This issue distributed to:

Magistrates, Clerks of Superior Court, Chief District Court Judges

ADMINISTRATION OF JUSTICE MEMORANDA

PUBLISHED BY THE INSTITUTE OF GOVERNMENT
The University of North Carolina at Chapel Hill

October 1983 **83/07**

1983 Legislation of Interest to Magistrates

Joan G. Brannon

This memorandum summarizes legislation that affects the civil duties of magistrates and is of general interest to them. Changes in criminal law have been covered in memorandum 83/06 prepared by Robert Farb. Very little noncriminal legislation enacted by the 1983 General Assembly directly affects the magistrate. The three most important bills discussed in this memorandum, which change the law of summary ejectment procedure and involuntary commitment, only indirectly affect magistrates.

Office of the Magistrate

The Judicial Department's annual appropriation for 1983-84 is approximately $89.5 million. Included in that are funds for a 5 per cent pay increase for all permanent employees. As amended, the salary schedule for magistrates is as follows:

Number of years of service	Annual salary
Less than 1	$10,440
1 or more but less than 3	11,340
3 or more but less than 5	12,396
5 or more but less than 7	13,512
7 or more but less than 9	14,760
9 or more	16,152

However, the General Assembly continued the freeze on automatic and merit increases at least until fiscal year 1984-85. The State Budget Officer has applied that freeze provision to magistrates, so that they cannot receive the increases based on years of service that the statute provides.

The current appropriations act, Ch. 761 (S 23), also amends G.S. 7A-133 to increase the maximum number of magistrates authorized for Dare, Hyde, Scotland, and Yadkin counties.

Ch. 181 (S 94), ratified early in the session, provided that a magistrate would be appointed to the Courts Commission by the Governor. Late in the session the Courts Commission was completely reorganized by Ch. 774 (H 905). It provides for a 24-member commission with one magistrate appointed by the Lieutenant Governor.

H 473, which would have given magistrates salary credit for service as an employee in a clerk of court's office or as a North Carolina law enforcement officer, never got out of the Appropriations Committee. H 353, which would have given part-time magistrates the same salary step benefits from educational experience as is given to full-time magistrates, also died in the Appropriations Committee. H 233, which would have allowed a chief district judge to appoint an administrative magistrate who could perform duties delegated to him by the judge, passed the House, was defeated on the floor of the Senate, and then through parliamentary maneuvering was returned to the Senate Law Enforcement Committee.

Court Costs

Ch. 713 (H 278) contains the first general revision of the court cost structure since 1965. In fiscal 1981-82 the

Judicial Department, through costs and fees collected, returned to the state treasury $19.4 million, or 22 per cent of the funds appropriated to the Judicial Department. Another $20 million went to the public schools from fines and forfeitures. Ch. 713 is expected to raise an additional $10 million for the state treasury from increased court costs.

New fees affecting magistrates are as follows:

District Court—Criminal	
General Court of Justice	$23
Facilities fee	5
Service fee	4
LEOB	3
Total	$35
District Court—Civil	
General Court of Justice	$22
Facilities fee	9
Service fee, per defendant	4
Total	$35
Magistrate—Civil	
General Court of Justice	$10
Facilities fee	5
Service fee, per defendant	4
Total	$19
Magistrate's Special Fees	
Performing marriage	$10
Assigning year's allowance	4
Taking a deposition	5
Acknowledgment	1
Performing any other function	1

If a party appeals a small-claims case from a magistrate to the district court, the costs of appeal will be $31, which is the district civil court costs without a service fee.

Summary Ejectment

Two bills made major changes in summary ejectment procedure. Ch. 332 (H 448), effective October 1, 1983, revises the way the sheriff must serve the summons and complaint in a summary ejectment action. In *Greene v. Lindsay* (1982), the United States Supreme Court held that to serve summary ejectment process by posting where it is likely that the process will be removed before the defendant returns does not meet the constitutional requirement of due process. The Court indicated that posting would be acceptable if the defendant was also served by first-class mail. Ch. 332 follows that recommendation.

