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# BASIC SCHOOL FOR NEW MAGISTRATES

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WEEK 1

JANUARY 28-FEBRUARY 1, 2013

## *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

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January 28-February 1, 2013  
School of Government, Chapel Hill, NC

### MONDAY, JANUARY 28

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9:00	Welcome <i>Dona Lewandowski, School of Government</i>	Room 2401
9:30	Involuntary Commitment (60m) <i>Mark Botts, School of Government</i>	Room 2401
10:30	Break	
10:45	IVC, cont'd (90m) <i>Mark Botts, School of Government</i>	Room 2401
12:15	Lunch	Dining Room
1:00	IVC, cont'd (60m) <i>Mark Botts, School of Government</i>	Room 2401
2:00	Welcome to the Job (45m) <i>Dona Lewandowski, School of Government</i>	Room 2401
2:45	Break	
3:00	Introduction to Civil Law <i>Dona Lewandowski, School of Government</i>	Room 2401
4:15	Break	
4:30	Ethics (60m) <i>Dona Lewandowski, School of Government</i>	Room 2401
5:30	Recess	

### TUESDAY, JANUARY 29

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9:00	Small Claims Procedure(90m) <i>Dona Lewandowski, School of Government</i>	Room 2401
10:30	Break	
10:45	Small Claims Procedure, cont'd <i>Dona Lewandowski, School of Government</i>	Room 2401
12:30	Lunch	
1:15	Contracts <i>Dona Lewandowski, School of Government</i>	Room 2401
2:30	Break	
2:45	Contracts, cont'd <i>Dona Lewandowski, School of Government</i>	Room 2401
4:00	Break	
4:15	Torts (60m) <i>Dona Lewandowski, School of Government</i>	Room 2401
5:15	Recess	

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### WEDNESDAY, JANUARY 30

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9:00	Landlord-Tenant (90m) <i>Dona Lewandowski, School of Government</i>	Room 2401
10:30	Break	
10:45	Landlord-Tenant, cont'd <i>Dona Lewandowski, School of Government</i>	Room 2401
12:30	Lunch	
1:15	Landlord-Tenant, cont'd <i>Dona Lewandowski, School of Government</i>	Room 2401
2:30	Break	
2:45	Landlord-Tenant, cont'd <i>Dona Lewandowski, School of Government</i>	Room 2401
4:00	Break	
4:15	Landlord-Tenant, cont'd (60m) <i>Dona Lewandowski, School of Government</i>	Room 2401
5:15	Recess	

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### THURSDAY, JANUARY 31

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9:00	Legal Issues in Domestic Violence (90m) <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 (75m) <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? (90m) <i>Dona Lewandowski, School of Government</i>	Room 2401
4:15	Break	
4:30	Contempt (45m) <i>Dona Lewandowski, School of Government</i>	Room 2401
5:15	Recess	

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### FRIDAY, FEBRUARY 1

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9:00	Handling Money (60m) <i>Joe Plemmons, Administrative Office of the Courts</i>	Room 2401
10:00	Understanding Domestic Violence (120m) <i>Chief District Court Judge Julius Corpening</i>	Room 2401



12:00	Marriage (45m) <i>Dona Lewandowski, School of Government</i>	Room 2401
12:45	Lunch	
1:30	NCAOC Language Access Services for Magistrates (60m) Brooke Bogue, Office of Language Access, AOC Kellie Myers, Office of Language Access, AOC	Room 2401
1:30	Evaluations	Room 2401
1:45	Test on Week 1 Material	Room 2401 & 2321

**Week I: Magistrate CLE hours: 31.5**

**Total available NC Bar CLEs: 12 hours for two weeks (9.5 general and 2.5 ethics)**



## BASIC SCHOOL FOR NEW MAGISTRATES: COURSE OBJECTIVES FOR WEEK 1

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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.

# **TAB: DAY 1**



## SCHEDULE FOR TODAY

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9:00	Welcome <i>Dona Lewandowski, School of Government</i>	Room 2401
9:30	Involuntary Commitment (60m) <i>Mark Botts, School of Government</i>	Room 2401
10:30	Break	
10:45	IVC, cont'd (90m) <i>Mark Botts, School of Government</i>	Room 2401
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3:00	Introduction to Civil Law <i>Dona Lewandowski, School of Government</i>	Room 2401
4:15	Break	
4:30	Ethics (60m) <i>Dona Lewandowski, School of Government</i>	Room 2401
5:30	Recess	

## OUR OBJECTIVES FOR TODAY

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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.

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## WELCOME TO YOUR JOB!

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### ACTIVITY: WHAT HAVE YOU BEEN TOLD?

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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.

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## GROUND RULES FOR BASIC SCHOOL

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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***

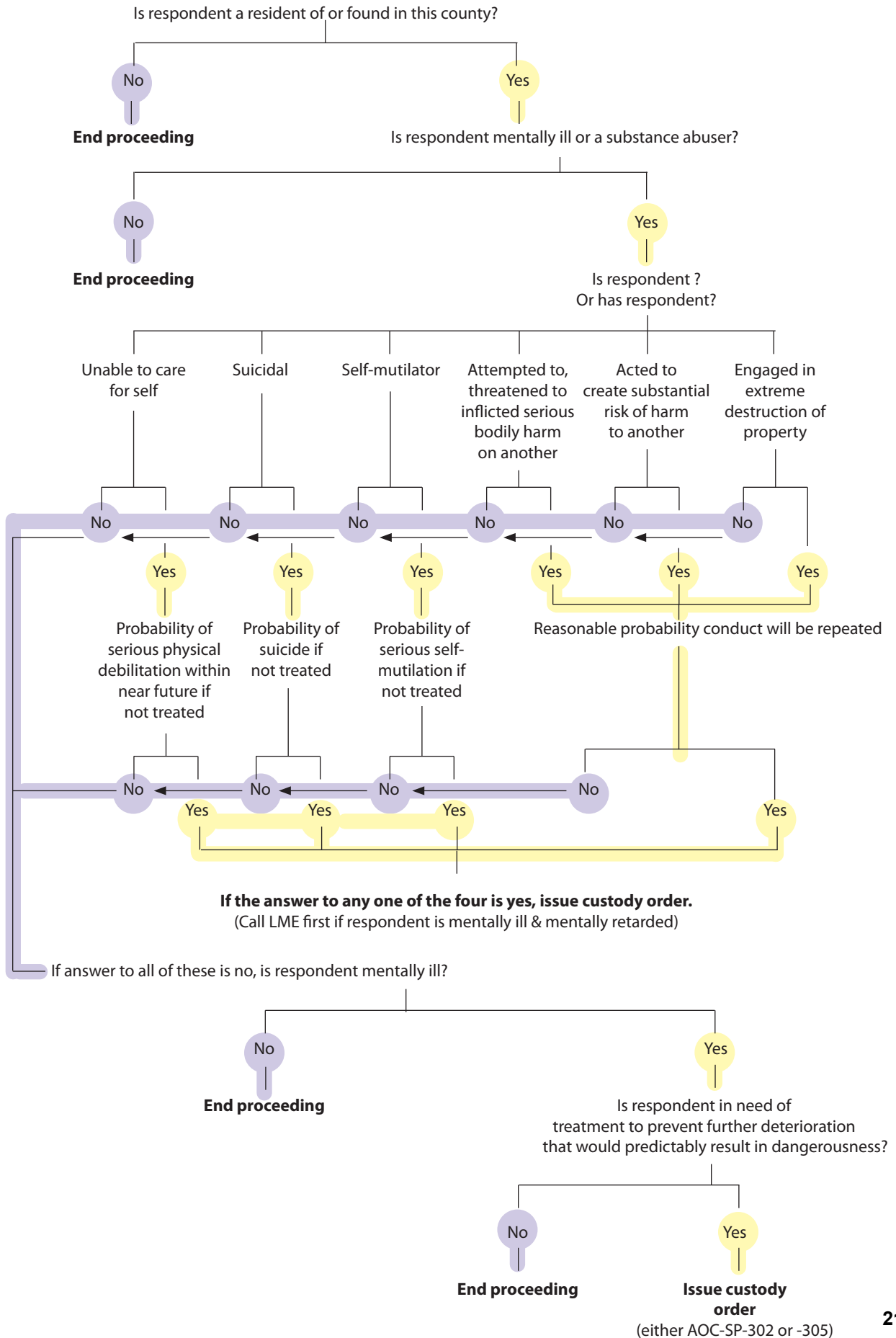
Within the relevant past the individual has:

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.



# Magistrate's Involuntary Commitment Decision Tree





**COMMON QUESTIONS TO ASK TO OBTAIN INFORMATION FOR THE PETITION FOR  
INVOLUNTARY COMMITMENT**

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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

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### I. BEHAVIORS

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

### II. MOVEMENTS

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

### III. SPEECH

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

### IV. EMOTIONS

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

### V. THOUGHTS

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



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

#### VI. ABNORMAL MENTAL TRENDS

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

#### VII. PREVIOUS EVIDENCE

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

#### VIII. COURSE OR DISTURBANCE

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

**Involuntary Commitment—Case Studies**  
**July 2011**

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?

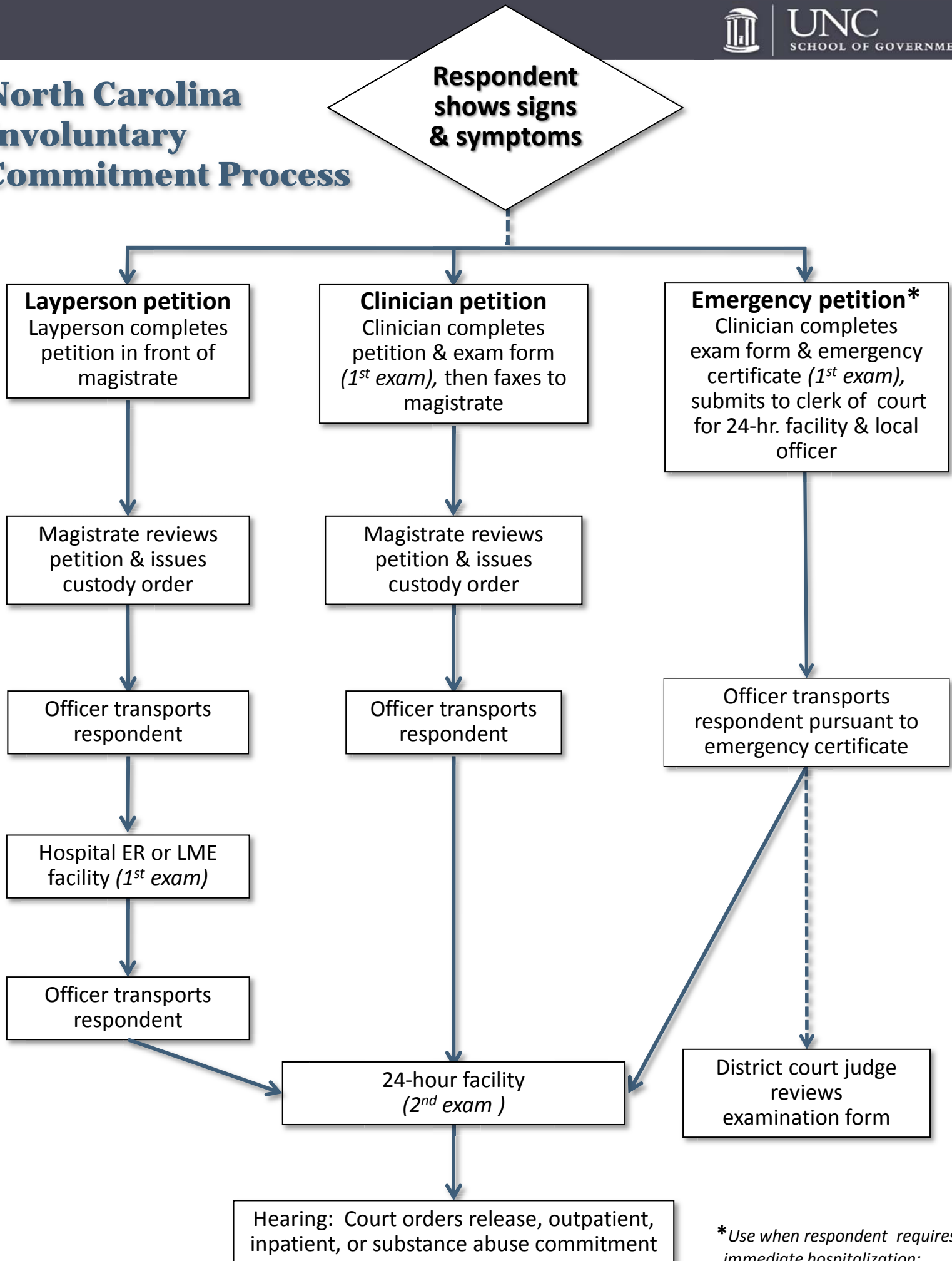
6. Mary has a hammer in the house, breaks everything she can find, and told her husband that if he went to sleep she would bash his brains out. She has threatened to kill her daughter, granddaughter and sister. The daughter says, "Upon coming home, I found the TV busted, the telephone had been cut away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



\*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](mailto:botts@sog.unc.edu)).

**STATE OF NORTH CAROLINA**

File No.

County

In The General Court Of Justice  
District Court Division**IN THE MATTER OF:**

Name, Address And Zip Code Of Respondent

**AFFIDAVIT AND PETITION FOR  
INVOLUNTARY COMMITMENT**

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

Social Security No. Of Respondent

Date Of Birth

Drivers License No. Of Respondent

State

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

(Check all that apply)

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

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

Name, Address And Zip Code Of Nearest Relative Or Guardian

Name, Address And Zip Code Of Other Person Who May Testify To Facts

Home Telephone No.

Business Telephone No.

Home Telephone No.

Business Telephone No.

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

**SWORN AND SUBSCRIBED TO BEFORE ME**

Signature Of Petitioner

Date

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

Signature

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

Relationship To Respondent

Date Notary Commission Expires

Home Telephone No.

Business Telephone No.

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

	<b>PETITIONER'S WAIVER OF NOTICE OF HEARING</b>	
--	---	--

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*

**MEMO:**

To: Clerks of Superior Court and Magistrates

Date: November 28, 2012

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

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

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

Thanks.

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

T 919 890-1305

F 919 890-1914

E [Jo.McCants@nccourts.org](mailto:Jo.McCants@nccourts.org)

W [www.nccourts.org](http://www.nccourts.org)



**STATE OF NORTH CAROLINA**

File No.

County

In The General Court Of Justice  
District Court Division**IN THE MATTER OF:**

Name And Address Of Respondent

**FINDINGS AND CUSTODY ORDER  
INVOLUNTARY COMMITMENT**  
(PETITIONER APPEARS BEFORE MAGISTRATE OR CLERK)

G.S. 122C-252, -261, -263, -281, -283

Social Security No. Of Respondent

Date Of Birth

Drivers License No. Of Respondent

State

**I. FINDINGS**

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

(Check all that apply)

- ☐ 1. mentally ill and dangerous to self or others or mentally ill and in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness.  
☐ In addition to being mentally ill, the respondent probably is also mentally retarded. (If this finding is made, see G.S. 122C-261(b) and (d) for special instructions.)
- ☐ 2. a substance abuser and dangerous to self or others.

**II. CUSTODY ORDER****TO ANY LAW ENFORCEMENT OFFICER:**

The Court ORDERS you to take the above named respondent into custody **WITHIN 24 HOURS AFTER THIS ORDER IS SIGNED** and take the respondent for examination by a person authorized by law to conduct the examination. (A COPY OF THE EXAMINER'S FINDINGS SHALL BE TRANSMITTED TO THE CLERK OF SUPERIOR COURT IMMEDIATELY.)

- ➔ IF the examiner finds that the respondent IS NOT a proper subject for involuntary commitment, then you shall take the respondent home or to a consenting person's home in the originating county and release him/her.
- ➔ IF the examiner finds that the respondent IS mentally ill and a proper subject for outpatient commitment, then you shall take the respondent home or to a consenting person's home in the originating county and release him/her.
- ➔ IF the examiner finds that the respondent IS mentally ill and a proper subject for inpatient commitment, then you shall transport the respondent to a 24-hour facility designated by the State for the custody and treatment of involuntary clients and present the respondent for custody, examination and treatment pending a district court hearing.
- ➔ IF the examiner finds that the respondent IS a substance abuser and subject to involuntary commitment, the examiner must recommend whether the respondent be taken to a 24-hour facility or released, and then you shall either release him/her or transport the respondent to a 24-hour facility designated by the State for the custody and treatment of involuntary clients and present the respondent for custody, examination and treatment pending a district court hearing.

Date

Time

☐ AM☐ PM

Signature

☐ Deputy CSC☐ CSC☐ Assistant CSC☐ Magistrate

This Order is valid throughout the State. If the respondent is taken into custody, this Order is valid for seven (7) days from the date and time of issuance.

**III RETURN OF SERVICE  
A. CUSTODY CERTIFICATION**

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

☐ I certify that this Order was received and respondent served and taken into custody as follows:

Date Respondent Taken Into Custody

Time

☐ AM☐ PM

Name Of Law Enforcement Officer (Type Or Print)

Signature Of Law Enforcement Officer

Name Of Law Enforcement Agency

Badge No. Of Officer

**NOTE TO LAW ENFORCEMENT OFFICER:** If respondent is not taken into custody within 24 hours after this Order is signed, check the appropriate box above and return to the Clerk of Superior Court immediately. If respondent is served and taken into custody, complete return of service on the reverse. When taking respondent into custody you must inform him or her that he or she is not under arrest and has not committed a crime, but is being transported to receive treatment and for his or her own safety and that of others.

Original-File Copy-24-Hour Facility Copy-Special Counsel Copy-Attorney General  
(Over)

**B. PATIENT DELIVERY TO FIRST EXAMINATION SITE**

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

Date Presented	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Examiner (Type Or Print)
Name Of Examining Facility	County Of Examining Facility	
Name Of Law Enforcement Officer (Type Or Print)	Signature Of Law Enforcement Officer	
Name Of Law Enforcement Agency	Badge No. Of Officer	

**C. FOR USE WHEN TRANSPORTING AFTER FIRST EXAMINATION:  
PATIENT RELEASED OR DELIVERED TO 24-HOUR FACILITY**

- ☐ 1. The examiner found that the respondent does not meet the commitment criteria, or meets the criteria for outpatient commitment, or meets the criteria for substance abuse commitment and should be released pending a hearing. I returned respondent to his/her regular residence or the home of a consenting person and released respondent from custody.
- ☐ 2. The examiner found that the respondent is mentally ill and meets the criteria for inpatient commitment, or meets the criteria for substance abuse commitment and should be held pending a district court hearing. I transported and placed the respondent in the custody of the 24-hour facility named below for observation and treatment.

