THE GENERAL STATUTES OF NORTH CAROLINA

1971 SUPPLEMENT

Completely Annotated, under the Supervision of the Department of Justice, by the Editorial Staff of the Publishers

UNDER THE DIRECTION OF

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Volume 4A

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Preface

This Supplement to Replacement Volume 4A contains amendments and supplementary annotations to the Constitutions of North Carolina and the United States, to the rules of practice in the General Court of Justice of the State and in the United States District Courts for the Middle District, the Eastern District and the Western District of North Carolina and to other matters within the scope of the volume. It also contains a table of the Session Laws of 1971.

Beginning with the opinions issued by the North Carolina Attorney General on July 1, 1969, any opinion which construes a specific statute will be cited as an annotation to that statute. For a copy of an opinion or of its headnotes write the Attorney General, P.O. Box 629, Raleigh, N.C. 27602.

The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes or in this Supplement, and any suggestions they may have for improving the General Statutes, to the Department of Justice of the State of North Carolina, or to The Michie Company, Law Publishers, Charlottesville, Virginia.

Scope of Volume

Constitutions:

Amendments to the Constitution of North Carolina proposed in 1971.
Amendment to the Constitution of the United States ratified in 1971.

Rules:

Amendments to rules of practice in the Court of Appeals of North Carolina, to rules of practice in the United States District Courts for the Middle District, the Eastern District and the Western District of North Carolina, and to rules governing admission to the practice of law.

Annotations:

Sources of the annotations to the North Carolina Constitution and to the rules of practice in the State courts:

North Carolina Reports volumes 276 (p. 728)-279 (p. 191).
North Carolina Court of Appeals Reports volumes 9 (p. 172)-11 (p. 596).
Federal Reporter 2nd Series volumes 429 (p. 993)-443 (p. 1216).
Federal Supplement volumes 315 (p. 321)-328 (p. 224).
United States Reports volumes 399 (p. 527)-403 (p. 442).
Supreme Court Reporter volumes 90 (p. 2355)-91 (p. 1976).
North Carolina Law Review volumes 48-49 (p. 591).
Wake Forest Intramural Law Review volume 6 (p. 568).
Opinions of the Attorney General.

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VOLUME 4A

Constitution of North Carolina

ARTICLE I
DECLARATION OF RIGHTS

Sec. 6. *Separation of powers.*

Generally.—
The legislature may not abdicate its power to make laws nor delegate its supreme legislative power to any other coordinate branch or to any agency which it may create. Martin v. North Carolina Housing Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

When Legislature May Delegate Legislative Power to Administrative Agency.— As to some specific subject matter, the legislature may delegate a limited portion of its legislative power to an administrative agency if it prescribes the standards under which the agency is to exercise the delegated powers. Martin v. North Carolina Housing Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

Assignment of Discretionary Power to Board of Paroles.—Section 148-62, insofar as it grants discretionary power to the Board of Paroles, is not an assignment of judicial power to the Board of Paroles in contravention of N.C. Const., Art. IV, § 1 and this section. Jernigan v. State, 10 N.C. App. 562, 179 S.E.2d 788 (1971).

Sec. 14. *Freedom of speech and press.*

Right to Comment on Matters of Public Interest.—Every one has a right to comment on matters of public interest and concern, provided he does so fairly and with an honest purpose. Johnston v. Time, Inc., 321 F. Supp. 837 (M.D.N.C. 1970).

Such Comments Not Libelous Unless Written Maliciously.—Such comments or criticisms are not libelous, however severe in their terms, unless they are written maliciously. Johnston v. Time, Inc., 321 F. Supp. 837 (M.D.N.C. 1970).

This section is viewed in the light of the doctrine of "qualified privilege." Johnston v. Time, Inc., 321 F. Supp. 837 (M.D.N.C. 1970).

The basis of privilege is the public interest in the free expression and communication of ideas. Johnston v. Time, Inc., 321 F. Supp. 837 (M.D.N.C. 1970).

Recovery for Defamation Not Allowed Where Public Interest Outweighs State's Interest. — Where this public interest is sufficient to outweigh the interest of the State in protecting the individual or corporate plaintiff from damage to his or its reputation, social or business relationships, the law does not allow recovery of damages, actual or punitive, occasioned by the defamatory speech or publication. Johnston v. Time, Inc., 321 F. Supp. 837 (M.D.N.C. 1970).

When Qualified Privilege Is Applicable. —Qualified privilege will apply to a statement made or article written in good faith, without actual malice, (as defined by the law of North Carolina), touching upon a topic in which the speaker or publisher has an interest, or in respect to which he has a duty, public, personal, or private, either legal, judicial, political, moral, or social. Johnston v. Time, Inc., 321 F. Supp. 837 (M.D.N.C. 1970).

Is Question of Law.—Whether a publication is privileged is a question of law to be determined by the court. Johnston v. Time, Inc., 321 F. Supp. 837 (M.D.N.C. 1970).

Qualified Privilege Not Extended to Sports Reporting. — The North Carolina courts have not, as of yet, extended the doctrine of qualified privilege to the field of sports reporting, nor is there any indication that they will do so in the future. Johnston v. Time, Inc., 321 F. Supp. 837 (M.D.N.C. 1970).

Malice Necessary to Overcome Qualified Privilege Distinguished from "Actual Malice". — The malice necessary under North Carolina law to overcome the shield of qualified privilege should not be confused with the "actual malice" standard which has been developed from the First Amendment, freedom of the press, decisions under the United States Constitution. Johnston v. Time, Inc., 321 F. Supp. 837 (M.D.N.C. 1970).

North Carolina equates actual malice with reckless or careless publication. Johnston v. Time, Inc., 321 F. Supp. 837 (M.D.N.C. 1970).

Falsehood of Statement Not Sufficient to Establish Malice.—In cases of qualified privilege, the falsehood of the statement will not of itself be sufficient to establish malice, for there is a presumption that the publication was made bona fide. Johnston v. Time, Inc., 321 F. Supp. 837 (M.D.N.C. 1970).

Sec. 19. *Law of the land; equal protection of the laws.*

I. GENERAL CONSIDERATION.

Editor's Note.—

For note on statutory requirement of safety helmets for motorcyclists, see 6 Wake Forest Intra. L. Rev. 349 (1970). For article surveying recent decisions by the North Carolina Supreme Court in the area of criminal procedure, see 49 N.C.L. Rev. 262 (1971).

"Law of the Land" Has Same Meaning as "Due Process of Law".—The expression "the law of the land," has the same meaning as the expression "due process of law." Horton v. Gulledge, 277 N.C. 353, 177 S.E.2d 885 (1970).

A decision of the Supreme Court of the United States construing the due process clause of the Fourteenth Amendment to the federal Constitution, though persuasive, does not control an interpretation by the Supreme Court of North Carolina of the law of the land clause in the Constitution of North Carolina. Horton v. Gulledge, 277 N.C. 353, 177 S.E.2d 885 (1970).

Principle of Equal Protection Expressly Incorporated.—The principle of the equal protection of the law, made explicit in the Fourteenth Amendment to the Constitution of the United States has now been expressly incorporated in this section of the Constitution of North Carolina. S.S. Kresge Co. v. Davis, 277 N.C. 654, 178 S.E.2d 382 (1971).

Scope of Police Power of State and Liberty of Individual.—The police power of the State extends to all the compelling needs of the public health, safety, morals and general welfare. Likewise, the liberty protected by the law of the land clause of the State Constitution extends to all fundamental rights of the individual. It is the function of the courts to establish the location of the dividing line between the two. State v. Dobbins, 277 N.C. 484, 178 S.E.2d 449 (1971).

The limit of the police power is the reasonable necessity for the action in order to protect the public. Horton v. Gulledge, 277 N.C. 353, 177 S.E.2d 885 (1970).

The police power does not include power arbitrarily to invade property rights. Horton v. Gulledge, 277 N.C. 353, 177 S.E.2d 885 (1970).

Protection against Unreasonable Discrimination Extends to Administration and Execution of Laws. — The constitutional protection in this section against unreasonable discrimination under color of law is not limited to the enactment of legislation. It extends also to the administration and the execution of laws valid on their face. S.S. Kresge Co. v. Davis, 277 N.C. 654, 178 S.E.2d 382 (1971).

Application and Administration of Law with Unjust and Illegal Discrimination Is within Prohibitions of Constitution. — Though a law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution. S.S. Kresge Co. v. Davis, 277 N.C. 654, 178 S.E.2d 382 (1971).

Discriminatory administration of an ordinance is a denial of the equal protection of the law. S.S. Kresge Co. v. Davis, 277 N.C. 654, 178 S.E.2d 382 (1971).

But Mere Laxity in Enforcement Does Not Render Law Invalid.—Mere laxity, delay or inefficiency of the police department, or of the prosecutor, in the enforcement of a statute or ordinance, otherwise valid, does not destroy the law or render it invalid and unenforceable. S.S. Kresge Co. v. Davis, 277 N.C. 654, 178 S.E.2d 382 (1971).

Even selective enforcement does not have that effect if it has a reasonable relation to the purpose of the legislation, such as making efficient use of police manpower by concentrating upon the major sources of the criminal activity. S.S. Kresge Co. v. Davis, 277 N.C. 654, 178 S.E.2d 382 (1971).

Unless There Is Intentional or Purposeful Discrimination.—The unlawful administration by state officers of a state statute fair on its face, resulting in its unequal application to those who are entitled to be treated alike, is not a denial of equal protection unless there is shown to be present in it an element of intentional or purposeful discrimination. Such discriminatory purpose is not presumed. S.S. Kresge Co. v. Davis, 277 N.C. 654, 178 S.E.2d 382 (1971).

The good faith of the enforcing officers is presumed. S.S. Kresge Co. v. Davis, 277 N.C. 654, 178 S.E.2d 382 (1971).

And Burden Is on Complainant to Show Intentional Discrimination. — The burden is upon the complainant to show the intentional, purposeful discrimination upon which he relies. S.S. Kresge Co. v. Davis, 277 N.C. 654, 178 S.E.2d 382 (1971).

And It Is Not Sufficient to Show That Numerous Other Violators Have Not Been Prosecuted.—One who violates a law, valid upon its face, does not bring himself within the protection of the discriminatory administration rule merely by showing that numerous other persons have also violated the law and have not been arrested and prosecuted therefor. S.S. Kresge Co. v. Davis, 277 N.C. 654, 178 S.E.2d 382 (1971).

The right to travel is a part of the liberty of which the citizen cannot be deprived without due process of law under the Fifth Amendment, but it can be restricted with due process of law. State v. Dobbins, 277 N.C. 484, 178 S.E.2d 449 (1971).

Quarantine of Disaster Areas.—The constitutional protection of the freedom of travel does not mean that areas ravaged by flood, fire or pestilence cannot be quarantined when it can be demonstrated that unlimited travel to the area would directly and materially interfere with the safety and welfare of the area. State v. Dobbins, 277 N.C. 484, 178 S.E.2d 449 (1971).

Applied in Hajoca Corp. v. Clayton, 277 N.C. 560, 178 S.E.2d 481 (1971).

Cited in McKinney v. Board of Comm'rs, 278 N.C. 295, 179 S.E.2d 313 (1971).

II. RIGHTS OF DEFENDANTS IN CRIMINAL CASES.

Section Prohibits Double Jeopardy.—It is a fundamental principle of the common law, now guaranteed by the federal and state constitutions, that no person can be twice put in jeopardy of life or limb for the same offense. State v. Cutshall, 278 N.C. 334, 180 S.E.2d 745 (1971).