Ch. 332 also attempts to lessen the burden on the sheriff in serving process. Current law has required a sheriff to make a diligent search to find the defendant in the county before posting the process. Sheriffs, particularly those in populous counties, have complained about the amount of time such service takes. The new act provides that the sheriff must mail a copy of the summons and complaint to the defendant, attempt to telephone him, and arrange a time to meet him to serve the process. Then he must go to the defendant's residence at the agreed-on time or, if he was unable to telephone him, at a time reasonably calculated to find the defendant home. If neither the defendant nor a person of suitable age and discretion is at the residence when the sheriff arrives, the sheriff may post the process. He need not make several trips to the residence before posting. The new law also requires the clerk to set the summary ejectment trial date within ten rather than five days after issuing the summons.

Ch. 672 (H 937) sets out a new procedure for sheriffs to follow when carrying out a writ of ejectment. Many sheriffs were uncomfortable with setting out a tenant's personal property. They sought a statewide procedure based on a procedure followed for many years in Guilford County. Ch. 672 allows the sheriff either to lock the premises on request of the landlord or to have the property removed and stored at a warehouse at the landlord's expense. The sheriff must either mail or deliver to the defendant a notice of the approximate time at which he will carry out the ejectment. Ch. 672 will also prevent the landlord from holding the judgment or writ of ejectment over the tenant's head to assure future rent payments. Some landlords issued the writ of ejectment and then asked the sheriff to hold off serving it because they think they will get their back rent. The new law requires the sheriff to carry out the ejectment within seven days after receiving the writ. (The language in the statute is unclear and could be interpreted to require the notice to the tenant be served within seven days rather than the writ.) Another common practice has been for landlords to recall a writ of ejectment when the tenant pays back rent but not indicate to the clerk that the judgment has been satisfied; later, when the tenant again failed to pay rent, the landlord reissued the writ without having to file another lawsuit. Ch. 672 will correct this practice also. A landlord who wants to recall a writ will have to give the sheriff a written statement that the tenant has paid the money owed. The sheriff attaches the statement to his return; when the clerk receives the return, he must mark the judgment satisfied. The landlord will have to file another lawsuit to evict the tenant for a future failure to pay the rent.

Small-Claims Procedure

Ch. 332, discussed in the section on Summary Ejectment, made another major change in service of process that affects *all* small-claims cases, not just summary ejectment cases. To be able to serve process in small-claims cases by certified mail, the plaintiff has been required to

request certified mail service by the clerk; the clerk then must mail the process to the defendant, and service is completed when the receipt signed by the defendant is returned to the clerk. Certified mail is rarely used because plaintiffs do not know that it is available, and clerks do not encourage its use because they do not have time to handle all the extra mailings. Rule 4 of the Rules of Civil Procedure allows the plaintiff himself to mail process by certified or registered mail if he chooses that method of service. Another difference between Rule 4, which provides for certified or registered mail service in district and superior court cases, and the statutory service required in small-claims cases lies in who must sign the postal receipt in order for the service to be valid. The small-claims statute requires that the receipt be signed by the defendant himself. In 1981 the General Assembly provided that in service under Rule 4, anyone other than the defendant who signs the receipt is presumed to be an agent of the addressee who is authorized to receive process or a person of suitable age and discretion who resides in the defendant's dwelling. Achieving service by certified or registered mail is easier under Rule 4 than under the statutory small-claims procedure. Ch. 332, effective October 1, 1983, provides that small-claims summons and complaints may be served by certified or registered and superior court cases. A plaintiff who serves by certified or registered mail proves service by filing with the clerk an affidavit of service with the postal receipt attached. The affidavit must state (1) that a copy of the summons and complaint was deposited in the post office for mailing by certified or registered mail, return receipt requested; (2) that it was in fact received as evidenced by the attached registry receipt or other evidence of delivery; and (3) that the genuine receipt or other evidence of delivery is attached. If the plaintiff uses certified or registered mail service, the magistrate will find an affidavit of service in the case file rather than a sheriff's return of service.

G.S. 7A-211.1 allows magistrates to hear motor vehicle lien cases where service of process was had by publication. Effective January 1, 1984, Ch. 679 (H 436) requires that when a plaintiff serves process by publication, he must publish the process in a newspaper circulated in the county where the party to be served is believed to be located. If the serving party has no reliable information about the location of the party to be served, the notice may be published in the county where the small-claim action is filed.

