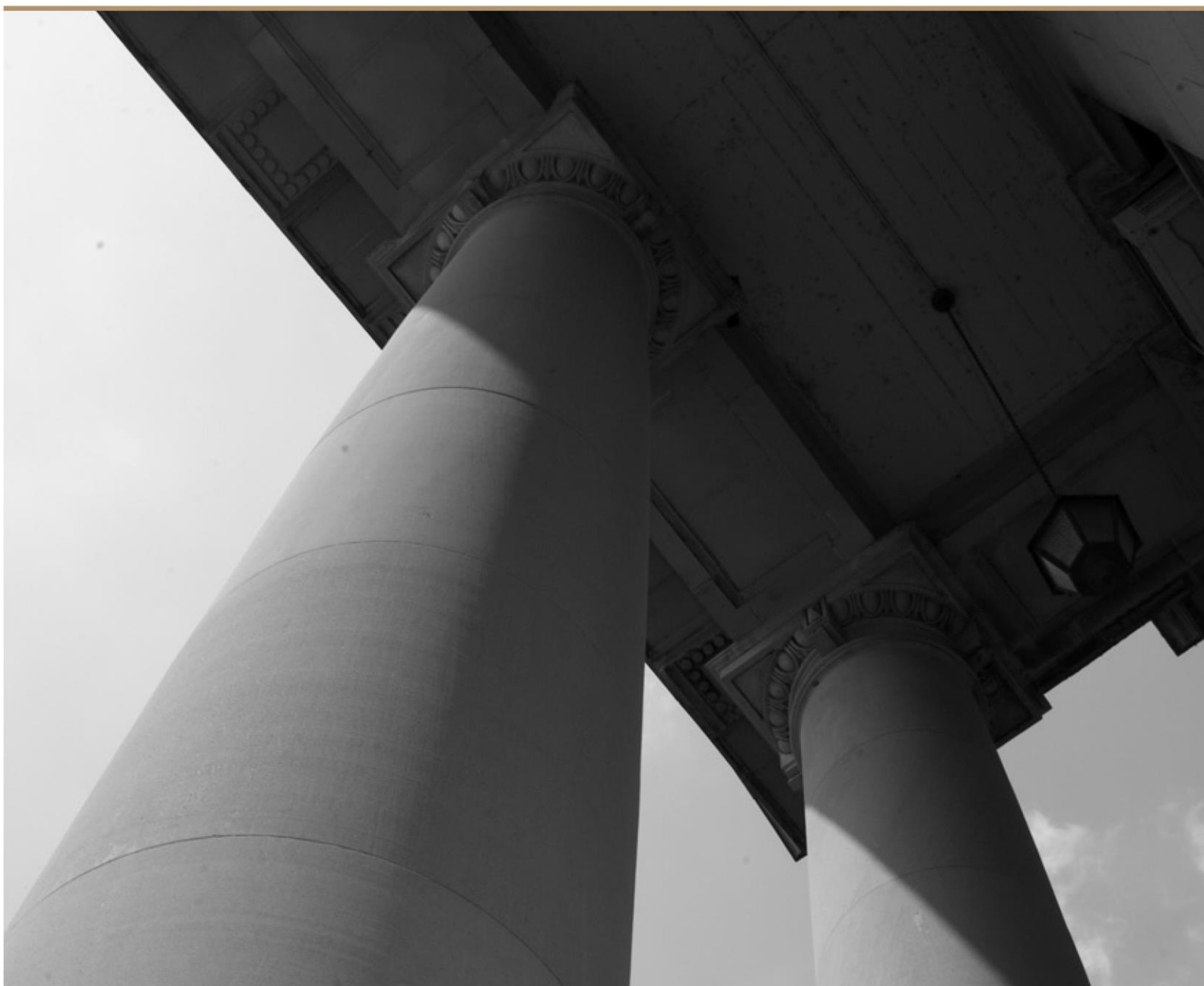




# MAGISTRATE/CLERK STAFFING REPORT

G.S. 7A-133

PREPARED BY  
NORTH CAROLINA ADMINISTRATIVE OFFICE OF THE COURTS  
JULY 10, 2024



#### **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

G.S. 7A-133, as amended by S.L. 2023-134, s.16.2, requires the North Carolina Administrative Office of the Courts (“NCAOC”) to submit a report on all hires that stem from the hiring of a deputy or assistant clerk in lieu of one of the magistrate positions assigned to the county. Specifically, G.S. 7A-133(c1) provides as follows:

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

...

(c1) Notwithstanding the minimum staffing numbers in subsection (c) of this section, the clerk of superior court in a county, with the written or emailed 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 shall 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 by March 1 of each year to the chairs of the House of Representatives Appropriations Committee on Justice and Public Safety and the Senate Appropriations Committee on Justice and Public Safety regarding each of the following:

- (1) All deputy or assistant clerk positions previously filled pursuant to this subsection if the position remains filled pursuant to this subsection.
- (2) New deputy or assistant clerk positions filled pursuant to this subsection.

NCAOC respectfully submits this report pursuant to the legislative mandate.

## 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. To be eligible for nomination as a magistrate, the person must be a resident of the county for which they are appointed and meet other statutory requirements.

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.

<sup>1</sup> See N.C. Const., Art. IV, §17; N.C.G.S. §§7A-170, 7A-173.

## 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 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.

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.

## Report on Clerks Hired in Lieu of Magistrates

As of July 10, 2024, there is one clerk each in Currituck, Perquimans, and Pitt Counties that were hired in lieu of magistrates, for a total of three positions. The timeline of position transfer from magistrate to clerk is as follows:

- 1) Currituck – January 18, 2022
- 2) Perquimans – August 1, 2017
- 3) Pitt – May 1, 2022

## 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. 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.



[This page intentionally left blank]





**North Carolina Administrative Office of the Courts**

P.O. Box 2448

Raleigh, NC 27602

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

919 890 1000

