Magistrates,
Clerks of Court,
Chief District
Court Judges

Administration OF JUSTICE Memorandum

Published by the Institute of Government, The University of North Carolina at Chapel Hill

October 1985 No. 85/03

1985 Legislation of Interest to Magistrates

Joan G. Brannon

This memorandum will discuss legislation enacted by the 1985 General Assembly that is of general interest to magistrates and affects small-claims trials and miscellaneous functions of magistrates. A separate memorandum by Robert Farb and Benjamin Sendor will cover the criminal law changes of interest to magistrates.

Salaries and Benefits

While most state employees received a 5 per cent cost-of-living pay increase in 1985, Ch. 698 (H 1218) increased salaries for magistrates by 10 per cent and added a new top pay scale of 11 years and over. The current salary for magistrates, effective July 1, 1985, is:

Number of years of service	Annual salary
Less than 1	$12,764
1 or more but less than 3	13,424
3 or more but less than 5	14,804
5 or more but less than 7	16,316
7 or more but less than 9	17,984
9 or more but less than 11	19,808
11 or more	21,800

Since the unified court system was established in 1965, magistrates who were assigned to duty for less than forty hours a week paid into the state retirement system and were eligible for state benefits just as other full-time state employees were. In 1977, when the magistrate's salary was set in the statutes and was based on length of service, the General Assembly distinguished, for salary purposes, between "full-time" and "part-time" magistrates. Two years ago the State Treasurer, on discovering the statutory distinction, queried whether magistrates designated "part-time" for salary purposes would be covered by the benefits of the Teachers and State Employees Retirement System (TSERS), since that system does not apply to part-time employees. The General Assembly resolved the issue in Ch. 698, which provides that all magistrates will continue to be covered by TSERS and the state health insurance coverage program.

Ch. 479 (S 1) changes the formula for retirement for all employees under TSERS. Effective July 1, 1985, a state employee who (1) is at least 65 years of age, (2) has completed at least 30 years of creditable service, or (3) is at least 60 years of age and has completed 25 years of creditable service may retire with an allowance equal to 1.58 per cent (formerly 1.57 per cent) of his average compensation in the four highest-paying years of his service, multiplied by the number of years of his creditable service. Retirement at an earlier age or with fewer years of service results in reduced benefits.

Ch. 479 also increases the maximum number of magistrates for Buncombe County from 13 to 14. No new positions for magistrates are specified in the budget, but the Administrative Office of the Courts received an ap-

propriation for new personnel of about $500,000, some of which may be used for additional magistrate positions if needed.

In recent years the General Assembly has been interested in developing methods of resolving disputes other than litigation. This year it continued to fund dispute-resolution centers in Buncombe and Orange counties and the child-custody mediation program in Mecklenburg County. It also funded dispute settlement centers in Winston-Salem and Guilford County. A Task Force Report on dispute resolution prepared by the North Carolina Bar Foundation recommended that a pilot project of court-ordered arbitration be established in three judicial districts. Ch. 698 implements this recommendation. It authorizes the Supreme Court to enact rules establishing pilot programs in three districts selected by the Court. The programs will require mandatory, nonbinding arbitration in all cases involving claims for money damages of $15,000 or less. Any party dissatisfied with the result reached by the arbitrator will have the right to a trial de novo. The Court is responsible for evaluating the program and for reporting the results to the General Assembly. No state funds may be used to implement the program; funding is to come from "willing private sources" sought by the Court.

Small Claims

Jurisdiction and Procedure

Beginning October 1, 1985, the maximum amount in controversy in small-claims cases will be increased from $1,000 to $1,500 (Ch. 329, H 379). As introduced, H 379 would have increased the amount to $2,000, but at the last minute the General Assembly agreed to a reduction when told that an increase would require the funding of numerous new magistrate positions to handle the expected increase in workload that would occur with a doubling of the jurisdictional amount. In 1984-85 magistrates disposed of over 200,000 small-claims cases; Ch. 329 will likely result in an increase in that number by 1986-87—the first full fiscal year of operation under the new jurisdictional amount.