Hearings for Persons Whose Vehicles Were Towed

Ch. 420 (H 1061) rewrites the law regarding hearings given to persons whose cars are towed by order of a law enforcement officer. In 1981 the General Assembly enacted a similar law but gave it an expiration date of June 30, 1983, because the legislature recognized that the act had some problems that needed working out. Ch. 420, the new statute, makes few changes in the towing hearing procedure that magistrates will follow. Basically, its main effect is to expand coverage of the law to all towings by any law enforcement officer except towings of vehicles being held as evidence of a crime, for forfeiture, or under an execution on a civil judgment. Universities, cities, and counties that do their own towing and collect their own towing charges may adopt their own hearing procedure and not use the magistrate if they choose. But universities, cities, and counties that have a private tower tow the vehicle and collect the expenses of the towing must use the statutory hearing procedure. The new law requires law enforcement officers to give a notice of towing and of the right to a hearing to the registered owners of any car towed. If the car has no valid registration plate and its owner cannot be determined, the officer must place a notice of towing on the car at least seven days before he tows it unless it is parked in a place where it constitutes a hazard.

Involuntary Commitment

One difficult and frustrating problem in the mental health system is dealing with revolving-door patients. These are the chronically mentally ill persons who, when they become dangerous to themselves or others, are involuntarily committed to the state mental hospitals. In the hospital such a patient is stabilized relatively quickly with medication. Current law requires that he then be released because he is no longer dangerous. But after his release he discontinues his medication and slowly deteriorates until he again becomes dangerous to himself or others and is again involuntarily committed. Some patients repeat this cycle every few months or once a year and are therefore called revolving-door patients. They cause tremendous frustration among family members and professionals who treat them. The reasons these patients stop taking their medication or receiving treatment vary. Some may not understand why they need to visit the mental health center or take the medication; others may feel so good that they think that taking their medication is no longer necessary, not realizing that it is the medicine that contributes to their well-being. Still others may not have the means to get to the clinic or to pay the costs, or they may not have enough support from family and friends to survive outside a structured environment. Finally, some patients simply refuse to participate in treatment. Ch. 638 (H 124) is an effort to reach all but the last type of these patients at a stage earlier than when they become dangerous and need to be involuntary committed or to help them when they are no longer dangerous but still need treatment.

The new law, which was recommended by the Mental Health Study Commission and takes effect January 1, 1984, will allow certain patients to be involuntarily committed to an outpatient commitment in their home community

before they become dangerous and will allow others to be kept on outpatient commitment after they are released from a mental hospital as long as necessary to keep them from becoming dangerous. Outpatient treatment is defined broadly to cover not only medication but also other services that these patients may need, such as therapy, day programming activities, and supervision of living arrangements. The new law *does not change the magistrate's role* in involuntary commitments. Before issuing a custody order, the magistrate must find that a respondent is mentally ill or inebriate and dangerous to himself or others. Then the physicians will decide whether the respondent meets outpatient or inpatient criteria. The new law will require the examinations by the local mental health center's physician and the inpatient facility's physician to include an assessment of the patient's current mental illness, previous illness, and treatment history if available; the patient's dangerousness to himself or others; his ability to survive safely without hospitalization, including the availability of supervision from family, friends, or others; and his capacity to make an informed decision concerning treatment. Current law will still be followed if both the local physician and the inpatient physician determine that the patient meets the criteria for inpatient commitment. If either the local physician or the hospital doctor determines that the patient meets the criteria for outpatient commitment, the patient will be released and told to go to the local mental health center for treatment. A hearing will be held in the district court in the county where the involuntary commitment began. The criteria for outpatient commitment are (1) the respondent is mentally ill; (2) he can survive safely in the community with available supervision from family, friends, or others; (3) his treatment history indicates that he needs treatment in order to prevent further disability or deterioration that can be predicted to result in dangerousness; and (4) his current mental status or the nature of his illness limits or negates his ability to make an informed decision to seek or comply with recommended treatment voluntarily. The respondent is not entitled to counsel at the district court hearing to determine whether outpatient commitment is appropriate unless the judge determines that (a) the legal or factual issues raised are so complex that counsel is needed, or (b) the respondent cannot speak for himself. The proposed outpatient physician need not be present at the hearing. Some other representative of the physician may be present to provide testimony. Medical reports are admissible into evidence. If the judge finds by clear, cogent, and convincing evidence that the respondent meets outpatient commitment criteria, he may order the respondent committed for up to 90 days. The new provisions differ from current law in that at the end of 90 days the respondent may be recommitted for another 180 days if he continues to meet the criteria for outpatient commitment. If he fails to comply with his treatment, the physician must make reasonable efforts to get his compliance; failing to obtain compliance, the physician may request that the clerk issue an order for a law enforcement officer to take the respondent into custody and bring him to the physician for examination. Ch. 638 prohibits physically forcing medicine on a respondent or forcibly detaining him for treatment unless he poses an immediate danger. The hope is (a) that most patients will not refuse treatment, and (b) that a patient who will not voluntarily seek treatment will accept it when placed under a court order.

