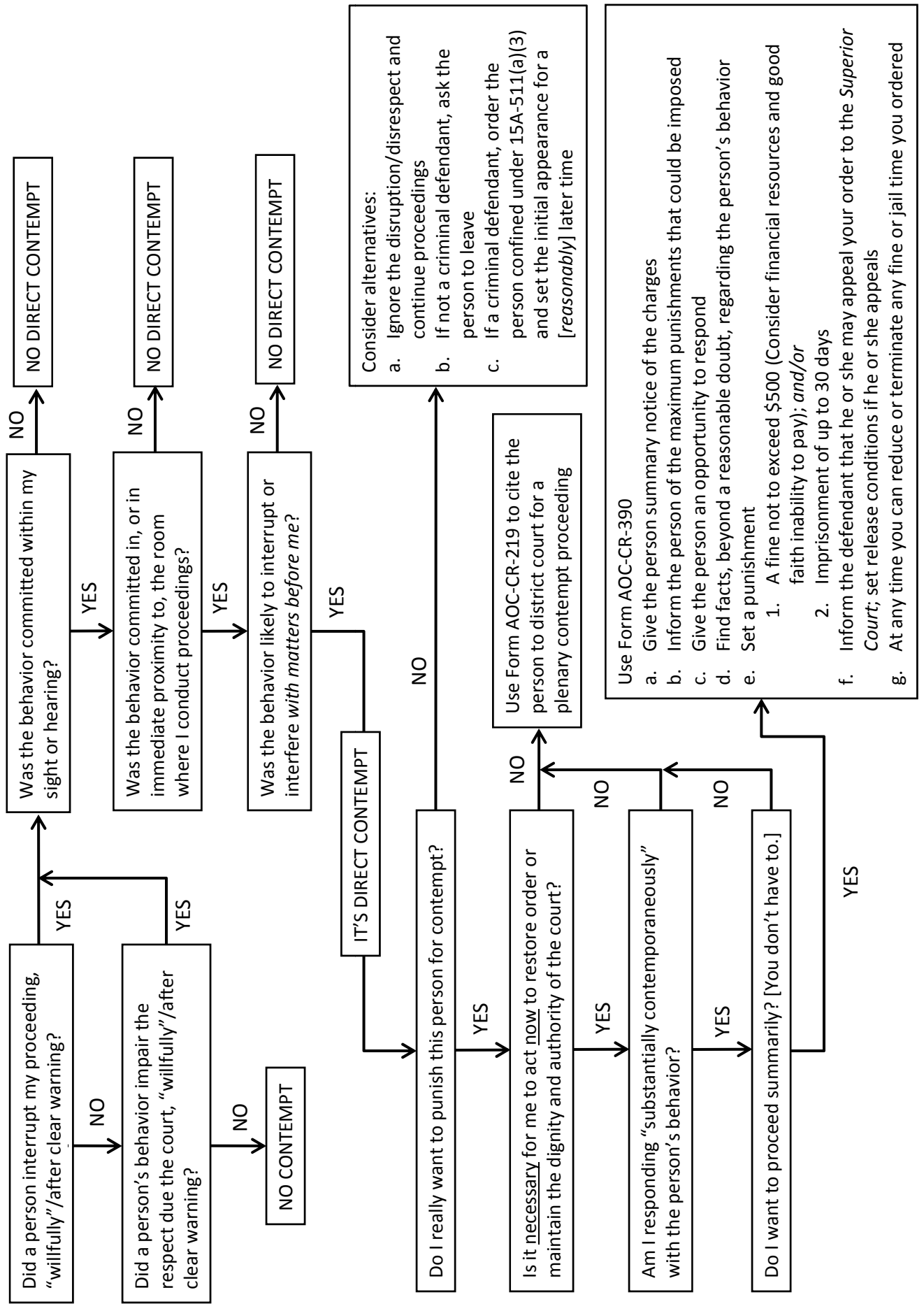
3. Violation deemed not willful

State v. Phair, 668 S.E.2d 110 (2008): A lawyer’s cell phone rang during a criminal trial. The lawyer immediately silenced the phone and the trial continued, with no discussion of the incident at that time. There was a sign outside the courtroom that gave a clear warning that cell phones must be turned off. At the end of the trial, the judge found the lawyer in contempt and ordered that she forfeit her cell phone in order for it to be destroyed or pay a \$100 fine within 10 days. The Court of Appeals reversed the order, finding that the lawyer’s act was not done willfully—that is, with a bad faith disregard for the law—and was thus not contemptuous.

c. The worst case scenario

State v. Greer, 308 N.C. 515 (1983): Larry Hafner, arrested for throwing a bottle at another motorist's windshield, came before magistrate Robert Greer. Mr. Hafner, by all accounts "drunk as a cooter" at the time, repeatedly interrupted the initial appearance with unruly behavior. Mr. Greer ordered the attending officers to put Mr. Hafner in jail for contempt, but never issued any criminal process against Mr. Hafner. Instead, he told the victims of the bottle incident (whose windshield was damaged to the tune of \$125) that he would "handle it his own way." Mr. Hafner's stepfather showed up at the jail and paid \$200 as a "bond for contempt." Mr. Greer then called the victims and told them he had \$190 for them to pick up. (The victims asked Mr. Greer to send them a cashier's check, but Mr. Greer refused, saying he didn't want to leave a paper trail "since he had handled the matter in an 'underhanded' manner.") Mr. Greer gave the victims \$125, telling them the other \$65 was for "court costs." Magistrate Greer was convicted of corrupt practices under G.S. 14-230 and removed from his office as magistrate for Caldwell County. (Epilogue: The Supreme Court did note in upholding the magistrate's conviction that Mr. Hafner's behavior at the initial appearance would have justified a contempt charge.)

Magistrates' Guide to Criminal Contempt



More Resources on Bias and Other Cognitive Distortions

To learn more about the Implicit Associations Test and to try a test yourself, go to <https://implicit.harvard.edu>

The California Administrative Office of the Courts website contains a superlative three-video series on judicial bias. That website also offers the screensaver we mentioned in class for download. <http://www2.courtinfo.ca.gov/cjer/aoctv/dialogue/neuro/index.htm>

The National Center for State Courts website offers several good resources, including a Primer on Implicit Bias and a narrated video on Social Cognition and Decision-Making. Both of these are excellent. http://www.ncsconline.org/D_Research/ref/implicit.html

Just for fun, check out the visual perception test we tried but failed to show during the session: <http://www.youtube.com/watch?v=2pK0BQ9CUHk>

A much longer and more detailed exploration of judicial bias, including inquiry into bias as a function of interaction between judge and jury, see *Judicial Bias* by Donald C. Nugent at 42 Clev. St. L. Rev. 1 (1994).

Tab: Forms

Small Claims Forms

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

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
AOC-CV-415	Motion to Claim Exempt Property
AOC-G-108	Order

_____ County

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

Plaintiff(s)

MAGISTRATE SUMMONS
 ALIAS AND PLURIES SUMMONS (ASSESS FEE)

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

VERSUS

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

A Small Claim Action Has Been Commenced Against You!

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

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

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

Date of Trial Time Of Trial AM PM Location Of Court

Name And Address Of Plaintiff Or Plaintiff's Attorney

Date Issued

Signature

Deputy CSC Assistant CSC Clerk Of Superior Court

RETURN OF SERVICE

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

DEFENDANT 1

<i>Date Served</i>	<i>Time Served</i> <input type="checkbox"/> AM <input type="checkbox"/> PM	<i>Name Of Defendant</i>
--------------------	---	--------------------------

- By delivering to the defendant named above a copy of the summons and complaint.
- By leaving a copy of summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copy Left (If Corporation, Give Title Of Person Copy Left With)

Other manner of service: *(specify)*.

Defendant WAS NOT served for the following reason:

DEFENDANT 2

<i>Date Served</i>	<i>Time Served</i> <input type="checkbox"/> AM <input type="checkbox"/> PM	<i>Name Of Defendant</i>
--------------------	---	--------------------------

- By delivering to the defendant named above a copy of the summons and complaint.
- By leaving a copy of summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copy Left (If Corporation, Give Title Of Person Copy Left With)

Other manner of service: *(specify)*.

Defendant WAS NOT served for the following reason:

FOR USE IN SUMMARY EJECTMENT CASES ONLY

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

<i>Date Served</i>	<i>Name(s) Of The Defendant(s) Served By Posting</i>
--------------------	--

Address Of Premises Where Posted

<i>Service Fee</i> \$	<i>Signature Of Deputy Sheriff Making Return</i>
--------------------------	--

<i>Date Received</i>	<i>Name Of Sheriff (Type Or Print)</i>
----------------------	--

<i>Date Of Return</i>	<i>County Of Sheriff</i>
-----------------------	--------------------------

File No.

STATE OF NORTH CAROLINA

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

County

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)

For Goods Sold And Delivered Between

For Money Lent

On a Promissory Note (attach copy)

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

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 \$5,000.00 excluding interest and costs.
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.**

File No.

STATE OF NORTH CAROLINA

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

County

COMPLAINT IN SUMMARY EJECTMENT

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

Name And Address Of Plaintiff

County

Telephone No.