The burden is upon defendant to sustain his plea of double jeopardy. State v. Cutshall, 278 N.C. 334, 180 S.E.2d 745 (1971).

Abandonment of Plea of Double Jeopardy.—Where the defendant fails to plead double jeopardy and to offer supporting evidence thereon, he is therefore deemed to have abandoned the plea of double jeopardy. State v. Cutshall, 278 N.C. 334, 180 S.E.2d 745 (1971).

When Jeopardy Attaches.—Jeopardy attaches when a defendant in a criminal prosecution is placed on trial: (1) on a valid indictment or information, (2) before a court of competent jurisdiction, (3) after arraignment, (4) after plea, and (5) when a competent jury has been empaneled and sworn. State v. Cutshall, 278 N.C. 334, 180 S.E.2d 745 (1971).

Double Jeopardy Provision Not Violated by Mistrial Order and Another Trial. — Both federal decisions, applying the Fifth Amendment, and State decisions, applying common law and State constitutional principles, have recognized that, in certain situations arising in criminal prosecutions, the court may order a mistrial before verdict and again place defendant on trial without violating the double jeopardy prohibition. State v. Preston, 9 N.C. App. 71, 175 S.E.2d 705 (1971).

Where Mistrial Was Ordered for Physical Necessity or Necessity of Doing Justice. — Even where all the elements of jeopardy appear, a plea of former jeopardy will not prevail where the order of mistrial was properly entered for "physical necessity or for necessity of doing justice." State v. Cutshall, 278 N.C. 334, 180 S.E.2d 745 (1971).

"Physical necessity" is illustrated where a juror by a sudden attack of illness is wholly disqualified from proceeding with the trial, or where the prisoner becomes insane during the trial, or where a female defendant is taken in labor during the trial. State v. Cutshall, 278 N.C. 334, 180 S.E.2d 745 (1971).

"Necessity of doing justice" is not an expression connoting a vague generality but one that relates to a limited subject, namely, the occurrence of some incident of a nature that would render impossible a fair and impartial trial under the law. State v. Cutshall, 278 N.C. 334, 180 S.E.2d 745 (1971).

"Necessity of doing justice" arises from the duty of the court to guard the administration of justice from fraudulent practices; as in the case of tampering with the jury, or keeping back the witnesses on the part of the prosecution. State v. Cutshall, 278 N.C. 334, 180 S.E.2d 745 (1971).

Duty of Judge Ordering Mistrial in Capital Cases.—In all cases, capital included, the court may discharge a jury and order

a mistrial when it is necessary to attain the ends of justice. It is a matter resting in the sound discretion of the trial judge, but in capital cases he is required to find the facts fully and place them upon record so that upon a plea of former jeopardy, the action of the court may be reviewed. State v. Cutshall, 278 N.C. 334, 180 S.E.2d 745 (1971).

Sustaining State's Challenges of Jurors. —Where it was perfectly clear from their answers that each of the prospective jurors, before hearing any of the evidence, had already made up his mind that he would not return a verdict pursuant to which the defendant might lawfully be executed whatever the evidence might be, the State's challenges for cause were properly sustained. State v. Westbrook, 279 N.C. 18, 181 S.E.2d 572 (1971).

Section Preserves Right of Confrontation and Cross-Examination.—"The law of the land" guaranteed by this section of the Constitution, synonymous with "due process," preserves the right of confrontation and cross-examination to an accused in a criminal action. By cross-examination a witness may be questioned as to prior inconsistent statements or as to any act inconsistent with his testimony in order to impeach him or cast doubt upon his credibility. State v. Gaiten, 277 N.C. 236, 176 S.E.2d 778 (1970).

Statutes Authorizing Jury to Determine Guilt and Fix Punishment at Same Time Are Constitutional.—No provision of the Constitution of this State supports the defendant's contention that the General Assembly may not provide, as it has done in § 14-17, that the jury shall make its determination as to punishment at the same time it renders its verdict upon the question of guilt. State v. Westbrook, 279 N.C. 18, 181 S.E.2d 572 (1971).

The procedure in this State which permits the trial jury in a rape prosecution to decide, within its absolute and uncontrolled discretion, the guilt of the defendant and at the same time and as a part of the verdict to fix his punishment at life imprisonment is constitutional. State v. Dozier, 277 N.C. 615, 178 S.E.2d 412 (1971).

Statute Authorizing Jury to Determine Whether Punishment Shall Be Death or Life Imprisonment. — No constitutional right of the defendant is violated by the provision of § 14-17 authorizing the jury, upon finding the defendant guilty of murder in the first degree, to determine whether the punishment shall be death or imprisonment for life, notwithstanding the absence from the statute any standards to guide the jury in making that determination. State v. Westbrook, 279 N.C. 18, 181 S.E.2d 572 (1971).

Enjoining Enforcement of Ordinance by Criminal Prosecution. — Nothing else appearing, the enforcement of an ordinance, by the criminal prosecution of those who violate it, will not be enjoined in a suit brought by an acknowledged violator, whose contention is that the ordinance is invalid or that it is administered or enforced in a discriminatory manner in violation of the equal protection of the laws. His right to present this defense at his trial on the criminal charge, or to maintain a civil action for damages, is deemed to constitute an adequate remedy at law. Where, however, a plaintiff's legitimate business is threatened with destruction, through an announced purpose of making repeated arrests of his employees or customers and charging them with the violation of an allegedly invalid law, a suit for injunctive relief is an appropriate procedure for testing the equal protection constitutionality of the law, or of the contemplated enforcement program. S.S. Kresge Co. v. Davis, 277 N.C. 654, 178 S.E.2d 382 (1971).

III. TAKING OF PRIVATE PROPERTY FOR PUBLIC USE.

Prohibition of Use of Property.—It is quite true that the police power of the State, which it may delegate to its municipal corporation, extends to the prohibition of a use of private property which may reasonably be deemed to threaten the public health, safety, or morals or the general welfare and that, when necessary to safeguard such public interest, it may be exercised, without payment of compensation to the owner, even though the property is thereby rendered substantially worthless. Horton v. Gulledge, 277 N.C. 353, 177 S.E.2d 885 (1970).

Police Regulation Can Only Be Justified by Presence of Public Interest. — Police regulation of the use or enjoyment of property rights can only be justified by the presence of a public interest, and such rights may be limited only to the extent necessary to subserve the public interest. Horton v. Gulledge, 277 N.C. 353, 177 S.E.2d 885 (1970).

The lawmaking authorities may not, under the guise of police power, impose restrictions which are unnecessary and unreasonable upon the use of private property. Horton v. Gulledge, 277 N.C. 353, 177 S.E.2d 885 (1970).

The only warrant for public interference with a person's building is to secure public safety and protect health of those occupying the building. Desirable as it might be from an aesthetic point of view to have public control of private building, the law does not permit an invasion of private rights on such grounds. Horton v. Gulledge, 277 N.C. 353, 177 S.E.2d 885 (1970).

State May Not Regulate Use of Property for Aesthetic Reasons.—The State, itself, may not, under the guise of the police power, regulate the use of property for aesthetic reasons which have no real or substantial relation to the public health, safety or morals, or to the general welfare. Horton v. Gulledge, 277 N.C. 353, 177 S.E.2d 885 (1970).

Public necessity is the limit of the right to destroy property which is a menace to public safety or health and the property cannot be destroyed if the conditions which make it a menace can be abated in any other recognized way. Horton v. Gulledge, 277 N.C. 353, 177 S.E.2d 825 (1970).

Ordering Demolition of House for Nonconformity with City Housing Code.—An action by a municipality, pursuant to an ordinance adopted under the authority of § 160-182, in ordering the demolition of a dwelling house without compensation to the owner thereof, and in charging the expense of demolition to the owner upon his failure to demolish the house himself, such action being based upon findings by the city building inspector that the house was unfit for human habitation and that the repairs necessary to bring the house into conformity with the housing code would cost 60% or more of the present value of the house, is violative of the law of the land clause of the State Constitution, where (1) the house could be repaired so as to comply with the housing code and (2) the owner was not afforded a reasonable opportunity to repair the house. Horton v. Gulledge, 277 N.C. 353, 177 S.E.2d 885 (1970).

Where it appears from the findings of a city housing commission that a house can be repaired so as to comply with the city's housing code, be suitable for human habitation and be no longer a threat to public health, safety, morals or general welfare, to require its destruction without giving the owner a reasonable opportunity thus to remove the existing threat to the public health, safety and welfare is arbitrary and unreasonable. Such power may not be delegated to or exercised by a municipal corporation of this State by reason of this section. Horton v. Gulledge, 277 N.C. 353, 177 S.E.2d 885 (1970).

A homeowner who is faced with a municipal housing inspector's order giving him no alternative but to demolish his home that was declared uninhabitable by the municipality, or to pay the expense of a demolition by the municipality, is not required to propose an alternative remedy for the condition of the house before asserting his constitutional right in the courts. Horton v. Gulledge, 277 N.C. 353, 177 S.E.2d 885 (1970).

City May Compensate for Easements by Agreement to Furnish Fire Protection Outside City Limits.—A municipality has the authority to compensate landowners for a water and sewer line easement across a tract of land located outside the municipal limits by an agreement to furnish fire protection for any buildings located on such tract. Valevais v. City of New Bern, 10 N.C. App. 215, 178 S.E.2d 109 (1970).

V. ILLUSTRATIVE CASES.

The right to travel upon the public streets of a city is a part of every individual's liberty, protected by the law of the land clause of the Constitution of North Carolina. State v. Dobbins, 277 N.C. 484, 178 S.E.2d 449 (1971).

But Curfew May Be Imposed Where Danger Is Clear and Present.—Where the danger is clear and present, the Constitution of the United States and Constitution of North Carolina do not forbid city authorities to declare a state of emergency and to proclaim and enforce a temporary, night-to-night, city-wide curfew, with specified exceptions for emergency and necessary travel. State v. Dobbins, 277 N.C. 484, 178 S.E.2d 449 (1971).

The statutory scheme of Chapter 14, Article 36A is not unconstitutional in contravention of this section. State v. Dobbins, 9 N.C. App. 452, 176 S.E.2d 353 (1970).

Section 148-62 does not deprive a defendant of liberty other than by the law of the land in that it fails to provide adequate standards to guide the Board of Paroles in exercise of the discretionary power granted to it, as contended. Jernigan v. State, 10 N.C. App. 562, 179 S.E.2d 788 (1971).

Enjoining Expenditure of Public Funds for Corporation Not Created for Public Purpose.—If an act creating a corporation is unconstitutional as violative of N.C. Const., Art. V, § 2 and Art. I, § 19, and of Section 1 of the Fourteenth Amendment to the Constitution of the United States, and is void because the purpose for which

the corporation was created is not a public purpose, then taxpayer may maintain an action to restrain state officials from paying to the corporation and the corporation from using money appropriated out of the general fund. Martin v. North Carolina Housing Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

Sec. 20. *General warrants.*

Cross Reference.—

As to illegal searches in general, see note to § 15-27.

It does not prohibit seizure, etc.—

The constitutional and statutory guarantee against unreasonable search and seizure does not prohibit seizure of evidence and its introduction into evidence on a subsequent prosecution where no search is required. State v. Simmons, 278 N.C. 468, 180 S.E.2d 97 (1971).