Name Of 24-Hour Facility

County Of 24-Hour Facility

- ☐ 3. Respondent was temporarily detained under appropriate supervision at the site of first examination because the first examiner recommended inpatient commitment and a 24-hour facility was not immediately available or medically appropriate. Upon further examination, an examiner determined that the respondent no longer meets inpatient commitment criteria or meets the criteria for outpatient commitment. I returned the respondent to his/her regular residence or the home of a consenting person and released respondent from custody.

Date Delivered	Time Delivered <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Examiner (Type Or Print)
Name Of Examining Facility	County Of Examining Facility	
Name Of Law Enforcement Officer (Type Or Print)	Signature Of Law Enforcement Officer	
Name Of Law Enforcement Agency	Badge No. Of Officer	

**NOTE TO LAW ENFORCEMENT OFFICER:** Upon completing this section, immediately return this form and a copy of the examiner's written report (Form No. DMH 5-72-01) to the Clerk of Superior Court of the county where the petition was filed and the custody order issued (See top of reverse side).

**STATE OF NORTH CAROLINA**

File No. \_\_\_\_\_

County \_\_\_\_\_

In The General Court Of Justice  
District Court Division**IN THE MATTER OF:**

Name And Address Of Respondent \_\_\_\_\_

**FINDINGS AND CUSTODY ORDER  
INVOLUNTARY COMMITMENT**

(PETITIONER IS CLINICIAN WHO HAS EXAMINED RESPONDENT)

G.S. 122C-252, -261, -263, -281, -283

Social Security No. Of Respondent \_\_\_\_\_

Date Of Birth \_\_\_\_\_

Drivers License No. Of Respondent \_\_\_\_\_

State \_\_\_\_\_

**I. FINDINGS**

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

(Check all that apply)

- ☐ 1. mentally ill and dangerous to self or others.
- ☐ In addition to being mentally ill, the respondent probably is also mentally retarded. (If this finding is made, see G.S. 122C-261(b) and (d) for special instructions.)
- ☐ 2. a substance abuser and dangerous to self or others.

**II. CUSTODY ORDER****TO ANY LAW ENFORCEMENT OFFICER:**

The Court ORDERS you to take the above named respondent into custody **WITHIN 24 HOURS AFTER THIS ORDER IS SIGNED** and transport the respondent directly to a 24-hour facility designated by the State for the custody and treatment of involuntary clients and present the respondent for custody, examination and treatment pending a district court hearing.

Date _____	Time _____ <input type="checkbox"/> AM <input type="checkbox"/> PM	Signature _____	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Magistrate
------------	---	-----------------	--

This Order is valid throughout the State. If the respondent is taken into custody, this Order is valid for seven (7) days from the date and time of issuance.

**III. RETURN OF SERVICE  
A. CUSTODY CERTIFICATION**

- ☐ Respondent WAS NOT taken into custody for the following reason: \_\_\_\_\_
- ☐ I certify that this Order was received and the respondent served and taken into custody as follows: \_\_\_\_\_

Date Respondent Taken Into Custody _____	Time _____ <input type="checkbox"/> AM <input type="checkbox"/> PM
Name Of Law Enforcement Officer (Type Or Print) _____	Signature Of Law Enforcement Officer _____
Name Of Law Enforcement Agency _____	Badge No. Of Officer _____

**NOTE TO LAW ENFORCEMENT OFFICER:** If respondent is not taken into custody within 24 hours after this Order is signed, check the appropriate box above and return to the Clerk of Superior Court immediately. If respondent is served and taken into custody, complete return of service on the reverse. When taking respondent into custody you must inform him or her that he or she is not under arrest and has not committed a crime, but is being transported to receive treatment and for his or her own safety and that of others.

Original-File Copy-24-Hour Facility Copy-Special Counsel Copy-Attorney General

(Over)



**B. FOR USE WHEN 24-HOUR FACILITY NOT IMMEDIATELY AVAILABLE OR MEDICALLY APPROPRIATE**

A 24-hour facility is not immediately available or medically appropriate. The respondent is being temporarily detained under appropriate supervision at the facility named below.

Date	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Examiner (Type Or Print)
Name Of Examining Facility	County Of Examining Facility	
Name Of Law Enforcement Officer (Type Or Print)	Signature Of Law Enforcement Officer	
Name Of Law Enforcement Agency	Badge No. Of Officer	

**C. FOR USE WHEN RESPONDENT RELEASED BEFORE TRANSPORT TO 24-HOUR FACILITY**

Respondent was temporarily detained under appropriate supervision at the site of first examination because the first examiner (petitioning clinician) recommended inpatient commitment and a 24-hour facility was not immediately available or medically appropriate. Upon further examination, an examiner determined that the respondent no longer meets the inpatient commitment criteria or meets the criteria for outpatient commitment. I returned the respondent to his/her regular residence or the home of a consenting person and released respondent from custody.

Date Delivered	Time Delivered <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Examiner (Type Or Print)
Name Of Examining Facility	County Of Examining Facility	
Name Of Law Enforcement Officer (Type Or Print)	Signature Of Law Enforcement Officer	
Name Of Law Enforcement Agency	Badge No. Of Officer	

**NOTE TO LAW ENFORCEMENT OFFICER:** Upon completing this section, immediately return this form and the examiner's written report (Form No. DMH 5-72-01) to the Clerk of Superior Court of the county where the petition was filed and the custody order issued (See top of reverse side).

**D. PATIENT DELIVERY TO 24-HOUR FACILITY**

I transported the respondent and placed him/her in the custody of the 24-hour facility named below.

Date Delivered	Time Delivered <input type="checkbox"/> AM <input type="checkbox"/> PM
Name Of 24-Hour Facility	County Of 24-Hour Facility
Name Of Law Enforcement Officer (Type Or Print)	Signature Of Law Enforcement Officer
Name Of Law Enforcement Agency	Badge No. Of Officer

**NOTE TO LAW ENFORCEMENT OFFICER:** Upon completing this section, immediately return this form to the Clerk of Superior Court of the county where the petition was filed and the custody order issued (See top of reverse side).

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

County \_\_\_\_\_

File # \_\_\_\_\_

Client Record # \_\_\_\_\_

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  
(1<sup>st</sup> Exam – Physician or Psychologist) ☐ in addition to being mentally ill is also mentally retarded  
(2<sup>nd</sup> 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  
(1<sup>st</sup> Exam – Physician or Psychologist; 2<sup>nd</sup> Exam – If 1<sup>st</sup> ☐ dangerous to himself or others  
exam done by Physician, 2<sup>nd</sup> 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*) \_\_\_\_\_

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

CC: Clerk of Superior Court where petition was initiated (initial hearing only)

Clerk of Superior Court where 24-hour facility is located or where outpatient treatment is supervised

Respondent or Respondent's Attorney and State's Attorneys, when applicable

Proposed Outpatient Treatment Center or Physician (Outpatient Commitment); Area Program / Physician (Substance Abuse Commitment)

NOTE: If it cannot be reasonably anticipated that the clerk will receive the copies within 48 hours of the time that it was signed, the physician or eligible psychologist/qualified professional shall communicate his findings to the clerk by telephone.

#### \*STATUTORY DEFINITIONS

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

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

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

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

# STATE OF NORTH CAROLINA

File No.

\_\_\_\_\_ County

In The General Court Of Justice  
Superior Court Division

## IN THE MATTER OF:

Name And Address Of Respondent

## FINDINGS AND ORDER INVOLUNTARY COMMITMENT PHYSICIAN-PETITIONER RECOMMENDS OUTPATIENT COMMITMENT

G.S. 122C-261

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

### FINDINGS

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

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

- ☐ mentally ill and in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness.
- ☐ a substance abuser and dangerous to himself/herself or others.

### ORDER

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

Date

Signature

☐ Deputy CSC  
☐ 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: \_\_\_\_\_

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

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

**NORTH CAROLINA**

\_\_\_\_\_ County  
Sworn to and subscribed before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

(seal)

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

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

**TO LAW ENFORCEMENT: See back side for Return of Service**

RETURN OF SERVICE			
<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> AM <input type="checkbox"/> PM <input type="checkbox"/>	<i>Date of Return</i>
<i>Name of Transporting Agency</i>		<i>Signature of Law Enforcement Official</i>	

**STATE OF NORTH CAROLINA**

File No.

County

In The General Court Of Justice  
District Court Division**IN THE MATTER OF:**

Name, Address And Zip Code Of Respondent

**AFFIDAVIT AND PETITION FOR  
INVOLUNTARY COMMITMENT**

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

Social Security No. Of Respondent

Date Of Birth

Drivers License No. Of Respondent

State

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

(Check all that apply)

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

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

Name, Address And Zip Code Of Nearest Relative Or Guardian

Name, Address And Zip Code Of Other Person Who May Testify To Facts

Home Telephone No.

Business Telephone No.

Home Telephone No.

Business Telephone No.

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

**SWORN AND SUBSCRIBED TO BEFORE ME**

Signature Of Petitioner

Date

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

Signature

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

Relationship To Respondent

Date Notary Commission Expires

Home Telephone No.

Business Telephone No.

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



	<b>PETITIONER'S WAIVER OF NOTICE OF HEARING</b>	
--	---	--

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*

**STATE OF NORTH CAROLINA**

File No.

County

In The General Court Of Justice  
District Court Division**IN THE MATTER OF:**

Name And Address Of Respondent

**FINDINGS AND CUSTODY ORDER  
INVOLUNTARY COMMITMENT**  
(PETITIONER APPEARS BEFORE MAGISTRATE OR CLERK)

G.S. 122C-252, -261, -263, -281, -283

Social Security No. Of Respondent

Date Of Birth

Drivers License No. Of Respondent

State

**I. FINDINGS**

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

(Check all that apply)

- ☐ 1. mentally ill and dangerous to self or others or mentally ill and in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness.  
☐ In addition to being mentally ill, the respondent probably is also mentally retarded. (If this finding is made, see G.S. 122C-261(b) and (d) for special instructions.)
- ☐ 2. a substance abuser and dangerous to self or others.

**II. CUSTODY ORDER****TO ANY LAW ENFORCEMENT OFFICER:**

The Court ORDERS you to take the above named respondent into custody **WITHIN 24 HOURS AFTER THIS ORDER IS SIGNED** and take the respondent for examination by a person authorized by law to conduct the examination. (A COPY OF THE EXAMINER'S FINDINGS SHALL BE TRANSMITTED TO THE CLERK OF SUPERIOR COURT IMMEDIATELY.)

- ➔ IF the examiner finds that the respondent IS NOT a proper subject for involuntary commitment, then you shall take the respondent home or to a consenting person's home in the originating county and release him/her.
- ➔ IF the examiner finds that the respondent IS mentally ill and a proper subject for outpatient commitment, then you shall take the respondent home or to a consenting person's home in the originating county and release him/her.
- ➔ IF the examiner finds that the respondent IS mentally ill and a proper subject for inpatient commitment, then you shall transport the respondent to a 24-hour facility designated by the State for the custody and treatment of involuntary clients and present the respondent for custody, examination and treatment pending a district court hearing.
- ➔ IF the examiner finds that the respondent IS a substance abuser and subject to involuntary commitment, the examiner must recommend whether the respondent be taken to a 24-hour facility or released, and then you shall either release him/her or transport the respondent to a 24-hour facility designated by the State for the custody and treatment of involuntary clients and present the respondent for custody, examination and treatment pending a district court hearing.

Date	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Signature	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC	<input type="checkbox"/> CSC <input type="checkbox"/> Magistrate
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This Order is valid throughout the State. If the respondent is taken into custody, this Order is valid for seven (7) days from the date and time of issuance.

**III RETURN OF SERVICE  
A. CUSTODY CERTIFICATION**

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

☐ I certify that this Order was received and respondent served and taken into custody as follows:

Date Respondent Taken Into Custody	Time <input type="checkbox"/> AM <input type="checkbox"/> PM
Name Of Law Enforcement Officer (Type Or Print)	Signature Of Law Enforcement Officer
Name Of Law Enforcement Agency	Badge No. Of Officer

**NOTE TO LAW ENFORCEMENT OFFICER:** If respondent is not taken into custody within 24 hours after this Order is signed, check the appropriate box above and return to the Clerk of Superior Court immediately. If respondent is served and taken into custody, complete return of service on the reverse. When taking respondent into custody you must inform him or her that he or she is not under arrest and has not committed a crime, but is being transported to receive treatment and for his or her own safety and that of others.

Original-File Copy-24-Hour Facility Copy-Special Counsel Copy-Attorney General  
(Over)

**B. PATIENT DELIVERY TO FIRST EXAMINATION SITE**

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

Date Presented	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Examiner (Type Or Print)
Name Of Examining Facility	County Of Examining Facility	
Name Of Law Enforcement Officer (Type Or Print)	Signature Of Law Enforcement Officer	
Name Of Law Enforcement Agency	Badge No. Of Officer	

**C. FOR USE WHEN TRANSPORTING AFTER FIRST EXAMINATION:  
PATIENT RELEASED OR DELIVERED TO 24-HOUR FACILITY**

- ☐ 1. The examiner found that the respondent does not meet the commitment criteria, or meets the criteria for outpatient commitment, or meets the criteria for substance abuse commitment and should be released pending a hearing. I returned respondent to his/her regular residence or the home of a consenting person and released respondent from custody.
- ☐ 2. The examiner found that the respondent is mentally ill and meets the criteria for inpatient commitment, or meets the criteria for substance abuse commitment and should be held pending a district court hearing. I transported and placed the respondent in the custody of the 24-hour facility named below for observation and treatment.

Name Of 24-Hour Facility

County Of 24-Hour Facility

- ☐ 3. Respondent was temporarily detained under appropriate supervision at the site of first examination because the first examiner recommended inpatient commitment and a 24-hour facility was not immediately available or medically appropriate. Upon further examination, an examiner determined that the respondent no longer meets inpatient commitment criteria or meets the criteria for outpatient commitment. I returned the respondent to his/her regular residence or the home of a consenting person and released respondent from custody.

Date Delivered	Time Delivered <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Examiner (Type Or Print)
Name Of Examining Facility	County Of Examining Facility	
Name Of Law Enforcement Officer (Type Or Print)	Signature Of Law Enforcement Officer	
Name Of Law Enforcement Agency	Badge No. Of Officer	

**NOTE TO LAW ENFORCEMENT OFFICER:** Upon completing this section, immediately return this form and a copy of the examiner's written report (Form No. DMH 5-72-01) to the Clerk of Superior Court of the county where the petition was filed and the custody order issued (See top of reverse side).

**STATE OF NORTH CAROLINA**

File No. \_\_\_\_\_

\_\_\_\_\_  
CountyIn The General Court Of Justice  
District Court Division**IN THE MATTER OF:**

Name And Address Of Respondent

**FINDINGS AND CUSTODY ORDER  
INVOLUNTARY COMMITMENT**

(PETITIONER IS CLINICIAN WHO HAS EXAMINED RESPONDENT)

G.S. 122C-252, -261, -263, -281, -283

Social Security No. Of Respondent

Date Of Birth

Drivers License No. Of Respondent

State

**I. FINDINGS**

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

(Check all that apply)

- ☐ 1. mentally ill and dangerous to self or others.
- ☐ In addition to being mentally ill, the respondent probably is also mentally retarded. (If this finding is made, see G.S. 122C-261(b) and (d) for special instructions.)
- ☐ 2. a substance abuser and dangerous to self or others.

**II. CUSTODY ORDER****TO ANY LAW ENFORCEMENT OFFICER:**

The Court ORDERS you to take the above named respondent into custody **WITHIN 24 HOURS AFTER THIS ORDER IS SIGNED** and transport the respondent directly to a 24-hour facility designated by the State for the custody and treatment of involuntary clients and present the respondent for custody, examination and treatment pending a district court hearing.

Date

Time

☐ AM ☐ PM

Signature

☐ Deputy CSC ☐ CSC☐ Assistant CSC ☐ Magistrate

This Order is valid throughout the State. If the respondent is taken into custody, this Order is valid for seven (7) days from the date and time of issuance.

**III. RETURN OF SERVICE  
A. CUSTODY CERTIFICATION**

- ☐ Respondent WAS NOT taken into custody for the following reason:
- ☐ I certify that this Order was received and the respondent served and taken into custody as follows:

Date Respondent Taken Into Custody

Time

☐ AM ☐ PM

Name Of Law Enforcement Officer (Type Or Print)

Signature Of Law Enforcement Officer

Name Of Law Enforcement Agency

Badge No. Of Officer

**NOTE TO LAW ENFORCEMENT OFFICER:** If respondent is not taken into custody within 24 hours after this Order is signed, check the appropriate box above and return to the Clerk of Superior Court immediately. If respondent is served and taken into custody, complete return of service on the reverse. When taking respondent into custody you must inform him or her that he or she is not under arrest and has not committed a crime, but is being transported to receive treatment and for his or her own safety and that of others.

Original-File Copy-24-Hour Facility Copy-Special Counsel Copy-Attorney General

(Over)

**B. FOR USE WHEN 24-HOUR FACILITY NOT IMMEDIATELY AVAILABLE OR MEDICALLY APPROPRIATE**

A 24-hour facility is not immediately available or medically appropriate. The respondent is being temporarily detained under appropriate supervision at the facility named below.

Date	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Examiner (Type Or Print)
Name Of Examining Facility		County Of Examining Facility
Name Of Law Enforcement Officer (Type Or Print)		Signature Of Law Enforcement Officer
Name Of Law Enforcement Agency		Badge No. Of Officer

**C. FOR USE WHEN RESPONDENT RELEASED BEFORE TRANSPORT TO 24-HOUR FACILITY**

Respondent was temporarily detained under appropriate supervision at the site of first examination because the first examiner (petitioning clinician) recommended inpatient commitment and a 24-hour facility was not immediately available or medically appropriate. Upon further examination, an examiner determined that the respondent no longer meets the inpatient commitment criteria or meets the criteria for outpatient commitment. I returned the respondent to his/her regular residence or the home of a consenting person and released respondent from custody.

Date Delivered	Time Delivered <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Examiner (Type Or Print)
Name Of Examining Facility		County Of Examining Facility
Name Of Law Enforcement Officer (Type Or Print)		Signature Of Law Enforcement Officer
Name Of Law Enforcement Agency		Badge No. Of Officer

**NOTE TO LAW ENFORCEMENT OFFICER:** Upon completing this section, immediately return this form and the examiner's written report (Form No. DMH 5-72-01) to the Clerk of Superior Court of the county where the petition was filed and the custody order issued (See top of reverse side).

**D. PATIENT DELIVERY TO 24-HOUR FACILITY**

I transported the respondent and placed him/her in the custody of the 24-hour facility named below.

Date Delivered	Time Delivered <input type="checkbox"/> AM <input type="checkbox"/> PM
Name Of 24-Hour Facility	County Of 24-Hour Facility
Name Of Law Enforcement Officer (Type Or Print)	Signature Of Law Enforcement Officer
Name Of Law Enforcement Agency	Badge No. Of Officer

**NOTE TO LAW ENFORCEMENT OFFICER:** Upon completing this section, immediately return this form to the Clerk of Superior Court of the county where the petition was filed and the custody order issued (See top of reverse side).