In 1981 G.S. 7A-228 was rewritten to provide that any appeal from small-claims court, whether given in open court or in writing, must be given to the magistrate and that the magistrate must note the appeal on the judgment. In order to perfect an appeal, within 10 days after the magistrate rendered judgment the appellant had to give notice of appeal, pay the $31 appeal costs, and serve a written notice of appeal on the clerk and all parties to the action. Ch. 753 (H 1118) modifies the appeals procedure to make it conform to other appeal procedures. After October 1, an appeal may be either given orally in open court to the magistrate or be given in writing to the clerk of superior court within ten days after the judgment is rendered. If the appeal is made in open court, the magistrate must note it on the judgment; if it is made in writing, the clerk must note the appeal on the judgment. Ch. 753 requires that a copy of a written appeal filed with the clerk also be served on all parties. Notice of appeal may be given by first-class mail addressed to the other parties or their attorneys if they were represented by an attorney at the small-claims trial. The new law gives the appellant 20 days instead of 10 days after entry of judgment in which to pay the costs. Failure to pay the costs within 20 days results in an automatic dismissal of the appeal; the resulting consequence is that the small-claims judgment is affirmed. Ch. 753 applies only to court costs to appeal and does not amend the requirement for a bond to stay execution of the judgment. A defendant who appeals must put up any bond required to stay execution within 10 days after judgment is rendered in order to avoid having the judgment carried out while the case is on appeal. (G.S. 1A-1, Rule 62 grants an automatic stay for ten days.) Under G.S. 7A-227, if the judgment awards money damages, it is automatically stayed upon appeal without the appellant's having to put up a bond. However, appeal from a judgment does not stay execution if the judgment is for the recovery of specific personal property or for the recovery of real property in a summary ejectment action. In those cases, the appellant must file with the clerk the undertakings required by G.S. 7A-227 and G.S. 42-34 in order to stay execution. For example, a magistrate awards possession to the landlord in a summary ejectment case on August 10, and the tenant gives notice in open court that he wishes to appeal. The tenant has until August 30 to pay his $31 costs of appeal to the clerk. But if the tenant has not signed the undertaking required by G.S. 42-34 (to pay rent as it becomes due to the clerk) by August 21 and on that date the landlord asks the clerk to issue an order to evict, it is proper for the clerk to issue the order. If the tenant pays the $31 appeal costs to the clerk by August 30, he will be entitled to have his appeal heard by the district court judge but will not be entitled to continue living in the premises while the case is on appeal.

Interest Rates

For breach-of-contract cases filed on or after October 1, Ch. 214 (H 234) provides that the contract rate of interest will be assessed on the principal amount owed from the date of the breach and the judgment (which under prior law has drawn interest at the legal rate) will continue to draw interest at the contract rate. If the parties have not provided for a rate of interest in the contract, the principal amount bears interest at the legal rate, which is 8 per cent per year. Because of the new law, a judgment based on breach of contract must show the date of the breach and the rate of interest allowed by the contract—or if none, the legal rate of interest. However, for finance companies a specific statute [G.S. 53-173(c)] specifies that a judgment for money owed will draw interest at 8 per cent. Therefore, for finance companies, prejudgment interest will be at the contract rate and postjudgment interest will be at 8 per cent. An example of

how the new law will work is as follows: An action is brought by a merchant who has sold goods on a revolving charge account. The contract between the merchant and the buyer specified that the interest rate would be 1½ per cent per month (18 per cent per year); the account was due on January 1, 1985; it was not paid; suit was filed on July 1, 1985; at the trial on August 1, 1985, the merchant proves his case by the greater weight of the evidence. The magistrate awards a judgment of $200 principal; $21 interest (8 months). The $200 principal amount will continue to draw interest at the rate of 18 per cent per year. The clerk, not the magistrate, will figure the dollar amount of interest due after judgment is entered on the basis of the rate of interest specified in the judgment.