Seizure of contraband, such as burglary tools, does not require a warrant when its presence is fully disclosed without necessity of search. State v. Simmons, 278 N.C. 468, 180 S.E.2d 97 (1971).

Search of Automobiles and Other Conveyances.—Automobiles and other conveyances may be searched without a warrant under circumstances that would not justify the search of a house, and a police officer in the exercise of his duties may search an automobile or other conveyance without a search warrant when the existing facts and circumstances are sufficient to support a reasonable belief that the automobile or other conveyance carries contraband materials. State v. Simmons, 278 N.C. 468, 180 S.E.2d 97 (1971).

Seizure of Non-Taxpaid Liquor Held Justified.—When officers saw the liquid in containers generally used to contain and transport non-taxpaid liquor, under the circumstances then existing, they had sufficient reasonable cause to believe that the jars contained non-taxpaid liquor to justify the seizure of the contraband without a search warrant. State v. Simmons, 278 N.C. 468, 180 S.E.2d 97 (1971).

Sec. 21. *Inquiry into restraints on liberty.*

Editor's Note.—

For article surveying recent decisions by the North Carolina Supreme Court in the area of criminal procedure, see 49 N.C.L. Rev. 262 (1971).

Sec. 22. *Modes of prosecution.*

The purposes of this section and § 23 of this Article are (1) to provide certainty so as to identify the offense, (2) to protect the accused from twice being put in jeopardy for the same offense, (3) to enable the accused to prepare for trial, and (4) to enable the court, on conviction or plea of guilty or nolo contendere, to pronounce sentence according to the rights of the case. State v. Foster, 10 N.C. App. 141, 177 S.E.2d 756 (1970).

Sec. 23. *Rights of accused.*

I. GENERAL CONSIDERATION.

The purposes of this section and § 22 of this Article are (1) to provide certainty so as to identify the offense, (2) to protect the accused from twice being put in jeopardy for the same offense, (3) to enable the accused to prepare for trial, and (4) to enable the court, on conviction or plea of guilty or nolo contendere, to pronounce sentence according to the rights of the case. State v. Foster, 10 N.C. App. 141, 177 S.E.2d 756 (1970).

To implement the constitutional rights under this section the General Assembly enacted § 15-47. State v. Hill, 277 N.C. 547, 178 S.E.2d 462 (1971).

One who is detained by police officers under a charge of driving while under the influence of an intoxicant has the same constitutional and statutory rights, including the rights given under N.C. Const., Art. I, § 23 and § 15-47, as any other accused. State v. Hill, 277 N.C. 547, 178 S.E.2d 462 (1971).

II. RIGHT TO BE INFORMED OF ACCUSATION.

Indictment for Larceny, etc.—

In an indictment for larceny the description "automobile parts . . . of one Furches Motor Company" sufficiently identifies the property alleged to have been stolen and this section and § 22 of this Article and their purposes. The description identifies the type of parts and the owner from whom they were taken. State v. Foster, 10 N.C. App. 141, 177 S.E.2d 756 (1970).

III. RIGHT OF CONFRONTATION.

Right Includes Opportunity, etc.—

A defendant has the constitutional right, in a criminal prosecution, to confront his accusers with other testimony. State v. Hill, 9 N.C. App. 279, 176 S.E.2d 41 (1970).

And to Prepare and Present Defense.— Every defendant is entitled under the Constitution to have a reasonable opportunity to prepare his defense. This includes the right to consult with his counsel and to have a fair and reasonable opportunity, in the light of all attendant circumstances, to investigate, to prepare, as well as to present his defense. This right must be accorded every person charged with a crime. State v. Hill, 9 N.C. App. 279, 176 S.E.2d 41 (1970).

When an officer's blunder deprives a defendant of his only opportunity to obtain evidence which might prove his innocence, the State will not be heard to say that such evidence did not exist. State v. Hill, 277 N.C. 547, 178 S.E.2d 462 (1971).

Subsequent Conviction Lacks Due Process of Law.—Where the effect of a failure of the arresting officer and of the custodian of the arrested person to perform their respective duties is such as to deprive a person of the constitutional right to call for evidence in his favor, his subsequent conviction lacks the required due process of law and cannot stand. State v. Hill, 277 N.C. 547, 178 S.E.2d 462 (1971).

Rights of Person Accused of Offense Involving Intoxication. — When one is taken into police custody for an offense of which intoxication is an essential element, time is of the essence. Intoxication does not last. Ordinarily a drunken man will "sleep it off" in a few hours. Thus, if one accused of driving while intoxicated is to have witnesses for his defense, he must have access to his counsel, friends, relatives, or some disinterested person within a relatively short time after his arrest. Section 15-47 says he is entitled to communicate with them immediately, and this is true whether he is arrested at 2:00 in the morning or 2:00 in the afternoon. State v. Hill, 277 N.C. 547, 178 S.E.2d 462 (1971).

IV. RIGHT TO COUNSEL.

A defendant has a constitutional right, etc.—

Both the State and federal Constitutions secure to every man the right to be defended in all criminal prosecutions by counsel whom he selects and retains. State v. Hill, 9 N.C. App. 279, 176 S.E.2d 41 (1970).

This right is not intended to be an empty formality. State v. Hill, 9 N.C. App. 279, 176 S.E.2d 41 (1970).

Counsel Must Have Opportunity to Investigate, Prepare and Present Defense.— Since the law regards substance rather than form, the constitutional guaranty of the right of counsel contemplates not only that a person charged with crime shall have the privilege of engaging counsel, but also that he and his counsel shall have a reasonable opportunity in the light of all attendant circumstances to investigate, prepare and present his defense. State v. Hill, 9 N.C. App. 279, 176 S.E.2d 41 (1970).

The refusal of a jailer to permit the defendant's attorney to confer with him while he was in jail is a denial of a constitutional right. State v. Hill, 9 N.C. App. 279, 176 S.E.2d 41 (1970).

A defendant is entitled to consult with friends and relatives and to have them make observations of his person. The right to communicate with counsel and friends necessarily includes the right of access to them. State v. Hill, 277 N.C. 547, 178 S.E.2d 462 (1971).

The rights of communication go with the man into the jail, and reasonable opportunity to exercise them must be afforded by the restraining authorities. The denial of an opportunity to exercise a right is a denial of the right. State v. Hill, 277 N.C. 547, 178 S.E.2d 462 (1971).

And Are Not Limited to Receiving Professional Advice from Attorney. — Under this section and § 15-47 a defendant's communication and contacts with the outside world are not limited to receiving professional advice from his attorney. State v. Hill, 277 N.C. 547, 178 S.E.2d 462 (1971).

The fact that a person is a defendant's lawyer, as well as his friend, does not impair his right to see the defendant at a critical time of the proceedings. State v. Hill, 277 N.C. 547, 178 S.E.2d 462 (1971).

A defendant is entitled to counsel at every critical stage of the proceedings against him. State v. Hill, 277 N.C. 547, 178 S.E.2d 462 (1971).

What Constitutes Critical Stage Where Offense Involves Intoxication.—A critical stage has been reached in a defendant's case when, immediately after officers have interrogated the defendant and conducted their test for sobriety, they charge him with the offense of driving while intoxicated. The denial of counsel at this point makes it impossible for a defendant to have disinterested witnesses observe his condition and to obtain a blood test by a doctor —the only means by which defendant might prove his innocence. State v. Hill, 277 N.C. 547, 178 S.E.2d 462 (1971).

A defendant's guilt or innocence under § 20-138 depends upon whether he is intoxicated at the time of his arrest. His condition then is the crucial and decisive fact to be proven. Permission to communicate with counsel and friends is of no avail if those who come to the jail in response

to a prisoner's call are not permitted to see for themselves whether he is intoxicated. In this situation, the right of a defendant to communicate with counsel and friends implies, at the very least, the right to have them see him, observe and examine him, with reference to his alleged intoxication. State v. Hill, 277 N.C. 547, 178 S.E.2d 462 (1971).

Denial of Right Resulting in Irreparable Prejudice. — The denial of a request for permission to contact counsel as soon as a person is charged with a crime involving the element of intoxication, is a denial of a constitutional right resulting in irreparable prejudice to his defense. State v. Hill, 277 N.C. 547, 178 S.E.2d 462 (1971).

Sec. 24. *Right of jury trial in criminal cases.*

Editor's Note.—

For note on right to jury trial in criminal contempt proceedings, see 6 Wake Forest Intra. L. Rev. 356 (1970).

Poll of Jury.—

The right to have the jury polled is surely one of the best safeguards for the protection of the accused, and as an incident to jury trials would seem to be a constitutional right, and its exercise only a mode, more satisfactory to the prisoner, of ascertaining the fact that it is the verdict of the whole jury. State v. Ingland, 278 N.C. 42, 178 S.E.2d 577 (1971).

By having the jury polled, a defendant can ascertain if there has been any misunderstanding of the requirement of unanimity by any juror. State v. Ingland, 278 N.C. 42, 178 S.E.2d 577 (1971).

Not Required in Absence of Request.— In the absence of a request, a trial judge is not required to charge the jury that its verdict must be unanimous. State v. Ingland, 278 N.C. 42, 178 S.E.2d 577 (1971).

Failure to Charge Jury That Verdict Must Be Unanimous.—Since the defendant has the right to have the jury polled, there is no apparent reason why the trial judge should be required in every case to instruct the jury that its verdict must be unanimous. State v. Ingland, 278 N.C. 42, 178 S.E.2d 577 (1971).

A holding that failure of the trial judge to instruct the jury that its verdict must be unanimous is prejudicial error is unnecessary because in North Carolina a defendant has an absolute right to have the jury polled. State v. Ingland, 278 N.C. 42, 178 S.E.2d 577 (1971).

Where the jury was polled and all jurors assented to the verdict in open court, defendant was assured that all jurors agreed with the verdict rendered, and the omission of the charge on unanimity was entirely harmless. State v. Ingland, 278 N.C. 42, 178 S.E.2d 577 (1971).

Sec. 25. *Right of jury trial in civil cases.*

Right to a jury trial is guaranteed, etc.— This section guarantees to every person the "sacred and inviolable" right to demand a jury trial of issues of fact arising in all controversies at law respecting property. Sykes v. Belk, 278 N.C. 106, 179 S.E.2d 439 (1971).

This section has been construed to guarantee trial by jury in all civil actions where the parties have not waived the right. Cutts v. Casey, 278 N.C. 390, 180 S.E.2d 297 (1971).

How Jury Trial May Be Waived. — A party may waive his right to jury trial by (1) failing to appear at the trial, (2) by written consent filed with the clerk, (3) by oral consent entered in the minutes of the court, (4) by failing to demand a jury trial pursuant to § 1A-1, Rule 38(b). Sykes v. Belk, 278 N.C. 106, 179 S.E.2d 439 (1971).

The credibility of testimony is for the jury, not the court, and a genuine issue of fact must be tried by a jury unless this right is waived. Cutts v. Casey, 278 N.C. 390, 180 S.E.2d 297 (1971).

A compulsory reference, under former § 1-189, did not deprive either party of his constitutional right to a trial by jury of the issues of fact arising on the pleadings, but such trial was only upon the written evidence taken before the referee. Resort Dev. Co. v. Phillips, 278 N.C. 69, 178 S.E.2d 813 (1971).