## THE OFFICE OF MAGISTRATE

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### *HISTORY:*

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### *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
- 
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### *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 12/31/2014.

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## WHAT DOES IT MEAN TO BE A MAGISTRATE?

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

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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:

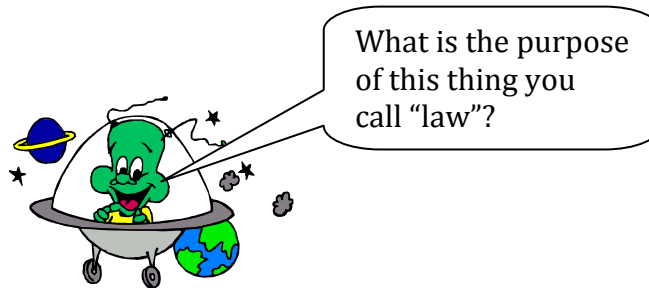
(1) \_\_\_\_\_

(2) \_\_\_\_\_

(3) \_\_\_\_\_

## INTRODUCTION TO LAW

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Key principles of legal system: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*No State shall . . . deprive any person of life,  
liberty, or property, without due process of law.*  
U.S. Constitution, 14<sup>th</sup> 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?

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**WHERE DOES LAW COME FROM?**

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**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? \_\_\_\_\_



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

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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](http://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.

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## ETHICS

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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:

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

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# North Carolina Code of Judicial Conduct

## Preamble

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

## Canon 1

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

## Canon 2

**A judge should avoid impropriety in all his activities.**

## Canon 3

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

## Canon 4

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

## Canon 5

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

## Canon 6

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

## Canon 7

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

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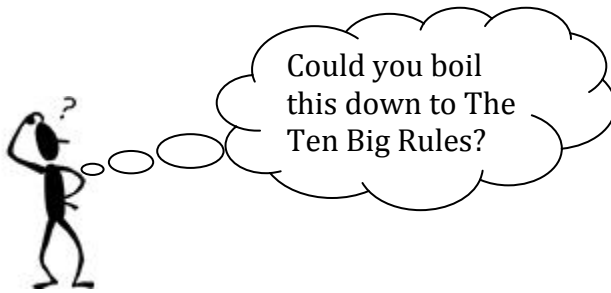
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### THE TEN BIG RULES<sup>1</sup>

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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.

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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.

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<sup>1</sup> 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.

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## EVALUATION FOR DAY 1

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**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]

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**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]

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## SPECIFIC SESSIONS

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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:

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Introduction to Civil Law:

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Ethics:

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#### WHAT YOU'D LIKE US TO KNOW BEFORE TOMORROW

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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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# Tab: Day 2

## SCHEDULE FOR TODAY

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9:00	Small Claims Procedure(90m) <i>Dona Lewandowski, School of Government</i>	Room 2401
10:30	Break	
10:45	Small Claims Procedure, cont'd <i>Dona Lewandowski, School of Government</i>	Room 2401
12:30	Lunch	
1:15	Contracts <i>Dona Lewandowski, School of Government</i>	Room 2401
2:30	Break	
2:45	Contracts, cont'd <i>Dona Lewandowski, School of Government</i>	Room 2401
4:00	Break	
4:15	Torts (60m) <i>Dona Lewandowski, School of Government</i>	Room 2401
5:15	Recess	

## YOUR OBJECTIVES FOR TODAY

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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.

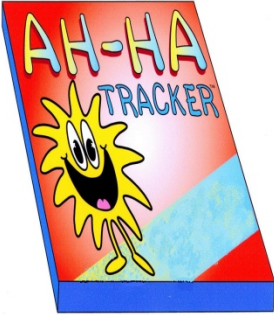
You'll know what a "tort" is, be familiar with the essential elements of torts frequently litigated in small claims court, and be able to identify common defenses.

## ACTIVITY: CHECKING-IN

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

_____	_____
_____	_____



Thinking About Yesterday:

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## 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?

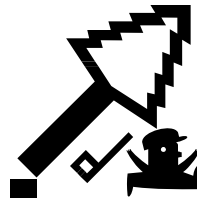
### Your Answer

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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?

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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?

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### *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 ejectment, recovery of personal property, money, or enforcement of a motor vehicle lien.
- ☒ At least one defendant lives in the county.

## MORE QUESTIONS & ANSWERS

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

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

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Should I sue, or take out criminal charges?

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

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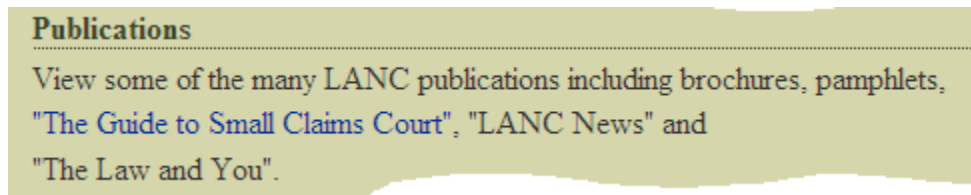
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## CAN YOU GUESS THE #1 RULE FOR ANSWERING QUESTIONS?

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](http://www.legalaidnc.org), clicking on "Learn," and then scrolling down to "Publications."



The second, published by the NC Attorney General's Office, is most easily found by going to [www.ncdoj.gov](http://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.<sup>1</sup> 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.

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<sup>1</sup> 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!

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### HOW TO MUDDLE THROUGH

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- ☒ 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:		
<b>DEFENDANT 1</b>		
Date Served	Time Served <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Defendant 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)		
<div></div>		
<input type="checkbox"/> Other manner of service: (specify).		
<div></div>		
<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.

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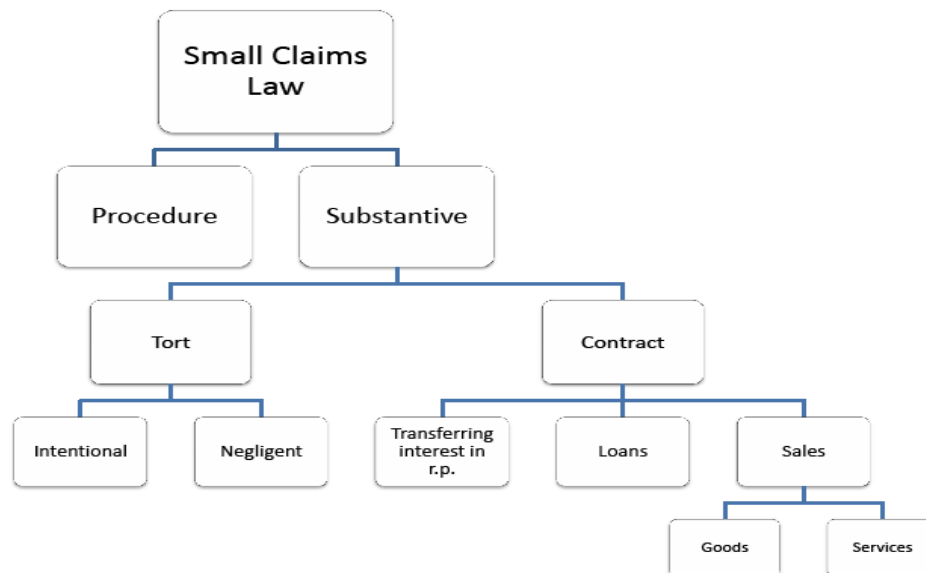
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☒ **READ THE COMPLAINT**

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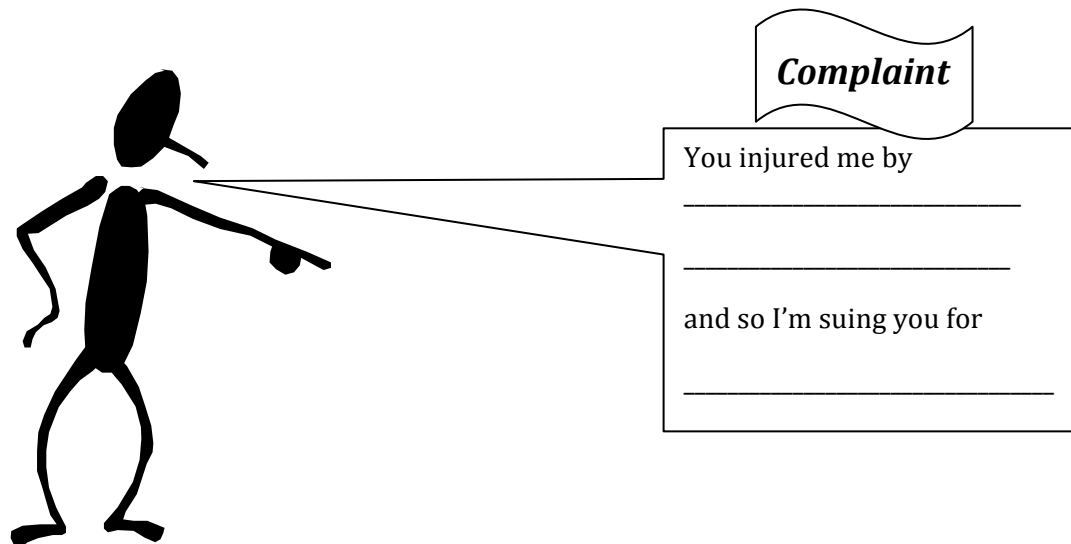
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Before we allow a defendant to use the force of law to take away property belonging to another, we require every plaintiff to establish specific facts. We call these required facts

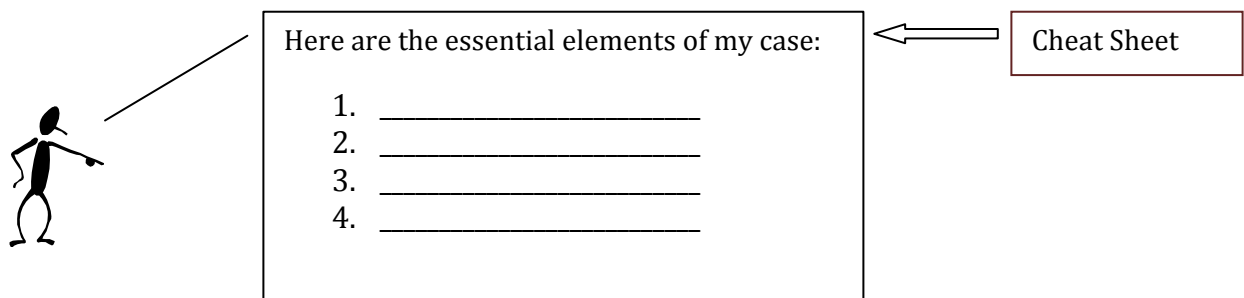
## Essential Elements

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. . . .



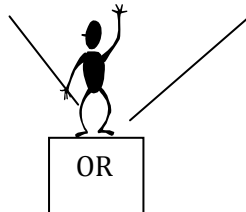
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## DEFENSE

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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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

---

## ☒ ENTER JUDGMENT

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- \_\_\_ 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		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: <input type="checkbox"/> the plaintiff has proved the case by the greater weight of the evidence. <input type="checkbox"/> the plaintiff has failed to prove the case by the greater weight of the evidence. <input type="checkbox"/> the defendant(s) <input type="checkbox"/> was <input type="checkbox"/> was not present at trial. <input type="checkbox"/> the case involves a breach of contract and the date of breach is: _____. <input type="checkbox"/> the contract provides for pre-judgment interest on damages for breach at the rate of _____ % and/or post-judgment interest at the rate of _____ %. <input type="checkbox"/> the contract does not provide a specific pre-judgment interest rate. <input type="checkbox"/> the contract does not provide a specific post-judgment interest rate. <input type="checkbox"/> Other:		ORDER	
It is ORDERED that: <input type="checkbox"/> the plaintiff recover possession of the personal property described in the complaint. <input type="checkbox"/> the plaintiff recover possession of the personal property listed below:  <input type="checkbox"/> the plaintiff recover nothing of the defendant(s) and that this action be dismissed with prejudice. <input type="checkbox"/> (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. <input type="checkbox"/> (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. <input type="checkbox"/> Other: (specify) <input type="checkbox"/> Costs of this action are taxed to the <input type="checkbox"/> plaintiff. <input type="checkbox"/> defendant.		CERTIFICATION	
Principal Sum Of Judgment \$		Name Of Judgment Debtor(s) From Whom Amount Recovered	
Pre-judgment Interest Not Included In Principal \$		<input type="checkbox"/> Judgment Announced And Signed In Open Court	
Attorney's Fees Or Other Damages (when appropriate) \$		Date	
TOTAL AMOUNT \$		Signature Of Magistrate	
Name Of Party Announcing Appeal In Open Court		Name Of Party Announcing Appeal In Open Court	
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		Signature Of Magistrate	
AOC-CVM-400, Rev. 2/12		© 2012 Administrative Office of the Courts	





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## CONTRACTS

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### HOW TO ANALYZE A CONTRACTS CASE

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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: \_\_\_\_\_

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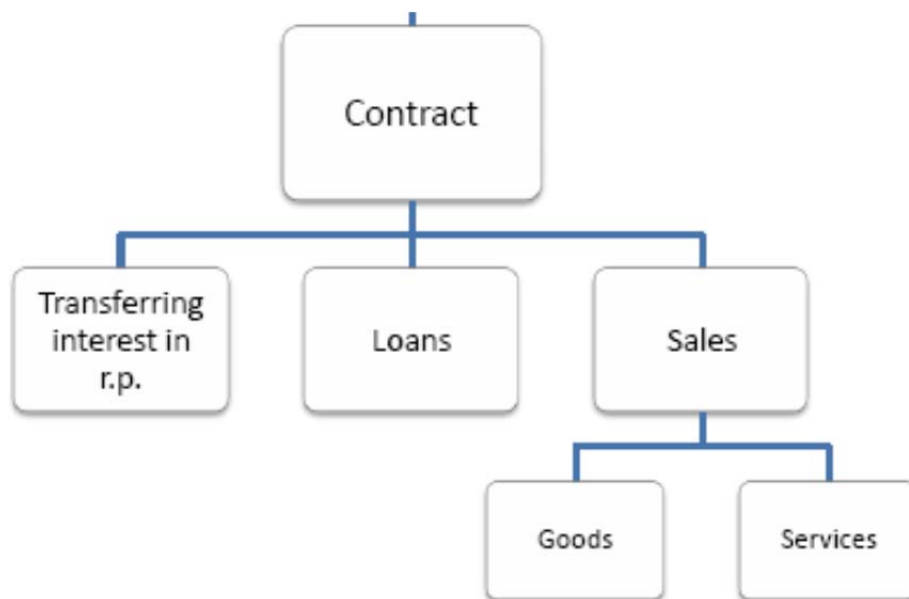
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### WHAT KIND OF CONTRACT IS IT?

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## 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:

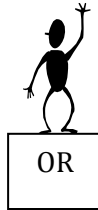
- There was a contract (aka agreement, bargain, bargained-for exchange)
- The defendant and I were the parties to the contract.
- The terms of the contract were A, B, C, and D.
- Defendant breached term A as follows: . . .
- The breach by defendant resulted in the my being damaged in this particular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

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## REMEMBER DEFENSES?

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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:

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Affirmative defenses:

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NOTES: \_\_\_\_\_

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\_\_\_\_\_

## 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)

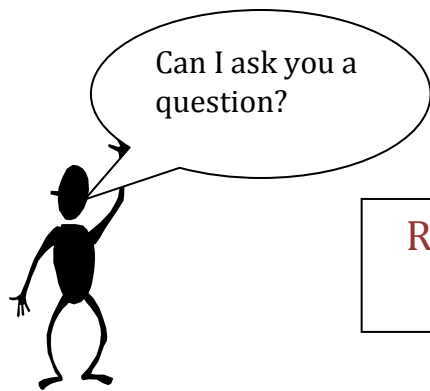
Worthless check (pp. 87-89)

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?"*

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

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

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*"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?"*

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*"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?"*

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*"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?"*

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*“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?”*

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{Add your questions here:}

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## TORTS

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A tort is a civil wrong.

Intentional

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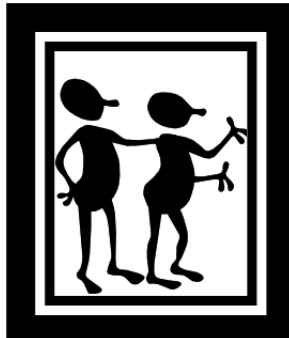
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Negligent

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*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.)

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### 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? \_\_\_\_\_

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### 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?

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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?

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

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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?

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

## EVALUATION FOR DAY 2

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### INSTRUCTOR

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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

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Small Claims Procedure:

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Contracts:

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Torts:

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### WHAT YOU'D LIKE US TO KNOW BEFORE TOMORROW

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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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# Tab: Day 3

## SCHEDULE FOR TODAY

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9:00	Landlord-Tenant (90m) <i>Dona Lewandowski, School of Government</i>	Room 2401
10:30	Break	
10:45	Landlord-Tenant, cont'd <i>Dona Lewandowski, School of Government</i>	Room 2401
12:30	Lunch	
1:15	Landlord-Tenant, cont'd <i>Dona Lewandowski, School of Government</i>	Room 2401
2:30	Break	
2:45	Landlord-Tenant, cont'd <i>Dona Lewandowski, School of Government</i>	Room 2401
4:00	Break	
4:15	Landlord-Tenant, cont'd (60m) <i>Dona Lewandowski, School of Government</i>	Room 2401
5:15	Recess	

## OBJECTIVES FOR TODAY

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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 ejectment to allow you to correctly decide most small claims cases.

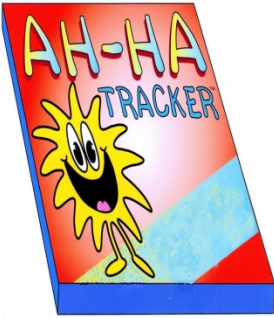
You'll practice using a job aid to assist you in correctly analyzing the evidence in a summary ejectment action.

## ACTIVITY: CHECKING-IN

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

_____	_____
_____	_____



Thinking About Yesterday:

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What is summary ejectment?

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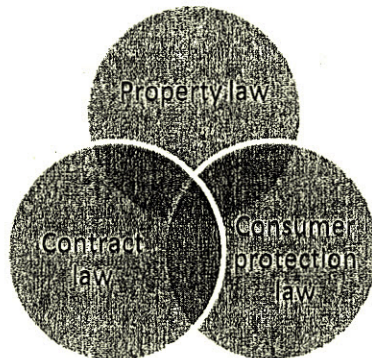
If Larry "owns" real property (i.e., land, not personal property), what is it that he owns, exactly?

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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

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## 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.

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### NOTES

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*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**).