VERSUS

Name And Address Of Defendant 1

Individual Corporation

County

Telephone No.

Name And Address Of Defendant 2

Individual Corporation

County

Telephone No.

Name And Address Of Plaintiff's Attorney Or Agent

1. The defendant is a resident of the county named above.

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

Description Of Premises (Include Location)

Conventional
 Public Housing
 Section 8

Rate Of Rent

\$ Month
per Week

Date Rent Due

Date Lease Ended

Type Of Lease
 Oral Written

3. The defendant failed to pay the rent due on the above date and the plaintiff made demand for the rent and waited the 10-day grace period before filing the complaint.

The lease period ended on the above date and the defendant is holding over after the end of the lease period.

The defendant breached the condition of the lease described below for which re-entry is specified.

Criminal activity or other activity has occurred in violation of G. S. 42-63 as specified below.

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

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

5. The defendant owes the plaintiff the following:

Description Of Any Property Damage

Amount Of Damage (If Known)

\$

Amount Of Rent Past Due

\$

Total Amount Due

\$

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

Date

Name Of Plaintiff/Attorney/Agent (Type Or Print)

Signature Of Plaintiff/Attorney/Agent

CERTIFICATION WHEN COMPLAINT SIGNED BY AGENT OF PLAINTIFF

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

Date

Name Of Agent (Type Or Print)

Signature Of Agent

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 \$5,000.00 excluding interest and costs.
3. The PLAINTIFF must show the complete name and address of the defendant to ensure service on the defendant. If there are two defendants and they reside at different addresses, the plaintiff must include both addresses. The plaintiff must determine if the defendant is a corporation and sue in the complete corporate name. If the business is not a corporation, the plaintiff must determine the owner's name and sue the owner.
4. The PLAINTIFF may serve the defendant(s) by mailing a copy of the summons and complaint by registered or certified mail, return receipt requested, addressed to the party to be served or by paying the costs to have the sheriff serve the summons and complaint. If certified or registered mail is used, the plaintiff must prepare and file a sworn statement with the Clerk of Superior Court proving service by certified mail and must attach to that statement the postal receipt showing that the letter was accepted.
5. In filling out number 3 in the complaint, if the landlord is seeking to remove the tenant for failure to pay rent when there is no written lease, the first block should be checked. (Defendant failed to pay the rent due on the above date and the plaintiff made demand for the rent and waited the ten (10) day grace period before filing the complaint.) If the landlord is seeking to remove the tenant for failure to pay rent when there is a written lease with an automatic forfeiture clause, the third block should be checked. (The defendant breached the condition of the lease described below for which re-entry is specified.) And "failure to pay rent" should be placed in the space for description of the breach. If the landlord is seeking to evict tenant for violating some other condition in the lease, the third block should also be checked. If the landlord is claiming that the term of the lease has ended and the tenant refuses to leave, the second block should be checked. If the landlord is claiming that criminal activity occurred, the fourth block should be checked and the conduct must be described in space provided.
6. The PLAINTIFF must pay advance court costs at the time of filing this Complaint. In the event that judgment is rendered in favor of the plaintiff, court costs may be charged against the defendant.
7. The PLAINTIFF must appear before the magistrate to prove his/her claim.
8. The DEFENDANT may file a written answer, making defense to the claim, in the office of the Clerk of Superior Court. This answer should be accompanied by a copy for the plaintiff and be filed no later than the time set for trial. The filing of the answer DOES NOT relieve the defendant of the need to appear before the magistrate to assert the defendant's defense.
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 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.
10. 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.
11. This form is supplied in order to expedite the handling of small claims. It is designed to cover the most common claims.
12. **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.**

File No.

STATE OF NORTH CAROLINA

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

County _____

COMPLAINT TO RECOVER POSSESSION OF PERSONAL PROPERTY

- PLAINTIFF A SECURED PARTY
- PLAINTIFF NOT A SECURED PARTY

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

Name And Address Of Plaintiff

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

\$

Signature Of Plaintiff Or Attorney

Date

VERSUS

WHEN PLAINTIFF IS NOT A SECURED PARTY

Name And Address Of Defendant 1 Individual Corporation

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.

County Telephone No.

Name And Address Of Defendant 2 Individual Corporation

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

Total Value Of Property
To Be Recovered

\$

Signature Of Plaintiff Or Attorney

Date

County Telephone No.

Name And Address Of Plaintiff's Attorney

Date Defendant Wrongfully Took Or Kept Property

\$

Damage Due For Loss Of Use

\$

Physical Damage To Property

\$

Total Amount Of Damages

Signature Of Plaintiff Or Attorney

Name Of Plaintiff Or Attorney (Type Or Print)

Date

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 to recover property worth more than \$5,000.00.
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.
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.

File No.

STATE OF NORTH CAROLINA

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

County _____

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 @ \$ Per Day Until Sold)

Total Lien Claimed To Date \$

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

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

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

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

Date

Signature Of Plaintiff Or Attorney

INSTRUCTIONS TO PLAINTIFF OR DEFENDANT

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 if the lien is for more than \$5,000.00.
 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.
- 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.

STATE OF NORTH CAROLINA
 In The General Court Of Justice
 District Court Division-Small Claims
 _____ County

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.

(Name Of Judgment Debtor(s) From Whom Amount Recovered

Principal Sum Of Judgment \$ _____

Pre-judgment Interest Not Included \$ _____ Judgment Announced And Signed In Open Court
 In Principal

Date _____ Signature Of Magistrate

Attorney's Fees Or Other Damages \$ _____

(when appropriate)

TOTAL AMOUNT \$ _____

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

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

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

FINDINGS

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

ORDER

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

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

Rate Of Rent Mo. Wk. Amt. Of Rent In Arrears (Owed To Date) Judgment Announced And Signed In Open Court
 \$ _____ per \$ _____ Date _____
 Signature Of Magistrate

Amount Of Other Damages \$ _____
 Name Of Party Announcing Appeal In Open Court

TOTAL AMOUNT \$ _____

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 _____

File No. _____
 Abstract No. _____
 Film No. _____

Judgment Docket Book And Page No. _____

**JUDGMENT
 IN ACTION FOR
 SUMMARY EJECTMENT**
 G.S. 7A-210(2), 7A-224; 42-30

Name And Address Of Plaintiff _____

County _____

Telephone No. _____

VERSUS

Name And Address Of Defendant 1 _____

County _____

Telephone No. _____

Name And Address Of Defendant 2 _____

County _____

Telephone No. _____

Name And Address Of Plaintiff's Attorney _____

County _____

Telephone No. _____

File No.

Film No.

STATE OF NORTH CAROLINA

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

County

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

**JUDGMENT
IN ACTION ON POSSESSORY
LIEN ON MOTOR VEHICLE**

G.S. 44A-4

Name And Address Of Plaintiff

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 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.

FINDINGS

County Telephone No.

VERSUS

Name And Address Of First Defendant

Make/Year Of Vehicle

Repairs \$

Towing \$

Storage Cost to Date \$

Vehicle Rental \$

Total Lien Claimed To Date \$

(Plus Storage @ \$ Per Day Until Sold)

Name And Address Of Second Defendant

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

Name And Address Of Plaintiff's Attorney

Date

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

(TYPE OR PRINT IN BLACK INK)
STATE OF NORTH CAROLINA

_____ County

File No.	Abstract No.
Judgment Docket Book And Page 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 after 1/1/06)

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. THERE ARE CERTAIN EXEMPTIONS UNDER STATE AND FEDERAL LAW THAT YOU ARE ENTITLED TO CLAIM IN ADDITION TO THE EXEMPTIONS LISTED BELOW. These exemptions may include social security, unemployment, and workers' compensation benefits and earnings for your personal services rendered within the last 60 days. There is available to you a prompt procedure for challenging an attachment or levy on your property.*

You must pay \$20 to the Clerk of Superior Court to file this document. Payment can be made in cash, cashier's check or money order. If you cannot afford to pay this fee you can apply to the Clerk to file as an indigent by completing form "PETITION TO SUE/APPEAL/FILE MOTIONS" AOC-G-106.

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

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

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

- 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)
	\$

Amount Of Lien(s) And Name(s) And Address(es) Of Lienholder(s): <i>(How much money is owed on the property and to whom)</i>	Current Amount Owed
	\$
	\$
<i>Location Of Burial Plots Claimed</i>	<i>Value Of Burial Plots Claimed</i>
	\$

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 TV, appliances, furniture, clothing, radios, record players.*)

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

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.

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

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
	\$	\$		\$
	\$	\$		\$
	\$	\$		\$
	\$	\$		\$

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.*)

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

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

VERSUS	<i>File No.</i>	<i>Abstract No.</i>
<i>Name Of Judgment Creditor (Plaintiff)</i>	<i>Judgment Docket Book And Page No.</i>	<i>Date Judgment Filed</i>

<i>Name And Address Of Lienholder</i>	<i>Current Amount Owed</i>
	\$
<i>Name And Address Of Lienholder</i>	<i>Current Amount Owed</i>
	\$

(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 <i>(What You Could Sell It For)</i>	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.)*

<i>Amount Of Compensation</i>	<i>Method Of Payment Lump Sum Or Installments (If Installments, State Amount, Frequency And Duration Of Payments)</i>
<i>Location/Source Of Compensation</i>	
\$	

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

<i>Name Of Custodian Of IRA Account</i>	<i>Type Of Account</i>	<i>Account Number</i>
<i>Name Of Custodian Of IRA Account</i>	<i>Type Of Account</i>	<i>Account Number</i>

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 Savings Plan	Account Number	Value	Name(s) Of Child(ren) Beneficiaries
		\$	
		\$	

(Over)

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.

