

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 517
Committee Substitute Favorable 5/25/11
Senate Judiciary I Committee Substitute Adopted 5/24/12

Short Title: Magistrates/Calendaring.

(Public)

Sponsors:

Referred to:

March 30, 2011

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE APPOINTMENT OF CHIEF MAGISTRATES, TO PROVIDE FOR ADDITIONAL DISCIPLINE OF MAGISTRATES, TO PROVIDE FOR A STUDY ON THE METHOD OF APPOINTING MAGISTRATES, AND TO PROVIDE FOR CERTAIN CONTROL OF CALENDARING IN SUPERIOR COURT BY THE SENIOR RESIDENT SUPERIOR COURT JUDGE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-146 reads as rewritten:

"§ 7A-146. Administrative authority and duties of chief district judge.

The chief district judge, subject to the general supervision of the Chief Justice of the Supreme Court, has administrative supervision and authority over the operation of the district courts and magistrates in his district. These powers and duties include, but are not limited to, the following:

...

(4) Assigning matters to magistrates, and consistent with the salaries set by the Administrative Officer of the Courts, prescribing times and places at which magistrates shall be available for the performance of their duties; however, the chief district judge may in writing delegate his authority to prescribe times and places at which magistrates in a particular county shall be available for the performance of their duties to another district court judge or the clerk of the superior court, or the judge may appoint a chief magistrate to fulfill some or all of the duties under subdivision (12) of this section, and the person to whom such authority is delegated shall make monthly reports to the chief district judge of the times and places actually served by each magistrate.

...

(12) Designating a full-time magistrate in a county to serve as chief magistrate for that county for an indefinite term and at the judge's pleasure. The chief magistrate shall have the derivative administrative authority assigned by the chief district court judge under subdivision (4) of this section. This subdivision applies only to counties in which the chief district court judge determines that designating a chief magistrate would be in the interest of justice."

SECTION 2. G.S. 7A-173 reads as rewritten:



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1 "§ 7A-173. ~~Suspension; Suspension pending a hearing; removal; removal or suspension~~
2 from duties; reinstatement.

3 (a) A magistrate may be suspended from performing the duties of ~~his~~the magistrate's
4 office by the chief district judge of the district court district in which his county is located, ~~or~~
5 and suspended or removed from office by the senior regular resident superior court judge of, or
6 any regular superior court judge holding court in, the district or set of districts as defined in
7 G.S. 7A-41.1(a) in which the county is located. Grounds for suspension or removal are the
8 same as for a judge of the General Court of Justice.

9 (b) Suspension from performing the duties of the office may be ordered by the chief
10 district judge upon filing of sworn written charges in the office of clerk of superior court for the
11 county in which the magistrate resides. If the chief district judge, upon examination of the
12 sworn charges, finds that the charges, if true, constitute grounds for removal, ~~he~~the chief
13 district judge may enter an order suspending the magistrate from performing the duties of his
14 office until a final determination of the charges on the merits. During suspension the salary of
15 the magistrate continues.

16 (c) If a hearing, with or without suspension, is ordered, the magistrate against whom the
17 charges have been made shall be given immediate written notice of the proceedings and a true
18 copy of the charges, and the matter shall be set by the chief district judge for hearing before the
19 senior regular resident superior court judge or a regular superior court judge holding court in
20 the district or set of districts as defined in G.S. 7A-41.1(a) in which the county is located. The
21 hearing shall be held in a county within the district or set of districts not less than 10 days nor
22 more than 30 days after the magistrate has received a copy of the charges. The hearing shall be
23 open to the public. All testimony offered shall be recorded. At the hearing the superior court
24 judge shall receive evidence, and make findings of fact and conclusions of law. If ~~he~~the court
25 finds that grounds for removal exist, ~~he shall~~the court may enter an order permanently
26 removing the magistrate from office, and terminating his salary. In lieu of a permanent
27 removal, the court may order the magistrate to be suspended from any performance of the
28 duties of the magistrate's office for a period of time set by the court at its discretion. A
29 magistrate who is suspended under this subsection shall receive no salary during the period of
30 that suspension. If hethe court finds that no ~~such~~grounds for disciplinary action exist, ~~he~~the
31 court shall terminate the ~~suspension~~, suspension imposed under subsection (b) of this section, if
32 any. Upon a determination that a magistrate has engaged in conduct that is not of such a nature
33 as would warrant suspension or removal, the court may issue to the magistrate a public
34 reprimand.

35 (d) A magistrate may appeal from an order of removal or suspension under subsection
36 (c) of this section to the Court of Appeals on the basis of error of law by the superior court
37 judge. Pending decision of the case on appeal, the magistrate shall not perform any of the duties
38 of ~~his~~the magistrate's office. If, upon final determination, ~~he~~the magistrate is ordered
39 reinstated, either by the appellate division or by the superior court on remand, ~~his~~the
40 magistrate's salary shall be restored from the date of the original order of ~~removal~~removal or
41 suspension."

42 **SECTION 3.** The Administrative Office of the Courts, in consultation with the
43 Conference of Superior Court Judges, the Conference of District Court Judges, the Conference
44 of Clerks of Superior Court, and the North Carolina Magistrates Association, shall study the
45 issue of whether the State constitutional provision that the senior resident superior court judge
46 shall appoint magistrates from nominations by the Clerk of Superior Court should continue as
47 the method for appointment of magistrates, or whether an amendment to the State Constitution
48 to provide for a different method would be both practical in light of the current responsibilities
49 of officers of the court and lead to better efficiencies in the administration of justice. The
50 Administrative Office of the Courts shall submit a report of its findings and recommendations,

1 including any legislative recommendations, to the 2013 General Assembly no later than March
2 1, 2013.

3 **SECTION 4.** G.S. 7A-49.4(c) reads as rewritten:

4 "(c) Definite Trial Date. – When a case has not otherwise been scheduled for trial within
5 120 days of indictment or of service of notice of indictment if required by law, then upon
6 motion by the defendant at any time thereafter, the senior resident superior court judge, or a
7 superior court judge designated by the senior resident superior court judge, may hold a hearing
8 for the purpose of establishing a trial date for the defendant. Notwithstanding the establishment
9 of a trial date under this subsection, if a case has not been tried within nine months after the
10 defendant has been indicted or bound over to superior court, the senior resident superior court
11 judge may give notice to the district attorney and the defendant's attorney and schedule a trial
12 conference."

13 **SECTION 5.** Sections 1 and 3 of the act are effective when this act becomes law.
14 Section 2 of this act becomes effective January 1, 2013, and applies to the filing of charges on
15 or after that date. Section 4 of this act becomes effective January 1, 2013. The remainder of
16 this act is effective when it becomes law.