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*Exercise: Find the forfeiture clause.*

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*Next, find the trigger.*

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

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

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

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

There are three ways a lease can end:

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

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

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

### Criminal activity

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

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

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



# Steps in Resolving Summary Ejectment Cases:

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**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

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### FAILURE TO PAY RENT

---

Plaintiff/LL must prove:

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

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

### HOLDING OVER

---

Plaintiff/LL must prove:

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

Most common defenses: waiver, improper notice.

### BREACH OF A LEASE CONDITION

---

Plaintiff/LL must prove:

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

Most common defenses: failure to follow proper procedure, waiver



## CRIMINAL ACTIVITY

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Plaintiff/LL must prove *one* of the following things:

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

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

# Questions

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

Answer: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

“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)**

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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?**

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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.

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## Notice Requirements

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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).

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## Waiver

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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:**

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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**

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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.



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## Retaliatory Eviction

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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?

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

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

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

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

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## **Rebuttal by the Landlord**

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

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

## **Self-Help Eviction**

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

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

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

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

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

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

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

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

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## **Tenant’s Remedies**

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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**

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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 1<sup>st</sup> day of each month of the term, in equal installments of \$720 DOLLARS, first and last installments to be paid upon the due execution of this Agreement, the second installment to be paid on Feb. 1, 2011. All such payments shall be made to Landlord at Landlord's address as set forth in the preamble to this Agreement on or before the due date and without demand.
3. **DAMAGE DEPOSIT.** Upon the due execution of this Agreement, Tenant shall deposit with Landlord the sum of \$1000 DOLLARS receipt of which is hereby acknowledged by Landlord, as security for any damage caused to the Premises during the term hereof. Such deposit shall be returned to Tenant, without interest, and less any set off for damages to the Premises upon the termination of this Agreement.
4. **USE OF PREMISES.** The Premises shall be used and occupied by Tenant and Tenant's immediate family, exclusively, as a private single family dwelling, and no part of the Premises shall be used at any time during the term of this Agreement by Tenant for the purpose of carrying on any business, profession, or trade of any kind, or for any purpose other than as a private single family dwelling. Tenant shall not allow any other person, other than Tenant's immediate family or transient relatives and friends who are guests of Tenant, to

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

## EVALUATION FOR DAY 3

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### INSTRUCTORS

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**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

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Landlord-Tenant Law

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**Tab: Day 4**

## SCHEDULE FOR TODAY

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9:00	Legal Issues in Domestic Violence (90m) <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 (75m) <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? (90m) <i>Dona Lewandowski, School of Government</i>	Room 2401
4:15	Break	
4:30	Contempt (45m) <i>Dona Lewandowski, School of Government</i>	Room 2401
5:15	Recess	

## OBJECTIVES FOR TODAY

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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.

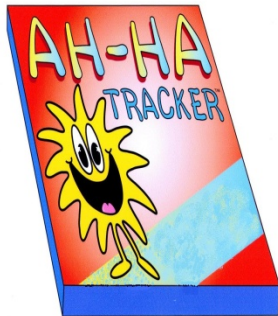
You'll be able to identify the circumstances required to constitute direct criminal contempt and follow correct procedure in holding a person in contempt.

### ACTIVITY: CHECKING-IN

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

_____	_____
_____	_____



Thinking About Yesterday:

_____
_____
_____
_____
_____



## LEGAL ISSUES IN DOMESTIC VIOLENCE

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### SOME BASIC INFORMATION ABOUT DOMESTIC VIOLENCE PROTECTIVE ORDERS<sup>1</sup>

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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?

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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?

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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
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<sup>1</sup> 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.

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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,<sup>1</sup> 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.<sup>2</sup>

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<sup>1</sup> Including those acting *in loco parentis* to a minor child.

<sup>2</sup> 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.<sup>3</sup> 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.

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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? )

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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:

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<sup>3</sup> 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.

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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.

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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.

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### ANSWERING QUESTIONS ABOUT DVPO'S

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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.

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### PRACTICE EXERCISE

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

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

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Case No. <span style="border: 1px solid black; display: inline-block; width: 150px; height: 20px; vertical-align: middle;"></span> Court      General Court of Justice District Court Division County <span style="border: 1px solid black; display: inline-block; width: 150px; height: 20px; vertical-align: middle;"></span> <b>NORTH CAROLINA</b>	<b>EX PARTE DOMESTIC VIOLENCE ORDER OF PROTECTION</b> <small>G.S. 50B-2, -3, -3.1</small>
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<b>PETITIONER/PLAINTIFF</b> <div style="border: 1px solid black; height: 20px; margin-bottom: 5px;"></div> <div style="display: flex; justify-content: space-between; font-size: small;"> <span>First</span> <span>Middle</span> <span>Last</span> </div> And/or on behalf of minor family member(s): <i>(List Name And DOB)</i> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td style="height: 20px;"></td><td style="width: 100px;"></td></tr> <tr><td style="height: 20px;"></td><td></td></tr> <tr><td style="height: 20px;"></td><td></td></tr> <tr><td style="height: 20px;"></td><td></td></tr> </table>									<b>PETITIONER/PLAINTIFF IDENTIFIERS</b> <div style="border: 1px solid black; height: 20px; margin-bottom: 5px;"></div> <small>Date Of Birth Of Petitioner</small> Other Protected Persons/DOB: <table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td style="height: 20px;"></td><td style="width: 100px;"></td></tr> <tr><td style="height: 20px;"></td><td></td></tr> <tr><td style="height: 20px;"></td><td></td></tr> <tr><td style="height: 20px;"></td><td></td></tr> </table>								

<b>VERSUS</b>																															
<b>RESPONDENT/DEFENDANT</b> <div style="border: 1px solid black; height: 20px; margin-bottom: 5px;"></div> <div style="display: flex; justify-content: space-between; font-size: small;"> <span>First</span> <span>Middle</span> <span>Last</span> </div> Relationship to Petitioner: <input type="checkbox"/> spouse <input type="checkbox"/> former spouse <input type="checkbox"/> unmarried, of opposite sex, currently or formerly living together <input type="checkbox"/> unmarried, have a child in common <input type="checkbox"/> of opposite sex, currently or formerly in dating relationship <input type="checkbox"/> current or former household member <input type="checkbox"/> parent <input type="checkbox"/> grandparent <input type="checkbox"/> child <input type="checkbox"/> grandchild Respondent's/Defendant's Address <div style="border: 1px solid black; height: 60px; margin-top: 5px;"></div> <div style="margin-top: 10px;"> <b>CAUTION:</b>  <input type="checkbox"/> Weapon Involved         </div>	<b>RESPONDENT/DEFENDANT IDENTIFIERS</b> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="width: 15%;">Sex</th> <th style="width: 15%;">Race</th> <th style="width: 15%;">DOB</th> <th style="width: 10%;">HT</th> <th style="width: 10%;">WT</th> </tr> <tr><td style="height: 20px;"></td><td></td><td></td><td></td><td></td></tr> <tr> <th>Eyes</th> <th>Hair</th> <th colspan="3">Social Security Number</th> </tr> <tr><td style="height: 20px;"></td><td></td><td colspan="3"></td></tr> <tr> <th colspan="2">Drivers License No.</th> <th>State</th> <th colspan="2">Expiration Date</th> </tr> <tr><td colspan="2" style="height: 20px;"></td><td></td><td colspan="2"></td></tr> </table> Distinguishing Features <div style="border: 1px solid black; height: 100px; margin-top: 5px;"></div>	Sex	Race	DOB	HT	WT						Eyes	Hair	Social Security Number								Drivers License No.		State	Expiration Date						
Sex	Race	DOB	HT	WT																											
Eyes	Hair	Social Security Number																													
Drivers License No.		State	Expiration Date																												

**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
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**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	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Clerk of Superior Court	<input type="checkbox"/> Assistant CSC
RETURN OF SERVICE			
<p><b>NOTE:</b> 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.</p> <p>I certify that this Ex Parte Domestic Violence Order of Protection was received and served as follows:</p>			
Date Served	Time Served <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Defendant	
<input type="checkbox"/> By delivering to the defendant named above a copy of the order.  <input type="checkbox"/> 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. <div style="border: 1px solid black; height: 60px; margin-top: 5px;"></div>			
<input type="checkbox"/> Other manner of service on the defendant (specify)			
<input type="checkbox"/> 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

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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.

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## 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.

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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.

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*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.

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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.

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

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

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.

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<sup>4</sup> *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.”

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

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

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

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### *ISSUES THAT ARISE IN ENFORCING VIOLATIONS*

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

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

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

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

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

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*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'd* 944 P.2d 1110 (1997) (plaintiff's consent is not a defense to a charge of violating a protection order).]

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

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

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

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

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### *CONDITIONS ON PRETRIAL RELEASE/VIOLATIONS*

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

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

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

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

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

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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.

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#### *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]

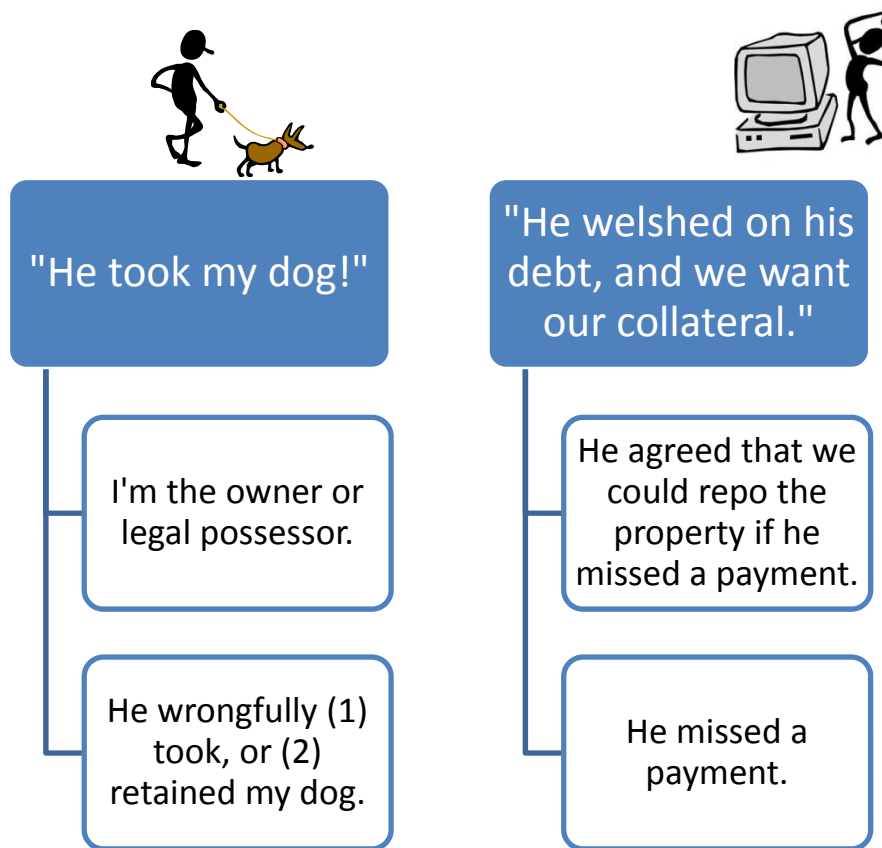
The category of domestic violence victims covered by the Crime Victim's Rights Act is broader than the category of those covered by the special pretrial release rules. A magistrate issuing an arrest warrant in one of these covered misdemeanors must note on the process that it is a Crime Victim's Rights 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

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

## FREQUENTLY-ASKED QUESTIONS

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### HE TOOK MY DOG:

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

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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?"*

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

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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?"*

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#### 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?"*

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

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

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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?"*

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### SECURED TRANSACTIONS: LEARNING THE LINGO

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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

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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.



File No.		STATE OF NORTH CAROLINA		In The General Court Of Justice District Court Division-Small Claims	
Film No.		County			
Judgment Docket Book And Page No.					
<div>JUDGMENT IN ACTION TO RECOVER MONEY OR PERSONAL PROPERTY</div>		FINDINGS			
G.S. 7A-210(2), 7A-224					
Name And Address Of Plaintiff		ORDER			
County		It is ORDERED that:			
Telephone No.		<input type="checkbox"/> the plaintiff recover possession of the personal property described in the complaint. <input type="checkbox"/> the plaintiff recover possession of the personal property listed below:			
VERSUS		<input type="checkbox"/> the plaintiff recover nothing of the defendant(s) and that this action be dismissed with prejudice. <input type="checkbox"/> (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. <input type="checkbox"/> (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. <input type="checkbox"/> Other: (specify) <input type="checkbox"/> Costs of this action are taxed to the <input type="checkbox"/> plaintiff. <input type="checkbox"/> defendant.			
County		Principal Sum Of Judgment \$		Name Of Judgment Debtor(s) From Whom Amount Recovered	
Name And Address Of Defendant 2		Pre-judgment Interest Not Included \$		<input type="checkbox"/> Judgment Announced And Signed In Open Court	
County		Attorney's Fees Or Other Damages \$ (when appropriate)		Date Signature Of Magistrate	
Telephone No.		TOTAL AMOUNT \$		Name Of Party Announcing Appeal In Open Court	
Name And Address Of Plaintiff's Attorney		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			



## STRUGGLING TOWARD FAIRNESS

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### 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.

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### EXERCISE:

How many passes did you count? \_\_\_\_

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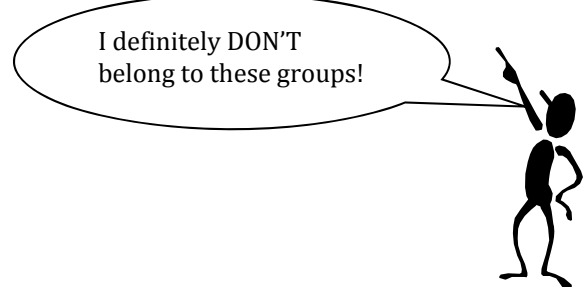
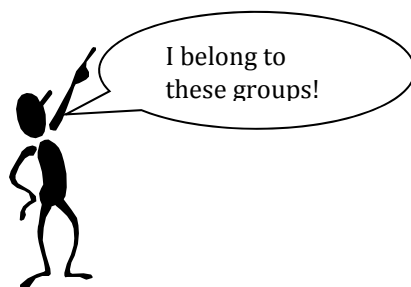
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### EXERCISE: INTERVIEW A STRANGER

Notes: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

#### Talking About Groups

_____	_____
_____	_____
_____	_____



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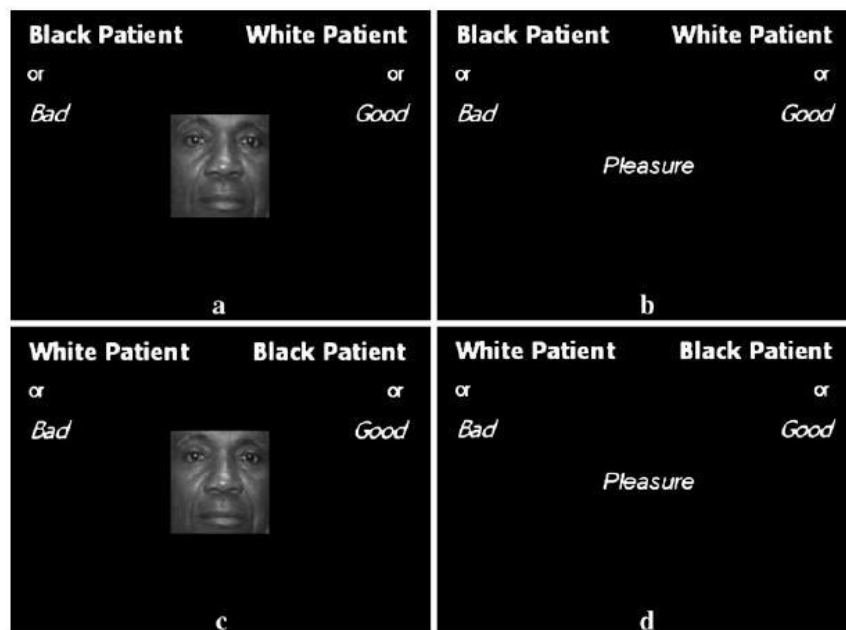
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## IMPLICIT ASSOCIATION TEST

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

WHAT FIRES  
TOGETHER. . .

. . . WIRES  
TOGETHER.

"When I think of marshmallows, I also think of  
\_\_\_\_\_, and  
\_\_\_\_\_, and  
\_\_\_\_\_.





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## Why is she blindfolded?

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### 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

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### EXERCISE ON CONTEMPT: SHARE WITH YOUR TABLEMATES. . .

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

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### 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.