<i>Date</i>	<i>Signature Of Judgment Debtor/Attorney For Debtor (Defendant)</i>
-------------	---

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: _____

<i>Date</i>	<i>Address And Phone Number Of Attorney For Debtor (Defendant)</i>
<i>Signature Of Judgment Debtor/Attorney For Debtor (Defendant)</i>	

STATE OF NORTH CAROLINA

File No.

Film No.

_____ County

In The General Court Of Justice

District Superior Court Division Small Claims

Name Of Plaintiff/Petitioner

VERSUS

Name Of Defendant/Respondent

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:

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

Tab: General



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

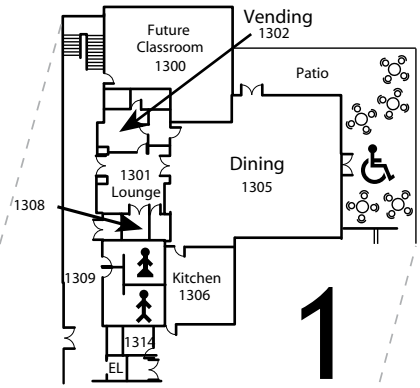
Support for the School of Government

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

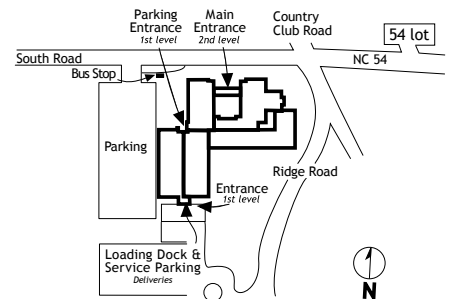
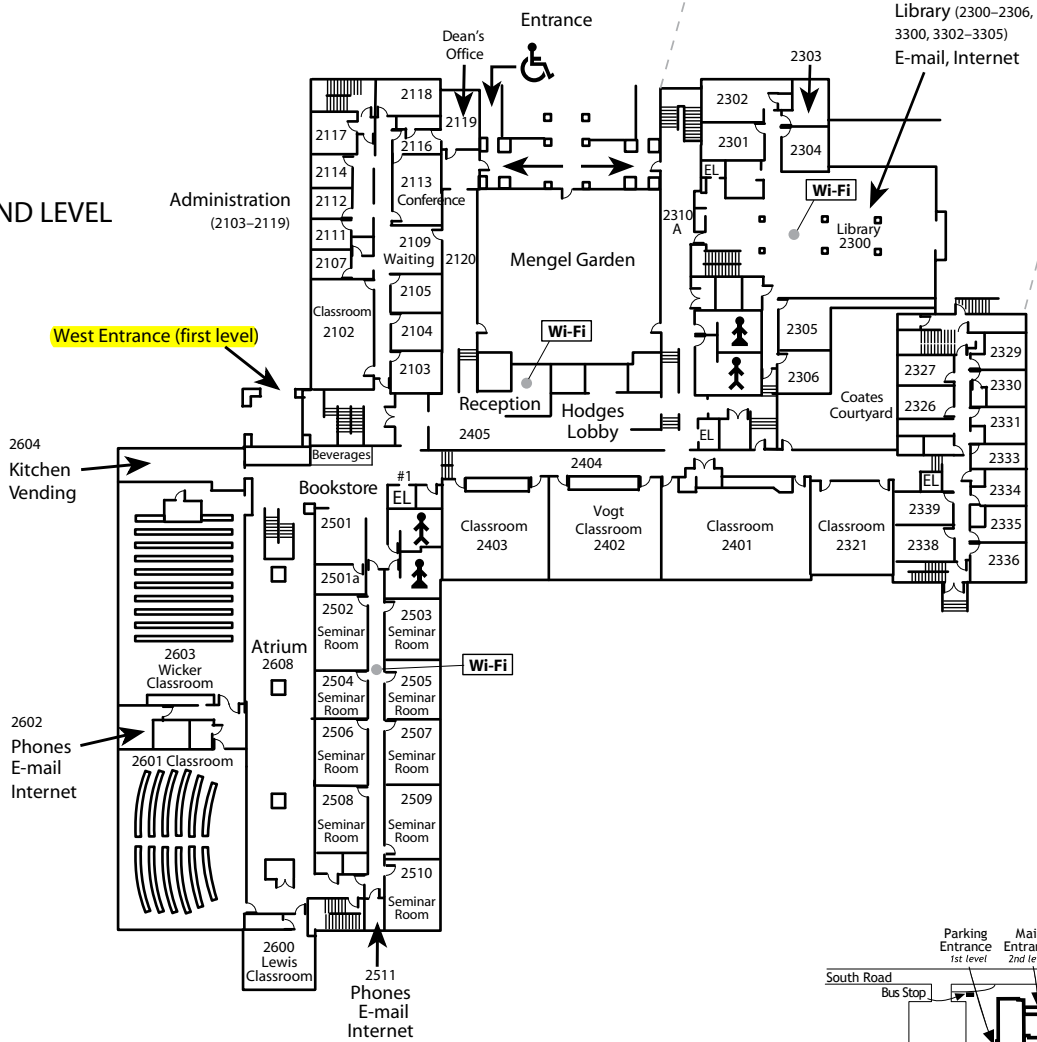
School of Government
UNC-Chapel Hill

May 2008
Guest Map



1
FIRST LEVEL

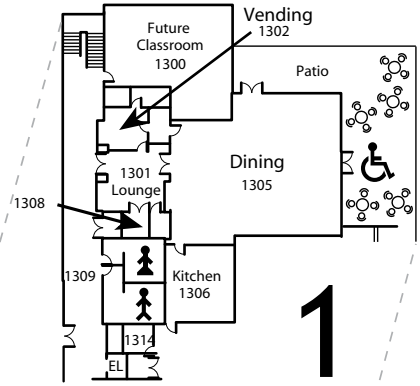
2
SECOND LEVEL



Knapp-Sanders Building

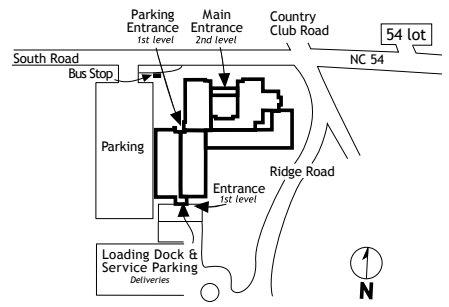
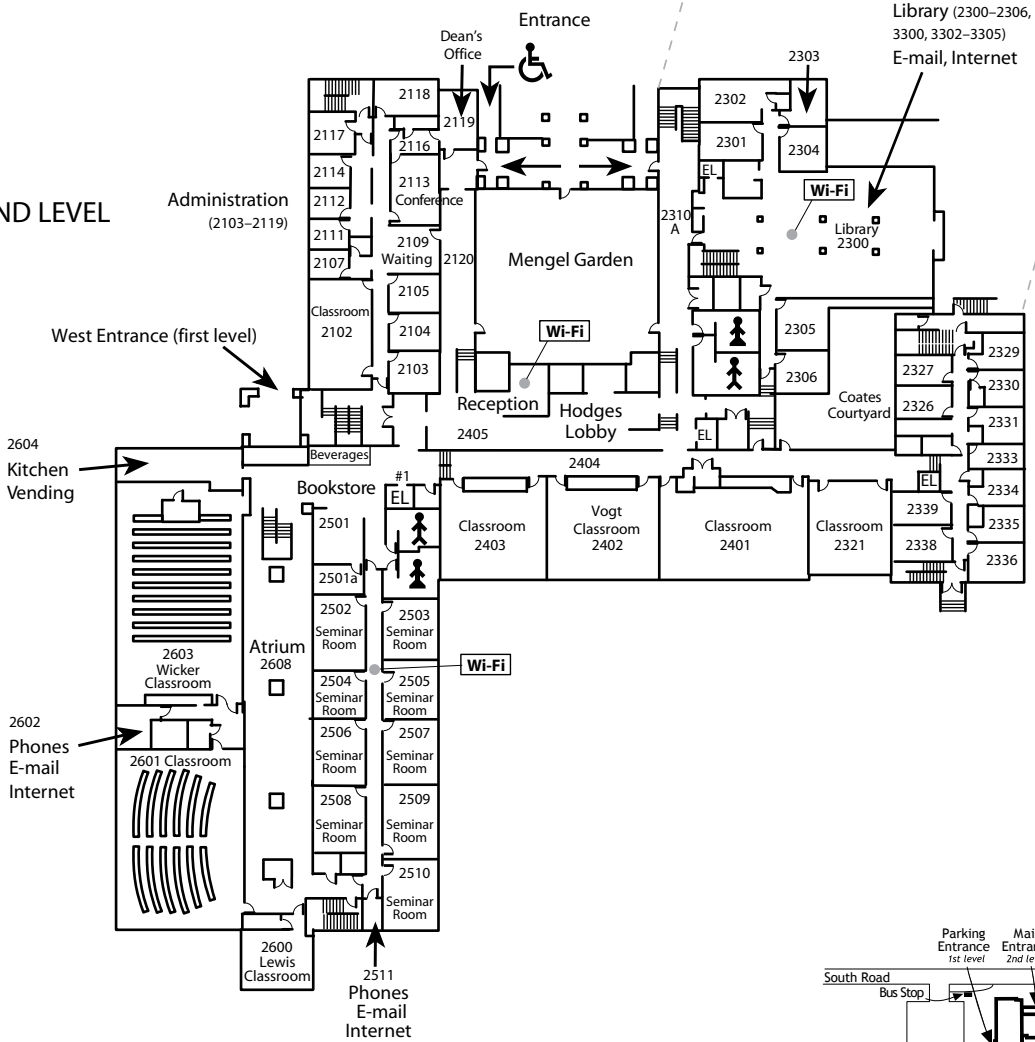
School of Government
UNC-Chapel Hill

