



# MAGISTRATE / CLERK STAFFING PILOT PROJECT

SESSION LAW 2017-57, §18B.12

REPORT PREPARED BY  
NORTH CAROLINA ADMINISTRATIVE OFFICE OF THE COURTS  
OCTOBER 1, 2018



**About the North Carolina Judicial Branch**

The mission of the North Carolina Judicial Branch is to protect and preserve the rights and liberties of all the people as guaranteed by the Constitutions and laws of the United States and North Carolina by providing a fair, independent and accessible forum for the just, timely and economical resolution of their legal affairs.

**About the North Carolina Administrative Office of the Courts**

The mission of the North Carolina Administrative Office of the Courts is to provide services to help North Carolina's unified court system operate more efficiently and effectively, taking into account each courthouse's diverse needs, caseloads, and available resources.

## INTRODUCTION

Section 18B.12 of Session Law 2017-57 requires the North Carolina Administrative Office of the Courts (“NCAOC”) to submit a report on the results of a pilot project that authorizes the hiring of a deputy or assistant clerk in lieu of one of the magistrate positions assigned to the county. Specifically, the statute provides as follows:

### **MAGISTRATE/CLERK STAFFING PILOT PROJECT**

**SECTION 18B.12.** Notwithstanding the minimum staffing number in G.S. 7A-133(c), the clerk of superior court in a county, with the written or e-mailed consent of the chief district court judge, may hire one deputy or assistant clerk in lieu of one of the magistrate positions allocated to that county. To provide accessibility for law enforcement and citizens, the clerk of superior court's office will provide some of the services traditionally provided by the magistrates' office during some or all of the regular courthouse hours. The Administrative Office of the Courts shall report on the results of the pilot project by October 1, 2018, to the chairs of the Joint Legislative Oversight Committee on Justice and Public Safety. The report shall include the counties participating, a summary of the magisterial tasks assumed by clerks, the estimated cost savings, and recommendations for future expansion.

For purposes of this report, the pilot authorized pursuant to Section 18B.12 will be referred to as the 18B.12 Pilot. NCAOC respectfully submits this report pursuant to the legislative mandate in Section 18B.12.

## OVERVIEW OF ROLES

A magistrate is an independent judicial officer, recognized by the North Carolina Constitution as an officer of the district court. Magistrates take the same oath as judges and share the same mandatory retirement age. The grounds for removing magistrates are the same as for removing judges.<sup>1</sup>

Magistrates perform numerous duties as officers of the district court in both civil and criminal proceedings. In criminal proceedings, this includes conducting initial appearances, setting conditions of release, and issuing warrants. On the civil side, magistrates hear small claims cases, enter orders for summary ejectment (evictions), determine involuntary commitments, and handle other responsibilities. The magistrate is the only civil official in the state who can perform a marriage.

Unlike judges and justices, magistrates are not elected. A magistrate is nominated for office by the clerk of superior court, appointed by the senior resident superior court judge, and supervised by the chief district court judge. In order to be eligible for nomination as a magistrate, the person must be a resident of the county for which he is appointed and meet other statutory requirements.

---

<sup>1</sup> See N.C. Const., Art. IV, §10; N.C.G.S. §§7A-170 and 7A-143.



Clerks are the custodians of records for district and superior court, perform clerical, administrative and fiscal functions in district and superior courts, and handle estates and special proceedings. Clerks also have existing statutory authority to perform several functions traditionally associated with magistrates:

- Issue warrants and accept written appearances, waivers of trial and pleas of guilty;
- Fix conditions of release in accordance with Chapter 15A, Article 26;
- Conduct initial appearances in accordance with Chapter 15A, Article 24;
- Make determinations about involuntary commitment hearings under Chapter 122C.

For purposes of this report, these functions will be referred to as “traditional magistrate functions.” These are the main functions performed by clerks participating in the 18B.12 Pilot.

## SCHEDULING OF MAGISTRATES

The Judicial Branch uses a workload formula to determine the appropriate number of magistrates per county, with a designated minimum of three magistrates per county. The Magistrate Workload Chart for FY 2016-17 is attached as Appendix A.

The chief district court judge is responsible for scheduling magistrates and may delegate that authority to another district court judge, the clerk of superior court, or the chief magistrate. Pursuant to G.S. 7A-146(9), the chief district court judge has authority to assign magistrates to temporary duty in another county during an emergency. However, chief district court judges tend to use that authority sparingly.