<b>STATE OF NORTH CAROLINA</b>					File No. _____									
_____ County					In The General Court Of Justice <input type="checkbox"/> Before The Clerk <input type="checkbox"/> District <input type="checkbox"/> Superior Court Division									
<b>IN THE MATTER OF</b>					<b>DIRECT CRIMINAL CONTEMPT/ SUMMARY PROCEEDINGS/ FINDINGS AND ORDER</b>  G.S. 5A-11, -12, -13, -14									
<small>Name And Address Of Contemnor</small>														
<small>Race</small>	<small>Sex</small>	<small>Date of Birth</small>	<small>Age</small>	<small>SSN</small>										
<small>Date</small>		<small>Time</small>		<small>Place</small>										
		<input type="checkbox"/> AM <input type="checkbox"/> PM												
On the date, time and place of hearing as stated above, the undersigned judicial official conducted: <table style="width: 100%; border: none;"> <tr> <td><input type="checkbox"/> an initial appearance</td> <td><input type="checkbox"/> a probable cause hearing</td> <td><input type="checkbox"/> a trial</td> </tr> <tr> <td><input type="checkbox"/> a first appearance</td> <td><input type="checkbox"/> an estates proceeding</td> <td><input type="checkbox"/> other _____</td> </tr> <tr> <td><input type="checkbox"/> a pre-trial motion hearing</td> <td><input type="checkbox"/> a special proceeding</td> <td></td> </tr> </table>						<input type="checkbox"/> an initial appearance	<input type="checkbox"/> a probable cause hearing	<input type="checkbox"/> a trial	<input type="checkbox"/> a first appearance	<input type="checkbox"/> an estates proceeding	<input type="checkbox"/> other _____	<input type="checkbox"/> a pre-trial motion hearing	<input type="checkbox"/> a special proceeding	
<input type="checkbox"/> an initial appearance	<input type="checkbox"/> a probable cause hearing	<input type="checkbox"/> a trial												
<input type="checkbox"/> a first appearance	<input type="checkbox"/> an estates proceeding	<input type="checkbox"/> other _____												
<input type="checkbox"/> a pre-trial motion hearing	<input type="checkbox"/> a special proceeding													
The court finds beyond a reasonable doubt that during the proceeding the above contemnor willfully behaved in a contemptuous manner, in that the above named contemnor did														
The undersigned gave a clear warning that the contemnor's conduct was improper. In addition, the contemnor was given summary notice of the charges and summary opportunity to respond. <i>(NOTE: The contemnor should be given an opportunity to explain his/her behavior, however the contemnor is not entitled to counsel, if court promptly punishes act of contempt.)</i> The contemnor's conduct interrupted the proceedings of the court and impaired the respect due its authority. Therefore, it is adjudged that the above named contemnor is in contempt of court. It is ordered that the contemnor <table style="width: 100%; border: none;"> <tr> <td><input type="checkbox"/> be confined in the _____ County jail for a period of _____</td> <td><input type="checkbox"/> hours.</td> <td><input type="checkbox"/> days.</td> </tr> <tr> <td colspan="3"><input type="checkbox"/> pay costs and a fine of \$ _____.</td> </tr> <tr> <td colspan="3"><input type="checkbox"/> Other: _____</td> </tr> </table>						<input type="checkbox"/> be confined in the _____ County jail for a period of _____	<input type="checkbox"/> hours.	<input type="checkbox"/> days.	<input type="checkbox"/> pay costs and a fine of \$ _____.			<input type="checkbox"/> Other: _____		
<input type="checkbox"/> be confined in the _____ County jail for a period of _____	<input type="checkbox"/> hours.	<input type="checkbox"/> days.												
<input type="checkbox"/> pay costs and a fine of \$ _____.														
<input type="checkbox"/> Other: _____														
<small>Date</small>		<small>Name Of Judicial Official (Type Or Print)</small>			<small>Signature</small>									
<b>APPEAL ENTRIES</b>														
<input type="checkbox"/> The defendant gives notice of appeal from this Judgment to Superior Court. <i>(NOTE: If finding of contempt was made by a judicial official inferior to a Superior Court Judge, the appeal is to Superior Court. G.S. 5A-17.)</i>														
<input type="checkbox"/> Conditions of release are as follows: _____														
<input type="checkbox"/> The defendant gives notice of appeal from the Judgment of the Superior Court to the Appellate Division. Appeal entries and any conditions of post conviction release are set forth on form AOC-CR-350.														
<small>Date</small>		<small>Name Of Presiding Judge (Type Or Print)</small>			<small>Signature Of Presiding Judge</small>									
<b>CERTIFICATION</b>														
I certify that this Judgment is a true and complete copy of the original which is on file in this case.														
<small>Date</small>				<small>Signature</small>										
				<b>SEAL</b>										
<small>Date Certified Copies Delivered To Sheriff</small>				<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court										
AOC-CR-390, New 7/04 © 2004 Administrative Office of the Courts														

## NOTES

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## SEE APPENDIX FOR:

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

## EVALUATION FOR DAY 4

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### INSTRUCTORS

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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

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Legal Issues in Domestic Violence

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Actions to Recover Personal Property

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Small Claims Practice

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The Struggle Toward Fairness

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Contempt

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Anything else you'd like to tell us:

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## DOMESTIC VIOLENCE CRIMES<sup>1</sup>

Crime Charged	Relationship Between Defendant and Victim	Only Judge May Set Bond for First 48 Hours After Arrest	Crime Victims' Rights Act (VRA) Applies
Simple assault [G.S. 14-33(a)]	<ul style="list-style-type: none"> <li>• Current or former spouses.</li> <li>• Persons who live or have lived together as if married.</li> </ul> <hr/> <ul style="list-style-type: none"> <li>• Child in common.</li> <li>• Persons of the opposite sex in a dating relationship.</li> <li>• Parent and child or grandparent and grandchild.</li> <li>• Current or former household members.</li> </ul>	<p style="text-align: center;">Yes</p> <hr/> <p style="text-align: center;">No</p>	<p style="text-align: center;">Yes</p> <p>[Magistrate must indicate VRA Case on the criminal process]</p>
Assault on a female [G.S. 14-33(c)(2)]	<ul style="list-style-type: none"> <li>• Current or former spouses.</li> <li>• Persons who live or have lived together as if married.</li> </ul> <hr/> <ul style="list-style-type: none"> <li>• Child in common.</li> <li>• Persons of the opposite sex in a dating relationship.</li> <li>• Parent and child or grandparent and grandchild.</li> <li>• Current or former household members.</li> </ul>	<p style="text-align: center;">Yes</p> <hr/> <p style="text-align: center;">No</p>	<p style="text-align: center;">Yes</p> <p>[Magistrate must indicate VRA Case on the criminal process]</p>
Assault with a deadly weapon [G.S. 14-33(c)(1)]	<ul style="list-style-type: none"> <li>• Current or former spouses.</li> <li>• Persons who live or have lived together as if married.</li> </ul> <hr/> <ul style="list-style-type: none"> <li>• Child in common.</li> <li>• Persons of the opposite sex in a dating relationship.</li> <li>• Parent and child or grandparent and grandchild.</li> <li>• Current or former household members.</li> </ul>	<p style="text-align: center;">Yes</p> <hr/> <p style="text-align: center;">No</p>	<p style="text-align: center;">Yes</p> <p>[Magistrate must indicate VRA Case on the criminal process]</p>

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

<b>Crime Charged</b>	<b>Relationship Between Defendant and Victim</b>	<b>Only Judge May Set Bond for First 48 Hours After Arrest</b>	<b>Crime Victims' Rights Act (VRA) Applies</b>
Assault inflicting serious injury [G.S.14-33(c)(1)]	<ul style="list-style-type: none"> <li>• Current or former spouses.</li> <li>• Persons who live or have lived together as if married.</li> </ul> <hr/> <ul style="list-style-type: none"> <li>• Child in common.</li> <li>• Persons of the opposite sex in a dating relationship.</li> <li>• Parent and child or grandparent and grandchild.</li> <li>• Current or former household members.</li> </ul>	<p>Yes</p> <hr/> <p>No</p>	<p>Yes</p> <p>[Magistrate must indicate VRA Case on the criminal process]</p>
Assault by pointing a gun [G.S. 14-34]	<ul style="list-style-type: none"> <li>• Current or former spouses.</li> <li>• Persons who live or have lived together as if married.</li> </ul> <hr/> <ul style="list-style-type: none"> <li>• Child in common.</li> <li>• Persons of the opposite sex in a dating relationship.</li> <li>• Parent and child or grandparent and grandchild.</li> <li>• Current or former household members.</li> </ul>	<p>Yes</p> <hr/> <p>No</p>	<p>Yes</p> <p>[Magistrate must indicate VRA Case on the criminal process]</p>
Assault with a deadly weapon with intent to kill [G.S. 14-32(c)]	<ul style="list-style-type: none"> <li>• Current or former spouses.</li> <li>• Persons who live or have lived together as if married.</li> </ul> <hr/> <ul style="list-style-type: none"> <li>• Child in common.</li> <li>• Persons of the opposite sex in a dating relationship.</li> <li>• Parent and child or grandparent and grandchild.</li> <li>• Current or former household members.</li> </ul>	<p>Yes</p> <hr/> <p>No</p>	<p>Yes; because VRA felony no matter what relationship.</p>
Assault with a deadly weapon inflicting serious injury [G.S. 14-32(b)]	<ul style="list-style-type: none"> <li>• Current or former spouses.</li> <li>• Persons who live or have lived together as if married.</li> </ul> <hr/> <ul style="list-style-type: none"> <li>• Child in common.</li> <li>• Persons of the opposite sex in a dating relationship.</li> <li>• Parent and child or grandparent and grandchild.</li> <li>• Current or former household members.</li> </ul>	<p>Yes</p> <hr/> <p>No</p>	<p>Yes; because VRA felony no matter what relationship.</p>



<b>Crime Charged</b>	<b>Relationship Between Defendant and Victim</b>	<b>Only Judge May Set Bond for First 48 Hours After Arrest</b>	<b>Crime Victims' Rights Act (VRA) Applies</b>
Assault with a deadly weapon with intent to kill inflicting serious injury [GS 14-32(a)]	<ul style="list-style-type: none"> <li>• Current or former spouses.</li> <li>• Persons who live or have lived together as if married.</li> </ul> <hr/> <ul style="list-style-type: none"> <li>• Child in common.</li> <li>• Persons of the opposite sex in a dating relationship.</li> <li>• Parent and child or grandparent and grandchild.</li> <li>• Current or former household members..</li> </ul>	<p>Yes</p> <hr/> <p>No</p>	Yes; because VRA felony no matter what relationship.
Assault inflicting serious bodily injury [G.S. 14-32.4(a)]	<ul style="list-style-type: none"> <li>• Current or former spouses.</li> <li>• Persons who live or have lived together as if married.</li> </ul> <hr/> <ul style="list-style-type: none"> <li>• Child in common.</li> <li>• Persons of the opposite sex in a dating relationship.</li> <li>• Parent and child or grandparent and grandchild.</li> <li>• Current or former household members.</li> </ul>	<p>Yes</p> <hr/> <p>No</p>	Yes; because VRA felony no matter what relationship.
Assault by strangulation [G.S. 14-32.4(b)]	<ul style="list-style-type: none"> <li>• Current or former spouses.</li> <li>• Persons who live or have lived together as if married.</li> </ul> <hr/> <ul style="list-style-type: none"> <li>• Child in common.</li> <li>• Persons of the opposite sex in a dating relationship.</li> <li>• Parent and child or grandparent and grandchild.</li> <li>• Current or former household members.</li> </ul>	<p>Yes</p> <hr/> <p>No</p>	No
Habitual misdemeanor assault [G.S. 14-33.2]	<ul style="list-style-type: none"> <li>• Current or former spouses.</li> <li>• Persons who live or have lived together as if married.</li> </ul> <hr/> <ul style="list-style-type: none"> <li>• Child in common.</li> <li>• Persons of the opposite sex in a dating relationship.</li> <li>• Parent and child or grandparent and grandchild.</li> <li>• Current or former household members.</li> </ul>	<p>Yes</p> <hr/> <p>No</p>	Yes; because VRA felony no matter what relationship.
Communicating a threat [G.S. 14-277.1]	<ul style="list-style-type: none"> <li>• Current or former spouses.</li> <li>• Persons who live or have lived together as if married.</li> </ul> <hr/> <ul style="list-style-type: none"> <li>• Child in common.</li> <li>• Persons of the opposite sex in a dating relationship.</li> <li>• Parent and child or grandparent and grandchild.</li> <li>• Current or former household members.</li> </ul>	<p>Yes</p> <hr/> <p>No</p>	No

<b>Crime Charged</b>	<b>Relationship Between Defendant and Victim</b>	<b>Only Judge May Set Bond for First 48 Hours After Arrest</b>	<b>Crime Victims' Rights Act (VRA) Applies</b>
Domestic criminal trespass [G.S. 14-134.3]	<ul style="list-style-type: none"> <li>• Current or former spouses.</li> <li>• Persons who live or have lived together as if married. (having one of these relationships is an element of this offense)</li> </ul>	Yes	Yes [Magistrate must indicate VRA Case on the criminal process]
Violating a protective order [G.S. 50B-4.1]	<ul style="list-style-type: none"> <li>• Current or former spouses.</li> <li>• Persons who live or have lived together as if married.</li> </ul> <hr/> <ul style="list-style-type: none"> <li>• Child in common.</li> <li>• Persons of the opposite sex in a dating relationship.</li> <li>• Parent and child or grandparent and grandchild.</li> <li>• Current or former household members.</li> </ul>	Yes	Yes [Magistrate must indicate VRA Case on the criminal process]
Stalking [G.S. 14-277.3A]	<ul style="list-style-type: none"> <li>• Current or former spouses.</li> <li>• Persons who live or have lived together as if married.</li> </ul> <hr/> <ul style="list-style-type: none"> <li>• Child in common.</li> <li>• Persons of the opposite sex in a dating relationship.</li> <li>• Parent and child or grandparent and grandchild.</li> <li>• Current or former household members.</li> </ul>	<div>Yes</div> <hr/> <div>No</div>	<div>Yes</div> <div>[Magistrate must indicate VRA Case on the criminal process]</div>
Rape or sexual offense [G.S. 14-27.2 to -27.8]	<ul style="list-style-type: none"> <li>• Current or former spouses.</li> <li>• Persons who live or have lived together as if married.</li> </ul> <hr/> <ul style="list-style-type: none"> <li>• Child in common.</li> <li>• Persons of the opposite sex in a dating relationship.</li> <li>• Parent and child or grandparent and grandchild.</li> <li>• Current or former household members.</li> </ul>	<div>Yes</div> <hr/> <div>No</div>	<div>Yes;</div> <div>because VRA felony no matter what relationship.</div>

<b>Crime Charged</b>	<b>Relationship Between Defendant and Victim</b>	<b>Only Judge May Set Bond for First 48 Hours After Arrest</b>	<b>Crime Victims' Rights Act (VRA) Applies</b>
Kidnapping [GS. 14-39]	<ul style="list-style-type: none"> <li>• Current or former spouses.</li> <li>• Persons who live or have lived together as if married.</li> </ul> <hr/> <ul style="list-style-type: none"> <li>• Child in common.</li> <li>• Persons of the opposite sex in a dating relationship.</li> <li>• Parent and child or grandparent and grandchild.</li> <li>• Current or former household members.</li> </ul>	<div>Yes</div> <hr/> <div>No</div>	Yes because VRA felony no matter what relationship.
Harassing telephone calls [G.S. 14-196]	<ul style="list-style-type: none"> <li>• Current or former spouses.</li> <li>• Persons who live or have lived together as if married.</li> </ul> <hr/> <ul style="list-style-type: none"> <li>• Child in common.</li> <li>• Persons of the opposite sex in a dating relationship.</li> <li>• Parent and child or grandparent and grandchild.</li> <li>• Current or former household members.</li> </ul>	No	No
Arson	<ul style="list-style-type: none"> <li>• Current or former spouses.</li> <li>• Persons who live or have lived together as if married.</li> </ul> <hr/> <ul style="list-style-type: none"> <li>• Child in common.</li> <li>• Persons of the opposite sex in a dating relationship.</li> <li>• Parent and child or grandparent and grandchild.</li> <li>• Current or former household members.</li> </ul>	<div>Yes</div> <hr/> <div>No</div>	Yes because VRA felony no matter what relationship.

**Tab: Day 5**

## SCHEDULE FOR TODAY

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9:00	Handling Money (60m) <i>Joe Plemmons, Administrative Office of the Courts</i>	Room 2401
10:00	Understanding Domestic Violence (120m) <i>Chief District Court Judge Julius Corpening</i>	Room 2401
12:00	Marriage (45m) <i>Dona Lewandowski, School of Government</i>	Room 2401
12:45	Lunch	
1:30	NCAOC Language Access Services for Magistrates (60m) Brooke Bogue, Office of Language Access, AOC Kellie Myers, Office of Language Access, AOC	Room 2401
1:30	Evaluations	Room 2401
1:45	Test on Week 1 Material	Room 2401 & 2321

## OUR OBJECTIVES FOR TODAY

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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

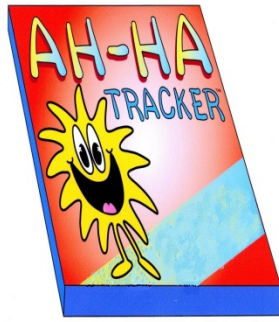
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Take a moment to meet your tablemates. Write their names down below:

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Thinking About Yesterday:

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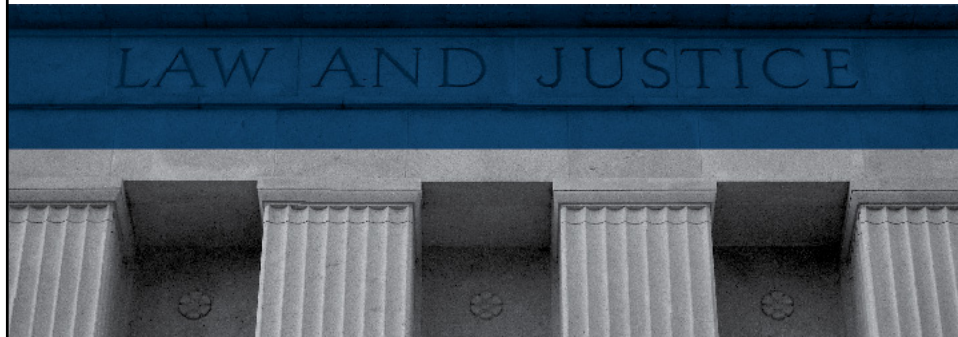


NORTH CAROLINA  
ADMINISTRATIVE OFFICE  
*of the COURTS*

## Basic School for Magistrates

### Handling and Accounting for Money

2012  
Prepared by NCAOC Financial Services Division



## Objectives

- Money handling policy
- Supplies and forms
- Cash holding security
- Collection and receipting procedures
- Submission of funds to CSC
- IRS form 8300



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Handling and Accounting for Money July 2012 2

## Money Handling Policy

Magistrates are responsible for the funds they receipt until both

1. the funds are transferred to the Clerk of Superior Court (CSC) office
- AND
2. applicable receipts are in-hand to document the transfer

## Money Handling Policy

- Magistrate shortages are not repaid by AOC
- The CSC cashier cannot accept any amount other than what is showing on the receipt.
- Funds collected by magistrates should never ever be “co-mingled” with personal funds. Such action is reportable to the State Bureau of Investigation (SBI)



## Money Handling Policy

Tips for collecting money:

- Always count money at least twice
- Don't let customer impatience distract you
- Use a counterfeit detection pen, available through the AOC warehouse, to test all bills of \$10 or more
- Do not put cash away until transaction is complete and payor is satisfied with change received



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## Money Handling Policy

Money collected (collections) must be accounted for at all times.

Collections are subject to review by:

- NC State Auditors
- NCAOC Internal Auditors
- NCAOC Financial Management Analysts
- Clerks of Superior Court



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## Supplies and Forms

- Manual Receipt Book (AOC-A2)
- Offsite Daily Cash Report (AOC-A-102)
- Physically secure location for holding funds receipted



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## Manual Receipt Book

- Each receipt consists of an original and three copies.
- The copies are distributed as follows:

Original (white)	CSC Cashier/Bookkeeping
Payor copy (green)	Given to payor
CSC copy (pink)	Placed in case file at CSC office
Audit copy (yellow)	Always stays in receipt book



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## Manual Receipt Book

- Write “Void” on all copies of unused receipts.
- Immediately notify CSC office of any ‘lost’ receipts.
- Only write receipts from a receipt book issued to you.
- Do not share receipt books.
- Keep receipt books in a secure place at all times.
  - Receipts can be negotiated as payment tendered or “cash.”

## Off Site Daily Cash Report

### Information to Capture:

- Magistrate name
- Date
- Itemize funds collected
- Record of each receipt issued
- Total collected by tender type
- Itemized funds to be distributed to corresponding municipalities
- Attached copies of receipts

## Recommended Cash Holding Locations

- Locking bank bag
- Locking cash box
- Safe
- Locking file cabinet
- Locking desk drawer

Note: Contact your bank to request a locking bank bag.