In cases not based on breach of contract, such as negligence actions, the judgment will draw interest on compensatory damages awarded from the date the action is instituted rather than the date the judgment is entered. The clerk will automatically figure the interest in those cases, and magistrates need not worry about computing interest.

Ch. 663 (H 1059) amends G.S. 24-1.1(3) and -1.2(2a) to allow banks and lenders other than finance companies to provide for variable-rate loans for loans made after July 9. Thus a bank could lend money and provide in the contract that the interest rate would vary monthly and be based on the monthly rate set by the Commissioner of Banks. In such cases, the magistrate should make sure that the creditor proves the dollar amount of interest owed at the time the judgment is entered rather than giving the various monthly rates of interest applicable from breach until judgment. However, with the new interest bill discussed in the paragraph above, it will be important for magistrates to specify in the judgment what the contract provides as to interest rate so that the clerk can properly calculate the interest on the judgment.

Ch. 755 (H 818) allows lenders, other than finance companies, to charge a late-payment charge of up to 4 per cent of the amount past due for payments at least 15 days past due. (Finance companies are governed by G.S. Chapter 53, which prohibits those who lend up to $3,000 from assessing a late fee and allows those who lend up to $10,000 to charge a late fee of 5 per cent.) If a late-payment charge is deducted from a payment made on the loan and the deduction results in a subsequent default on a subsequent payment, no late-payment penalty may be imposed for the subsequent default. A late payment charge is waived unless, within 45 days following the date on which the payment is due, the lender either collects the late payment charge or sends a written notice of the charge to the borrower.

Worthless Checks

Beginning October 1, Ch. 643 (S 442) will allow a payee of a check (one to whom the check was written) to recover treble damages in civil actions to collect on a check returned for insufficient funds if the check writer does not pay the amount due within 30 days after a written demand for payment is made. The new law requires the written demand to include (1) a description of the check and the circumstances of its dishonor; (2) a demand for payment and a notice that a lawsuit will be filed for treble damages if payment is not received within 30 days. The demand must be mailed by certified mail to the defendant at his last known address. It does not require that the letter be mailed with a return receipt requested. The statute is satisfied when the letter is mailed, not when or if it is received. At the small-claims trial, the payee must prove that (1) the check was dishonored because of insufficient funds, (2) the check writer knew when he wrote the check that there were insufficient funds in the account, and (3) the checkwriter did not pay the amount in cash within 30 days after written demand was made by certified mail. If these three elements are proved, in addition to the amount of the check, the plaintiff is entitled to $500 or three times the amount owing on the check, whichever is less, but not less than $100. Thus if the check was for $25, the magistrate would award $125 damages—$25 for the check and $100 (the statutory minimum) for treble damages. If the check was for $100, the award would be $400—$100 for the check and $300 treble damages. And if the check was for $800, the award would be $1,300—$800 for the check and $500 (the statutory maximum) for treble damages.

The new law specifies three affirmative defenses to the action: The defendant must prevail if he proves that (1) full satisfaction of the amount of the check was made before the lawsuit was begun; (2) the bank made an error in dishonoring the check; or (3) the person who accepted the check knew when he did so that there were insufficient funds on deposit to cover it.

The law also provides that the magistrate may waive all or part of the treble-damages part of the award on finding that the defendant's failure to satisfy the dishonored check was due to economic hardship.

Ch. 643 also allows the magistrate to award to the prevailing party a reasonable attorney's fee for the duly licensed attorney who represented him in an action based on the return of a check for insufficient funds. The awarding of the fees is discretionary. What is reasonable may be determined by the magistrate; no statutory percentage of the award is specified as a reasonable attorney's fee.

Deleted from G.S. 6-21.3 is the requirement that the magistrate add $10 to the total sum of the award to defray the costs of processing the returned check. Apparently that fee may no longer be collected as part of the civil action on a worthless check; the treble damages provision is intended to replace the award of $10. G.S. 25-3-512 continues to allow a merchant to charge a processing fee, not to exceed $10, for checks on which the bank refuses payment because of insufficient funds or because the maker did not have an account at the bank at the time the check was

presented if in the immediate vicinity of the cash register and in plain view of anyone paying for goods or services by check, the merchant posted a sign no smaller than 8 x 11 inches stating the amount of the fee that would be charged for returned checks. If the check writer goes to the merchant to pay the check before a lawsuit is filed, the merchant is entitled to collect, in addition to the amount of the check, the processing fee.