Sec. 27. *Bail, fines, and punishments.*

Editor's Note.—

For article surveying recent decisions by the North Carolina Supreme Court in the area of criminal procedure, see 49 N.C.L. Rev. 262 (1971).

Punishment within Limits Fixed by Statute, etc.—

In accord with 3rd paragraph in original. See State v. Atkinson, 278 N.C. 168, 179 S.E.2d 410 (1971).

Unless Punishment Provisions of Statute Itself, etc.—

In accord with original. See State v. Atkinson, 278 N.C. 168, 179 S.E.2d 410 (1971).

The death penalty, etc.—

The imposition of the death penalty for murder in the first degree is not, per se, a violation of the Fourteenth Amendment to the Constitution of the United States or of any provision of the Constitution of North Carolina. It is not cruel and unusual punishment in the constitutional sense, being expressly authorized by Art. XI, § 2, of the Constitution of North Carolina. State v. Westbrook, 279 N.C. 18, 181 S.E.2d 572 (1971).

Whatever the arguments may be against capital punishment it cannot be said to violate the constitutional concept of cruelty. State v. Westbrook, 279 N.C. 18, 181 S.E.2d 572 (1971).

Death Penalty for Rape.—

The death penalty is not prohibited as cruel and unusual in the constitutional sense, and its imposition upon conviction of the crime of rape is not unconstitutional per se. State v. Atkinson, 278 N.C. 168, 179 S.E.2d 410 (1971).

Sec. 30. *Militia and the right to bear arms.*

Cited in State v. Dobbins, 277 N.C. 484, 178 S.E.2d 449 (1971).

Sec. 34. *Perpetuities and monopolies.*

Cited in Hajoca Corp. v. Clayton, 277 N.C. 560, 178 S.E.2d 481 (1971).

ARTICLE II

LEGISLATIVE

Section 1. *Legislative power.*

General Assembly Is Possessed of Full Legislative Powers. — Under the North Carolina Constitution, the General Assembly, so far as that instrument is concerned, is possessed of full legislative powers unless restrained by express constitutional provision or necessary implication therefrom. Martin v. North Carolina Housing Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

To Legislate for Protection of Health, Safety, Morals and General Welfare.—The General Assembly, exercising the police power of the State, may legislate for the protection of the public health, safety, morals and general welfare of the people. Martin v. North Carolina Housing Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

Questions of Public Policy Are for Legislative Determination.—Absent constitutional restraint, questions as to public policy are for legislative determination. Martin v. North Carolina Housing Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

The wisdom of an enactment is a legislative and not a judicial question. The General Assembly has the right to experiment with new modes of dealing with old evils, except as prevented by the Constitution. Martin v. North Carolina Housing Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

Whether the public policy and program established by the North Carolina Housing Corporation Act (§ 122A-1 et seq.) is wise or unwise is for determination by the General Assembly. Martin v. North Carolina Housing Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

The General Assembly cannot delegate to a city or county more extensive power than it possesses. In re Ellis, 277 N.C. 419, 178 S.E.2d 77 (1970).

Though the law-making power can unquestionably create a municipal corporation and delegate legislative authority to it, it cannot clothe the creature with power to do what the Constitution prohibits the creator from doing. In re Ellis, 277 N.C. 419, 178 S.E.2d 77 (1970).

The power to zone is the power originally vested in the General Assembly to legislate with reference to the use which may be made of land and the structures which may be erected or located thereon. Keiger v. Winston-Salem Bd. of Adjustment, 278 N.C. 17, 178 S.E.2d 616 (1971).

And Is Subject to Constitutional Limitation on Interference with Property Rights. —Power to zone rests originally in the General Assembly, but this power is subject to the constitutional limitation forbidding arbitrary and unduly discriminatory interference with the right of property owners. In re Ellis, 277 N.C. 419, 178 S.E.2d 77 (1970).

Municipality May Not Delegate Power to Zone to Board of Adjustment. — The legislative body of a municipal corporation, in which the General Assembly has vested

its power to zone, may not delegate the power to zone to the municipal board of adjustment. Keiger v. Winston-Salem Bd. of Adjustment, 278 N.C. 17, 178 S.E.2d 616 (1971).

Sec. 24. *Limitations on local, private, and special legislation.*

Subdivision (55) of § 153-9 is a home rule statute, applicable throughout the State. It enables the county commissioners of every county to enact ordinances in the exercise of the general police power within the prescribed territory just as other statutes enable the governing bodies of cities and towns to enact ordinances in the exercise of the general police power within their corporate limits. Such statutes are upheld as general laws and therefore valid notwithstanding that they regulate Sunday trade. Subdivision (55) of § 153-9 is a general law and therefore does not contravene N.C. Const., Art. II, § 29, Whitney Stores, Inc. v. Clark, 277 N.C. 322, 177 S.E.2d 418 (1970).

Cited in Hajoca Corp. v. Clayton, 277 N.C. 560, 178 S.E.2d 481 (1971).

ARTICLE III

EXECUTIVE

Sec. 5. *Duties of Governor.*

Quoted in Wilson v. North Carolina, 438 F.2d 284 (4th Cir. 1971).

Cited in Jernigan v. State, 10 N.C. App. 562, 179 S.E.2d 788 (1971).

ARTICLE IV

JUDICIAL

Section 1. *Judicial power.*

Grant of Discretionary Power to Board of Paroles. — Section 148-62, insofar as it grants discretionary power to the Board of Paroles, is not an assignment of judicial power to the Board of Paroles in contravention of this section and N.C. Const., Art. I, § 6. Jernigan v. State, 10 N.C. App. 562, 179 S.E.2d 788 (1971).

Sec. 8. *Retirement of Justices and Judges.*

Proposed Amendment. — Session Laws 1971, c. 451, s. 1, proposed that this section be amended to read as follows:

Sec. 8. Retirement of Justices and Judges. The General Assembly shall provide by general law for the retirement of Justices and Judges of the General Court of Justice, and may provide for the temporary recall of any retired Justice or Judge to serve on the court from which he was retired. The General Assembly shall also prescribe maximum age limits for service as a Justice or Judge.

Session Laws 1971, c. 451, s. 2, as amended by Session Laws 1971, c. 707, s. 1, provides that the amendment shall be voted on at the next general election.

Session Laws 1971, c. 451 s. 3, provides: "If a majority of the votes cast thereon are in favor of the amendment set out in section 1 of this act, then the Governor shall certify the amendment to the Secretary of State, who shall enroll the amendment so certified among the permanent records of his office, and the amendment shall become effective on January 1, 1973."

Sec. 12. *Jurisdiction of the General Court of Justice.*

II. SUPREME COURT.

A. In General.

Authority for a writ of error coram nobis stems from this section of the Constitution of North Carolina which gives the Supreme Court authority to exercise supervision over the inferior courts of the State. Dantzic v. State, 10 N.C. App. 369, 178 S.E.2d 790 (1971).

The availability of a writ of error coram nobis in this State stems from § 4-1, which adopts the common law as the law of this State, and authority for the writ stems from this section which gives the Supreme Court authority to exercise supervision over the inferior courts of the State. State v. Green, 277 N.C. 188, 176 S.E.2d 756 (1970).

Application Must Be Made to Supreme Court for Permission to Apply for Writ of Error Coram Nobis. — Since authority for issuance of a writ of error coram nobis derives from the supervisory power of the Supreme Court conferred by the Constitution, it is necessary that an application be

made to that court for permission to apply for the writ to the superior court in which a case is tried. State v. Green, 277 N.C. 188, 176 S.E.2d 756 (1970); Dantzic v. State, 10 N.C. App. 369, 178 S.E.2d 790 (1971).

The requirement that, in every instance, the approval of the Supreme Court must first be obtained before application can be made to the trial court for issuance of a writ of error coram nobis appears to be novel to North Carolina and here, of recent vintage. Prior to In re Taylor, 229 N.C. 297, 49 S.E.2d 749 (1948), it does not appear that authority for the issuance of the writ, long recognized as an available common-law writ, was derived from the supervisory powers granted in the Constitution but rather from § 4-1 which, with certain exceptions, adopted the common law as the law of this State. Dantzic v. State, 10 N.C. App. 369, 178 S.E.2d 790 (1971).

Which Application Is Addressed to Supervisory Authority of Supreme Court. — An application for permission to apply to the trial court for a writ of error coram nobis is addressed to the supervisory authority of the Supreme Court over proceedings of the inferior courts of the State. Dantzic v. State, 10 N.C. App. 369, 178 S.E.2d 790 (1971).

The Court of Appeals is without authority to entertain an application for a writ of error coram nobis; application for the writ must be made to the Supreme Court. Dantzic v. State, 10 N.C. App. 369, 178 S.E.2d 790 (1971).

Upon a prima facie showing of substantiality, the Supreme Court may grant permission to apply for the writ of error coram nobis to the court in which the case was tried. Dantzic v. State, 10 N.C. App. 369, 178 S.E.2d 790 (1971).

And Ultimate Merits of Claim Are for Trial Court.—A writ of error coram nobis is granted by the Supreme Court only upon a prima facie showing of substantiality and the ultimate merits of a petitioner's claim are not for that court but for the trial court. State v. Green, 277 N.C. 188, 176 S.E.2d 756 (1970).

A writ of error coram nobis will not lie in the superior court after an appeal to the Supreme Court and an affirmation of the judgment in that court. Dantzic v. State, 10 N.C. App. 369, 178 S.E.2d 790 (1971).

Sec. 17. *Removal of judicial officers.*

Proposed Amendment. — Session Laws 1971, c. 560, s. 1, proposed that this section be amended to read as follows:

Sec. 17. Removal of judges, magistrates and clerks.

(1) *Removal of Judges by the General Assembly.* Any Justice or Judge of the General Court of Justice may be removed from office for mental or physical incapacity by joint resolution of two thirds of all the members of each house of the General Assembly. Any Justice or Judge against whom the General Assembly may be about to proceed shall receive notice thereof, accompanied by a copy of the causes alleged for his removal, at least 20 days before the day on which either house of the General Assembly shall act thereon. Removal from office by the General Assembly for any other cause shall be by impeachment.

(2) *Additional method of removal of Judges.* The General Assembly shall prescribe a procedure, in addition to impeachment and address set forth in this section, for the removal of a Justice or Judge of the General Court of Justice for mental or physical incapacity interfering with the performance of his duties which is, or is likely to become, permanent, and for the censure and removal of a Justice or Judge of the General Court of Justice for wilful misconduct in office, wilful and persistent failure to perform his duties, habitual intemperance, conviction of a crime involving moral turpitude, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

(3) *Removal of Magistrates.* The General Assembly shall provide by general law for the removal of Magistrates for misconduct or mental or physical incapacity.

(4) *Removal of Clerks.* Any Clerk of the Superior Court may be removed from office for misconduct or mental or physical incapacity by the senior regular resident Superior Court Judge serving the county. Any Clerk against whom proceedings are instituted shall receive written notice of the charges against him at least 10 days before the hearing upon the charges. Any Clerk so removed from office shall be entitled to an appeal as provided by law.

Session Laws 1971, c. 560, s. 2, as amended by Session Laws 1971, c. 707, s. 2, provides that the amendment shall be voted on at the next general election.

Session Laws 1971, c. 560, s. 3, provides: "If a majority of the votes cast thereon are in favor of the amendment set out in section 1 of this act, then the Governor shall certify the amendment to the Secretary of State, who shall enroll the amendment so certified among the permanent records of his office, and the amendment shall become effective on January 1, 1973."