## Collection/Receipting Procedures

- Complete receipts in numerical order
- A complete receipt includes all of the following:
  - Date
  - Name
  - Amounts in the correct accounts
  - Address when applicable

Note: Penmanship counts. Always write as legibly as possible.

## Collection/Receipting Procedures

- ALWAYS account for all receipts
- NEVER throw away a receipt or any part of a receipt
- NEVER remove the yellow audit copy

## Required Clerk Logs

- Manual Receipt Book Log
  - Magistrates are required to sign for all receipt books issued and returned
  - Magistrates should have no more than two receipt books at any given time
- Manual Receipt Log
  - Tracks all receipts
  - Tracks timeliness of receipts

## Collection/Receipting Procedures – Cash Bonds

- The 'Received of' line should include:
  - name of the person paying or posting the bond
  - payor's address
- The 'For' line should include the name of the defendant if the person paying the bond is anyone other than the defendant



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of the COURTS

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## 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 _____
<b>NOTES ON CASH BONDS:</b> (1) <b>To Official Taking The Bond.</b> 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: <b>When Cash Deposited By Defendant Or By Another Person Who Intends For The Cash To Be Used To Satisfy The Defendant's Obligations.</b> 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." <b>Make receipt out to DEFENDANT,</b> not to any other person. <b>When Cash Deposited By Another Person Who Does NOT Intend For The Cash To Be Used To Satisfy The Defendant's Obligations.</b> 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." <b>Make receipt out to person depositing the cash.</b> (2) <b>To Bookkeeper.</b> 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) <b>Bond With Insurance Company As Surety Same As Cash Except In Child Support.</b> 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		



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## Appearance Bond Form

<b>STATE OF NORTH CAROLINA</b>		File No. 10CR 101
YOUR _____ County	In The General Court Of Justice <input checked="" type="checkbox"/> District <input type="checkbox"/> Superior Court Division	
Name And Mailing Address Of Defendant TEW MANNY BILLS 101 MAIN ST RALEIGH, NC 27602		
<b>APPEARANCE BOND FOR PRETRIAL RELEASE</b>		
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"/> See Attachment		
<input type="checkbox"/> <b>Unsecured Appearance Bond</b> - 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"/> <b>Cash Appearance Bond</b> (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"/> <b>Defendant's Property Appearance Bond</b> - 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"/> <b>Surety Appearance Bond</b> - 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"/> <b>Cash Deposited By Surety</b> (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	



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## Cash Deposited By Defendant

AOC-A2 REV. 11/99		<b>CLERK OF SUPERIOR COURT</b>		RECEIPT NO. <b>I-150252</b>	
10/3/10		YOUR (COUNTY)			
Received of <b>TEW MANNY BILLS</b>		101 MAIN ST		Cash <input checked="" type="checkbox"/> Check <input type="checkbox"/> M.O. <input type="checkbox"/>	
For		RALEIGH, NC 27602			
File # <b>10 CR 101</b>		vs.			
General Court Fee:		Facility Fee-Co \$ _____		Partial Pay \$ _____	
Superior Court		Facility Fee-Mun \$ _____		Judgment \$ _____	
Criminal \$ _____		Officer Fee-Co \$ _____		Cash Bond \$ <b>1,000.00</b>	
Civil \$ _____		Officer Fee-Mun \$ _____		Trust \$ _____	
Spec Proc \$ _____		Jail Fee-Co \$ _____		Alim & Supp \$ _____	
Estates \$ _____		Jail Fee-Mun \$ _____			
District Court		LEOB & RF \$ _____			
Criminal \$ _____		Fine \$ _____			
Civil \$ _____		Other \$ _____ Des _____			
Magistrate-S.F. \$ _____					
Misc-Fees & Comm \$ _____					
PAYOR		By		Total Received \$ <b>1,000.00</b>	
		CLERK OF SUPERIOR COURT/MAGISTRATE			




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## Appearance Bond Form

<b>STATE OF NORTH CAROLINA</b>		File No. <b>10CR 101</b>
YOUR _____ County	In The General Court Of Justice <input checked="" type="checkbox"/> District <input type="checkbox"/> Superior Court Division	
Name And Mailing Address Of Defendant <b>HUGH BADMAN</b> <b>101 MAIN ST</b> <b>RALEIGH, NC 27602</b>		
<b>APPEARANCE BOND FOR PRETRIAL RELEASE</b>		
Social Security No. <b>XXX-XX-XXXX</b>	Telephone No. Of Defendant _____	
Total Bond Required \$ <b>1,000.00</b>	Amount Of This Bond \$ <b>1,000.00</b>	# _____ G.S. 15A-531, 15A-534, 15A-544.2
Offenses And Additional File Numbers _____		
<input type="checkbox"/> See Attachment		
<input type="checkbox"/> <b>Unsecured Appearance Bond</b> - 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 type="checkbox"/> <b>Cash Appearance Bond</b> (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"/> <b>Defendant's Property Appearance Bond</b> - 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 checked="" type="checkbox"/> <b>Surety Appearance Bond</b> - 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 checked="" type="checkbox"/> <b>Cash Deposited By Surety</b> (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 _____	
<b>ACCOMMODATION BONDSMAN</b>		
<input type="checkbox"/> See Page Two for additional accommodation bondsman executing this bond.		
Name And Address Of Accommodation Bondsman <b>RAISA BADMAN</b> <b>201 MAIN ST</b> <b>RALEIGH, NC 27602</b>		Name And Address Of Accommodation Bondsman
Social Security No. <b>XXX-XX-XXXX</b>	Telephone No. _____	Social Security No. _____ Telephone No. _____
Handling and Accounting for Money July 2012 <b>19</b>		

## Cash Deposited By Surety

ADC-42 REV. 11/99		<b>CLERK OF SUPERIOR COURT</b>		RECEIPT NO. <b>I-150252</b>
Received of <b>RAISA BADMAN</b> (COUNTY) <b>YOUR</b>		For <b>HUGH BADMAN</b>		Cash <input checked="" type="checkbox"/> Check <input type="checkbox"/> M.O. <input type="checkbox"/>
File # <b>10 CR 101</b>		vs. <b>RALEIGH, NC 27602</b>		
General Court Fee:	Facility Fee-Co \$ _____	Partial Pay \$ _____		
Superior Court	Facility Fee-Mun \$ _____	Judgment \$ _____		
Criminal \$ _____	Officer Fee-Co \$ _____	Cash Bond \$ <b>1,000.00</b>		
Civil \$ _____	Officer Fee-Mun \$ _____	Trust \$ _____		
Spec Proc \$ _____	Jail Fee-Co \$ _____	Alim & Supp \$ _____		
Estates \$ _____	Jail Fee-Mun \$ _____			
District Court	LEOB & RF \$ _____			
Criminal \$ _____	Fine \$ _____			
Civil \$ _____	Other \$ _____ Des _____			
Magistrate-S.F. \$ _____				
Misc-Fees & Comm \$ _____				
PAYOR		By  CLERK OF SUPERIOR COURT/MAGISTRATE		
		Total Received <b>\$1,000.00</b>		



## Appearance Bond Form

<b>STATE OF NORTH CAROLINA</b>		File No. <b>10CR 101</b>
ANOTHER County		In The General Court Of Justice <input checked="" type="checkbox"/> District <input type="checkbox"/> Superior Court Division
Name And Mailing Address Of Defendant <b>HUGH BADMAN</b> 101 MAIN ST RALEIGH, NC 27602		
<b>APPEARANCE BOND FOR PRETRIAL RELEASE</b>		
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"/> See Attachment		
<input type="checkbox"/> <b>Unsecured Appearance Bond</b> - 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"/> <b>Cash Appearance Bond (See note on reverse side.)</b> - 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"/> <b>Defendant's Property Appearance Bond</b> - 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"/> <b>Surety Appearance Bond</b> - 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"/> <b>Cash Deposited By Surety (See note on reverse side.)</b> - The "Affidavit" on the reverse side of this Bond is complete and true. <input type="checkbox"/> <b>Cash Deposited By Surety</b> - 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



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## Bond for Another County

AOC-A2 REV. 11/09		<b>CLERK OF SUPERIOR COURT</b>		RECEIPT NO. <b>I-150251</b>
10/31/10		ANOTHER (COUNTY)		
Received of <b>HUGH BADMAN</b>		100 MAIN ST		Cash <input checked="" type="checkbox"/> Check <input type="checkbox"/> M.O. <input type="checkbox"/>
For <b>10 CR 301</b>		RALEIGH, NC 27602		
File #	vs.			
General Court Fee:	Facility Fee-Co	\$	Partial Pay	\$
Superior Court:	Facility Fee-Mun	\$	Judgment	\$
Criminal \$	Officer Fee-Co	\$	Cash Bond	\$
Civil \$	Officer Fee-Mun	\$	Trust	\$
Spec Proc \$	Jail Fee-Co	\$	Alim & Supp	\$
Estates \$	Jail Fee-Mun	\$		
District Court	LEOB & RF	\$		
Criminal \$	Fine	\$		
Civil \$	Other \$ <b>1,000.00</b> Des <b>Bond For</b>		Total Received	\$ <b>1,000.00</b>
Magistrate-S.F. \$	<b>ANOTHER COUNTY</b>			
Misc-Fees & Comm \$	By <b>[Signature]</b>			
PAYOR	CLERK OF SUPERIOR COURT/MAGISTRATE			



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## Collection/Receipting Procedures – Cash Bonds

### Typical Complaints

- “The magistrate said I could get my cash back the day I appeared in court.”
- “I’m Johnny’s mother and I gave him MY money to post the bond. I should get the bond, not Johnny.”
- “Why do I have to get a check back from the CSC? I had to pay cold, hard cash to the magistrate.”

## Collecting/Receipting Procedures – Court Costs

### Items Requiring Special Attention

- Officer Fees
  - Highway Patrol, Sheriff, DMV are all considered as ‘County’ Officers
  - City Officers have different receipt codes specific to each municipality
- Facility Fees
  - County seat and other county owned facilities
  - Magistrate offices in a city owned facility have different receipt codes specific to each municipality

## Court Cost – County

ADC-A2 REV. 11/99

10/13/10 **CLERK OF SUPERIOR COURT** RECEIPT NO. **I-150251**  
 YOUR (COUNTY)

Received of HEVERE FORTA Cash ☒ Check ☐ M.O. ☐  
 For 123 MAIN ST RALEIGH, NC 27602 70-55

File # C 1234567-0 vs. \_\_\_\_\_

General Court Fee:	Facility Fee-Co	\$ <u>12.00</u>	Partial Pay	\$ _____
Superior Court	Facility Fee-Mun	\$ _____	Judgment	\$ _____
Criminal	Officer Fee-Co	\$ <u>5.00</u>	Cash Bond	\$ _____
Civil	Officer Fee-Mun	\$ _____	Trust	\$ _____
Spec Proc	Jail Fee-Co	\$ _____	Alim & Supp	\$ _____
Estates	Jail Fee-Mun	\$ _____		
District Court	LEOB & RF	\$ <u>7.50</u>		
Criminal	Fine	\$ <u>30.00</u>		
Civil	Other \$ <u>3.00</u> IDA Des <u>4.00</u> JUD PHONE FEE			
Magistrate-S.F.	<u>2.00</u> LEO TRNG <u>10.00</u> GS-20			
Misc-Fees & Comm				

PAYOR

By [Signature]  
 CLERK OF SUPERIOR COURT/MAGISTRATE

Total Received \$ 171.00



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## Court Cost – Municipality

ADC-A2 REV. 11/99

10/13/10 **CLERK OF SUPERIOR COURT** RECEIPT NO. **I-150252**  
 YOUR (COUNTY)

Received of HEVERE FORTA Cash ☒ Check ☐ M.O. ☐  
 For 123 MAIN ST RALEIGH, NC 27602

File # C 12345 vs. \_\_\_\_\_

General Court Fee:	Facility Fee-Co	\$ _____	Partial Pay	\$ _____
Superior Court	Facility Fee-Mun	\$ <u>12.00</u> <u>MARS HILL</u>	Judgment	\$ _____
Criminal	Officer Fee-Co	\$ _____	Cash Bond	\$ _____
Civil	Officer Fee-Mun	\$ <u>5.00</u> <u>MARS HILL</u>	Trust	\$ _____
Spec Proc	Jail Fee-Co	\$ _____	Alim & Supp	\$ _____
Estates	Jail Fee-Mun	\$ _____		
District Court	LEOB & RF	\$ <u>7.50</u>		
Criminal	Fine	\$ <u>30.00</u>		
Civil	Other \$ <u>3.00</u> IDA Des <u>4.00</u> JUD PHONE FEE			
Magistrate-S.F.	<u>2.00</u> LEO TRNG <u>10.00</u> GS-20			
Misc-Fees & Comm				

PAYOR

By [Signature]  
 CLERK OF SUPERIOR COURT/MAGISTRATE

Total Received \$ 171.00



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## Submitting Funds to CSC

- What to submit
  - Funds with receipt copies
  - Off-site report
  - Paperwork
- When to submit
  - End of business day but no later than the close of the next business day

## Submitting funds to CSC office

- The recommended procedures for submitting funds to the CSC are detailed in the Financial Policies and Procedures manual, Magistrates chapter.
- Head cashier or cashier should verify the funds in the presence of the magistrate
- Magistrate should receive a receipt from the CSC for the exact amount of funds submitted

## Submitting funds to CSC office

- If you do not submit your receipts in numerical order, the CSC's office will contact you to determine the status of the 'missing' receipt.
- Missing receipts are considered missing state funds until located and subject to review by NCAOC and the NC State Bureau of Investigation (SBI).

## United States Internal Revenue Code

Section 6050I (26 United States Code) and 31 U.S.C. 5331 states "Any person in a trade or business who receives more than \$10,000 in cash in a single transaction or in related transactions must file Form 8300."

It further states "Any clerk of a Federal or State court who receives more than \$10,000 in cash as bail" for specific criminal offenses must use Form 8300.

The IRS has conducted reviews of these forms and procedures in the Clerk of Court offices.

## What payments must be reported?

You must complete Form 8300 to report cash payments if:

- The payment is received as either
  - a) a lump sum of over \$10,000 or
  - b) a smaller payments that cause the total cash received within a 12-month period for that case to total more than \$10,000
- Received in a single transaction or in related transactions from the same individual.

## Who completes Form 8300?

- The person receipting the money should complete the Form 8300.
- Example:
  - The magistrate would complete the form when receipting cash bonds that exceed \$10,000
  - The completed form is then submitted to the CSC office along with the Daily Deposit.
  - The CSC office is responsible for filing the Form 8300 with the IRS

## What is considered cash?

- Coins and Currency of the United States more than \$10,000.
- Cashier's check; bank draft; bank check; traveler's check; or money order with a face value of **less** than \$10,000 when used to make a payment that exceeds \$10,000 and you suspect the payer may be trying to avoid the reporting.
- Example:
  - Payor presents three cashiers checks each in the amount of \$4,000 to pay a \$12,000 cash bond

## What is NOT considered cash?

- Cashier's checks; bank drafts; bank checks; traveler's checks, or money orders with a face value of **more** than \$10,000 are **not** considered cash because they were originally purchases at a financial institution with currency.
- The bank or financial institution where these items were purchased is responsible for reporting the purchase to the IRS.

## Offenses that require a Form 8300

Regardless whether the monetary conditions are met, a Form 8300 must be completed and filed if the charges meet the “specific criminal offense” portion of the IRS code.

These offenses are:

- Any Federal offense involving a controlled substance
- Racketeering
- Money laundering
- Any State offense substantially similar to the above

## Form 8300



**Form 8300** Report of Cash Payments Over \$10,000 Received in a Trade or Business

**Section 1: Filer Information**

1. Name of filer (Print or type name)  
 2. Taxpayer identification number (TIN)  
 3. State of filer (Print or type state)  
 4. City (Print or type city)  
 5. ZIP code (Print or type ZIP code)  
 6. Country (Print or type country)

**Section 2: Identity of Individual From Whom the Cash Was Received**

7. Name (Print or type name)  
 8. Social Security number (Print or type SSN)  
 9. Date of birth (Print or type date)  
 10. Address (Print or type address)  
 11. City (Print or type city)  
 12. State (Print or type state)  
 13. ZIP code (Print or type ZIP code)  
 14. Country (Print or type country)

**Section 3: Person to Whom the Cash Was Paid**

15. Name (Print or type name)  
 16. Social Security number (Print or type SSN)  
 17. Date of birth (Print or type date)  
 18. Address (Print or type address)  
 19. City (Print or type city)  
 20. State (Print or type state)  
 21. ZIP code (Print or type ZIP code)  
 22. Country (Print or type country)

**Section 4: Description of Transaction and Method of Payment**

23. Date (Print or type date)  
 24. Amount of cash received (Print or type amount)  
 25. Amount of cash paid (Print or type amount)  
 26. Amount of cash received in installments (Print or type amount)  
 27. Amount of cash received in other form (Print or type amount)  
 28. Amount of cash received in other form (Print or type amount)  
 29. Amount of cash received in other form (Print or type amount)  
 30. Amount of cash received in other form (Print or type amount)  
 31. Amount of cash received in other form (Print or type amount)  
 32. Amount of cash received in other form (Print or type amount)  
 33. Amount of cash received in other form (Print or type amount)  
 34. Amount of cash received in other form (Print or type amount)  
 35. Amount of cash received in other form (Print or type amount)  
 36. Amount of cash received in other form (Print or type amount)  
 37. Amount of cash received in other form (Print or type amount)  
 38. Amount of cash received in other form (Print or type amount)  
 39. Amount of cash received in other form (Print or type amount)  
 40. Amount of cash received in other form (Print or type amount)  
 41. Amount of cash received in other form (Print or type amount)  
 42. Amount of cash received in other form (Print or type amount)  
 43. Amount of cash received in other form (Print or type amount)  
 44. Amount of cash received in other form (Print or type amount)  
 45. Amount of cash received in other form (Print or type amount)  
 46. Amount of cash received in other form (Print or type amount)  
 47. Amount of cash received in other form (Print or type amount)  
 48. Amount of cash received in other form (Print or type amount)  
 49. Amount of cash received in other form (Print or type amount)  
 50. Amount of cash received in other form (Print or type amount)

**Section 5: Business That Received Cash**

51. Name (Print or type name)  
 52. Social Security number (Print or type SSN)  
 53. Date of birth (Print or type date)  
 54. Address (Print or type address)  
 55. City (Print or type city)  
 56. State (Print or type state)  
 57. ZIP code (Print or type ZIP code)  
 58. Country (Print or type country)