A key part of Ch. 638 is an accompanying new law, Ch. 864. The area mental health programs were greatly concerned that the outpatient commitment law would give them new responsibilities without additional money to finance these responsibilities. Ch. 864 appropriates $250,000 to DHR to implement the first six months (January-July 1984) of the outpatient commitment program. The funds are to be allocated to the local programs on the basis of outpatient caseload. Each area program will be reimbursed $2,000 per year for each outpatient it handles. The General Assembly's hope was that the appropriation would encourage area programs to make a variety of services available for these chronically mentally ill patients.

Two years ago the General Assembly enacted a law that set out special procedures for involuntarily committed persons who had been charged with a violent crime and had been found not guilty by reason of insanity or incapable of proceeding. Those persons could be released only by a judge after a hearing; notice of their rehearings had to be given to the chief district court judge, the clerk of superior court, and the district attorney in the county where the respondent was found not guilty by reason of insanity or incapable of proceeding. Any person could have the place of those hearings transferred back to the county where the commitment proceeding was begun. Through oversight, those special procedures did not apply to the respondent on his initial hearing on commitment but applied only to any rehearings. Ch. 380 (S 75), effective October 1, 1983, corrects that deficiency and makes the same rules apply to the respondent on his first hearing.

Ch. 380 also corrects another problem. When a person is found incapable of proceeding, present law requires that some person appear before a magistrate for a determination of whether there is probable cause to believe that the respondent meets the criteria for commitment. When a defendant is found not guilty by reason of insanity, present law is not clear on who is responsible for determining whether he meets the criteria for involuntary commitment. As a result, in some instances defendants who have been found incapable of proceeding have never had an involuntary commitment determination. In other cases defendants who should have been committed subject to the special procedures for persons charged with violent crimes and found not guilty by reason of insanity or incapable of proceeding were not specifically committed on this basis because the magistrate who signed the order to take the respondent into custody had not been told about the cir-

cumstances under which commitment was sought and therefore had not indicated on the custody order that the defendant was being committed after having been charged with a violent crime and found incapable of proceeding or not guilty by reason of insanity. To correct these problems, Ch. 380 will require that when a defendant is found incapable of proceeding or not guilty by reason of insanity, the judge who presides at the trial or who rules that the defendant is incapable of proceeding shall determine whether there are reasonable grounds to believe that the defendant meets the criteria for involuntary commitment. If he determines that there are such grounds, he is to issue the custody order normally issued by the magistrate and indicate on the custody order whether the respondent had been charged with a violent crime so that the district court judge who presides at the involuntary commitment proceeding, if he commits the respondent, will know to carry forward on the commitment order the finding that the respondent was found not guilty by reason for insanity or incapable of proceeding after having been charged with a violent crime. Another important change in the procedure is that if the judge issues a custody order for a respondent who had been charged with a violent crime, the respondent will be taken directly to the regional hospital, bypassing the local doctor.

Several law enforcement departments have long complained about their responsibilities for transporting patients under the involuntary commitment law. This duty presents particular difficulty for sheriffs' departments with few deputies when the regional hospital is some distance away. Ch. 138 (H 288) allows the city or county governing board to designate other public or private agency personnel or volunteers to provide the transportation. Former law allowed the county or city to contract with private ambulance services to provide transportation or to appoint some other city or county official to handle transportation. Ch. 138 expands the law to allow any public or private agency or any volunteer to be designated, so that—for example—the area mental health authority or a volunteer group could contract to provide transportation if it wanted to do so. Any affected agency and the area authority must participate with the governing board in developing a new transportation plan.

