

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

## Part 1: Where does law come from?

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

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

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

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

A magistrate is a judicial official holding constitutional office.

The *rule of law* has 4 components: The law applies equally to everyone.

The law is determined by a fair process.

The law is administered by competent, impartial individuals.

Rules are clear, public, stable, & just, applied evenly, and protect fundamental rights

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

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

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

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### Part 3: How Judicial Officials Make Decisions

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

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

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

*"[W]here a landowner knows that he has a tree on his property which is in a dangerous condition and which is likely to fall and injure the property of an adjoining landowner, he has a duty to eliminate such danger."*

*Rowe v. McGee*, 5 N.C. App. 60, 66, 168 S.E.2d 77, 81 (1969).

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

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

In a small claims case, the presiding magistrate must also consider possible defenses.

Defenses may be of two types:

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