May 2008
Guest Map



FIRST LEVEL

2
SECOND LEVEL



DIRECTIONS TO THE SCHOOL OF GOVERNMENT

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

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

From the West

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

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

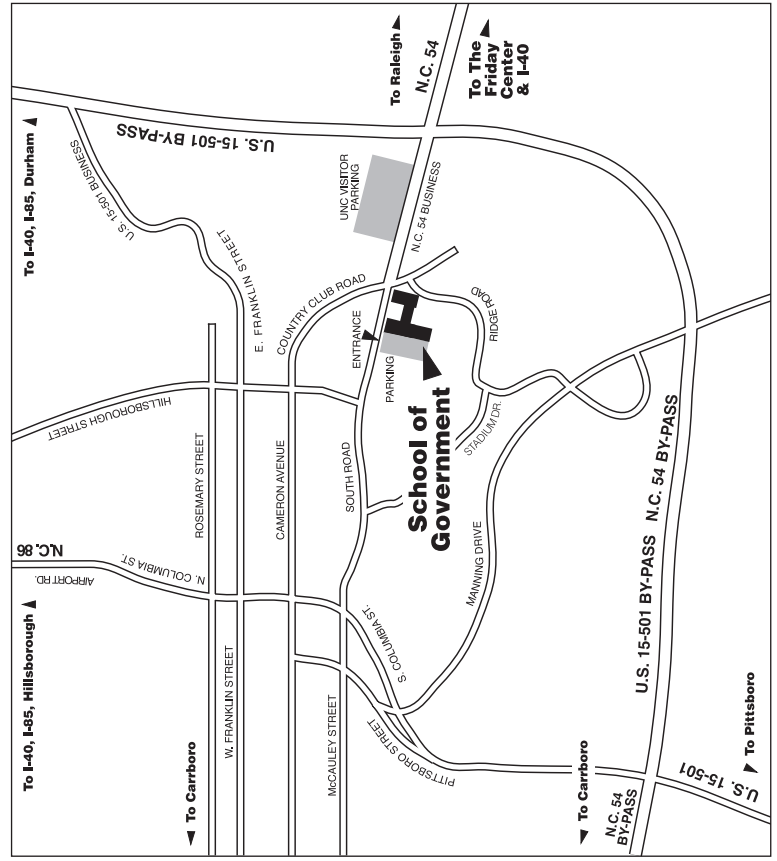
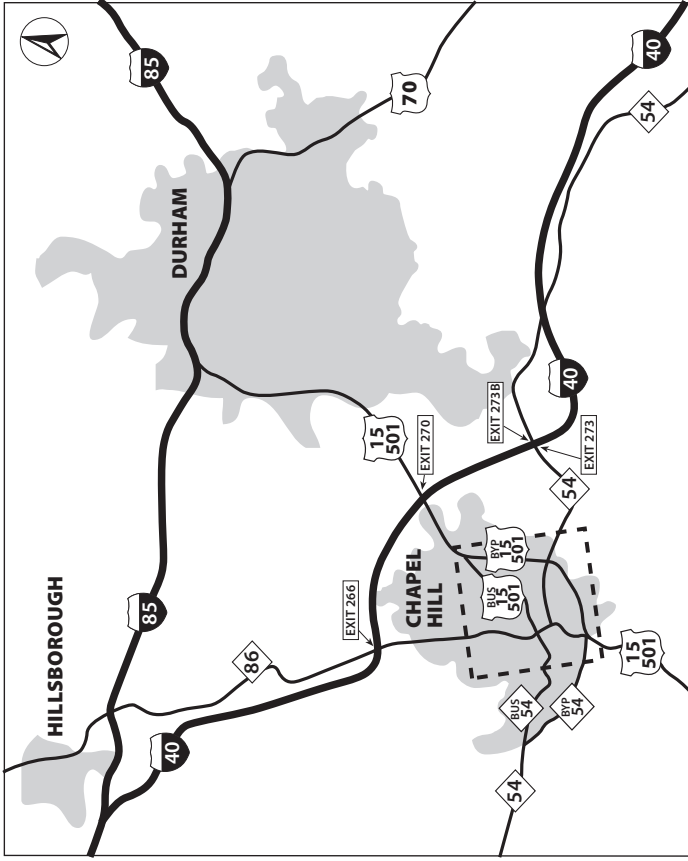
From the East

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

Parking

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

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



SOG FACULTY BIOGRAPHIES

Mark Botts
(919) 962-8204

botts@sog.unc.edu

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

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

Shea Riggsbee Denning
(919) 843-5120

denning@sog.unc.edu

Shea Denning joined the School of Government in 2003. Prior to that, she was an assistant federal public defender for the Eastern District of North Carolina and practiced law with the firm of King and Spalding in Atlanta, Georgia. Denning began her career as a law clerk to the Honorable Malcolm J. Howard, U.S. District Judge for the Eastern District of North Carolina. She is a member of the North Carolina State Bar. Denning earned an AB in journalism and mass communication and a J.D. with high honors, Order of the Coif, from the University of North Carolina at Chapel Hill.

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

Dona Lewandowski
(919) 966-7288

lewandowski@sog.unc.edu

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

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

Jamie Markham
(919) 843-3914

markham@sog.unc.edu

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

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

John Rubin
(919) 962-2498

rubin@sog.unc.edu

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

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

Jessica Smith
(919) 966-4105

smithj@sog.unc.edu

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

Areas of Interest: Criminal law and procedure; evidence

Jeff Welty
(919) 843-8474

welty@sog.unc.edu

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

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



FIELDS OF EXPERTISE

November 2010

This resource list is updated regularly and is available online:
www.sog.unc.edu/about/directory.

ABUSE AND NEGLECT

Janet Mason
919.966.4246 • mason@sog.unc.edu

ADMINISTRATIVE LAW

Richard B. Whisnant
919.962.9320 • whisnant@sog.unc.edu

ADOPTION

Janet Mason
919.966.4246 • mason@sog.unc.edu

AFFORDABLE HOUSING

C. Tyler Mulligan
919.962.0987 • mulligan@sog.unc.edu

ALCOHOLIC BEVERAGE CONTROL LAW

Michael Crowell
919.966.4438 • crowellm@sog.unc.edu

ALTERNATIVE DISPUTE RESOLUTION

John B. Stephens
919.962.5190 • stephens@sog.unc.edu

ANIMAL CONTROL

Aimee N. Wall
919.843.4957 • wall@sog.unc.edu

ANNEXATION, MUNICIPAL

Frayda S. Bluestein
919.966.4203 • bluestein@sog.unc.edu

ATTORNEYS, CITY OR COUNTY

A. Fleming Bell, II
919.966.4210 • bell@sog.unc.edu
Frayda S. Bluestein
919.966.4203 • bluestein@sog.unc.edu
Kara A. Millonzi
919.962.0051 • millonzi@sog.unc.edu

ATTORNEYS, SOCIAL SERVICES

Janet Mason
919.966.4246 • mason@sog.unc.edu

BAIL AND PRETRIAL RELEASE

John Rubin
919.962.2498 • rubin@sog.unc.edu
Jessica Smith
919.966.4105 • smithj@sog.unc.edu
Jeffrey B. Welty
919.843.8474 • welty@sog.unc.edu

BENCHMARKING

David N. Ammons
919.962.7696 • ammons@sog.unc.edu
William C. Rivenbark
919.962.3707 • rivenbark@sog.unc.edu

BOARD DEVELOPMENT

Vaughn M. Upshaw
919.966.9982 • upshaw@sog.unc.edu

BUDGET PREPARATION AND ENACTMENT

Maureen M. Berner
919.843.8980 • mberner@sog.unc.edu
William C. Rivenbark
919.962.3707 • rivenbark@sog.unc.edu