Consumer Credit Legislation

Ch. 126 (H 336) changed the interest rate that may be charged by some finance companies. Finance companies may organize themselves as small-loan lenders or optional-rate lenders. The provisions governing small-loan lenders were not changed; they may lend up to $3,000 to any one person and may charge interest at the rate of 36 per cent per annum on that part of the unpaid balance of any loan not in excess of $600 and 15 per cent per annum on the remaining unpaid balance. Rates for optional-rate lenders were changed. Formerly, optional-rate lenders could make loans of not more than $5,000 and charge interest at the latest published noncompetitive rate for U.S. Treasury bills with a six-month maturity plus 6 per cent or 16 per cent, whichever is greater. Effective May 30, 1983, optional-rate lenders may make loans of not more than $10,000. If the loan is $7,500 or less, optional-rate lenders may charge 30 per cent per annum on the unpaid principal balance not exceeding $1,000 and 18 per cent per annum on the remainder of the unpaid principal balance. If the loan is for more than $7,500, optional-rate lenders may charge 18 per cent per annum on the outstanding principal balance.

Ch. 126 also amends G.S. 24-11(a) to allow the imposition of an annual charge not to exceed $20 for open-end credit cards issued by someone other than the seller (i.e., VISA or Mastercharge cards).

Ch. 417 (H 752) amends G.S. 75-56 to allow the presiding judge to award reasonable attorney's fees against the losing party in an action for unfair debt-collection practices. The judge must find (1) that the party charged with the violation has willfully engaged in the act or practice, and there was an unwarranted refusal by such party to resolve fully the matter that constitutes the basis of the suit, or (2) that the party that instituted the action knew, or should have known, that the action was frivolous and malicious.

Formerly, contracts for bailments or leases were included under the Retail Installment Sales Act if they called for the bailee or lessee to pay an amount equivalent to the sales price; and for no other or nominal consideration, the bailee or lessee has the option to become the owner of the goods after complying with the contract. Ch. 686 (H 545) expands the coverage of bailments and leases under the Retail Installment Sales Act to include terminable bailments or leases of goods or services in which the bailee or lessee (1) may renew the contract periodically; (2) at the end may buy the property for no other or nominal consideration; and (3) the dollar total of the specified number of payments necessary to exercise the purchase option is more than 10 per cent in excess of the aggregate value of the property and services involved. Ch. 686 then sets out the requirements for an advertisement of a terminable bailment or lease. Such advertisement must include (1) a statement that the transaction advertised is a lease; (2) the total amount of periodic payments necessary to acquire ownership or a statement that the consumer has the option to purchase the property and at what time; (3) that the consumer acquires no ownership rights if either the property is not leased for the term required or the terms of purchase are not otherwise satisfied. The advertisement must clearly and conspicuously state whether the consumer may terminate the lease at any time without penalty and that the consumer acquires no ownership rights if either the property is not leased for the term required or the terms of purchase are not otherwise satisfied. A buyer damaged by improper advertising may recover damages and reasonable attorney's fees.

Uniform Wildlife and Boating Fines

The judicial system and the Wildlife Commission have received many complaints from citizens about the fact that those charged with minor wildlife and boating offenses may not mail in payments of fines. For instance, a resident of Jones County who was charged with a minor hunting offense in Swain County would have to drive to Swain County to appear before a magistrate or district court judge to enter his plea of guilty. Ch. 586 (H 1214), effective January 1, 1984, will allow magistrates and clerks to accept written appearances, waivers of trial, and pleas of guilty to boating, hunting, and fishing violations in accordance with a uniform schedule of fines issued by the chief district judges. Minor wildlife and boating offenses will then be handled like minor traffic offenses. Magistrates will be given a list of offenses for which they can accept written appearances, waivers of trial, and pleas of guilty and the fines to be assessed for such violations. The fines for these violations will be uniform throughout the state.

A total of 960 copies of this public document were printed by the Institute of Government, The University of North Carolina at Chapel Hill, at a cost of $195.74, or $.20 per copy. These figures include only the direct costs of reproduction. They do not include preparation, handling, or distribution costs.