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# Administration of Justice Memorandum

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## 1994 Legislation of Interest to Magistrates

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This *Administration of Justice Memorandum* discusses acts of the 1994 Regular Session of the General Assembly, other than criminal legislation, of interest to magistrates. Criminal legislation is discussed in "1994 Regular Session Legislation Affecting Criminal Law and Procedure," *Administration of Justice Memorandum* (No. 94/09 August 1994) by Robert L. Farb. Each act is referred to by its chapter number in the session laws and by the number of the original bill that became law. The effective date of each new law is given also.

### New Educational Requirements and Salary Plan

**Introduction.** The most significant piece of legislation from this session affecting magistrates is the new educational requirement and pay plan legislation, which passed this year after much hard, long work by the North Carolina Magistrates' Association and the Administrative Office of the Courts (hereafter AOC). At its fall conference in 1989, the North Carolina Magistrates' Association determined that there was a need to study the qualification requirements and compensation for magistrates. The ever-increasing complexity of the law and increasing jurisdiction of magistrates support the need to recruit and retain individuals with the level and type of education and experience that would ensure a continuing high standard of performance and service to the state's judicial system. In response to the Magistrates' Association's request, in 1991, the

director of the AOC appointed a committee, which included judges, clerks, and magistrates, to study the educational requirements and salary plan. The committee, chaired by Superior Court Judge J. B. Allen, gathered data on the responsibilities of magistrates that were used to determine the knowledge, skills and abilities needed to perform the job. To provide a basis for a salary range, the committee looked at comparable jobs in North Carolina. That committee recommended increasing the minimum educational requirements and salary level. Magistrates already in office would not immediately receive large salary increases but because of the ability to move into higher paying steps, eventually their pay would increase substantially. The committee's proposal was introduced in the 1993 session of the General Assembly. The North Carolina Magistrates' Association and the North Carolina Courts Commission endorsed it, and the General Assembly in Chapter 769 (S 1505) enacted the recommendations with only one change.

**Educational requirements.** Formerly, G.S. 7A-171.2 required an individual to have a high school diploma or equivalency to be eligible for nomination as a magistrate. Chapter 769 now requires an individual appointed as a magistrate to have a four-year college degree or to have a two-year associate degree and four years of work experience in a related field, including teaching, social services, law enforcement, mediation or arbitration, the court system, or counseling. The AOC determines whether

the individual's work experience is sufficiently related to the duties of the office of magistrate. The new law applies to magistrates hired on or after July 1, 1994, except that magistrates nominated by June 30, 1994, or magistrates hired between July 1 and July 17 who do not meet the new educational requirements are eligible to serve as magistrates. Magistrates already in office on June 30, 1994, are exempted from the new educational requirements and may continue to serve and be reappointed as magistrate.

**Salary scale.** Concomitant with increasing minimum education requirements, the General Assembly increased the pay for magistrates. The magistrates' former salary plan provided for seven steps, with an automatic increase after the first year and then every two years on the anniversary of the magistrate's original appointment. The pay scale ranged from the entry level of \$17,399 to a high of \$29,333, which was reached after eleven years of service. The old plan gave salary credit for certain educational degrees and work experience. An individual appointed as a magistrate who had a four-year college degree or who had ten years experience as a North Carolina law enforcement officer or in a clerk of superior court's office began in the middle of the salary scale at \$22,075 and reached the top of the scale in seven years. Chapter 769 sets a new six step (after the entry level) salary scale for magistrates, with the new entry level salary being the same salary (plus four percent) as the middle of the old scale where a person with a college degree would have begun before the new law took effect. The new salary scale is as follows:

#### New Pay Plan

| Step       | Annual Salary |
|------------|---------------|
| Entry Rate | \$22,958      |
| Step 1     | 25,262        |
| Step 2     | 27,770        |
| Step 3     | 30,506        |
| Step 4     | 33,503        |
| Step 5     | 36,797        |
| Step 6     | 40,420        |

Magistrates receive an automatic step increase every two years on their anniversary date for the first three steps and then every four years for steps four

through six. Under the new plan, it will take eighteen years of service to reach the top of the pay scale. The only differentiation in pay is for persons appointed as magistrates who are licensed to practice law in North Carolina. Those magistrates begin at Step 4 and reach the top of the pay scale after eight years.