Magistrates are salaried employees who provide services 24 hours a day, seven days a week, 365 days a year. Staffing models vary among the counties depending on each county’s unique needs. Larger counties typically have enough employees to staff the magistrate’s office at all times, while smaller counties may use a combination of office staffing and on-call duty to provide coverage.

## PILOT IMPLEMENTATION

### ***Pilot Parameters***

In August 2017, the NCAOC convened an ad hoc Magistrate / Clerk Pilot Project Committee comprised of chief district court judges (or their designees) and select clerks of superior court nominated by the Conference of Clerks of Superior Court. The committee reviewed and provided input to pilot guidelines drafted by NCAOC staff. A copy of those guidelines, *Hiring a Clerk in Lieu of a Magistrate*, is attached as Appendix B. NCAOC staff also met with elected clerks to explain the pilot and answer related questions.





The guidelines outline the expectation of clerks and magistrates in counties who participate in the 18B.12 Pilot. Under the pilot, clerks perform the traditional magistrate functions previously discussed during some or all courthouse hours:

- Issue warrants and accept written appearances, waivers of trial and pleas of guilty
- Fix conditions of release in accordance with Chapter 15A, Article 26,
- Conduct initial appearances in accordance with Chapter 15A, Article 24
- Review petitions for involuntary commitment under Chapter 112C

Again, clerks have existing statutory authority to perform these duties under existing law. However, for purposes of this report, these functions will be referred to as “traditional magistrate functions.”

### ***The Perquimans Experience***

As of September 1, 2018, Perquimans County was the only county that opted to participate in the Section 18B.12 pilot. Participation in the pilot results in a total of seven clerks and two magistrates for the county.

Under the 18B.12 Pilot in Perquimans County, three clerks (two assistant clerks and the elected clerk) perform the traditional magistrate functions during the regular courthouse hours on Mondays, Tuesdays, Thursdays, and Fridays. Each magistrate is scheduled to work in the courthouse every other Wednesday, so a magistrate is present in the courthouse on every Wednesday. The magistrates also provide on-call coverage for all nights, weekends, and holidays, and are available when needed after hours by law enforcement or a member of the public. When necessary, the clerks assist the magistrate who works during business hours on Wednesdays.

To account for differences in training and education requirements for magistrates and clerks, the clerks who provide the traditional magistrate functions have attended components of magistrate training provided through the UNC School of Government. In addition, the clerk of superior court in Perquimans County is a former magistrate, which helps facilitate a smooth interplay between the clerks and magistrates.

The Perquimans County Sheriff indicates that the pilot has been helpful to his deputies. Because three clerks are available to handle law enforcement needs during regular courthouse hours, deputies spend less time waiting and more time devoted to other law enforcement duties. Both the sheriff and the clerk of superior court support continuation of the 18B.12 Pilot in Perquimans County.

True to the 18B.12 model, Perquimans County hired one clerk in lieu of one magistrate position. Consequently, the cost savings in Perquimans County is the difference between the



minimum salary of a deputy clerk and that of a magistrate. As of July 1, 2018, the annualized costs savings would be approximately \$9,100 for each participating county.

### ***The Surry County Model – A Different Approach***

The 2017 Joint Conference Committee Report on the Base, Capital, and Expansion Budget for Senate Bill 257 (“Money Report”) included two budget items specific to Surry County. The cumulative effect of those items was to eliminate two magistrate positions and create three new deputy clerk positions in Surry County for a magistrate / clerk staffing project. The Money Report explanation provided that “(t)he Clerk’s office will provide some of the services traditionally provided by the magistrates’ office during some or all of the regular courthouse hours, freeing magistrates to work evening and weekends.”

Although some of the language in the Money Report mirrors that in Section 18B.12, the staffing configuration mandated by the Money Report is separate from the 18B.12 Pilot. For purposes of this report, the mandatory pilot authorized by the items in the Money Report will be referred to as the “Surry County Model.” The Surry County Model differs from the magistrate / clerk staffing pilot project in Section 18B.12 in many significant ways.

First, the Surry County Model is mandated by the General Assembly and did not require the consent of local officials. Meanwhile, the 18B.12 Pilot requires the agreement of local officials, specifically including the clerk and chief district court judge.