**Section 6: Signature**

59. Signature (Print or type signature)  
 60. Date (Print or type date)  
 61. Title (Print or type title)  
 62. Amount of cash received (Print or type amount)  
 63. Amount of cash paid (Print or type amount)  
 64. Amount of cash received in installments (Print or type amount)  
 65. Amount of cash received in other form (Print or type amount)  
 66. Amount of cash received in other form (Print or type amount)  
 67. Amount of cash received in other form (Print or type amount)  
 68. Amount of cash received in other form (Print or type amount)  
 69. Amount of cash received in other form (Print or type amount)  
 70. Amount of cash received in other form (Print or type amount)  
 71. Amount of cash received in other form (Print or type amount)  
 72. Amount of cash received in other form (Print or type amount)  
 73. Amount of cash received in other form (Print or type amount)  
 74. Amount of cash received in other form (Print or type amount)  
 75. Amount of cash received in other form (Print or type amount)  
 76. Amount of cash received in other form (Print or type amount)  
 77. Amount of cash received in other form (Print or type amount)  
 78. Amount of cash received in other form (Print or type amount)  
 79. Amount of cash received in other form (Print or type amount)  
 80. Amount of cash received in other form (Print or type amount)



## What information is required for Form 8300?

- Part I – Identity of Individual From Whom the Cash was Received
  - Name, address, taxpayer ID of the defendant
  - Name, address, taxpayer ID of the person(s) paying the bond
  - Date of birth of person paying the bond
  - Occupation of defendant and the person(s) paying the bond

## What information is required for Form 8300?

Identifying the payor:

You must:

1. Describe the type of ID used, e.g. drivers license
2. Record the issuing agency of the ID, e.g. State of North Carolina
3. Record the number of the identification, e.g. drivers license number

## What information is required for Form 8300?

### ■ Part II – Person on Whose Behalf This Transaction was Conducted

- Name
- DBA
- Address
- Identification

### ■ Part III – Description of Transaction and Method of Payment

- Amount of cash received
- Date cash received

### ■ Business that Received Cash

- Name and address
- Signature



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NORTH CAROLINA  
ADMINISTRATIVE OFFICE  
*of the* COURTS

Prepared by:  
NCAOC Financial Services Division

[www.nccourts.org](http://www.nccourts.org)



# **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:

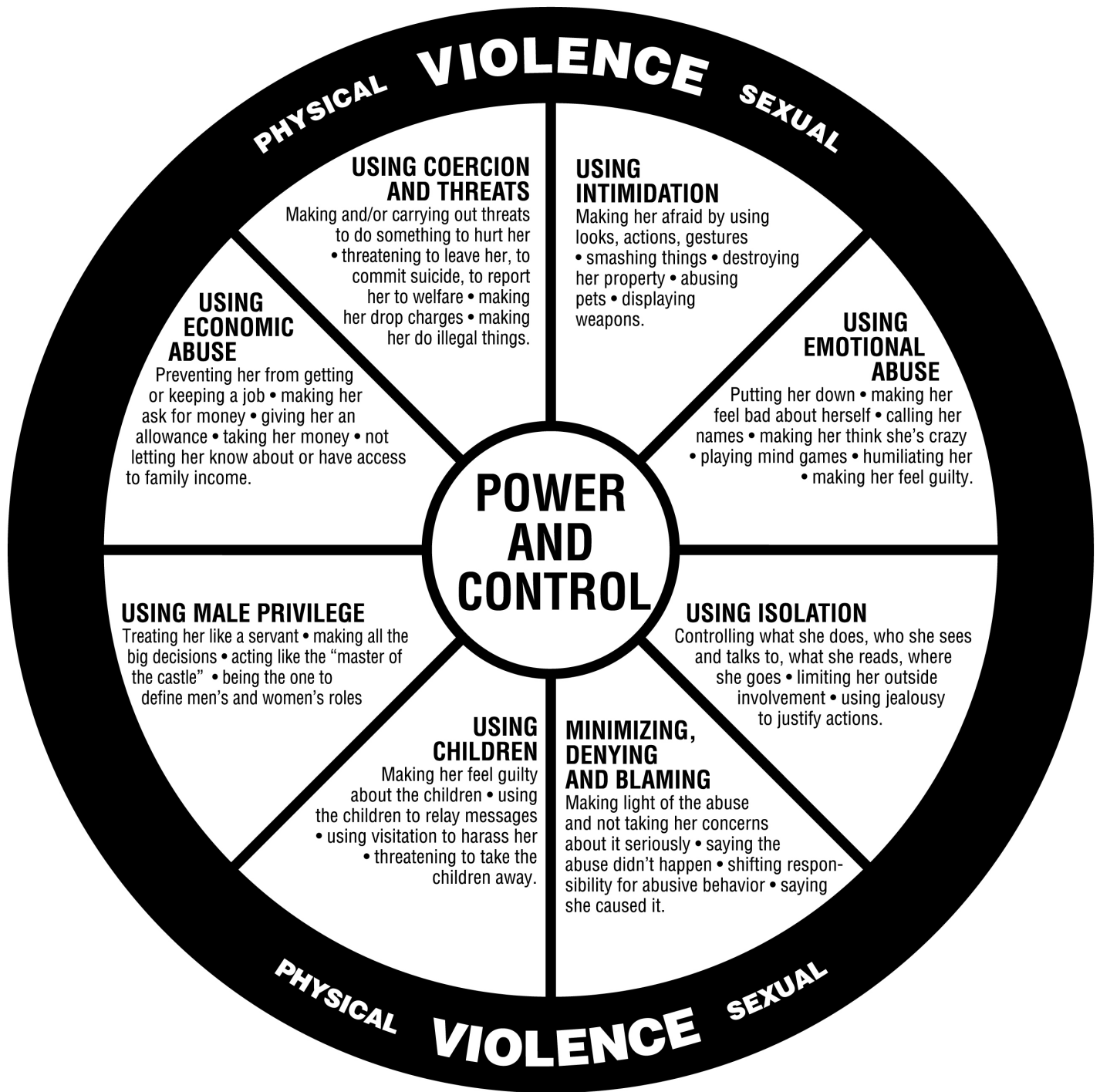
- (1) Attempting to cause bodily injury, or intentionally causing bodily injury; or
- (2) Placing the aggrieved party or a member of the aggrieved party's family or household in fear of imminent serious bodily injury or continued harassment, as defined in G.S. 14-277.3A, that rises to such a level as 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](http://www.duluth-model.org)





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## *Power and Control Wheel Enactments*

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### *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

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## *Power and Control Wheel Enactments*

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### *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

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## Case Study

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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.

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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*

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DO	DON'T
<ul style="list-style-type: none"><li>• Explain the services available in a simple and direct manner.</li><li>• Prioritize the victim's needs.</li><li>• Express concern for their safety and that of their children. Empower the victim with information that increases their choices.</li><li>• 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.</li><li>• Help the victim understand the danger and repetitiveness of the violence.</li><li>• Encourage the victim to take small steps, which will promote independence and build self-confidence.</li><li>• Take into consideration cultural values and beliefs.</li><li>• Challenge any efforts on the victim's part to justify the abuse through religion.</li><li>• 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.</li><li>• Define your role as a court official; be realistic about what you can and cannot do with regards to the relationship.</li><li>• Recognize that the victim's reactions and responses may change frequently and be unpredictable. Reactions will range from resistance to cooperation.</li><li>• Express your concerns if the situation is lethal and take appropriate action.</li><li>• Be patient and honest with the victim.</li><li>• Emphasize the abuser's responsibility for his/her own choices.</li><li>• Expect the "honeymoon" period to emerge following an abusive episode.</li><li>• 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.</li><li>• Be honest with the victim, especially about confidentiality issues.</li></ul>	<ul style="list-style-type: none"><li>• Assume that battered women know about their options and the services available.</li><li>• Overload the victim with services and decisions.</li><li>• 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.</li><li>• Impose your own values and make quick judgments. Your reaction to the victim's responses will be communicated strongly.</li><li>• Expect the victim to exaggerate or invent the violence.</li><li>• Try to rescue the victim.</li><li>• Lump all victims into one category.</li><li>• Reject the woman's religion or ignore references to religious beliefs.</li><li>• Convey disappointment if the victim chooses to stay. This can elicit feelings of failure and worthlessness.</li><li>• Get caught up in the role of marriage counselor, mediator and/or referee.</li><li>• 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.</li><li>• Ignore or minimize the potential dangerousness of the situation.</li><li>• Expect instant decision-making by the victim or contribute to unrealistic expectations.</li><li>• Let the victim blame themselves or other factors for the abuse.</li><li>• Delay in responding to a reported incident of violence. Timing is a key factor in gathering evidentiary information.</li><li>• Accept unexplained injuries accompanied by implausible reasons.</li><li>• Make a promise you can't keep.</li></ul>



## 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

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### TIME FOR A POP QUIZ!

True or False      A magistrate can legally perform a marriage anywhere in the state of North Carolina.

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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.

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

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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.

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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.

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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.

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## EVALUATION FOR DAY 5

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### INSTRUCTORS

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**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

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Understanding Domestic Violence

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Marriage

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#### 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

[illegible]



## Language Access Services Available to North Carolina Magistrates

Updated January 2013  
Prepared by Brooke A. Bogue & Kellie Z. Myers



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## Working with Court Interpreters

Using a properly trained court interpreter ensures full and fair participation and improves access to justice for limited English proficient individuals in our court system



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## Goals of the Session

- Understand the difference between a bilingual person and a properly trained court interpreter
- Understand the proper role of the court interpreter & how to work with court interpreters
- Review UTT, Inc. – Telephone interpreting service available & required for all spoken languages - Spanish & non-Spanish

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### Goals of the Session (cont'd)

- Determine for what cases an interpreter can be appointed at state expense
- Learn how to choose an interpreter for the deaf and hard of hearing for ALL REQUESTS RECEIVED
- Understand the importance of identifying cases for which an interpreter will be needed for future court dates
- Determine the need for an interpreter in a small claims proceeding

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### Terms of the Profession



- **LEP:** Limited English Proficient
- **LOTS:** Language(s) Other Than Spanish
- **Interpretation:** The accurate and complete unrehearsed transmission of an oral message from one language to an oral message in another language
- **Simultaneous Interpretation:** Interpreting continuously at the same time a person is speaking
- **Consecutive Interpretation:** Interpreting a person's statement after that person has stopped speaking
- **Translation:** The accurate and complete transmission of written text from one language into written text in another language

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### What is the interpreter's job?

- To render everything said in court from the source language into the target language
- Accurately without any distortion of meaning
- Without omissions
- Without additions
- Without changes to style or register
- With as little delay or interference as possible

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## Cognitive and Motor Skills

### *What an interpreter does*

Listen

Comprehend

Abstract message from words and word order

Store ideas

Search for conceptual/semantic matches

Reconstruct message in new language

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## While . . .

Speaking and listening for next chunk of language

Monitoring their own output



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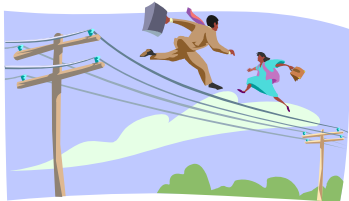
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## The Interpreter is a . . .

# LANGUAGE CONDUIT



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## The Interpreter's Job is . . . .

- **NOT** TO EXPLAIN ANYTHING TO ANYBODY
- **NOT** TO FILL OUT FORMS
- **NOT** TO BE AN ADVOCATE
- **TO INTERPRET**

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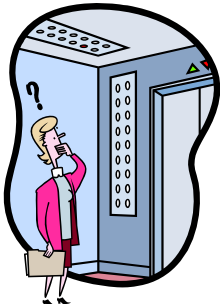
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## Lost in Translation



Belgrade elevator:

*To move the cabin, push button for wishing floor. If the cabin should enter more persons, each one should press a number of wishing floor. Driving then going alphabetically in national order.*

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## Court Interpreters are Impartial

*Do not allow bilingual law enforcement officers or other untrained bilingual individuals to serve as interpreters for non-English speaking people who come before you. Why?*



1. Avoid any appearance of partiality or conflict of interest
2. Ensure the use of qualified, skilled interpreters

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### When Using an Interpreter. . .

- Speak to the limited English proficient person directly and in the *first person*, not the third person – the interpreter's job is to interpret what is being said, not to reconstruct what is said
- Remember to speak clearly and allow adequate time for the interpreter to interpret fully
- Do not ask the interpreter to explain anything to the LEP individual

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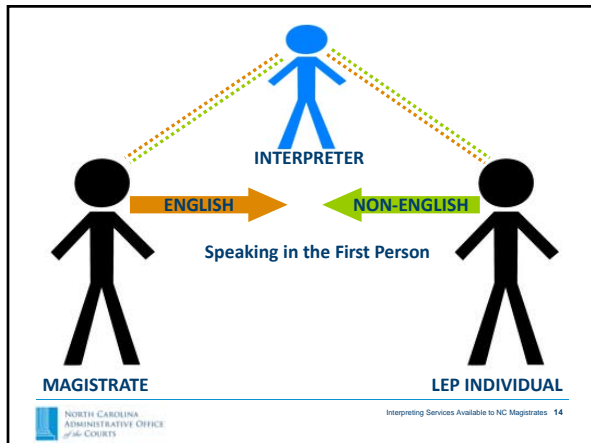
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### NCAOC Office of Language Access Services (OLAS)

- **In-person interpreting for court proceedings** — staff court interpreters in 11 counties: Buncombe, Chatham, Durham, Forsyth, Guilford, Harnett, Johnston, Lee, Mecklenburg, Orange and Wake; and contract court interpreters
- **Telephone interpreting service** — use for brief routine matters in district court; use by magistrates and DAs; use in public access areas in clerks' and family court offices
- **Distance court interpretation equipment (BIAMP)** — for hearings and trials in district and superior court when certified court interpreters are not available locally
- **Translation** of court forms and vital court documents
- **Transcription/translation** of audio/visual evidence for district attorneys and public defenders or assigned counsel

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## NCAOC Expansion of Services

The Judicial Department is committed to expanding state-funded foreign language access services to all case types by January 1, 2015, using a phased implementation approach.

Phase I - detailed in the **Notice of Expansion and Enhancement of Foreign Language Interpreting Services** memorandum dated August 8, 2012

Future phases will include expansion to other case types, including domestic, **small claims**, general civil, estates, and special proceedings matters.

## Who is Currently Eligible for a Foreign Language Interpreter at State Expense?

- All criminal court **proceedings** where either the defendant, victim, or witnesses for either the defendant or the State are limited English proficient (LEP)
- Parties to juvenile delinquency **proceedings**
- Parties to A/N/D (abuse, neglect and dependency) **proceedings**
- Parents ordered to court-ordered child custody mediation
- Chapter 50B Domestic Violence **proceedings**
- Chapter 50C **proceedings** (AOC does NOT pay for services needed to facilitate Counsel/Respondent or Legal Aid/Petitioner meetings or conferences)
- Respondents in involuntary commitment **proceedings**



**NORTH CAROLINA JUDICIAL DEPARTMENT  
LANGUAGE ACCESS SERVICES**

**COMPLAINTS OR CONCERNS  
ABOUT FOREIGN LANGUAGE ACCESS SERVICES?**  
Contact the Language Access Officer. The Language Access Officer will address your concerns and attempt to resolve any outstanding language access issues.

**¿Tiene dudas o inquietudes acerca del  
Acceso a los Servicios en el idioma?**  
Contacte al personal de acceso a los servicios de idioma. El Representante de Acceso a los Servicios de Idioma o los servicios de idioma o el personal de acceso a los servicios de idioma o el personal de acceso a los servicios de idioma.

**CÓ PHẢN NÃN HAY QUAN NGÃI  
VỀ DỊCH VỤ HỖ TRỢ NGÔN NGỮ?**  
Liên hệ với nhân viên tiếp nhận tại Văn phòng ngôn ngữ. Văn phòng ngôn ngữ tiếp nhận các khiếu nại và cố gắng giải quyết các vấn đề liên quan đến dịch vụ hỗ trợ ngôn ngữ.

**У ВАС ЕСТЬ ЖАЛОБА ИЛИ ЗАМЕЧАНИЕ  
В СВЯЗИ С УСЛУГАМИ ЯЗЫКОВОГО ДОСТУПА?**  
Обращайтесь к сотруднику приема посетителей, специалисту по языковому доступу или к сотруднику по доступу к услугам.

**AVEZ-VOUS DES COMMENTAIRES OU PLAINTES  
CONCERNANT LES SERVICES D'ACCÈS LINGUISTIQUE?**  
Veuillez contacter l'administrateur des services linguistiques, qui prendra en compte vos commentaires et facilitera de résoudre toute question d'accès linguistique.

你有對語言協助服務有投訴或有關心的問題嗎？  
請聯絡語言協助服務專員或投訴及有關語言協助服務的問題。

你有對語言協助服務有投訴或有關心的問題嗎？  
請聯絡語言協助服務專員。


你有對語言協助服務有投訴或有關心的問題嗎？  
請聯絡語言協助服務專員。

الذاتى فى اللغة العربية  
الذاتى فى اللغة العربية  
الذاتى فى اللغة العربية  
الذاتى فى اللغة العربية

North Carolina  
ADMINISTRATIVE OFFICE  
of the COURTS

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## Language Access Officer



**Language Access Complaint Form**

Complaints or concerns about language access services?

Submit your complaint or concern here.

The North Carolina Judicial Department is committed to removing barriers that prohibit equal access to justice by individuals with limited English proficiency. To that end, a language access officer has been appointed to receive and address concerns about language access services in the North Carolina state courts.

If you have complaints or concerns about language access services that have been provided to you, or if you have concerns about language access policies and practices within our courts, report your concerns here. Provide appropriate contact information so that we can contact you for additional information if necessary, properly investigate your complaint and respond to you.

The language access officer will address your concerns and attempt to resolve any outstanding language access issues within 30 days of submission of this form.

**NOTE:** Complete this form only if you have a formal complaint or concern about language access services. If you have general questions, contact the Office of Language Access Services at (919) 690-1407 or send an email to [OLAS@nccourts.org](mailto:OLAS@nccourts.org).