If a merchant has sought to recover the worthless check through the criminal process, he may also file a civil lawsuit to recover the check until the time that he has recovered the amount of the check under the criminal process (as part of restitution). No civil action may be brought after the check was collected through restitution because the treble-damages provision of G.S. 6-21.3 does not apply if the check is paid before the civil action is filed. However, the payee may pursue both civil and criminal remedies at the same time. For example, Roberts writes a check to the Kroger Food Store for $57.00; the check is dishonored for insufficient funds; by certified mail, Kroger sends Roberts a written demand for payment; 30 days later Kroger files a civil action and on the same day proceeds to have a criminal arrest warrant issued; before the civil trial, the defendant pleads guilty to the criminal offense and pays the amount of the check; at the civil trial, Kroger wants $171 for the treble-damages portion of his suit. Is Kroger entitled to treble damages even though the amount of the check has been paid as part of restitution? In my opinion, yes. Ch. 643 provides that the treble-damages provisions apply notwithstanding any criminal sanctions that may apply. Therefore, when the payee in the civil case proves the three required elements, he is entitled to treble damages even though the amount of the check was paid as part of restitution in the criminal case. In fact, if the defendant plead guilty in the criminal case, that plea would provide proof in the civil case of the element of knowing that the check was insufficient when it was made.

Motor Vehicle Liens

When a garageman repairs or stores a motor vehicle, the law gives him a lien in the car for the repair or storage costs, thereby allowing him to hold the car and sell it to satisfy the lien if the owner does not pay the repair or storage costs. Current law allows a vehicle owner who contests the amount owed to the garageman to file a civil action and get immediate possession of the car by posting with the clerk a bond of double the value of the lien or a cash bond of the amount of the lien. But it does not set out any procedures for implementing the procedure. Attorneys for vehicle owners told legislators that it is very difficult to follow current law and to get garagemen to release vehicles even after money is paid to the clerk. Ch. 655 (H 1082), which becomes effective on January 1, 1986, sets out a procedure to make that provision workable. It eliminates the provision that enables the vehicle owner to post a bond; instead, he must post a cash amount equal to the claimed lien. It provides that when the owner files his complaint in an action to recover possession, the amount of the lien is the amount in controversy, not the value of the vehicle. In the complaint, the owner may ask for immediate possession and must set forth the total amount of the garageman's lien and the amount he disputes. For example, if the garageman has told the owner that the cost of relining the brakes is $600 and the owner believes the cost should only be $250, he would put down $600 as the total amount of the lien and $350 as the disputed amount. The garageman has three days after being served with the complaint to file with the court a statement that the amount stated by the owner is incorrect. Although the new law does not specify, presumably if the garageman files the statement, the clerk will establish the lien at the amount stated by the garageman and require the vehicle owner to deposit that amount. If no statement is filed, the amount stated by the owner is taken to be correct, and that is the cash deposit required by the clerk. The clerk will then issue an order to the garageman to turn the car over to the owner immediately. The garageman may have the clerk disburse to him the undisputed portion of the cash bond—$250 in the example used above. Then, at the trial of the civil action, the magistrate must determine whether the garageman was entitled to a lien—and if so, for how much. The magistrate must decide which party is entitled to the undisputed portion of the bond and order disbursement of the remaining funds accordingly. For example, if he finds that the owner contracted to have his brakes relined, that nothing was said about the cost, and that $600 was a reasonable charge for that service (in implied contracts, the person who provides services is entitled to recover the reasonable costs of the services), the magistrate would find that the garageman was entitled to a lien for $600 and had already been paid $250 by the clerk, and he would order the clerk to disburse the remaining $350 to the garageman. On the other hand if the magistrate found that the reasonable costs of relining the brakes was $400, he would order $150 disbursed to the garageman and $200 to the vehicle owner.