Second, the Surry County Model specifically eliminates magistrate positions and creates new clerk positions. The 18B.12 Pilot does not eliminate positions, but instead provides the flexibility to make changes immediately if the pilot does not accomplish identifiable objectives. Because the Surry County Pilot was created directly by the General Assembly, the clerk of superior court and chief district court judge cannot revert to the prior staffing configuration.

Third, the Surry County Pilot eliminates two magistrate positions and funds three clerk positions. Based on a comparison of the salary and benefit costs of two magistrate positions at minimum salary versus three deputy clerk positions at minimum salary, the Surry County Model results in increased annualized recurring costs of approximately \$20,000 per year.<sup>2</sup> As previously indicated, the 18B.12 Model has the potential to realize an annualized savings of approximately \$9,100 in each participating county.

Finally, contrary to information and guidance from NCAOC in 2017, the clerk of superior court in Surry County did not utilize the deputy clerks as intended in Section 18B.12. Instead of having the clerk’s office provide some of the services traditionally provided by the magistrates’ office during some or all of the regular courthouse hours, the Surry County clerk requires some of the

---

<sup>2</sup> The difference between salaries and benefits for the two individuals in the magistrate positions eliminated and the specific deputy clerk positions created resulted in annualized savings of approximately \$4,600 for FY 2017-18.



new deputy clerk positions to cover shifts in the magistrates' office, which remains open during courthouse hours.

While the creation of three deputy clerk positions in Surry County has met the workload need in the clerks' office, the elimination of two magistrate positions has created a staffing shortage in the magistrates' office. Based on July 1, 2017 workload calculations, the Surry County clerks' office needs 21.85 positions, and currently has 22 state-funded positions (including the elected clerk). Meanwhile, the magistrates' office has 4.0 magistrates, with a workload need for 4.5 magistrates.

## LESSONS LEARNED AND RECOMMENDATIONS

The 18B.12 Pilot appears to be well-received in Perquimans County. NCAOC consequently recommends that the ability to hire one deputy or assistant clerk in lieu of a magistrate be continued with the parameters set forth below.

- The option to hire a clerk in lieu of a magistrate should be limited to counties with four or fewer magistrates.
- A clerk should be hired in lieu of a magistrate only with the express consent of the clerk of superior court and the chief district court judge.
- A maximum of only **one** magistrate position may be used to create a maximum of **one** clerk position.

If the General Assembly chooses to continue the 18B.12 Pilot, NCAOC suggests amending G.S. 7A-133 as set forth below to enact the change.

**SECTION XX.** G.S. 7A-133 is amended to read as follows:

**§ 7A-133. Numbers of judges by districts; numbers of magistrates and additional seats of court, by counties.**

...

(d) Notwithstanding the minimum staffing number in G.S. 7A-133(c), the clerk of superior court in a county with four or fewer magistrates, with the written or e-mailed consent of the chief district court judge, may hire a maximum of one deputy or assistant clerk in lieu of one of the magistrate positions allocated to that county. To provide accessibility for law enforcement and citizens, the clerk of superior court's office will provide some of the services traditionally provided by the magistrates' office during some or all of the regular courthouse hours.



NCAOC will continue to provide written guidelines and technical assistance for the counties that choose to hire a clerk in lieu of a magistrate. Those guidelines will include responsibilities and appropriate training for the clerks performing the traditional magistrate functions. NCAOC plans to facilitate training for participating clerks in cooperation with the UNC School of Government.

NCAOC also recommends that the number of clerks and magistrates in Surry County be restored to levels identified by the respective NCAOC workload formulas for clerks and magistrates. This would require the General Assembly to reestablish one of the two magistrate positions eliminated in the 2017 Money Report.

## **SUMMARY**

NCAOC continues to work collaboratively with local officials to establish best practices that local elected officials may consider using when making staffing and scheduling decisions in their districts. The decision to hire one additional clerk in lieu of a magistrate should continue within the parameters identified in this report. NCAOC expects to provide guidance, information and technical assistance that will maximize judicial efficiency and ensure the most appropriate use of clerk and magistrate personnel.