BUILDING AND HOUSING CODE ENFORCEMENT

Richard D. Ducker
919.966.4179 • ducker@sog.unc.edu

CAPITAL PLANNING, BUDGETING, AND FINANCE

Jeffrey A. Hughes
919.843.4956 • jhughes@sog.unc.edu

CASH MANAGEMENT AND INVESTMENTS

Gregory S. Allison
919.966.4376 • allison@sog.unc.edu

CENTER FOR PUBLIC TECHNOLOGY

Shannon H. Tufts
919.962.5438 • tufts@sog.unc.edu

CHILD SUPPORT

Cheryl D. Howell
919.966.4437 • howell@sog.unc.edu

CITIZEN PARTICIPATION AND CIVIC INVOLVEMENT

A. Fleming Bell, II
 919.966.4210 • bell@sog.unc.edu

Maureen M. Berner
 919.843.8980 • mberner@sog.unc.edu

Ricardo S. Morse
 919.843.1366 • rmorse@sog.unc.edu

Kelley T. O'Brien
 919.962.8273 • obrien@sog.unc.edu

John B. Stephens
 919.962.5190 • stephens@sog.unc.edu

Gordon P. Whitaker
 919.962.0427 • whitaker@sog.unc.edu

CITY ATTORNEYS

A. Fleming Bell, II
 919.966.4210 • bell@sog.unc.edu

Frayda S. Bluestein
 919.966.4203 • bluestein@sog.unc.edu

CITY-COUNTY RELATIONS

Frayda S. Bluestein
 919.966.4203 • bluestein@sog.unc.edu

CITY GOVERNMENT

A. Fleming Bell, II
 919.966.4210 • bell@sog.unc.edu

Frayda S. Bluestein
 919.966.4203 • bluestein@sog.unc.edu

CIVIC EDUCATION

Kelley T. O'Brien
 919.962.8273 • obrien@sog.unc.edu

Gordon P. Whitaker
 919.962.0427 • whitaker@sog.unc.edu

CIVIL DUTIES OF SHERIFFS

Dona Lewandowski
 919.966.7288 • lewandowski@sog.unc.edu

CIVIL PROCEDURE

Ann Anderson
 919.962.0595 • anderson@sog.unc.edu

CLERKS, CITY AND COUNTY

A. Fleming Bell, II
 919.966.4210 • bell@sog.unc.edu

CLERKS OF COURT

James C. Drennan
 919.966.4160 • drennan@sog.unc.edu

COASTAL RESOURCES

David W. Owens
 919.966.4208 • owens@sog.unc.edu

COLLABORATION IN GROUPS

Lydian Altman
 919.962.0103 • lydian@sog.unc.edu

Margaret F. Henderson
 919.966.3455 • margaret@sog.unc.edu

John B. Stephens
 919.962.5190 • stephens@sog.unc.edu

COMMISSIONERS, BOARD OF COUNTY

A. Fleming Bell, II
 919.966.4210 • bell@sog.unc.edu

COMMUNICABLE DISEASE CONTROL

Jill D. Moore
 919.966.4442 • moore@sog.unc.edu

COMMUNITY CORRECTIONS

James C. Drennan
 919.966.4160 • drennan@sog.unc.edu

James M. Markham
 919.843.3914 • markham@sog.unc.edu

COMMUNITY DEVELOPMENT

William H. Lambe
 919.966.4247 • whlambe@sog.unc.edu

C. Tyler Mulligan
 919.962.0987 • mulligan@sog.unc.edu

CONFIDENTIALITY (MEDICAL)

Jill D. Moore
 919.966.4442 • moore@sog.unc.edu

Aimee N. Wall
 919.843.4957 • wall@sog.unc.edu

CONFIDENTIALITY (MENTAL HEALTH)

Mark F. Botts
 919.962.8204 • botts@sog.unc.edu

CONFLICTS OF INTEREST (GOVERNMENT)

A. Fleming Bell, II
 919.966.4210 • bell@sog.unc.edu

Eileen Youens
 919.962.0942 • eyouens@sog.unc.edu

CONFLICTS OF INTEREST (LAND USE)

David W. Owens
 919.966.4208 • owens@sog.unc.edu

CONFLICTS OF INTEREST (VOTING)

A. Fleming Bell, II
 919.966.4210 • bell@sog.unc.edu

Frayda S. Bluestein
 919.966.4203 • bluestein@sog.unc.edu

Eileen Youens
 919.962.0942 • eyouens@sog.unc.edu

CONSOLIDATION, CITY-COUNTY

Frayda S. Bluestein
 919.966.4203 • bluestein@sog.unc.edu

CONSTITUTION, STATE

Michael Crowell
 919.966.4438 • crowellm@sog.unc.edu

James C. Drennan
 919.966.4160 • drennan@sog.unc.edu

CONTRACTS, GOVERNMENT

A. Fleming Bell, II

919.966.4210 • bell@sog.unc.edu

Norma Houston

919.843.8930 • nhouston@sog.unc.edu

Eileen Youens

919.962.0942 • eyouens@sog.unc.edu

COUNCIL, MUNICIPAL

A. Fleming Bell, II

919.966.4210 • bell@sog.unc.edu

Frayda S. Bluestein

919.966.4203 • bluestein@sog.unc.edu

COUNTY ADMINISTRATION PROGRAM

Gregory S. Allison

919.966.4376 • allison@sog.unc.edu

COUNTY ATTORNEYS

A. Fleming Bell, II

919.966.4210 • bell@sog.unc.edu

Kara A. Millonzi

919.962.0051 • millonzi@sog.unc.edu

COUNTY GOVERNMENT

A. Fleming Bell, II

919.966.4210 • bell@sog.unc.edu

Kara A. Millonzi

919.962.0051 • millonzi@sog.unc.edu

COURTS

Ann Anderson

919.962.0595 • anderson@sog.unc.edu

Michael Crowell

919.966.4438 • crowellm@sog.unc.edu

James C. Drennan

919.966.4160 • drennan@sog.unc.edu

Cheryl D. Howell

919.966.4437 • howell@sog.unc.edu

COURTS, JUVENILE

Janet Mason

919.966.4246 • mason@sog.unc.edu

CRIMINAL LAW AND PROCEDURE

James M. Markham

919.843.3914 • markham@sog.unc.edu

John Rubin

919.962.2498 • rubin@sog.unc.edu

Jessica Smith

919.966.4105 • smithj@sog.unc.edu

Jeffrey B. Welty

919.843.8474 • welty@sog.unc.edu

CROSS-ORGANIZATIONAL COLLABORATION

Lydian Altman

919.962.0103 • lydian@sog.unc.edu

Margaret F. Henderson

919.966.3455 • margaret@sog.unc.edu

Ricardo S. Morse

919.843.1366 • rmorse@sog.unc.edu

Gordon P. Whitaker

919.962.0427 • whitaker@sog.unc.edu

DEFENDER EDUCATION

Whitney Fairbanks

919.962.9594 • fairbanks@sog.unc.edu

Alyson Grine

919.966.4248 • agrine@sog.unc.edu

John Rubin

919.962.2498 • rubin@sog.unc.edu

DELINQUENT JUVENILES

Janet Mason

919.966.4246 • mason@sog.unc.edu

DISPUTE RESOLUTION

John B. Stephens

919.962.5190 • stephens@sog.unc.edu

DOMESTIC VIOLENCE

Cheryl D. Howell

919.966.4437 • howell@sog.unc.edu

John Rubin

919.962.2498 • rubin@sog.unc.edu

DRIVER LICENSE REVOCATIONS

Shea Riggsbee Denning

919.843.5120 • denning@sog.unc.edu

DRIVING WHILE IMPAIRED

Shea Riggsbee Denning

919.843.5120 • denning@sog.unc.edu

ECONOMIC DEVELOPMENT

William H. Lambe

919.966.4247 • whlambe@sog.unc.edu

Kara A. Millonzi

919.962.0051 • millonzi@sog.unc.edu

Jonathan Q. Morgan

919.843.0972 • morgan@sog.unc.edu

C. Tyler Mulligan

919.962.0987 • mulligan@sog.unc.edu

Karl W. Smith

919.966.9393 • karl@sog.unc.edu

EDUCATION LAW

Robert P. Joyce

919.966.6860 • joyce@sog.unc.edu

EDUCATION LAW (EXCEPT PERSONNEL LAW)

Laurie L. Mesibov

919.966.4253 • mesibov@sog.unc.edu

EDUCATION OUTREACH (K-12)

Kelley T. O'Brien

919.962.8273 • obrien@sog.unc.edu

ELECTED OFFICIALS

Carl W. Stenberg
919.962.2377 • stenberg@sog.unc.edu
Vaughn M. Upshaw
919.966.9982 • upshaw@sog.unc.edu
Donna Warner
919.962.1575 • warner@sog.unc.edu

ELECTED OFFICIALS (LEGAL AND PROCEDURAL)

A. Fleming Bell, II
919.966.4210 • bell@sog.unc.edu

ELECTIONS LAW

Robert P. Joyce
919.966.6860 • joyce@sog.unc.edu

EMERGENCY MANAGEMENT LAW

Norma Houston
919.843.8930 • nhouston@sog.unc.edu

EMINENT DOMAIN

Charles A. Szypszak
919.843.8932 • szypszak@sog.unc.edu

EMPLOYER-EMPLOYEE RELATIONS

Willow S. Jacobson
919.966.4760 • jacobson@sog.unc.edu
Robert P. Joyce
919.966.6860 • joyce@sog.unc.edu
Diane M. Juffras
919.843.4926 • juffras@sog.unc.edu