Ch. 655 includes another section that will change the way actions to enforce motor vehicle lien cases are heard. This action—opposite of the one discussed in the paragraph above—is brought by the garageman who wants to enforce his lien and sell the car. Currently, the Division of Motor Vehicles (DMV) requires the garageman to get a court order to enforce his lien if DMV is unable to notify the vehicle owner by certified mail of the garageman's intent to sell the vehicle. Court orders are acquired now by bringing small-claims actions to enforce the lien. After January 1, garagemen will be able to enforce their liens through a simplified special proceeding before the clerk. Magistrates are likely to see a reduction in the motor vehicle lien cases they hear.

Landlord-Tenant Law

Several changes were made in landlord-tenant law, but only one directly affects the magistrate. Ch. 541 (H 1070) amends G.S. 42-14 to provide that when a tenancy involves

the rental of a mobile home space, either party must give 30 days' notice before the end of the current rental period to terminate the periodic tenancy unless the lease provides otherwise. For example, suppose tenant and landlord enter into a month-to-month tenancy for a mobile home space. If the landlord wishes to end the tenancy, he must give the tenant thirty days' notice before the end of the month. Prior law would have required only one week's notice. Ch. 541 took effect July 1, 1985, and applies to leases entered into after that date. For periodic tenancies, the provision would apply at the beginning of the next period (week or month, depending on the tenancy) beginning after July 1. For example, it would apply to a month-to-month tenancy for a mobile home space for the term beginning August 1.

Ch. 102 (H 109) amends the statute governing service of the summons in summary ejectment cases to allow, rather than require, the sheriff to attempt to telephone the defendant before serving a summons.

Many landlords have been concerned at the expense involved in removing a tenant from the premises after getting a judgment for ejectment from a magistrate. Before October 1, the landlord had to leave the property on the premises, returning it to the tenant on request; or store the property for the tenant (paying one month's storage fee); or if the property was worth $100 or less, donate it to charity. Ch. 612 (H 1207), effective October 1, 1985, gives the landlord another option: The landlord may now deliver property worth $500 or less left on the premises by the tenant for 10 days to a nonprofit organization that regularly provides free or nominal-cost clothing and household furnishings to people in need. The nonprofit organization must separately store the property for 30 days, during which time the tenant may claim it. The new provision will give landlords an inexpensive way of removing property left on the premises when the tenant vacates or when the sheriff padlocks the premises under a writ of possession.

Involuntary Commitments

Ch. 589 (S 58) repeals General Statutes Chapter 122—mental health laws—and replaces it with a new G.S. Chapter 122C, effective January 1, 1986. The new law—a recodification of former law—is primarily a reorganization of present law, with outdated language rewritten and outmoded provisions repealed. However, it does make some changes in the involuntary commitment law that affect magistrates. Perhaps the most important change deals with the criteria that must be found before a custody order may be issued in an involuntary commitment proceeding. In 1983, the General Assembly enacted a new statute allowing a person who was not yet dangerous but whose history indicated that, without prompt treatment, he would become dangerous to be committed to outpatient rather than inpatient commitment. The law was intended to reach those chronically mentally ill patients who revolve in and out of the state institutions at an earlier point in their treatment so that they might be kept out of the institutions for longer periods of time. As enacted, that law required the magistrate to find probable cause to believe the respondent was mentally ill and dangerous to himself or others before issuing the custody order. Once the order was issued, the physician conducting the examination could determine that the respondent was not dangerous but met the criteria for outpatient commitment. Ch. 589 allows the magistrate to issue the custody order if he finds probable cause to believe that the respondent is mentally ill and is either dangerous or in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness. The change was made because many respondents are prescreened at mental health centers, and the center professionals who determined that these people met the criteria for outpatient commitment were uncomfortable with having to advise their family members to tell a magistrate under oath that the respondent was dangerous to himself or others. An important point for magistrates to remember is that the outpatient standard is not meant to encompass a new group of patients not now being served by the involuntary commitment law; rather, its purpose is to reach those who have a history of commitments before they deteriorate to the point of dangerousness. Before committing a nondangerous person, the magistrate must find that he is mentally ill and needs treatment if further disability or deterioration that would predictably result in dangerousness is to be prevented. The specification of "predictably" should require some past facts leading to the conclusion that the current behavior will result in a deterioration to dangerousness.