Because of the significant cost of fully implementing the new plan and because of the increased educational requirements for newly appointed magistrates, Chapter 769 phases in the salary effects for individuals who were already serving as magistrates on June 30, 1994. All magistrates received a four percent pay raise, effective July 1, 1994. Magistrates who are licensed to practice law in North Carolina were moved up to the new Step 4 salary level. The chart below indicates the immediate salary increases for magistrates who were in office on June 30.

#### Effect of Pay Plan on Current Magistrates

| Years of Service               | Salary June 30   | Salary July 1       |
|--------------------------------|------------------|---------------------|
| Less than 1 year               | \$17,399         | \$18,095            |
| 1 but less than 3 yrs.         | 18,293           | 19,025              |
| 3 but less than 5 yrs.         | 20,092           | 20,896              |
| 5 but less than 7 yrs.         | 22,075           | 22,958 (Entry Rate) |
| 7 but less than 9 yrs.         | 24,290           | 25,262 (Step 1)     |
| 9 but less than 11 yrs.        | 26,702           | 27,770 (Step 2)     |
| 11 or more yrs.                | 29,333           | 30,506 (Step 3)     |
| Licensed to practice law in NC | 26,702 or 29,333 | 33,503 (Step 4)     |

Magistrates also receive the one percent bonus paid to state employees. Those magistrates who, on July 1, 1994, were being paid at a rate below the new minimum salary will receive step increases based on the old salary plan until they reach the entry level salary under the new plan. At that point they will move up the new plan salary levels as do other magistrates. Magistrates whose salaries under the old plan were at the Entry Level or Steps 1 through 3 under the new plan move up the scale under the new plan as provided for new magistrates. Magistrates at the top of the old scale (Step 3 under the new plan) move up to Step 4 on their anniversary date when they have been at the top of the old scale for four years.

Some examples of how the new pay plan will affect magistrates already in office might be useful. Example 1: Magistrate A was hired on January 1, 1994. He has a high school education and began at

\$17,399. On July 1, 1994, he received a four-percent increase to \$18,095. On January 1, 1995, he will move to the the level of 1 or more but less than 3 years and will receive an increase to \$19,025. He will continue to move up the scale every two years on his anniversary date until he reaches Step 3, and then he will move to Steps 4 through 6 by receiving a step increase every four years on his anniversary date. It will take Magistrate A 23 years from the date of his initial appointment until he reaches the top of the new pay scale.

Example 2: Magistrate B was hired on January 1, 1994. She has a high school degree but had 10 years experience as a North Carolina police officer and began at the level of a magistrate with 5 or more but less than 7 years experience. Her beginning salary was \$22,075, and on July 1 she received a raise to \$22,958, which put her at the Entry Rate under the new law. She will receive a step increase on January 1, 1996, and every two years until January 1, 2000. At that point she will be at Step 3, and will not receive another step increase for four years. It will take Magistrate B 18 years to reach the top step.

Example 3: Magistrate C has been a magistrate for twenty years. He has been at the highest step of the old salary range for nine years. His anniversary date is October 1. On June 30, 1994, Magistrate C was paid at the rate of \$29,333. On July 1, he received a raise to \$30,506. On October 1, 1994, his first anniversary date after the new law took effect, Magistrate C will receive a step increase to \$33,503. He will not receive another step increase until October 1, 1998, and then will reach the top of the new scale on October 1, 2002.

Example 4: Magistrate D is also at the top of the old pay scale, but she only reached that step on her last anniversary date, April 1, 1994. Magistrate D received a four percent raise on July 1, 1994 to \$30,506. She will not move to Step 4 until April 1, 1998, when she will have been at Step 3 for four years.