ARTICLE V
FINANCE

Sec. 2. *State and local taxation.*

I. POWER OF TAXATION GENERALLY; CLASSIFICATION.

A. General Consideration.

A sovereign state, as one of its inherent attributes, has the power of taxation, which must be exercised by its legislative branch. Hajoca Corp. v. Clayton, 277 N.C. 560, 178 S.E.2d 481 (1971).

A county is not a sovereign and hence does not have the inherent power to levy taxes. A county must derive its taxing power from the State Constitution or from the State's legislative enactments. Hajoca Corp. v. Clayton, 277 N.C. 560, 178 S.E.2d 481 (1971).

A county board of elections does not have taxing power. Hajoca Corp. v. Clayton, 277 N.C. 560, 178 S.E.2d 481 (1971).

Taxes and Local Assessments for Public Improvements Distinguished.—There is a distinction between local assessments for public improvements and taxes levied for purposes of general revenue. It is true that local assessments may be a species of tax, and that the authority to levy them is generally referred to the taxing power, but they are not taxes within the meaning of that term as generally understood in constitutional restrictions and exemptions. Southern Ry. v. City of Raleigh, 9 N.C. App. 305, 176 S.E.2d 21 (1970).

Meaning of "Public Purpose".—

A slide-rule definition to determine public purpose for all time cannot be formulated; the concept expands with the population, economy, scientific knowledge, and changing conditions. Martin v. North Carolina Housing Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

For a use to be public its benefits must be in common and not for particular persons, interests, or estates; the ultimate net gain or advantage must be the public's as contradistinguished from that of an individual or private entity. Martin v. North Carolina Housing Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

Legislative Declaration Not Conclusive.—A legislative declaration which asserts in general terms that the statute under consideration is enacted for a public purpose, although entitled to great weight, is not conclusive. When the facts are determined, what is a public purpose is a question of law for the court. Martin v. North Carolina Housing Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

Tax Revenues May Not Be Used, etc.—

The power to appropriate money from the public treasury is no greater than the power to levy the tax which put the money in the treasury. Martin v. North Carolina Housing Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

If an act creating a corporation is unconstitutional as violative of this section and Article I, § 19, of the Constitution of North Carolina, and of Section 1 of the Fourteenth Amendment to the Constitution of the United States, and is void because the purpose for which the corporation was created is not a public purpose, then taxpayer may maintain an action to restrain state officials from paying to the corporation and the corporation from using money appropriated out of the General Fund. Martin v. North Carolina Housing Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

The principles of equality and uniformity are indispensable to taxation, whether general or local. Hajoca Corp. v. Clayton, 277 N.C. 560, 178 S.E.2d 481 (1971).

Uniformity, in its legal and proper sense, is inseparably incident to the exercise of the power of taxation. Hajoca Corp. v. Clayton, 277 N.C. 560, 178 S.E.2d 481 (1971).

Compliance with Rule of Uniformity, etc.—

The requirements of "uniformity," "equal protection," and "due process" are, for all practical purposes, the same under both the State and federal Constitutions. Hajoca Corp. v. Clayton, 277 N.C. 560, 178 S.E.2d 481 (1971).

State May Not Levy Tax in Some Counties and Exempt Others.—The Constitution does not permit a state to levy a tax which discriminates in favor of or against taxpayers in the same classification. The prohibition extends throughout the State. Hence, the State cannot levy a tax in 25 counties and exempt 75 counties. Nor can the State set up a valid scheme by which that precise result is accomplished. Thus, the additional sales tax authorized by the Local Option Sales and Use Tax Act is unconstitutional. Hajoca Corp. v. Clayton, 277 N.C. 560, 178 S.E.2d 481 (1971).

Local taxation must be uniform upon the same class of subjects within the territorial limits of the authority levying the tax. Hajoca Corp. v. Clayton, 277 N.C. 560, 178 S.E.2d 481 (1971).

Requirement of Uniformity Extends to License, Franchise and Other Forms of Taxation. — Repeated judicial interpretations extend the requirement of uniformity to license, franchise, and other forms of taxation. Hajoca Corp. v. Clayton, 277 N.C. 560, 178 S.E.2d 481 (1971).

Although it is not expressly provided that the tax on trades, etc., shall be uniform, yet a tax not uniform, as properly understood, would be so inconsistent with natural justice, and with the intent which is apparent in the section of the Constitution above cited, that it may be admitted that the collection of such a tax would be restricted as unconstitutional. Hajoca Corp. v. Clayton, 277 N.C. 560, 178 S.E.2d 481 (1971).

License taxes must bear equally and uniformly upon all persons engaged in the same class of business or occupation or exercising the same privileges. Hajoca Corp. v. Clayton, 277 N.C. 560, 178 S.E.2d 481 (1971).

When Tax Is Uniform.—

Taxing is required to be by a uniform rule—that is, by one and the same unvarying standard. Uniformity in taxing implies equality in the burden of taxation, and this equality of burden cannot exist without uniformity in the mode of assessment, as well as in the rate of taxation. But this is not all. The uniformity must be coextensive with the territory to which it applies. If a State tax, it must be uniform all over the State. If a county or city tax, it must be uniform throughout the extent of the territory to which it is applicable. Hajoca Corp. v. Clayton, 277 N.C. 560, 178 S.E.2d 481 (1971).

Uniformity is defined to consist in putting the same tax upon all of the same class—that is, while the same tax must be enforced upon all innkeepers, upon railroads, and so throughout, a tax discriminating persons of the same class, whereby some are required to pay more than others, would lack uniformity. Hajoca Corp. v. Clayton, 277 N.C. 560, 178 S.E.2d 481 (1971).

Equality within the class or for those of like station and condition is all that is required to meet the test of constitutionality under subsection (2) of this section. A tax on trades, etc., must be considered uniform when it is equal upon all persons belonging to the prescribed class upon which it is imposed. Hajoca Corp. v. Clayton, 277 N.C. 560, 178 S.E.2d 481 (1971).

The rule of uniformity is observed, etc.—

With reference to locality a tax is uniform when it operates with equal force and effect in every place where the subject of it is found, and with reference to classification, it is uniform when it operates without distinction or discrimination upon all persons composing the described class. Hajoca Corp. v. Clayton, 277 N.C. 560, 178 S.E.2d 481 (1971).

Uniformity of taxation, as provided for by State Constitution, is required throughout the territorial limits of the taxing district. Hajoca Corp. v. Clayton, 277 N.C. 560, 178 S.E.2d 481 (1971).

Wide Latitude Accorded, etc.—

In accord with original. See Hajoca Corp. v. Clayton, 277 N.C. 560, 178 S.E.2d 481 (1971).

B. Illustrative Cases.

Local Option Sales and Use Tax Act.— The additional 1% sales and use tax authorized by the Local Option Sales and Use Tax Act is a State tax, not a county tax, and is unconstitutional since it is not uniformly applied to all taxpayers of the same class in all counties of the State. Hajoca Corp. v. Clayton, 277 N.C. 560, 178 S.E.2d 481 (1971).

The levy imposed by the Local Option Sales and Use Tax Act is discriminatory in that it requires one person to pay the tax involved and it exempts his competitor in a county which votes against the tax. Both Nash and Edgecombe are exempt if either votes against the tax. Uniformity is required. No provision is made for partial uniformity, and for that reason the tax authorized under § 105-164.45 is unconstitutional. Hajoca Corp. v. Clayton, 277 N.C. 560, 178 S.E.2d 481 (1971).

II. EXEMPTIONS.

Statute Exempting Certain Property from Assessments for Local Improvements.—Former § 160-521, exempting railroad right-of-way property from assessment for local improvements, was not unconstitutional on the ground it was not authorized by this section, since this section deals with the power of taxation and not with assessments for local improvements. Southern Ry. v. City of Raleigh, 9 N.C. App. 305, 176 S.E.2d 21 (1970).

Property of North Carolina Housing Corporation.—Since Chapter 122A and the North Carolina Housing Corporation's activities pursuant thereto are for a public purpose, it is permissible for the General Assembly to exempt from taxation the property of the Corporation and the obligations incurred by the Corporation to effectuate such public purpose. Martin v. North Carolina Housing Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

Bonds of North Carolina Housing Authority. — Since the tax-exempt feature makes possible the more favorable sale of revenue bonds and thereby contributes substantially to the accomplishment of the public purpose for which they are issued, the General Assembly may exempt them from taxation by the State or any of its subdivisions. Martin v. North Carolina Housing Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

Sec. 3. *Limitations upon the increase of State debt.*

The method of financing set forth in § 122A-6 does not create a debt within the meaning of the Constitution and therefore the limitations of this section are inapplicable. Martin v. North Carolina Housing Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

Authority to Establish Reserve or Contingency Fund Not Pledge of Faith and Credit. — The fact that such appropriations as the General Assembly may see fit to make may be used for the establishment of a reserve or contingency fund to be available for the payment of the principal of and the interest on any bonds or notes of a public corporation, does not constitute a pledge of the faith and credit of the State or of any political subdivision thereof for the payment of the principal of and the interest on any bonds or notes of the corporation. Martin v. North Carolina Housing Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

Sec. 4. *Limitations upon the increase of local debt.*

II. PURPOSES; TWO-THIRDS LIMITATION.

This section contemplates a contracting of an obligation to be paid at some future time. Davis v. Iredell County, 9 N.C. App. 381, 176 S.E.2d 361 (1970).

It does not apply where the funds to be applied are already on hand and the proposed expenditure will impose no further liability on the municipality, nor involve the imposition of further taxation upon it. Davis v. Iredell County, 9 N.C. App. 381, 176 S.E.2d 361 (1970).

The acquisition of land from surplus funds is not beyond the power of a city and it in no way offends the provisions of this section. Davis v. Iredell County, 9 N.C. App. 381, 176 S.E.2d 361 (1970).

III. NECESSARY EXPENSE LIMITATION.

A. General Consideration.

Section Places No Limitation on General Assembly or State Instrumentality. — This section is applicable to a "county, city, town, or other municipality." It requires the approval of a majority of the voters therein before such subdivision of the State may pledge its credit or levy a tax except for its necessary expenses. It places no limitation upon the General Assembly or on an instrumentality of the State created by the General Assembly for a public purpose. Martin v. North Carolina Housing Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

IV. NECESSARY EXPENSE LIMITATION.

B. What Are "Necessary Expenses."

The construction, acquisition and operation of an auditorium is not a necessary expense, and the voters of the municipality must therefore approve a bond issue for such purpose. Sykes v. Belk, 278 N.C. 106, 179 S.E.2d 439 (1971).

B. What Are "Necessary Expenses."

1. In General.

The construction, acquisition and operation of an auditorium is not a necessary expense, and the voters of the municipality must therefore approve a bond issue for such purpose. Sykes v. Belk, 278 N.C. 106, 179 S.E.2d 439 (1971).

Sec. 5. *Acts levying taxes to state objects.*

A law authorizing a bond issue for various purposes which does not declare what proportion of the proceeds of the bonds shall be applied to each specific purpose is not void. Such matter may properly rest within the sound discretion of the municipal authorities. Coggins v. City of Asheville, 278 N.C. 428, 180 S.E.2d 149 (1971).