In another change, the recodification bill provided that the term "dangerous to others" includes evidence that an individual has engaged in extreme destruction of property. Thus a magistrate may consider evidence of extreme destruction of property as well as evidence of an attempt to inflict serious bodily harm on another or evidence of respondent's having acted in a way as to create a substantial risk of serious bodily harm in determining whether the respondent is dangerous to others.

Ch. 589 makes court records for all involuntary commitments confidential; therefore magistrates should ensure that involuntary commitment petitions and custody orders are kept in a place where no one can see them and should not let reporters look at those papers.

Another major change in Ch. 589 deals with the commitment of inebriates or "substance abusers." Currently substance abusers (those who abuse alcohol or other drugs) are treated the same as the mentally ill under the commitment laws except that they are not eligible for outpatient commitment. Substance abusers may be involuntarily committed to an inpatient facility for 90 days and then recommitted for 180 more days if they continue to be dangerous. Substance-abuse professionals, finding these provisions unworkable, recommended that commitment for substance abusers be for a longer period of time than for the mentally

ill and that the commitment allow the client to be moved back and forth from inpatient to outpatient treatment as needed. The new law extends the original commitment of substance abusers from up to 90 days to 180 days, and any recommitment may be for up to 350 days. The standard for commitment remains unchanged—the respondent must be found to be a substance abuser and dangerous to himself or others. The general procedure remains the same as in current law except for the following provisions: (1) At the first examination, the physician who finds that the respondent is a substance abuser and is dangerous determines whether the person should be held in a 24-hour facility or released until the hearing; this means that the magistrate who issues the custody order will order the respondent to be taken to the local physician for examination and the physician, not the magistrate, will determine where the respondent will be sent to await his district court hearing. (2) If the physician recommends that the client be held at a 24-hour facility, the second examination may be conducted by a qualified professional rather than a physician. (3) If the district court judge orders commitment of the substance abuser, the abuser will be committed to the area mental health or mental retardation and substance abuse authority or to a physician who is responsible for his commitment and not to a specific inpatient facility, as is now done. (4) The treating professional determines whether the respondent needs inpatient or outpatient treatment and may move him from an outpatient to inpatient setting without another court hearing unless the respondent is held in an inpatient setting for more than 45 consecutive days.

Ch. 695 (H 1024) makes a change in who can perform the local examination for a respondent for whom a custody order for involuntary commitment has been issued. Currently only a physician may conduct those hearings. Ch. 695, effective January 1, 1986, will allow licensed practicing psychologists who have at least two years of clinical experience to perform initial examinations also. The new law continues to require a physician to conduct the second examination at the inpatient facility. As mentioned, Ch. 589—the recodification bill—allows the second examination of a committed substance abuser to be performed by a qualified professional. Ch. 695 amends that provision to specify that if the first examination is conducted by a psychologist, the second must be conducted by a physician.

Miscellaneous

Ch. 756 (H 900) rewrites G.S. 11-4 to specify how to give an oath when the person to whom the oath is to be given has conscientious scruples against taking an oath on a Bible. In that case the magistrate should have the person raise his right hand and should give the same oath that would normally be given except the word "affirm" should be used instead of "swear" and the words "so help me God" should be deleted.

Ch. 608 (H 784) merely clarifies that a minor who has been emancipated under an emancipation proceeding (Article 56 of G.S. Chapter 7) may get a marriage license from the register of deeds without a parental consent.

Ch. 589 repeals G.S. 51-12, which requires a person adjudicated incompetent to be sterilized before the register of deeds may issue to him a license to marry.

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 $191.80, or $.20 per copy. These figures include only the direct costs of reproduction. They do not include preparation, handling, or distribution costs.