# **APPENDIX A**

## **Hiring a Clerk in Lieu of a Magistrate (September 2017)**



**[This page intentionally left blank]**





# HIRING A CLERK IN LIEU OF A MAGISTRATE

September 2017

Session Law 2017-57 provides:

## **MAGISTRATE/CLERK STAFFING PILOT PROJECT**

*SECTION 18B.12. Notwithstanding the minimum staffing number in G.S. 7A-133(c), the clerk of superior court in a county, with the written or e-mailed consent of the chief district court judge, may hire one deputy or assistant clerk in lieu of one of the magistrate positions allocated to that county. To provide accessibility for law enforcement and citizens, the clerk of superior court's office will provide some of the services traditionally provided by the magistrates' office during some or all of the regular courthouse hours. The Administrative Office of the Courts shall report on the results of the pilot project by October 1, 2018, to the chairs of the Joint Legislative Oversight Committee on Justice and Public Safety. The report shall include the counties participating, a summary of the magisterial tasks assumed by clerks, the estimated cost savings, and recommendations for future expansion.*

**To implement this provision, the following guidelines are provided:**

### **Clerk's office are expected, during courthouse hours, to:**

- Complete any criminal process requested by law enforcement
- Conduct initial appearances, including setting conditions for release
- Process requests for citizen - initiated criminal processes
- Make determinations on applications for involuntary commitments

### **Magistrates are still expected to:**

- Offer at least 10 hours per week for marriages (each county determines whether the 10 hours are in person or by appointment)
- Preside in small claims hearings
- If authorized in the county, make determinations on domestic violence protection order applications
- Provide in-person and/or on-call coverage (as scheduled by chief district court judge) for non-courthouse hours, including weekends and holidays

### **Qualifications/Salary:**

- Meet magistrate qualifications – starts at appropriate step on **deputy or assistant clerk pay plan** or
- Does not meet magistrate qualifications – starts at appropriate step on **deputy or assistant clerk pay plan**, and is not entitled to severance if pilot ends

### **Transfers between magistrate and clerk positions:**

- If current magistrate transfers to a deputy/assistant clerk position, salary is set by **clerk pay plan** with equity considerations in clerk's office (no guarantee of current magistrate salary)
- If a deputy/assistant clerk transfers to a magistrate position, salary is set by magistrate pay plan (magistrate must meet statutory qualifications)

*Continued*



**Deputy/Assistant clerk designations:**

- Position does not count in determining assistant clerk designations (same as grant deputy clerks)
- Position can be hired as an assistant clerk if the office has an unused assistant clerk designation and the elected clerk wants to use that assistant designation for the position

I am consenting for participation in this pilot project in \_\_\_\_\_ county. I understand that my consent will remain in force until I revoke it:

\_\_\_\_\_  
Clerk of Superior Court

\_\_\_\_\_  
Date

\_\_\_\_\_  
Chief District Court Judge

\_\_\_\_\_  
Date

Completed forms and/or email consents should be sent to: [brad.d.fowler@nccourt.org](mailto:brad.d.fowler@nccourt.org)



# **APPENDIX B**

## Magistrate Need as of July 1, 2017





**[This page intentionally left blank]**





# MAGISTRATES

As of July 1, 2017

Prepared by  
NCAOC Research, Policy, and Planning Division

Magistrates Need Based on Filings through 6/30/2017					
County	Magistrates Authorized 7/1/2017	Unrounded Magistrates Needed	Total Appropriate Staffing (Minimum of 3)		Staff to Workload Ratio
Alamance	12	10.35	10.35		116%
Alexander	4	1.63	3.00		133%
Alleghany	3	0.46	3.00		100%
Anson	4	1.95	3.00		133%
Ashe	3	0.97	3.00		100%
Avery	3	0.86	3.00		100%
Beaufort	4	3.00	3.00		133%
Bertie	3	1.09	3.00		100%
Bladen	4	2.17	3.00		133%
Brunswick	8	7.04	7.04		114%
Buncombe	15	12.97	12.97		116%
Burke	5.6	5.28	5.28		106%
Cabarrus	10	10.83	10.83		92%
Caldwell	6	4.58	4.58		131%
Camden	3	0.28	3.00		100%
Carteret	6	4.40	4.40		136%
Caswell	3	0.89	3.00		100%
Catawba	10	9.62	9.62		104%
Chatham	4	2.02	3.00		133%
Cherokee	4	1.63	3.00		133%
Chowan	3	0.68	3.00		100%
Clay	3	0.46	3.00		100%
Cleveland	7	6.35	6.35		110%
Columbus	5	3.54	3.54		141%
Craven	8	5.75	5.75		139%
Cumberland	20	19.42	19.42		103%
Currituck	4	1.25	3.00		133%
Dare	4	2.64	3.00		133%
Davidson	8	9.50	9.50		84%
Davie	4	1.81	3.00		133%
Duplin	4	3.22	3.22		124%
Durham	18	18.30	18.30		98%
Edgecombe	7	6.25	6.25		112%
Forsyth	19	23.48	23.48		81%
Franklin	4	3.09	3.09		129%
Gaston	17	13.74	13.74		124%
Gates	3	0.49	3.00		100%
Graham	3	0.58	3.00		100%
Granville	5	3.49	3.49		143%
Greene	3	0.92	3.00		100%
Guilford	31	34.03	34.03		91%