Transfer of Funds from One Project to Another. — While a municipality has a limited authority, under certain conditions, to transfer or allocate funds from one project to another, included within the general purpose for which bonds are authorized, the transfer must be to a project included in the general purpose as stated in the bond resolution, and the funds may be diverted to the proposed purposes only in the event the municipality finds in good

faith that conditions have so changed since the bonds were authorized that proceeds therefrom are no longer needed for the original purpose. Coggins v. City of Asheville, 278 N.C. 428, 180 S.E.2d 149 (1971).

Courts Will Not Interfere with Exercise of Discretionary Powers of Municipal Corporation. — With respect to the use of bond money, the court will not interfere with the exercise of discretionary powers of a municipal corporation unless its actions are so unreasonable and arbitrary as to amount to an abuse of discretion. Coggins v. City of Asheville, 278 N.C. 428, 180 S.E.2d 149 (1971).

Immaterial or Temporary Changes Not Unlawful Diversions of Funds.—While the law will not justify the use of the proceeds of a State or municipal bond issue for purposes other than those specified in the act authorizing the issue, it does not follow that immaterial or temporary changes consistent with the general purpose of the legislative act should be interpreted as unlawful diversions of public funds. Coggins v. City of Asheville, 278 N.C. 428, 180 S.E.2d 149 (1971).

Changes Necessary to Accomplish General Purpose Are Not Outlawed. — It is worthy of note the cases on the use of bond money emphasize "deviation from the general purpose for which bonds are authorized" and do not outlaw such changes as are necessary under existing conditions to accomplish the general purpose. Coggins v. City of Asheville, 278 N.C. 428, 180 S.E.2d 149 (1971).

A definition of corporate purpose cannot be static. Changing conditions require that application of the limitations be tempered with due recognition of the existing situation so the purpose for which the public body was organized may be accomplished and enjoyment thereof by the public made possible. Coggins v. City of Asheville, 278 N.C. 428, 180 S.E.2d 149 (1971).

ARTICLE VI

SUFFRAGE AND ELIGIBILITY TO OFFICE

Section 1. *Who may vote.*

Proposed Amendment. — Session Laws 1971, c. 201, s. 1, proposed that this section be amended to read as follows:

Section 1. Who may vote. Every person born in the United States and every person who has been naturalized, 18 years of age, and possessing the qualifications set out in this Article, shall be entitled to vote at any election by the people of the State, except as herein otherwise provided.

Session Laws 1971, c. 201, s. 2, as amended by Session Laws 1971, c. 1141, s. 1, provides: "The amendment set out in section 1 of this act shall be submitted to the qualified voters of the State at a general election which shall be held on November 7, 1972. That election shall be conducted under the laws then governing elections in this State."

Session Laws 1971, c. 201, s. 4, as amended by Session Laws 1971, c. 1141, s. 1, provides: "If a majority of the votes cast thereon are in favor of the amendment set out in section 1 of this act, then the Governor shall certify that fact under the Great Seal of the State to the Secretary of State, and that amendment as set out in section 1 of this act shall take effect on January 1, 1973."

Sec. 2. *Qualifications of voter.*

One-Year Residency Requirement Invalid As Applied to Local Elections.—The one-year durational residency requirement as it relates to the right to vote in local elections, is unconstitutional and invalid, as violative of the equal protection clause of the Fourteenth Amendment. Andrews v. Cody, 327 F. Supp. 793 (M.D.N.C. 1971).

Sec. 6. *Eligibility to elective office.*

Proposed Amendment. — Session Laws 1971, c. 201, s. 1, proposed that this section be amended to read as follows:

Sec. 6. Eligibility to elective office. Every qualified voter in North Carolina who is 21 years of age, except as in this Constitution disqualified, shall be eligible for election by the people to office.

Session Laws 1971, c. 201, s. 2, as amended by Session Laws 1971, c. 1141, s. 1, provides: "The amendment set out in section 1 of this act shall be submitted to the qualified voters of the State at a general election which shall be held on November 7, 1972. That election shall be conducted under the laws then governing elections in this State."

Session Laws 1971, c. 201, s. 4, as amended by Session Laws 1971, c. 1141, s. 1, provides: "If a majority of the votes cast

thereon are in favor of the amendment set out in section 1 of this act, then the Governor shall certify that fact under the Great Seal of the State to the Secretary of State, and that amendment as set out in section 1 of this act shall take effect on January 1, 1973."

ARTICLE VII

LOCAL GOVERNMENT

Section 1. *General Assembly to provide for local government.*

Proposed Amendment. — Session Laws 1971, c. 857, s. 1, to be voted on at the next general election, proposed that this section be amended by adding the following new paragraph at the end thereof:

"The General Assembly shall not incorporate as a city or town, nor shall it authorize to be incorporated as a city or town, any territory lying within one mile of the corporate limits of any other city or town having a population of 5,000 or more according to the most recent decennial census of population taken by order of Congress, or lying within three miles of the corporate limits of any other city or town having a population of 10,000 or more according to the most recent decennial census of population taken by order of Congress, or lying within five miles of the corporate limits of any other city or town having a population of 50,000 or more according to the most recent decennial census of population taken by order of Congress. Notwithstanding the foregoing limitations, the General Asembly may incorporate a city or town by an act adopted by vote of three fifths of all the members of each house."

Session Laws 1971, c. 857, s. 4, provides: "If a majority of the votes cast thereon shall be in favor of the amendment set out in Section 1 of this act, the Governor shall certify that amendment under the Great Seal of the State to the Secretary of State, who shall enroll that amendment so certified among the permanent records of his office, and the amendment shall become effective on January 1 next after its ratification by the qualified voters of the State."

County Has No Inherent Power to Levy Taxes. — A sovereign state, as one of its inherent attributes, has the power of taxation, which must be exercised by its legislative branch. The county is not a sovereign and hence does not have the inherent power to levy taxes. A county must derive its taxing power from the State Constitution or from the State's legislative enactments. Hajoca Corp. v. Clayton, 277 N.C. 560, 178 S.E.2d 481 (1971).

A county board of elections does not have taxing power. Hajoca Corp. v. Clayton, 277 N.C. 560, 178 S.E.2d 481 (1971).

ARTICLE IX

EDUCATION

Section 1. *Education encouraged.*

Quoted in Swann v. Charlotte-Mecklenburg Bd. of Educ., 318 F. Supp. 786 (W.D.N.C. 1970).

Sec. 2. *Uniform system of schools.*

Charlotte-Mecklenburg Schools Ordered to Desegregate.—See Swann v. Charlotte-Mecklenburg Bd. of Educ., 318 F. Supp. 786 (W.D.N.C. 1970).

ARTICLE X

HOMESTEADS AND EXEMPTIONS

Sec. 5. *Insurance.*

Purpose of Section.—This section was adopted for the express purpose of protecting insurance for wives and children from creditors during the life of the insured. Home Sec. Life Ins. Co. v. McDonald, 277 N.C. 275, 177 S.E.2d 291 (1970).

The obvious purpose of this section was

to enlarge rather than to restrict the rights of the wife and children of an insured. Home Sec. Life Ins. Co. v. McDonald, 277 N.C. 275, 177 S.E.2d 291 (1970).

The exemption provided by this section is separate from and in addition to other exemptions provided in this Article. This section applies only to one factual situation, namely, where a husband insures his own life for the benefit of his wife and children. Home Sec. Life Ins. Co. v. McDonald, 277 N.C. 275, 177 S.E.2d 291 (1970).

When Insurance Is "for Sole Use and Benefit of Wife and/or Children".—Insurance is "for the sole use and benefit of the wife and/or children" within the meaning of this section when the "wife and/or children" are the only persons named as beneficiaries. So long as they remain the only persons named as beneficiaries, the policy, including the cash surrender value thereof, is not subject to the claims of the insured's creditors during his lifetime. Home Sec. Life Ins. Co. v. McDonald, 277 N.C. 275, 177 S.E.2d 291 (1970).

The words "proceeds" or "proceeds and avails" when used in life insurance exemption statutes comprehend the protection of cash surrender values and other values built up during the life of the policies as well as the death benefits. Home Sec. Life Ins. Co. v. McDonald, 277 N.C. 275, 177 S.E.2d 291 (1970).

Section Does Not Conflict with or Nullify § 58-206.—Section 58-206 exempts the cash surrender values of policies of life insurance in which the "wife and/or children" of the insured (bankrupt) are designated beneficiaries, and this section of the Constitution does not conflict with and nullify § 58-206 in those instances where the "wife and/or children" are designated beneficiaries, but on the contrary is in accord therewith. Home Sec. Life Ins. Co. v. McDonald, 277 N.C. 275, 177 S.E.2d 291 (1970).

The intent of the General Assembly and of the electorate would be thwarted if this section were construed as providing a lesser benefit than that provided by § 58-206 for the "wife and/or children." Home Sec. Life Ins. Co. v. McDonald, 277 N.C. 275, 177 S.E.2d 291 (1970).

Life Policy of Bankrupt Is Protected.—The cash surrender value of a life insurance policy issued on the life of a bankrupt for the benefit of his wife, with the bankrupt reserving the right to change the beneficiary, is not an asset of the bankrupt's estate and is therefore exempt from the claims of the trustee in bankruptcy. Home Sec. Life Ins. Co. v. McDonald, 277 N.C. 275, 177 S.E.2d 291 (1970).

A trustee in bankruptcy is not entitled to the cash surrender value of a life insurance policy in which the wife is the named beneficiary notwithstanding the insured (bankrupt) has reserved the right to change the beneficiary. Home Sec. Life Ins. Co. v. McDonald, 277 N.C. 275, 177 S.E.2d 291 (1970).

ARTICLE XI

PUNISHMENTS, CORRECTIONS, AND CHARITIES

Section 1. *Punishments.*

Policy of State as to Death Penalty. — It is the policy of this State, as declared in its Constitution, and by the General Assembly in § 14-17, that one convicted of murder in the first degree, after a fair trial in accordance with the law, shall be put to death if the jury does not, in its discretion, recommend punishment by imprisonment for life. State v. Westbrook, 279 N.C. 18, 181 S.E.2d 572 (1971).

Right and Duty of Prosecuting Attorney to Seek Death Penalty. — The grand jury, an agency of the State, after investigation according to law, indicted the defendant for murder in the first degree, and the solicitor, an officer of the State, after investigation, determined, on behalf of the State, that the defendant should be tried for this offense and that the death penalty should be sought. These determinations having been made on behalf of the State, it was the right and duty of the prosecuting attorney, vigorously, but fairly and in accordance with law, both in the presentation of evidence and in his argument, to seek that result. State v. Westbrook, 279 N.C. 18, 181 S.E.2d 572 (1971).

Sec. 2. *Death punishment.*

Imposition of Death Penalty Is Not Cruel and Unusual Punishment. — The imposition of the death penalty for murder in the first degree is not, per se, a violation of the Fourteenth Amendment to the Constitution of the United States or of any provision of the Constitution of North Carolina. It is not cruel and unusual

punishment in the constitutional sense, being expressly authorized by this section. State v. Westbrook, 279 N.C. 18, 181 S.E.2d 572 (1971).

Authorizing Jury to Determine Whether Punishment Shall Be Death or Life Imprisonment.—Nothing in the Constitution of the United States forbids a state to commit to the untrammeled discretion of the jury the power to determine whether a defendant found guilty of murder in the first degree shall be put to death or imprisoned for life. State v. Westbrook, 279 N.C. 18, 181 S.E.2d 572 (1971).