EMPLOYMENT DISCRIMINATION LAW

Robert P. Joyce
919.966.6860 • joyce@sog.unc.edu
Diane M. Juffras
919.843.4926 • juffras@sog.unc.edu

EMPLOYMENT LAW

Diane M. Juffras
919.843.4926 • juffras@sog.unc.edu

ENVIRONMENTAL FINANCE CENTER

Glenn Barnes
919.962.2789 • barnes@sog.unc.edu
Stacey Isaac Berahzer
770.509.3887 • isaac@sog.unc.edu
Shadi Eskaf
919.962.2785 • eskaf@sog.unc.edu
Jeffrey A. Hughes
919.843.4956 • jhughes@sog.unc.edu
Richard B. Whisnant
919.962.9320 • whisnant@sog.unc.edu

ENVIRONMENTAL HEALTH

Aimee N. Wall
919.843.4957 • wall@sog.unc.edu

ENVIRONMENTAL PROTECTION

Jeffrey A. Hughes
919.843.4956 • jhughes@sog.unc.edu
David W. Owens
919.966.4208 • owens@sog.unc.edu
Richard B. Whisnant
919.962.9320 • whisnant@sog.unc.edu

EQUITABLE DISTRIBUTION

Cheryl D. Howell
919.966.4437 • howell@sog.unc.edu

ESSENTIALS OF COUNTY/MUNICIPAL GOVERNMENT PROGRAMS

Vaughn M. Upshaw
919.966.9982 • upshaw@sog.unc.edu

ETHICS IN GOVERNMENT

A. Fleming Bell, II
919.966.4210 • bell@sog.unc.edu
Frayda S. Bluestein
919.966.4203 • bluestein@sog.unc.edu
Norma Houston
919.843.8930 • nhouston@sog.unc.edu
Eileen Youens
919.962.0942 • eyouens@sog.unc.edu

EVIDENCE

John Rubin
919.962.2498 • rubin@sog.unc.edu
Jessica Smith
919.966.4105 • smithj@sog.unc.edu
Jeffrey B. Welty
919.843.8474 • welty@sog.unc.edu

FAMILY LAW

Cheryl D. Howell
919.966.4437 • howell@sog.unc.edu

FINANCE, COUNTY AND MUNICIPAL

Gregory S. Allison
919.966.4376 • allison@sog.unc.edu
Kara A. Millonzi
919.962.0051 • millonzi@sog.unc.edu

FORESTRY

Richard B. Whisnant
919.962.9320 • whisnant@sog.unc.edu

GENERAL ASSEMBLY

Christine Wunsche
919.733.2484 • wunsche@sog.unc.edu

GOVERNING BOARDS

A. Fleming Bell, II
919.966.4210 • bell@sog.unc.edu
Carl W. Stenberg
919.962.2377 • stenberg@sog.unc.edu
Vaughn M. Upshaw
919.966.9982 • upshaw@sog.unc.edu

GOVERNMENTAL ACCOUNTING AND REPORTING

Gregory S. Allison
919.966.4376 • allison@sog.unc.edu

GROUP FACILITATION

Lydian Altman
919.962.0103 • lydian@sog.unc.edu
Margaret F. Henderson
919.966.3455 • margaret@sog.unc.edu
John B. Stephens
919.962.5190 • stephens@sog.unc.edu

GUARDIANSHIP (CHILDREN)

Janet Mason
919.966.4246 • mason@sog.unc.edu

HEALTH, ENVIRONMENTAL

Aimee N. Wall
919.843.4957 • wall@sog.unc.edu

HEALTH, LOCAL BOARDS OF

Jill D. Moore
919.966.4442 • moore@sog.unc.edu
Aimee N. Wall
919.843.4957 • wall@sog.unc.edu

HEALTH LAW (OTHER THAN MENTAL HEALTH)

Jill D. Moore
919.966.4442 • moore@sog.unc.edu
Aimee N. Wall
919.843.4957 • wall@sog.unc.edu

HIGHER EDUCATION LAW

Robert P. Joyce
919.966.6860 • joyce@sog.unc.edu

HUMAN RESOURCE MANAGEMENT

Willow S. Jacobson
919.966.4760 • jacobson@sog.unc.edu

INCORPORATION, MUNICIPAL

A. Fleming Bell, II
919.966.4210 • bell@sog.unc.edu
Frayda S. Bluestein
919.966.4203 • bluestein@sog.unc.edu
Kara A. Millonzi
919.962.0051 • millonzi@sog.unc.edu

IMMIGRATION LAW

Sejal Zota
919.843.8404 • szota@sog.unc.edu

INDIGENT DEFENSE

John Rubin
919.962.2498 • rubin@sog.unc.edu

INVOLUNTARY COMMITMENT LAW

Mark F. Botts
919.962.8204 • botts@sog.unc.edu

JUDICIAL EDUCATION

Michael Crowell
919.966.4438 • crowellm@sog.unc.edu
James C. Drennan
919.966.4160 • drennan@sog.unc.edu
Cheryl D. Howell
919.966.4437 • howell@sog.unc.edu
Jessica Smith
919.966.4105 • smithj@sog.unc.edu

JUVENILE LAW

Janet Mason
919.966.4246 • mason@sog.unc.edu

LAND-USE REGULATION

Richard D. Ducker
919.966.4179 • ducker@sog.unc.edu
David W. Owens
919.966.4208 • owens@sog.unc.edu

LANDLORD-TENANT LAW

Dona Lewandowski
919.966.7288 • lewandowski@sog.unc.edu

LEADERSHIP DEVELOPMENT

Ricardo S. Morse
919.843.1366 • rmorse@sog.unc.edu
Carl W. Stenberg
919.962.2377 • stenberg@sog.unc.edu
Vaughn M. Upshaw
919.966.9982 • upshaw@sog.unc.edu
Donna Warner
919.962.1575 • warner@sog.unc.edu
Gordon P. Whitaker
919.962.0427 • whitaker@sog.unc.edu

LEGISLATIVE EDUCATION

Aimee N. Wall
919.843.4957 • wall@sog.unc.edu

LEGISLATIVE REPORTING SERVICE

Christine Wunsche
919.733.2484 • wunsche@sog.unc.edu

LEGISLATIVE REPRESENTATION

Robert P. Joyce
919.966.6860 • joyce@sog.unc.edu

LOCAL ELECTED LEADERS ACADEMY

Donna Warner
919.962.1575 • warner@sog.unc.edu

LOCAL GOVERNMENT CONTRACTING

A. Fleming Bell, II
919.966.4210 • bell@sog.unc.edu
Norma Houston
919.843.8930 • nhouston@sog.unc.edu
Eileen Youens
919.962.0942 • eyouens@sog.unc.edu