Contact Information:

First Name: \_\_\_\_\_

Last Name: \_\_\_\_\_

Address Line 1: \_\_\_\_\_

Complaint Guidelines:  
<http://www.nccourts.org/Citizens/CPPrograms/Foreign/Documents/OMB-policy.pdf>

NORTH CAROLINA ADMINISTRATIVE OFFICE OF the COURTS

Interpreting Services Available to NC Magistrates 19

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## Telephone Interpreting for Magistrates

Telephone interpreting services are available for:

- **All criminal court proceedings** where either the defendant, victim, or witnesses for either the defendant or the State are limited English proficient (LEP)
- Assisting magistrates in **responding to public inquiries** and assisting the public with general informational questions of a short duration
- **Brief matters in Small Claims Court**, such as notifying parties that a case is continued or that they should hire an OLAS qualified court interpreter



NORTH CAROLINA ADMINISTRATIVE OFFICE OF the COURTS

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## Telephone Interpreting for Magistrates

- Telephone interpreting service is **NOT** to be used for trials
- Magistrates are required to use the telephone interpreting service for NCAOC authorized matters through a contract between NCAOC and Universe Technical Translation, Inc. (UTT, Inc.)
- This service has proven to be very effective and efficient for initial appearances
- An interpreter is obtained over the telephone with the assistance of a speakerphone and **without having to delay** the defendant's initial appearance or the petitioner's filing of a 50B or 50C petition or filing of a criminal complaint

NORTH CAROLINA ADMINISTRATIVE OFFICE OF the COURTS

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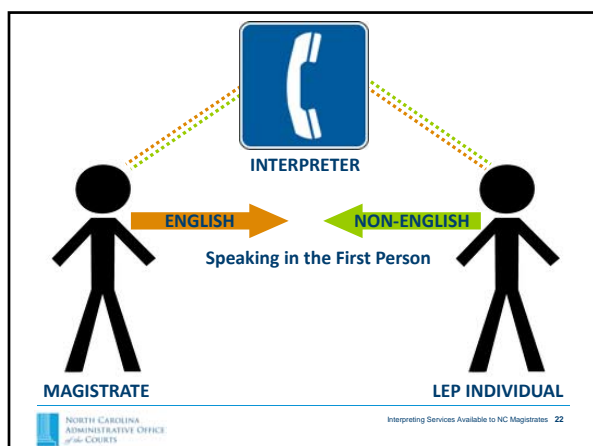
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## Language Access Accommodations for Persons who are Deaf or Hard of Hearing

The governing legal requirements for ADA accommodations:

1. NCGS Chapter 8B, and
2. Title II of the federal Americans with Disabilities Act (ADA)

**Bottom line:** Courts are required to appoint a qualified (licensed) interpreter for any deaf or hard of hearing party or witness in any proceeding, including juvenile proceedings, special proceedings, and proceedings before a magistrate.

Guidelines can be found here:

<http://www.nccourts.org/Citizens/SRPlanning/Documents/GuidelinesdeafandHH.pdf>

## Language Access Accommodations for Persons who are Deaf or Hard of Hearing

- Interpreter must be licensed and on the DSDHH website:

<http://www.ncdhhs.gov/dsdhh/directories.htm>

- Local court contacts interpreter directly to schedule service
- **Applicable AOC Form:** **AOC-G-116** includes Motion, Order of Appointment, Certification and Order Authorizing Payment. Certified copy of this form shall be submitted by the clerk to AOC for payment
- **MAGISTRATE HAS THE AUTHORITY TO MAKE THE MOTION, APPOINT AN INTERPRETER AND AUTHORIZE PAYMENT**

## Flagging Cases in NCAWARE

### MAGISTRATES ARE GATEWAYS TO THE COURT SYSTEM

If you use a foreign language interpreter – spoken or signed – for communicating with a defendant or complainant, **flag the case using the INTERPRETER NEEDED FIELD on NCAWARE** to indicate the language needed or the ADA accommodation required.

This will allow the courts to more efficiently schedule cases and more quickly schedule an appropriate interpreter or ADA accommodation for future court dates.

Magistrates are key players in court efficiency!

## Interpreter Needed Field Screen Shot

Enter Court Information and click Edit when completed.

\* Courtroom : 0001 - WILSON

\* Court Date : mm/dd/yyyy Today

\* Court Session : ☐ AM ☐ PM ☒ NC

\* Court Time : 09 : 00

\* Court Type : DISTRICT COURT

Interpreter Needed : Edit

AMERICAN SIGN LANGUAGE  
OTHER THAN SPANISH  
SPANISH

NORTH CAROLINA ADMINISTRATIVE OFFICE of the COURTS

Interpreting Services Available to NC Magistrates 28

## Interpreter Needed Field - Completed

NORTH CAROLINA COURT INFORMATION SYSTEM

ICAWARE Home > Process Search > Case Summary - Release Orders Tab > Court Info Tab

File Number: (ISSUED) - RELEASE ORDER

Defendant Name: Person True Name

Defendant	Offenses	Conditions	Additional Forms	Related Cases	Court Info
County Courthouse:	WAKE COUNTY COURTHOUSE				
Courtroom:	004A - WAKE COURTHOUSE				
Courthouse Address:	316 FAVETTEVILLE STREET ,RALEIGH,NC 27601				
Court Date:	07/25/2012				
Court Time:	09:00 AM				
Court Type:	DISTRICT COURT				
Interpreter Needed:	SPANISH				

Print Process Cancel Case Summary

NORTH CAROLINA ADMINISTRATIVE OFFICE of the COURTS

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## What Happens to this Information?

PENDING ICA INQUIRY 01 FILM

R S DOB/AGE OR FILING DATE: 070412 NC

H F

CIT#: TRIAL DATE: 10/31/12

CSLR: CSLRC: PM /DC: SP

DEF ATTY: HAIR, CAROLYN TYP: P VRA: Y

CHG/ARRN OFFN: M SIMPLE ASSAULT 14-33(A)

COMPLAINANT: CUNNINGHAM, M

CPD ISSUED: 070412 SERVED: 070412

OFFN DATE: 070412 ARRIN DATE: MOTIONS DATE: DISP DATE:

CONT: D: 01 S: 01 C: 00 NR: 00 RSON/CO: GANG REL: DV CV: IN

PLEA VER MOD \$ FINE \$ COSTS VCC REST JUDGE PAID TO-BE-PAID

CONV OFFN:

SENT LEV: SENT TYPE: CONS F/J/GMT:

PROB: WITHDRAWN: APPEALED TO SUPERIOR:

AREA CD: ACCD: HWY: V LIC: TRANS TO SUPERIOR:

COL: N CIV: N HAZ: N TRP/DIST: V ST: V TYP: APPELLATE:

NORTH CAROLINA ADMINISTRATIVE OFFICE of the COURTS

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### Why does the *Interpreter Needed* flag matter?

DISTRICT COURT CALENDAR					PAGE: 2
COURT DATE: 09/19/12		TIME: 09:00 AM		COURTROOM NUMBER: 004A	
NO.	FILE NUMBER	DEFENDANT NAME	COMPLAINANT	ATTORNEY	CONT
10	12CR 211691	SIMMONS, B	SFF APT.: ANDERSON, PHILLI		2
***** DEFENDANT NEEDS TO BE FINGERPRINTED					
BOND: \$5,000 SEC					
(M) COMMUNICATING THREATS PLEA: VER:					
CLS:1 P: L: DOM VI: Y JUDGMENT:					
(M) ASSAULT BY POINTING A GUN PLEA: VER:					
CLS:11 P: L: JUDGMENT:					
(M) MISDEMEANOR LARCENY PLEA: VER:					
CLS: P: L: JUDGMENT:					
11	12CR 214910	CUNNINGHAM, M	RFD P.D.: HAIR, CAROLYN		2
SPANISH INTERPRETER REQUIRED					
BOND: <del>\$5,000</del> SEC					
(M) SIMPLE ASSAULT PLEA: VER:					
CLS:2 P: L: DOM VI: Y JUDGMENT:					

### Interpreters for Small Claims

Until NCAOC's expansion plan is extended by the director to small claims matters, ***parties in small claims cases must bear the cost of spoken foreign language court interpreters for court proceedings at their own expense.***

#### (1) The parties can hire a court interpreter

- Please refer parties to NCAOC's *Registry of Spanish Language Court Interpreters* (on NC Courts website) as a source of available Spanish interpreters and to the Office of Language Access Services for LOTS interpreters, but they must make private arrangements with the interpreter for the payment of services

OR. . .

### Interpreters for Small Claims (cont'd)

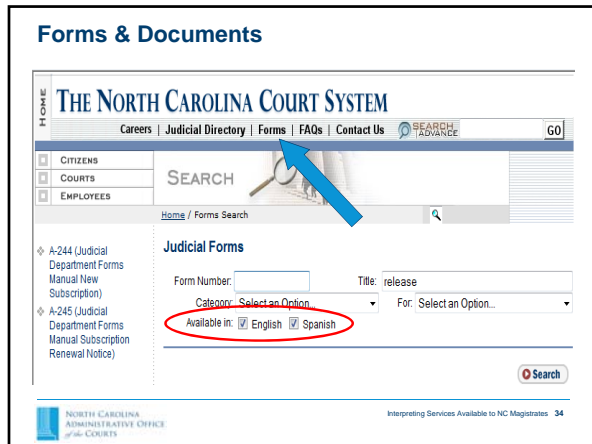
#### (2) The court may appoint an interpreter on its own motion and require the parties to bear the cost of that interpreter in whatever proportion the court deems appropriate

- AOC-G-107 Form
- Rules of Evidence 604 and 706 provide the court with this authority

*Court officials should be mindful of the importance of providing meaningful language access to LEP parties regardless of whether or not the matter falls within what the state is currently authorized to cover at state expense*



## Forms & Documents



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COURTS

EMPLOYEES

SEARCH

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Judicial Forms

Form Number: Title: release

Category: Select an Option For: Select an Option...

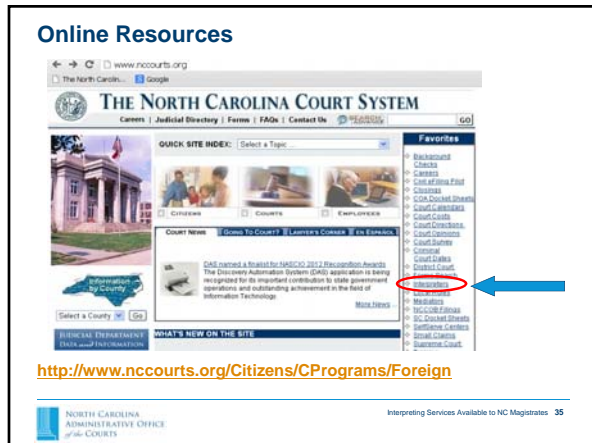
Available in: ☒ English ☒ Spanish

Search

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## Online Resources



www.nccourts.org

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COURTS

EMPLOYEES

Court News

Go to Court | Learn's Colors | In English

What's New on the Site

WHAT'S NEW ON THE SITE

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<http://www.nccourts.org/Citizens/CPrograms/Foreign>

## Final Thoughts

- Using the telephone interpreting service allows you to obtain an interpreter over the telephone **without having to delay** the defendant's initial appearance or a witness's criminal complaint
- Interpreting services help get you the **information you need**
- Interpreting services ensure **full and fair participation** and improves access to justice for LEP individuals

NORTH CAROLINA ADMINISTRATIVE OFFICE OF THE COURTS

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### Keep In Touch

NCAOC's Office of Language Access Services is here to serve the North Carolina State Court System. Please do not hesitate to contact us with any questions or issues that arise, or any input you would like to provide regarding the use of interpreters.

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# **Tab: Appendix**

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## 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**

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### **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

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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

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## **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

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**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.

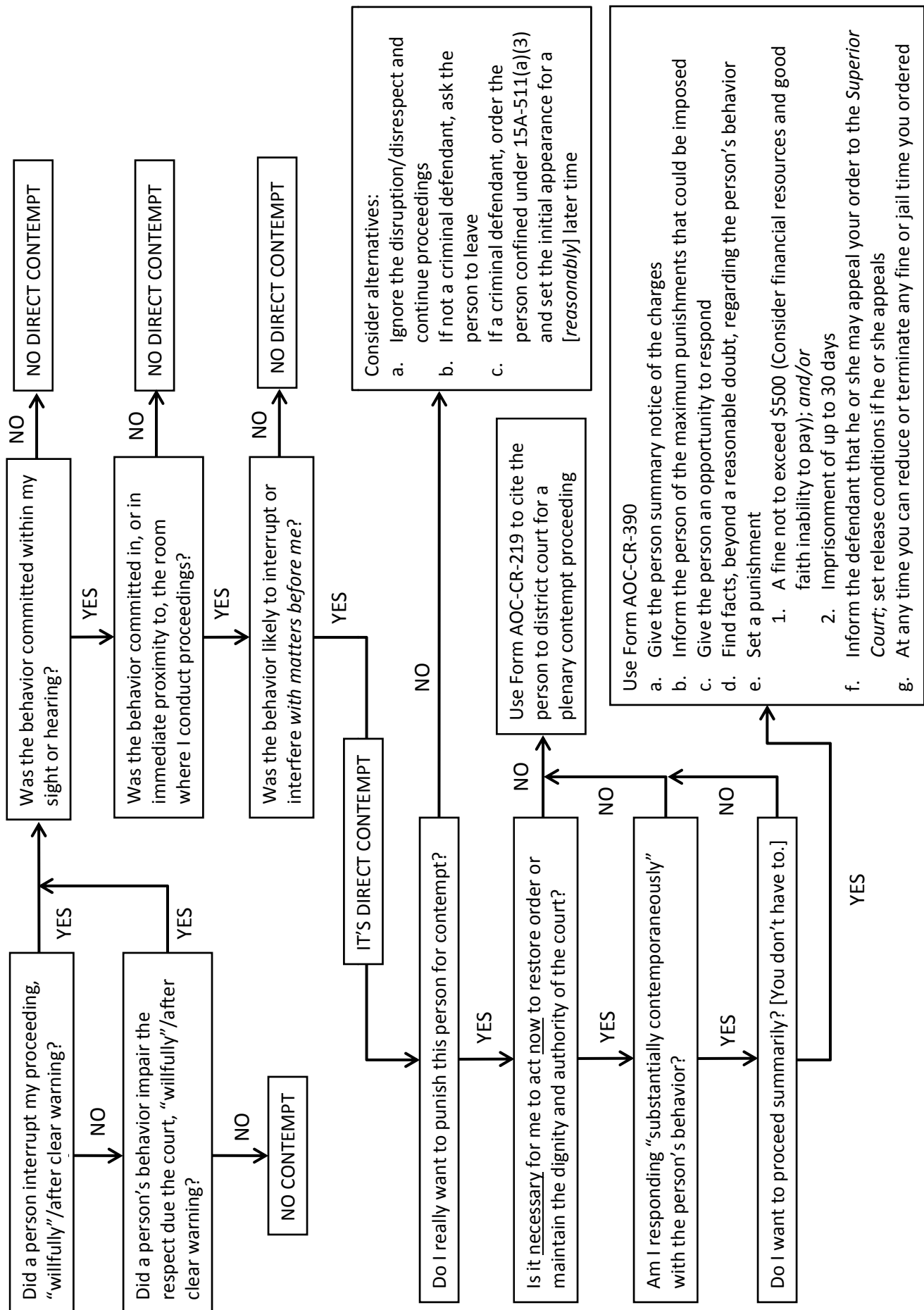
3. Violation deemed not willful

**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

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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](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).





# Basic School: Small Claims Review

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- I. Procedure
  - A. Small Claims Action
    - i. Summary Ejectment, \$ Owed, or Return of Personal Property
    - ii. \$5,000 or less
    - iii. At least one defendant must reside in county
  - B. Service of Process
    - i. Personal service by sheriff
    - ii. Certified mail, return receipt requested
    - iii. Voluntary appearance
    - iv. (SE cases only: Service by posting)
  - C. Counterclaim
    - i. Must be filed with clerk prior to time case is set for trial
    - ii. Written
    - iii. For \$5000 or less
  - D. Continuance
    - i. Both parties agree: allowed
    - ii. Motion by one party: allow only for good cause shown
  - E. Failure to appear
    - i. By defendant: Take plaintiff's testimony just as usual
    - ii. By plaintiff: dismiss with prejudice
  - F. Amendment of complaint
    - i. Freely allowed
    - ii. Usually only issue is whether defendant has sufficient notice
  - G. Voluntary dismissal (without prejudice)
    - i. Plaintiff has the right to take a voluntary dismissal at any time before conclusion of plaintiff's evidence
  - H. Entering judgment
    - i. May reserve judgment for up to 10 days
    - ii. Party may give notice of appeal in open court, or by seeing clerk
  - I. Clerical errors: judge may correct without notice to parties
  - J. Rule 60(b) motions to set aside judgment for excusable neglect
    - i. Must be authorized by CDCJ to hear these motions
    - ii. Requires notice to other party and hearing
    - iii. If motion by defendant, must also show meritorious defense

## II. Torts:

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

## III. Contracts

- A. Bargained-for exchange
- B. Contracts by minors
  - i. Voidable at the option of the minor
  - ii. Exception: contracts for necessities
- C. Statutes of limitation
  - i. Contracts for the sale of goods: 4 years
  - ii. Other contracts: 3 years
  - iii. Contracts under seal: 10 years
  - iv. NOTE: Partial payment on account starts statute running over again. A creditor who accepts partial payment of a debt does not waive the right to bring an action for the remainder of a debt.
- D. Contracts that must be in writing
  - i. Contracts for the sale of goods for \$500 or more
  - ii. Retail installments sales contracts
  - iii. Security agreements
- E. Terms of a contract
  - i. Parole evidence rule: Evidence of contract terms in the form of conversation between the parties is not allowed to change or contradict a written contract, unless
    - a. That evidence is offered to clarify a term that is vague or unclear, or
    - b. The evidence is of a modification of the written contract that occurred after the written contract was completed.
  - a. Implied terms: In contracts for the sale of goods, there is an implied term (called an implied warranty of merchantability) that the goods will be fit for the ordinary purpose for which they are used, assuming the seller is someone who sells these goods in the ordinary course of business.
- F. Parties to a contract
  - 1. Husband and wife do not have authority to bind each other to contracts, unless one is acting as an agent for the other. Marriage =agency.
  - 2. An agent does have authority to enter a contract on behalf of the principal.
  - 3. Under the theory of joint and several liability, a creditor having a contract with two debtors has the option of suing either or both for the entire amount due.

#### IV. Actions to recover personal property

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

B. By a secured party:

i. SP must prove

a. Security agreement

i) Written

ii) Signed

iii) Dated

iv) Contains a description of the property.

b. Default by defendant

c. Defendant is in possession of property.

NOTE: Amount of underlying debt is not relevant.

ii. Retail Installment Sales Act

a. Applies to consumer credit purchases in which seller finances purchase

b. Seller allowed to take security interest only in property sold, or in property previously sold by same seller and not yet paid off.

c. Attempt to take security interest in other property is void.

d. FIFO rule applies to allocation of payments when several goods bought from same seller.

#### V. Summary Ejectment

A. Procedure

i. Property manager may sign complaint, but owner must be listed as plaintiff

ii. Service by posting? No money judgment

iii. Judgment on the pleadings available if all requirements satisfied

B. Grounds

i. Breach of lease condition (forfeiture clause?)

ii. Failure to pay rent (demand/10-day wait/tender)

iii. Holding over

a. Lease ends when it says it ends

b. Month to month: 7 days

c. Week to week: 2 days

d. Year to year: 30 days

e. Special rule for mobile home lots: 60 days

iv. Criminal activity

C. Consumer Protection Laws

i. Late fees (maximum amount, agreed-to in lease, at least 5 days late)

- ii. No self-help eviction
- iii. Security deposit
- iv. Residential Rental Agreements Act  
LL has duty to keep premises in safe and habitable condition and make all repairs