Example 5: Magistrate E is licensed to practice law in North Carolina. He was hired January 1, 1994, and on June 30, 1994, was paid at the rate of \$26,702. On July 1, 1994, his salary was increased to Step 4, \$33,503. He will receive his next step increase on January 1, 1998, because the AOC has changed his anniversary date to July 1.

## Small Claims

**Entry of judgment.** G.S. 1A-1, Rule 58 is the rule of civil procedure that establishes when a civil judgment is entered. The rule sets out three different times at which a judgment is considered to be entered depending on the kind of judgment and whether it is announced in open court. In many cases, none of the three provisions is followed precisely, and in recent years the North Carolina appellate courts have issued several opinions interpreting Rule 58 and applying a set of factors to determine when a judgment is entered. The rule has resulted in much uncertainty for attorneys, litigants and judicial officials as to when the time for appeal and filing of certain motions has expired. In response, a committee of the North Carolina Bar Association recommended that Rule 58 be rewritten to provide certainty about when judgments are entered, and H 977 was introduced in the 1993 General Assembly. It passed the House but remained in the Senate at adjournment in 1993. This session it was considered by the Senate. After further changes by both the House and the Senate, Chapter 594 (H 977) was enacted.

Under the old Rule 58, a small claims judgment was entered when it was rendered in open court, or if the magistrate reserved judgment, the judgment was entered when it was filed with the clerk and the clerk sent notice of the judgment to the parties. Chapter 594 rewrites G.S. 1A-1, Rule 58 to provide that judgment is entered when it is reduced to writing, signed by the magistrate and filed with the clerk of court. That change will not affect magistrates. However, the new law's change in the requirement about notice to parties will dramatically affect the way in which magistrates handle cases. Chapter 594 provides that if the magistrate announces the decision and signs the judgment in open court at the conclusion of the trial, the judgment need not be served on any party. However, in other cases, the magistrate must serve a copy of the judgment on all parties within three days after the judgment is entered. The time to appeal is tolled until service is made or until 90 days after judgment is entered, whichever is shorter. Note that under the new Rule 58 magistrates must both announce their judgments and sign them in open court at the end of the trial in order to avoid having to mail copies. In order to comply with that provision, the magistrate,



at the end of the trial, will have to (1) fill in the names of the parties (the addresses and telephone numbers could be filled in later); (2) check the findings block on the judgment form; (3) fill out the actual judgment; and (4) sign and date the judgment. On a day with a crowded docket, this new procedure will slow the speed with which cases can be heard. But the alternative is a costly and even more time consuming one: mailing copies of the judgment to all parties in small claims cases. Two time-saving methods could be tried. First, magistrates could ask frequent users of the small claims system to bring a copy of the judgment to court with the names and addresses of the parties and other information on the left-hand side of the form already typed in. If that is done, the magistrate could hear the case, check the appropriate blocks and sign the judgment, and then announce the judgment in open court. Another possible solution is for the clerk to schedule the beginning of court later in the morning so the magistrate can prepare the left-hand side of the judgments before court begins.

If the magistrate does not announce and sign the judgment at the end of the trial, the magistrate must serve a copy of the judgment on all parties in accordance with Rule 5 of the Rules of Civil Procedure. Service is by mailing copies by first class mail (29¢) to the parties at the addresses listed on the complaint, or if a party is represented by an attorney, by mailing a copy to the attorney for the party. (Rule 5 also permits service by giving a copy to the parties or attorney for a party, but that is not a feasible means of service for the magistrate to use.) The new law requires the magistrate to certify that he or she has served copies on the parties. One possible procedure for a magistrate to follow when not announcing and signing the judgment in open court is to sign the judgment, make copies, mail the the copies to the parties (or take the copies in addressed envelopes to the clerk for mailing), write a certification of service on the original copy of the judgment, and file the original judgment with the clerk. An example of a certification would be "I certify that I mailed a copy of the judgment to all of the parties named in this judgment by mailing copies, in post-paid, properly addressed envelopes, on (*insert date*). Signed: Magistrate X."