LOCAL GOVERNMENT LAW

A. Fleming Bell, II
919.966.4210 • bell@sog.unc.edu

Frayda S. Bluestein
919.966.4203 • bluestein@sog.unc.edu

Norma Houston
919.843.8930 • nhouston@sog.unc.edu

Kara A. Millonzi
919.962.0051 • millonzi@sog.unc.edu

**LOCAL GOVERNMENT ORGANIZATION/
ADMINISTRATION**

William C. Rivenbark
919.962.3707 • rivenbark@sog.unc.edu

Carl W. Stenberg
919.962.2377 • stenberg@sog.unc.edu

MAGISTRATES

Dona Lewandowski
919.966.7288 • lewandowski@sog.unc.edu

MAGISTRATES, INVOLUNTARY COMMITMENT

Mark F. Botts
919.962.8204 • botts@sog.unc.edu

MANAGERS, CITY AND COUNTY

Carl W. Stenberg
919.962.2377 • stenberg@sog.unc.edu

MARRIAGE LAW

Janet Mason
919.966.4246 • mason@sog.unc.edu

MEDIATION, PUBLIC DISPUTES

John B. Stephens
919.962.5190 • stephens@sog.unc.edu

MEDICAL CONFIDENTIALITY

Jill D. Moore
919.966.4442 • moore@sog.unc.edu

Aimee N. Wall
919.843.4957 • wall@sog.unc.edu

MEETINGS, OPEN

A. Fleming Bell, II
919.966.4210 • bell@sog.unc.edu

Frayda S. Bluestein
919.966.4203 • bluestein@sog.unc.edu

MENTAL HEALTH LAW

Mark F. Botts
919.962.8204 • botts@sog.unc.edu

MOTOR VEHICLE LAW

Shea Riggsbee Denning
919.843.5120 • denning@sog.unc.edu

MPA PROGRAM DIRECTOR

Carl W. Stenberg
919.962.2377 • stenberg@sog.unc.edu

MUNICIPAL ADMINISTRATION PROGRAM

Gregory S. Allison
919.966.4376 • allison@sog.unc.edu

NATURAL RESOURCES MANAGEMENT

Jeffrey A. Hughes
919.843.4956 • jhughes@sog.unc.edu

Richard B. Whisnant
919.962.9320 • whisnant@sog.unc.edu

NEWS MEDIA-GOVERNMENT RELATIONS

Robert P. Joyce
919.966.6860 • joyce@sog.unc.edu

NONPROFIT-GOVERNMENT RELATIONSHIPS

Lydian Altman
919.962.0103 • lydian@sog.unc.edu

Margaret F. Henderson
919.966.3455 • margaret@sog.unc.edu

Gordon P. Whitaker
919.962.0427 • whitaker@sog.unc.edu

NONPROFIT MANAGEMENT

Lydian Altman
919.962.0103 • lydian@sog.unc.edu

Margaret F. Henderson
919.966.3455 • margaret@sog.unc.edu

OFFICE-HOLDING, MULTIPLE AND INCOMPATIBLE

A. Fleming Bell, II
919.966.4210 • bell@sog.unc.edu

ORGANIZATIONAL CHANGE AND DEVELOPMENT

Willow S. Jacobson
919.966.4760 • jacobson@sog.unc.edu

Vaughn M. Upshaw
919.966.9982 • upshaw@sog.unc.edu

Gordon P. Whitaker
919.962.0427 • whitaker@sog.unc.edu

PARKS AND RECREATION

Richard B. Whisnant
919.962.9320 • whisnant@sog.unc.edu

PARLIAMENTARY PROCEDURE

A. Fleming Bell, II
919.966.4210 • bell@sog.unc.edu

PATTERN JURY INSTRUCTIONS

James C. Drennan
919.966.4160 • drennan@sog.unc.edu

PERFORMANCE MEASUREMENT

David N. Ammons
919.962.7696 • ammons@sog.unc.edu

William C. Rivenbark
919.962.3707 • rivenbark@sog.unc.edu

Dale J. Roenigk
919.843.8927 • roenigk@sog.unc.edu

PLANNING, CITY AND COUNTY

Richard D. Ducker
919.966.4179 • ducker@sog.unc.edu
David W. Owens
919.966.4208 • owens@sog.unc.edu

POLICE ATTORNEYS

Jeffrey B. Welty
919.843.8474 • welty@sog.unc.edu

POST-CONVICTION PROCEDURE

Jessica Smith
919.966.4105 • smithj@sog.unc.edu

PRIVATIZATION

David N. Ammons
919.962.7696 • ammons@sog.unc.edu

PROCEDURES FOR MEETINGS

A. Fleming Bell, II
919.966.4210 • bell@sog.unc.edu

PROCESS IMPROVEMENT IN LOCAL GOVERNMENT

William C. Rivenbark
919.962.3707 • rivenbark@sog.unc.edu

PRODUCTIVITY IMPROVEMENT IN LOCAL GOVERNMENT

David N. Ammons
919.962.7696 • ammons@sog.unc.edu

PROGRAM EVALUATION

Maureen M. Berner
919.843.8980 • mberner@sog.unc.edu

PROPERTY MAPPING

Charles A. Szypszak
919.843.8932 • szypszak@sog.unc.edu

PROPERTY TAX APPRAISAL AND ASSESSMENT

Kenneth L. Joyner
919.962.7434 • joyner@sog.unc.edu

PROPERTY TAX COLLECTION

Kenneth L. Joyner
919.962.7434 • joyner@sog.unc.edu
Christopher B. McLaughlin
919.843.9167 • mclaughlin@sog.unc.edu

PROPERTY TAX LISTING AND ASSESSING

Kenneth L. Joyner
919.962.7434 • joyner@sog.unc.edu
Christopher B. McLaughlin
919.843.9167 • mclaughlin@sog.unc.edu

PROPERTY TRANSACTIONS, LOCAL GOVERNMENT

Frayda S. Bluestein
919.966.4203 • bluestein@sog.unc.edu
Eileen Youens
919.962.0942 • eyouens@sog.unc.edu

PROSECUTOR TRAINING

Jeffrey B. Welty
919.843.8474 • welty@sog.unc.edu

PUBLIC ADMINISTRATION

David N. Ammons
919.962.7696 • ammons@sog.unc.edu
Maureen M. Berner
919.843.8980 • mberner@sog.unc.edu
Willow S. Jacobson
919.966.4760 • jacobson@sog.unc.edu
Jonathan Q. Morgan
919.843.0972 • morgan@sog.unc.edu
Ricardo S. Morse
919.843.1366 • rmorse@sog.unc.edu
William C. Rivenbark
919.962.3707 • rivenbark@sog.unc.edu
Dale J. Roenigk
919.843.8927 • roenigk@sog.unc.edu
Carl W. Stenberg
919.962.2377 • stenberg@sog.unc.edu
Vaughn M. Upshaw
919.966.9982 • upshaw@sog.unc.edu
Gordon P. Whitaker
919.962.0427 • whitaker@sog.unc.edu

PUBLIC DEFENDER TRAINING

John Rubin
919.962.2498 • rubin@sog.unc.edu

PUBLIC DISPUTE MEDIATION

John B. Stephens
919.962.5190 • stephens@sog.unc.edu

PUBLIC ENTERPRISE ORGANIZATION AND FINANCING

Jeffrey A. Hughes
919.843.4956 • jhughes@sog.unc.edu

PUBLIC EXECUTIVE LEADERSHIP ACADEMY

Carl W. Stenberg
919.962.2377 • stenberg@sog.unc.edu

PUBLIC HEALTH SYSTEM

Jill D. Moore
919.966.4442 • moore@sog.unc.edu
Aimee N. Wall
919.843.4957 • wall@sog.unc.edu

PUBLIC MANAGEMENT

Willow S. Jacobson
919.966.4760 • jacobson@sog.unc.edu
Carl W. Stenberg
919.962.2377 • stenberg@sog.unc.edu
John B. Stephens
919.962.5190 • stephens@sog.unc.edu

PUBLIC PERSONNEL ADMINISTRATION

Diane Juffras
919.843.4926 • juffras@sog.unc.edu
Robert P. Joyce
919.966.6860 • joyce@sog.unc.edu

PUBLIC RECORDS

A. Fleming Bell, II
919.966.4210 • bell@sog.unc.edu
Frayda S. Bluestein
919.966.4203 • bluestein@sog.unc.edu
Kara A. Millonzi
919.962.0051 • millonzi@sog.unc.edu

PUBLIC UTILITIES

Jeffrey A. Hughes
919.843.4956 • jhughes@sog.unc.edu

PURCHASING, PUBLIC

A. Fleming Bell, II
919.966.4210 • bell@sog.unc.edu
Norma Houston
919.843.8930 • nhouston@sog.unc.edu
Eileen Youens
919.962.0942 • eyouens@sog.unc.edu

REAL ESTATE LAW

Charles A. Szypszak
919.843.8932 • szypszak@sog.unc.edu

RECORDS, MENTAL HEALTH

Mark F. Botts
919.962.8204 • botts@sog.unc.edu

REGISTERS OF DEEDS

Charles A. Szypszak
919.843.8932 • szypszak@sog.unc.edu

RESEARCH METHODS FOR PUBLIC ADMINISTRATION

Maureen M. Berner
919.843.8980 • mberner@sog.unc.edu

RETREAT FACILITATION

Lydian Altman
919.962.0103 • lydian@sog.unc.edu
Margaret F. Henderson
919.966.3455 • margaret@sog.unc.edu
Donna Warner
919.962.1575 • warner@sog.unc.edu

SCHOOL AND COMMUNITY OUTREACH

Kelley T. O'Brien
919.962.8273 • obrien@sog.unc.edu

SCHOOL LAW (SCHOOL AS EMPLOYER)

Robert P. Joyce
919.966.6860 • joyce@sog.unc.edu

SCHOOL LAW (EXCEPT PERSONNEL LAW)

Laurie L. Mesibov
919.966.4253 • mesibov@sog.unc.edu

SENTENCING LAW

James C. Drennan
919.966.4160 • drennan@sog.unc.edu
James M. Markham
919.843.3914 • markham@sog.unc.edu
John Rubin
919.962.2498 • rubin@sog.unc.edu

SHERIFFS, CIVIL DUTIES OF

Dona Lewandowski
919.966.7288 • lewandowski@sog.unc.edu

SHERIFFS, CIVIL COMMITMENT DUTIES OF

Mark F. Botts
919.962.8204 • botts@sog.unc.edu

SMOKING REGULATION

Aimee N. Wall
919.843.4957 • wall@sog.unc.edu

SOCIAL SERVICES ATTORNEYS AND BOARDS

Janet Mason
919.966.4246 • mason@sog.unc.edu

SOCIAL SERVICES LAW (CHILD WELFARE, FOSTER CARE)

Janet Mason
919.966.4246 • mason@sog.unc.edu

SOIL AND WATER CONSERVATION

Richard B. Whisnant
919.962.9320 • whisnant@sog.unc.edu

SOLID WASTE MANAGEMENT

Jeffrey A. Hughes
919.843.4956 • jhughes@sog.unc.edu
Kara A. Millonzi
919.962.0051 • millonzi@sog.unc.edu
Richard B. Whisnant
919.962.9320 • whisnant@sog.unc.edu

SPECIAL ASSESSMENTS

Kara A. Millonzi
919.962.0051 • millonzi@sog.unc.edu

STRATEGIC PLANNING AND VISIONING

Lydian Altman
919.962.0103 • lydian@sog.unc.edu
Margaret F. Henderson
919.966.3455 • margaret@sog.unc.edu
Ricardo S. Morse
919.843.1366 • rmorse@sog.unc.edu
Carl W. Stenberg
919.962.2377 • stenberg@sog.unc.edu
Vaughn M. Upshaw
919.966.9982 • upshaw@sog.unc.edu
Donna Warner
919.962.1575 • warner@sog.unc.edu