No constitutional right of the defendant is violated by the provision of § 14-17 authorizing the jury, upon finding the defendant guilty of murder in the first degree, to determine whether the punishment shall be death or imprisonment for life, notwithstanding the absence from the statute of any standards to guide the jury in making that determination. State v. Westbrook, 279 N.C. 18, 181 S.E.2d 572 (1971).

Determining Guilt and Fixing Punishment at Same Time. — No provision of the Constitution of this State supports the defendant's contention that the General Assembly may not provide, as it has done in § 14-17, that the jury shall make its determination as to punishment at the same time it renders its verdict upon the question of guilt. State v. Westbrook, 279 N.C. 18, 181 S.E.2d 572 (1971).

Nothing in the Constitution of the United States forbids a state to adopt a procedure whereby the jury shall return simultaneously its verdict upon the issue of guilt and its determination of the sentence to be imposed. State v. Westbrook, 279 N.C. 18, 181 S.E.2d 572 (1971).

ARTICLE XIV

MISCELLANEOUS

Sec. 4. *Continuity of laws; protection of office holders.*

Proposed New § 5.—Session Laws 1971, c. 630, s. 1, to be voted on at the general election on Nov. 7, 1972, proposed to add a new section to this Article to read as follows:

"Sec. 5. Conservation of natural resources. It shall be the policy of this State to conserve and protect its lands and waters for the benefit of all its citizenry, and to this end it shall be a proper function of the State of North Carolina and its political subdivisions to acquire and preserve park, recreational, and scenic areas, to control and limit the pollution of our air and water, to control excessive noise, and in every other appropriate way to preserve as a part of the common heritage of this State its forests, wetlands, estuaries, beaches, historical sites, openlands, and places of beauty.

"To accomplish the aforementioned public purposes, the State and its counties, cities and towns, and other units of local government may acquire by purchase or gift properties or interests in properties which shall, upon their special dedication to and acceptance by resolution adopted by a vote of three fifths of the members of each house of the General Assembly for those public purposes, constitute part of the 'State Nature and Historic Preserve,' and which shall not be used for other purposes except as authorized by law enacted by a vote of three fifths of the members of each house of the General Assembly. The General Assembly shall prescribe by general law the conditions and procedures under which such properties or interests therein shall be dedicated for the aforementioned public purposes."

Session Laws 1971, c. 630, s. 4 provides: "If a majority of the votes cast thereon are in favor of the amendment set out in section 1 of this act, then the Governor shall certify the amendment set out in section 1 of this act to the Secretary of State, who shall enroll that amendment so certified among the permanent records of his office, and that amendment shall take effect as an amendment to the revised and amended Constitution of North Carolina on July 1, 1973."

Constitution of the United States

AMENDMENTS

Amendment XXVI.

§ **1.** The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

§ **2.** The Congress shall have power to enforce this article by appropriate legislation.

The Twenty-sixth Amendment was certified by the Administrator of General Services on July 5, 1971, to have been ratified by three fourths of the whole number of states and to have become valid as a part of the Constitution of the United States.

Appendix I. Rules of Practice in the General Court of Justice

(1) RULES OF PRACTICE IN THE SUPREME COURT OF NORTH CAROLINA

1. Terms of Court

The rules of the Supreme Court, etc.— In accord with 2nd paragraph in original. See State v. Brown, 9 N.C. App. 534, 176 S.E.2d 907 (1970).

Appellate rules of practice are applicable to indigent defendants and their court-appointed counsel as they are to all others. State v. Jacobs, 278 N.C. 693, 180 S.E.2d 832 (1971).

19. Transcripts

(3) Exceptions Grouped.

Rules Mandatory.— The rules of practice in the Supreme Court are mandatory and this rule and Rule 21 require that an error asserted on appeal must be based upon an appropriate exception duly taken and shown in the record. State v. Greene, 278 N.C. 649, 180 S.E.2d 789 (1971).

Not Sufficient to Show Exceptions, etc.— Since the rules require that assignments of error specifically show within themselves the questions sought to be presented, it follows, therefore, that a mere reference in the assignment of error to the record page where the asserted error may be discovered fails completely to comply with this rule and Rule 21. State v. Brown, 9 N.C. App. 534, 176 S.E.2d 907 (1970).

Assignment May Not Present Question Not Embraced in Exception.— Assignments of error must be based upon exceptions duly noted, and may not present a question not embraced in an exception. State v. Greene, 278 N.C. 649, 180 S.E.2d 789 (1971).

Where the exceptions appear in the record, etc.— Exceptions which appear for the first time in the purported assignments of error present no question for appellate review. State v. Jacobs, 278 N.C. 693, 180 S.E.2d 832 (1971).

Exceptions which appear nowhere in the record except under the purported assignments of error will not be considered. State v. Greene, 278 N.C. 649, 180 S.E.2d 789 (1971).

Assignments Must Point Out, etc.— Each assignment must specifically state the alleged error so that the question sought to be presented is therein revealed. State v. Jacobs, 278 N.C. 693, 180 S.E.2d 832 (1971).

Evidence Admitted or Rejected Must Be Set Out in Assignment.— When the assignment is that the court erred in the admission or rejection of evidence the evidence itself must be set out in the assignment, and a mere reference in the assignment of error to the record page where the asserted error may be discovered is not sufficient. State v. Fox, 277 N.C. 1, 175 S.E.2d 561 (1970).

Discretion of Supreme Court.— Since no exception was taken to the entry of the trial judge's order, there was no basis for the assignment of error, and no question of law was presented to the Supreme Court for decision, but due to the seriousness of the case, the court considered the assignment. State v. Jones, 278 N.C. 259, 179 S.E.2d 433 (1971).

21. Exceptions

I. EXCEPTIONS.

Rule Mandatory. In accord with 2nd paragraph in original. See State v. Greene, 278 N.C. 649, 180 S.E.2d 789 (1971).

An assignment of error alone, etc.— This rule and Rule 19 require that an error asserted on appeal must be based upon an appropriate exception duly taken and shown in the record. State v. Greene, 278 N.C. 649, 180 S.E.2d 789 (1971).

Assignments of error must be based upon exceptions duly noted, and may not present a question not embraced in an ex-

ception. State v. Greene, 278 N.C. 649, 180 S.E.2d 789 (1971).

Where the assignments of error are not based upon any exceptions in the record they should not be considered by this court. State v. Boyd, 278 N.C. 682, 180 S.E.2d 794 (1971).

Exceptions which appear nowhere in the record except under the purported assignments of error will not be considered. State v. Greene, 278 N.C. 649, 180 S.E.2d 789 (1971).

Exceptions which appear for the first time in the purported assignments of error present no question for appellate review. State v. Jacobs, 278 N.C. 693, 180 S.E.2d 832 (1971).

Reference to Page.—

Since the rules require that assignments of error specifically show within themselves the questions sought to be presented, it follows, therefore, that a mere reference in the assignment of error to the record page where the asserted error may be discovered fails completely to comply with this rule and Rule 19(3). State v. Brown, 9 N.C. App. 534, 176 S.E.2d 907 (1970).

Exceptions to Evidence.—

Ordinarily, where evidence admissible for some purposes, but not for all, is admitted generally, its admission will not be held for error unless the appellant requested at the time of its admission that its purpose be restricted. State v. Teasley, 9 N.C. App. 477, 176 S.E.2d 838 (1970), appeal dismissed, 277 N.C. 459, 177 S.E.2d 900 (1970); State v. Rhodes, 10 N.C. App. 154, 177 S.E.2d 754 (1970).

When a general objection is interposed and overruled, it will not be considered reversible error if the evidence is competent for any purpose. State v. Dawson, 278 N.C. 351, 180 S.E.2d 140 (1971).

Case Considered Notwithstanding Absence of Exception. — Since no exception was taken to the entry of the trial judge's order, there was no basis for the assignment of error, and no question of law was presented to the Supreme Court for decision, but due to the seriousness of the case, the court considered the assignment. State v. Jones, 278 N.C. 259, 179 S.E.2d 433 (1971).

28. Appellant's Brief

Exceptions Not Discussed, etc.—

Even though based upon exceptions duly noted in the record and preserved in the statement of the case on appeal, assignments of error not set out in the appellant's brief, or in support of which no reason or argument is stated or authority cited, are deemed abandoned. State v. Greene, 278 N.C. 649, 180 S.E.2d 789 (1971).

Where no authority was cited and no reason stated in support of the assignment of error in permitting certain testimony, save the bare assertion that it was irrelevant and prejudicial, the assignment was deemed abandoned. State v. Dawson, 278 N.C. 351, 180 S.E.2d 140 (1971).

Where assignments of error are not discussed in defendant's brief they are deemed abandoned. State v. Boyd, 278 N.C. 682, 180 S.E.2d 794 (1971).

Applied in State v. Westbrook, 279 N.C. 18, 181 S.E.2d 572 (1971).

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(2) SUPPLEMENTARY RULES

GOVERNING THE HEARING OF CAUSES IN THE SUPREME COURT WHICH WERE ORIGINALLY DOCKETED IN THE COURT OF APPEALS AND OTHER RULES REQUIRED BY THE ACT ESTABLISHING THE COURT OF APPEALS.

Rule 3. Appeals as of Right from the Court of Appeals to the Supreme Court.

Cited in Keiger v. Winston-Salem Bd. of Adjustment, 278 N.C. 17, 178 S.E.2d 616 (1971).

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(3) ORDER TRANSFERRING CERTAIN CASES FROM THE COURT OF APPEALS TO THE SUPREME COURT

(Rescinded as of November 1, 1971.)

(4) RULES OF PRACTICE IN THE COURT OF APPEALS OF NORTH CAROLINA

1. Sessions.

The Rules of Practice, etc.—

In accord with 2nd paragraph in original. See State v. Thigpen, 10 N.C. App. 88, 178 S.E.2d 6 (1970).

Appellate rules of practice are applicable to indigent defendants and their court-appointed counsel as they are to all others. State v. Jacobs, 278 N.C. 693, 180 S.E.2d 832 (1971).

4. Appeals—When Not Entertained.

The Court of Appeals will not entertain an appeal:

From the ruling on an interlocutory motion, unless provided for elsewhere. Any interested party may enter an exception to the ruling on the motion and present the question thus raised to this Court on the final appeal; provided, that when any interested party conceives that he will suffer substantial harm from the ruling on the motion, unless the ruling is reviewed by this Court prior to the trial of the cause on its merits, he may petition this Court for a writ of certiorari within thirty days from the date of the entry of the order ruling on the motion.

Editor's Note.—The amendment adopted Jan. 20, 1971, rewrote this rule.

Denial of Motion for Summary Judgment.—The Court of Appeals dismisses as fragmentary an appeal from a denial of a motion for summary judgment. Motyka v. Nappier, 9 N.C. App. 579, 176 S.E.2d 858 (1970).

Denial of Motion to Dismiss Complaint for Failure to State Cause of Action.—The Court of Appeals will not entertain an appeal from an order denying defendant's motion to dismiss plantiff's complaint for failure of the complaint to state a cause of action upon which relief can be granted; the defendant's remedy is to petition for writ of certiorari. Green v. Best, 9 N.C. App. 599, 176 S.E.2d 795 (1970).

5. Appeals—When Heard.

Order Granting Extension Not Signed by Judge Who Signed Order Appealed from.—Criminal appeal is subject to dismissal when the order granting the extension of time to serve the case on appeal was not signed by the trial judge who signed the original order appealed from. State v. Shoemaker, 9 N.C. App. 273, 175 S.E.2d 781 (1970).