If copies of the judgment are mailed to the parties, a party has thirteen days from the date the copies are mailed to file a notice of appeal. If copies

are not mailed when the law requires copies to be mailed, the time for appeal is tolled for 90 days. In that case, the parties would have 100 days from the date the judgment was filed with the clerk to appeal the case.

Chapter 594 applies to judgments, not orders of dismissal or to continuances. It takes effect October 1, 1994 and applies to judgments subject to entry on or after that date.

**Application of payments under Retail Installment Sales Act.** Chapter 745 (H 1725) allows merchants to choose the method of applying payments made in certain consumer credit contracts under the Retail Installment Sales Act. An example of how the application of payments issue arises will help. Mr. Jones wants to buy a couch from Ace Furniture Store but is unable to pay immediately the \$900 price of the couch. Ace Furniture Store extends credit for the purchase and has Mr. Jones sign a security agreement that the couch will be security for the extension of credit. Before Mr. Jones finishes paying for the couch, he returns to Ace Furniture Store and purchases a kitchen table and chairs for \$450. Again he is not able to pay the full amount. Ace Furniture Store consolidates the two contracts and Mr. Jones continues making one payment per month to Ace Furniture Store with the extension of credit secured by the couch and kitchen table and chairs. In many instances the buyer continues over the years to make additional purchases so that there may be ten purchases at different times consolidated into one security agreement. G.S. 25A-27 governs how Ace Furniture Store must apply the payments made by Mr. Jones to the various items purchased at different times. The issue is important because once an item is fully paid for, it is no longer security for the extension of credit. If Mr. Jones were to default in payments, Ace Furniture Store could not repossess those items fully paid for. G.S. 25A-27 had provided that Ace Furniture Store was to apply the payments to the various items purchased in the same proportion as the original cash prices of the items bore to one another. So in the example used, if Mr. Jones made monthly payments of \$75 and if the finance charge were \$15, \$15 would be applied to the finance charge, \$40 would be applied to the couch and \$20 to the table and chairs because the original cash price of the couch was twice as much as the table and chairs.. The 1993 Session of the General Assembly amended G.S. 25A-27, effective October 1, 1993, to provide

finance charges and then to the oldest item purchased. When the oldest item purchased is paid for, that item is no longer security for the extension of credit. Future payments would be applied to the next oldest item purchased. In the example, Ace Furniture Store would apply \$15 of the \$75 payment to the finance charge and \$60 to the couch. Chapter 745, enacted this year, allows the seller to have the choice of applying payments made between October 1, 1988, and October 1, 1993, under either the old or the new law.

### **Administrative Matters**

**Forsyth warrant-issuing clerks become magistrates.** When the magistrate system was created in 1965, Judicial District 21, Forsyth County, determined that it would use warrant-issuing deputy clerks of court rather than magistrates to perform the criminal functions performed by magistrates in all other judicial districts. Forsyth County has had only three magistrates who handle civil duties such as trying small claims cases and performing marriages.

During this past year, the judicial officials in Forsyth County decided that they wanted to change to a magistrate system for warrant-issuing functions. Chapter 769 authorizes the AOC to transfer the eleven deputy clerk positions currently used for issuing warrants to magistrates' positions. Any warrant-issuing clerk who is appointed as a magistrate will receive credit, for pay purposes, for the years of service as a warrant-issuing clerk.

**Maximum number of magistrates increased in three counties.** Chapter 769 amends G.S. 7A-133 to increase the maximum number of magistrates allowed in Catawba, McDowell, and Iredell Counties by one each. However, the amendment does not mean that each of those counties actually will be given a new magistrate. The appointment of additional magistrates in a county depends on a determination of need made by the chief district judge and the Director of the AOC and on an appropriation by the General Assembly. The budget includes no appropriation for new magistrates' positions.

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