SUBDIVISION REGULATION

Richard D. Ducker
919.966.4179 • ducker@sog.unc.edu
David W. Owens
919.966.4208 • owens@sog.unc.edu

SUBPOENAS

John Rubin
919.962.2498 • rubin@sog.unc.edu

SURVEY METHODOLOGY

Maureen M. Berner
919.843.8980 • mberner@sog.unc.edu
Shannon H. Tufts
919.962.5438 • tufts@sog.unc.edu

TAX POLICY

Karl W. Smith
919.966.9393 • karl@sog.unc.edu

TAXATION, LOCAL

Christopher B. McLaughlin
919.843.9167 • mclaughlin@sog.unc.edu

TECHNOLOGY

Maurice Ferrell
919.843.5284 • mferrell@sog.unc.edu
Shannon H. Tufts
919.962.5438 • tufts@sog.unc.edu

VIOLENCE, DOMESTIC

Cheryl D. Howell
919.966.4437 • howell@sog.unc.edu
John Rubin
919.962.2498 • rubin@sog.unc.edu

WATER RESOURCES

Jeffrey A. Hughes
919.843.4956 • jhughes@sog.unc.edu
Richard B. Whisnant
919.962.9320 • whisnant@sog.unc.edu

WATER AND SEWERAGE SERVICES

Glenn Barnes
919.962.2789 barnes@sog.unc.edu
Shadi Eskaf
919.962.2785 eskaf@sog.unc.edu
Jeffrey A. Hughes
919.843.4956 • jhughes@sog.unc.edu
Kara A. Millonzi
919.962.0051 • millonzi@sog.unc.edu
Mary Tiger
919.843.2958 mwtiger@sog.unc.edu

ZONING

Richard D. Ducker
919.966.4179 • ducker@sog.unc.edu
David W. Owens
919.966.4208 • owens@sog.unc.edu

School of Government Administration

Business and Finance Division
919.966.4110

Dean's Office
919.966.4107

Development Division
919.843.2556

Library
919.962.2760

Receptionist
919.966.5381

Registration Office
919.966.4415

School of Government Fax
919.962.0654

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

RESOURCE PEOPLE FOR NEW MAGISTRATES

School of Government

Central Switchboard Number (919) 966-5381

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

Mark Botts	botts@sog.unc.edu
Involuntary Commitment	(919) 962-8204
Shea Denning	denning@sog.unc.edu
DWI & Motor Vehicle	(919) 843-5120
Cheryl Howell	howell@sog.unc.edu
Domestic Violence Protective Orders	(919) 966-4437
Dona Lewandowski	lewandowski@sog.unc.edu
Small Claims and Miscellaneous	(919) 966-7288
Magistrates' Issues	
Jamie Markham	Markham@sog.unc.edu
Criminal Sentencing and Corrections	(919) 843-3914
including extradition and law relating to fugitives	
John Rubin	rubin@sog.unc.edu
Criminal Law and Procedure	(919) 962-2498
Jessie Smith	smithj@sog.unc.edu
Criminal Law and Procedure	(919) 966-4105
Jeff Welty	welty@sog.unc.edu
Criminal Law and Procedure	(919) 843-8474

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

Administrative Office of the Courts

Judge John Smith, Director (919) 890-1000

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

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

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

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

Debbie Perkinson (A-F) (919) 890-1120

Sarah West (G-M) (919) 890-1106

Bob McKane (N-Z) (919) 890-1117

Other Personnel Matters (919) 890-1000

Gloria Lennon, Payroll (919) 890-1015

Lynn Holder, Travel (919) 890-1010

Jim Gray, HR Web Design/Training Coordinator (919) 890-1110
keeps records of CLE hours and approves non-School of Government hours

Magistrates Support Staff (919) 571-4900

Beverly Andrews

Rebecca Saleeby

Sean Bunn

Keith Harris

Bruce Saburn

Kim Whitfield

Help Desk (919) 890-2407

All magistrates' calls to AOC for computer assistance (Magistrate System user assistance, hardware, software etc.)

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

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

Website Resources

School of Government Website

www.sog.unc.edu

School of Government's Magistrate Website

www.ncmagistrates.unc.edu

School of Government's Criminal Law Website

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

School of Government's District Court Judges Website

<http://www.sog.unc.edu/programs/dcjudges>

NC Judicial College Website

<http://www.sog.unc.edu/programs/judicialcollege>

School of Government's Family Law Website

<http://www.sog.unc.edu/node/1225>

NC Magistrate's Association Website

www.aoc.state.nc.us/magistrate

Administrative Office of the Courts' (AOC) Website

www.nccourts.org

General Assembly's Website

(can download any bill or statute)

www.ncleg.net

North Carolina Judicial Center

901 Corporate Center Drive

From North, US 1

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

From East,

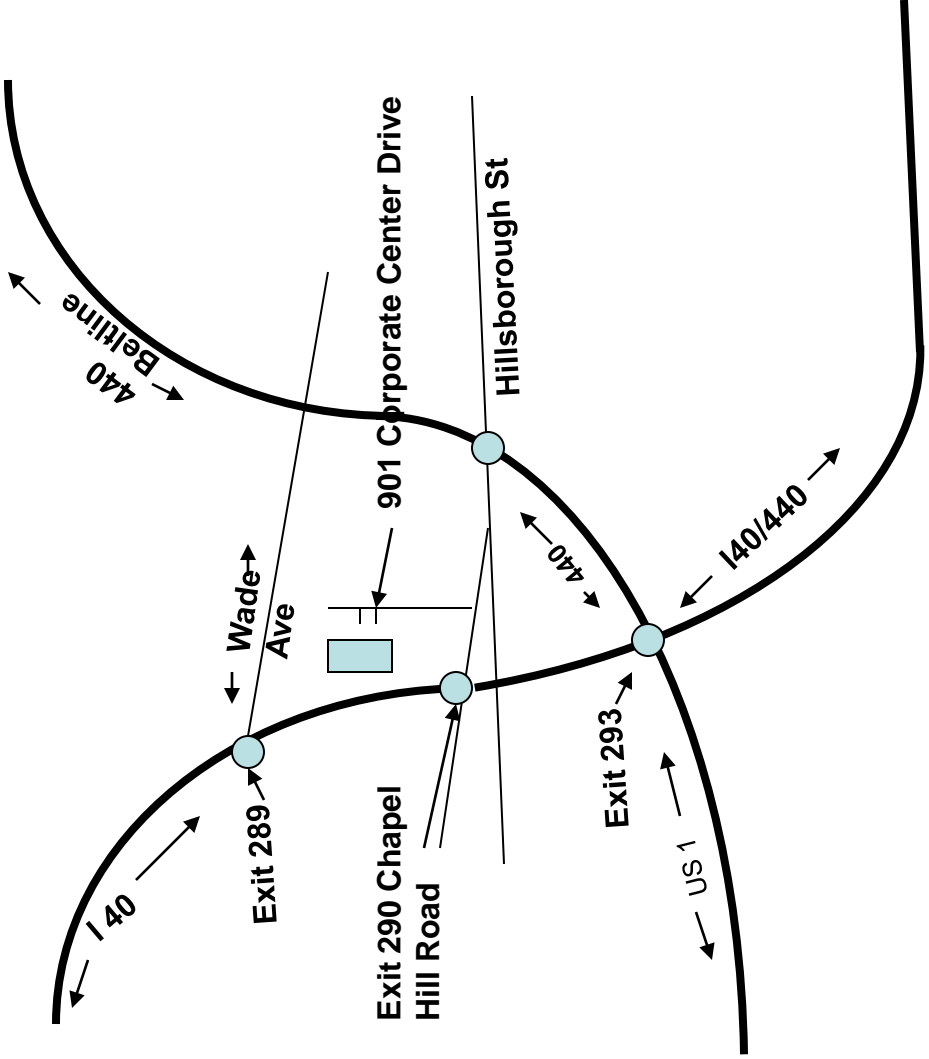
Take I 40/440 toward Durham. Exit 290, turn right onto Chapel Hill Rd. Then turn left at light onto Corporate Center Drive, then left into the NC Judicial Center (old Nortel Bldg)

From West,

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

From South, US 1

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



REIMBURSEMENT FOR TRAVEL AND SUBSISTENCE

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

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

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

Breakfast	\$ 8.00
Lunch	\$ 10.45
Dinner	\$ 17.90
Lodging (actual cost, up to)	\$ 63.90
Total Daily Rate	\$ 100.25
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 claim dinner if you arrive home after 8:00 p.m.

NOTE: If meals are provided by the School of Government you cannot claim them.

If you are commuting daily, you are not entitled to recover any meal expenses except you may claim \$8.00 for breakfast if you left before 6:00 a.m. and may claim \$17.90 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 \$63.90, plus actual tax. The original itemized hotel receipt (not a photocopy) must be attached to the reimbursement form. The itemized hotel receipt must show each day's total and tax separately. Your receipt must show a "0" balance owed.

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

TRAVEL:

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

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

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

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