# MAGISTRATES

As of July 1, 2017

Prepared by  
NCAOC Research, Policy, and Planning Division

Magistrates Need Based on Filings through 6/30/2017					
County	Magistrates Authorized 7/1/2017	Unrounded Magistrates Needed	Total Appropriate Staffing (Minimum of 3)		Staff to Workload Ratio
Halifax	7	4.77	4.77		147%
Harnett	7	6.54	6.54		107%
Haywood	5	4.07	4.07		123%
Henderson	7	5.47	5.47		128%
Hertford	4	1.80	3.00		133%
Hoke	4	2.45	3.00		133%
Hyde	3.5	0.28	3.00		117%
Iredell	9	9.27	9.27		97%
Jackson	4	2.09	3.00		133%
Johnston	10	9.09	9.09		110%
Jones	3	0.62	3.00		100%
Lee	5	3.75	3.75		133%
Lenoir	7	4.99	4.99		140%
Lincoln	5	3.89	3.89		128%
Macon	4	1.65	3.00		133%
Madison	3	1.13	3.00		100%
Martin	4	1.58	3.00		133%
McDowell	4	2.57	3.00		133%
Mecklenburg	33.5	52.58	52.58		64%
Mitchell	3	0.63	3.00		100%
Montgomery	4	1.56	3.00		133%
Moore	5	4.33	4.33		115%
Nash	9	9.80	9.80		92%
New Hanover	13	16.40	16.40		79%
Northampton	3	0.96	3.00		100%
Onslow	11	9.99	9.99		110%
Orange	7	5.87	5.87		119%
Pamlico	3	0.72	3.00		100%
Pasquotank	4	2.59	3.00		133%
Pender	4	2.53	3.00		133%
Perquimans	3	0.57	3.00		100%
Person	4	2.24	3.00		133%
Pitt	13	13.82	13.82		94%
Polk	3	1.19	3.00		100%
Randolph	9	7.05	7.05		128%
Richmond	5	3.76	3.76		133%
Robeson	12	9.60	9.60		125%
Rockingham	7	4.74	4.74		148%
Rowan	9	8.52	8.52		106%
Rutherford	6	4.56	4.56		132%
Sampson	5	3.89	3.89		129%





# MAGISTRATES

As of July 1, 2017

Prepared by  
NCAOC Research, Policy, and Planning Division

Magistrates Need Based on Filings through 6/30/2017					
County	Magistrates Authorized 7/1/2017	Unrounded Magistrates Needed	Total Appropriate Staffing (Minimum of 3)		Staff to Workload Ratio
Scotland	5	3.59	3.59		139%
Stanly	5	3.61	3.61		138%
Stokes	4	2.14	3.00		133%
Surry	6	4.50	4.50		133%
Swain	3	0.93	3.00		100%
Transylvania	4	1.80	3.00		133%
Tyrrell	3	0.35	3.00		100%
Union	7	7.87	7.87		89%
Vance	6	4.95	4.95		121%
Wake	27	43.10	43.10		63%
Warren	3	0.97	3.00		100%
Washington	3	0.78	3.00		100%
Watauga	4	2.60	3.00		133%
Wayne	9	8.48	8.48		106%
Wilkes	6	3.68	3.68		163%
Wilson	7	7.03	7.03		100%
Yadkin	4	1.65	3.00		133%
Yancey	3	0.70	3.00		100%
Total	674.6	573.66	649.81		



**North Carolina Administrative Office of the Courts**

P.O. Box 2448

Raleigh, NC 27602

[www.nccourts.org](http://www.nccourts.org)

919 890 1000