Effect of Noncompliance.—

For failure to docket in apt time, an appeal is subject to dismissal. State v. Morgan, 9 N.C. App. 624, 177 S.E.2d 457 (1970).

For failure to docket a record on appeal within the time allowed by this rule, an appeal is dismissed. Public Serv. Co. v. Lovin, 9 N.C. App. 709, 177 S.E.2d 448 (1970); James v. Harris, 9 N.C. App. 733, 177 S.E.2d 306 (1970); Williford v. Williford, 10 N.C. App. 541, 179 S.E.2d 118 (1971).

Applied in State v. Burgess, 11 N.C. App. 430, 181 S.E.2d 120 (1971); State v. Cook, 11 N.C. App. 439, 181 S.E.2d 172 (1971); Horton v. Davis, 11 N.C. App. 592, 181 S.E.2d 781 (1971).

Cited in State v. Lewis, 9 N.C. App. 323, 176 S.E.2d 1 (1970); State v. McDaniel, 10 N.C. App. 743, 179 S.E.2d 833 (1971); Lee v. Rowland, 11 N.C. App. 27, 180 S.E.2d 455 (1971).

6. Appeals—Criminal Actions.

Cited in Lee v. Rowland, 11 N.C. App. 27, 180 S.E.2d 445 (1971).

19. Record on Appeal.

(a) *What to Contain and How Arranged.* In every record on appeal brought to this Court the trial tribunal and the presiding Judge shall be identified, the appealing party shall be identified, and proceedings shall be set forth in the order of the time in which they occurred, and the processes, orders, and documents included in the record on appeal shall be identified by their title or heading, and shall be arranged to follow each other in the order that they were filed. Every pleading, motion, affidavit, or other document included in the record on appeal shall plainly show the date on which it was filed and, if verified, the date of the verifica-

tion and the name of the person who verified it. Every order, judgment, decree, and determination shall show the date on which it was signed and the date on which it was filed.

The pleadings on which the case was tried, the issues, and the order, judgment, decree, or determination appealed from shall be included in the record on appeal in all cases, and the charge of the Court where there is exception thereto. It shall not be necessary to include any affidavits, orders, processes, or documents not required for an understanding of the exceptions relied on, provided counsel so agree in writing, and such agreement is included; but, in the event of disagreement of counsel, the trial tribunal shall designate by written order what shall be included in the record on appeal.

This rule is subject to the power of this Court, in its discretion, to order additional parts of the record or proceedings to be sent up, and added to the record on appeal.

The pages of the record on appeal shall be numbered. On the front thereof shall be an index and at the end shall be the signature, office address and telephone number of counsel representing the appellant.

Editor's Note.—

The amendment adopted Jan. 20, 1971, divided the last paragraph of subsection (a) into two sentences and added to the second sentence the requirement that at the end of the record there shall be the signature, office address and telephone number of counsel representing the appellant.

As the rest of this rule was not changed by the amendment, only subsection (a) is set out.

The rules of practice are mandatory and a failure to comply with them subjects the appeal to dismissal by the Court of Appeals ex mero motu. State v. Harris, 10 N.C. App. 553, 180 S.E.2d 29 (1971).

It is the duty of appellant to see that the record is properly made up and transmitted to the Court. State v. Thigpen, 10 N.C. App. 88, 178 S.E.2d 6 (1970).

Correct Chronological Arrangement of Record. — For an example of correct chronological arrangement of the record on appeal, see State v. Harris, 10 N.C. App. 553, 180 S.E.2d 29 (1971).

Stenographer's Note.—

The stenographic transcript of the evidence may not be used as an alternative to narration of the evidence. McConnell v. McConnell, 11 N.C. App. 193, 180 S.E.2d 465 (1971).

Failure to State Evidence in Narrative Form.—

An appeal that sets forth the evidence in question and answer form is subject to dismissal by the Court of Appeals in its discretion. State v. Thigpen, 10 N.C. App. 88, 178 S.E.2d 6 (1970).

Defendant's motion to dismiss the appeal, on the grounds that the evidence in the record on appeal was presented in question and answer form rather than by narrative, was denied, and the court, in its discretion under this rule, heard the appeal and considered the matter on its merits. Lambe v. Smith, 11 N.C. App. 580, 181 S.E.2d 783 (1971).

Assignment Should Clearly Present and Specifically Point Out Alleged Error. — While the circumstances of each case must largely dictate the form of an assignment of error, the assignment should clearly present and specifically point out the alleged error relied upon without the necessity of going beyond the assignment itself to ascertain the question to be debated. State v. Thigpen, 10 N.C. App. 88, 178 S.E.2d 6 (1970).

Any single assignment of error must present a single question of law. Nye v. University Dev. Co., 10 N.C. App. 676, 179 S.E.2d 795 (1971).

Broadside Assignments Are Ineffective. —Where one assignment of error attempts to present more than one question of law it is broadside and ineffective. Nye v. University Dev. Co., 10 N.C. App. 676, 179 S.E.2d 795 (1971).

An assignment which is based on numerous exceptions and attempts to present several separate questions of law—none of which are set out in the assignment itself —leaves it broadside and ineffective. An assignment which attempts to raise several different questions is broadside. State v. Brown, 9 N.C. App. 534, 176 S.E.2d 907 (1970).

The assignment of error must be so specific that the court is given some real aid and a voyage of discovery through an often voluminous record not rendered necessary. State v. Thigpen, 10 N.C. App. 88, 178 S.E.2d 6 (1970).

Appeal Subject to Dismissal Where Assignments Do Not Refer to Exceptions.— An appeal is subject to dismissal for failure to comply with subsection (c) of this rule

where none of the assignments of error refer to any exception upon which it purports to be based. State v. Morgan, 9 N.C. App. 624, 177 S.E.2d 457 (1970).

Mere Reference to Record Page Is Insufficient.—A mere reference in the assignment of error to the record page where the asserted error may be discovered fails completely to comply with this rule and Rule 21. State v. Brown, 9 N.C. App. 534, 176 S.E.2d 907 (1970).

Assignment Relating to Charge Must Set Out Portion Excepted to.—When an exception relates to the charge, that portion to which the exception is taken must be set out in the particular assignment of error. A mere reference to the exception number and the page number of the record where the exception appears will not present the alleged error for review. State v. Brown, 9 N.C. App. 534, 176 S.E.2d 907 (1970).

Assignments of error to the charge should quote the portion of the charge to which appellant objects, and assignments based on failure to charge should set out appellant's contention as to what the court should have charged. State v. Brown, 9 N.C. App. 534, 176 S.E.2d 907 (1970).

And Entire Charge Must Be Included in Record.—This rule requires that where there is exception to the charge of the court, the charge shall be included in the record on appeal. This means the entire charge, and the court will not attempt to consider alleged error in the selected portions of a charge where the entire charge is not before them. State v. Young, 11 N.C. App. 145, 180 S.E.2d 322 (1971).

Or Charge Will Be Presumed Correct.—When an exception is taken to the charge and it is not contained in the record on appeal, it is presumed that the court correctly instructed the jury on every principle of law applicable to the facts. Elsevier v. Gann Machine Shop, Inc., 9 N.C. App. 539, 176 S.E.2d 875 (1970).

When Exceptions to Be Grouped under One Assignment of Error. — One assignment of error should have grouped under it all exceptions which present the same single question of law. Nye v. University Dev. Co., 10 N.C. App. 676, 179 S.E.2d 795 (1971).

The appellant must classify his exceptions, putting in a separate group all exceptions which relate to each particular question. The failure to group requires a dismissal of the appeal. State v. Thigpen, 10 N.C. App. 88, 178 S.E.2d 6 (1970).

This requirement for grouping of exceptions is designed to have all exceptions which present the same single question of law grouped together and assigned as error. Nye v. University Dev. Co., 10 N.C. App. 676, 179 S.E.2d 795 (1971).

More than one exception may be grouped under a single assignment of error, but this may be done only when all the exceptions relate to but a single question of law. Nye v. University Dev. Co., 10 N.C. App. 676, 179 S.E.2d 795 (1971).

It is the grouping of exceptions (whether one or more) presenting the same single question of law, which constitutes an assignment of error. Nye v. University Dev. Co., 10 N.C. App. 676, 179 S.E.2d 795 (1971).

Grouping of Exceptions Relating to Testimony. — Where exceptions were entered to orders overruling objections to testimony of witnesses, but each of the exceptions had for its basis a different rule of law and evidence, the mere fact that they all relate to testimony does not mean that they present a single question of law. Nye v. University Dev. Co., 10 N.C. App. 676, 179 S.E.2d 795 (1971).

Examples of Proper and Improper Grouping of Exceptions.—Dobias v. White, 240 N.C. 680, 83 S.E.2d 785 (1954) gives examples of proper and improper grouping of exceptions under one assignment of error. Nye v. University Dev. Co., 10 N.C. App. 676, 179 S.E.2d 795 (1971).

Exceptions Not Grouped as Required.—Where appellant's exceptions are not grouped as required, they may not be considered. State v. Young, 11 N.C. App. 145, 180 S.E.2d 322 (1971).

Record on Appeal from Trial of Misdemeanor Charge. — The necessity for the record on appeal from the trial of a misdemeanor charge to show the proceedings in the district court is compelling; the district court has exclusive original jurisdiction of each of the offenses with which defendant was charged, and the superior court had no jurisdiction to try defendant except after a disposition in the district court and an appeal to superior court. State v. Harris, 10 N.C. App. 553, 180 S.E.2d 29 (1971).

The solicitors of the several districts should make certain that the fact of a disposition, in the district court, and an appeal to superior court is always shown in the record on appeal from the trial of a misdemeanor charge. State v. Harris, 10 N.C. App. 553, 180 S.E.2d 29 (1971).

The solicitors have the duty to make certain the record on appeal from the trial of a misdemeanor charge presents an accurate record of the proceeding; in the absence of agreement a solicitor should file exceptions and have the judge settle

the matter. State v. Harris, 10 N.C. App. 553, 180 S.E.2d 29 (1971).

Applied in In re Garcia, 9 N.C. App. 691, 177 S.E.2d 461 (1970).

Quoted in Resort Dev. Co. v. Phillips, 9 N.C. App. 158, 175 S.E.2d 782 (1970).

Cited in State v. Greene, 278 N.C. 649, 180 S.E.2d 789 (1971); State v. Jacobs, 278 N.C. 693, 180 S.E.2d 832 (1971).

20. Pleadings.

Adding New Parties.—In an action to determine custody of a child, an order which was entered in the Court of Appeals making the paternal grandparents parties, pursuant to their motion, thereby subjected them to the jurisdiction of the Court of Appeals and of the trial court to the same extent as if they had been original parties plaintiff. Brandon v. Brandon, 10 N.C. App. 457, 179 S.E.2d 319 (1971).

Applied in Stewart v. Nation-Wide Check Corp., 9 N.C. App. 172, 175 S.E.2d 172 (1970).

21. Exceptions. (See also Rule 19 (c)).

Court Will Not Consider Error, etc.—It is the duty of the appellant who asserts prejudicial error to point out the asserted error by exception. The failure to except leaves nothing to review. State v. Thigpen, 10 N.C. App. 88, 178 S.E.2d 6 (1970).

Exceptions not duly noted, etc.—Exceptions which appear for the first time in the purported assignments of error present no question for appellate review. State v. Jacobs, 278 N.C. 693, 180 S.E.2d 832 (1971).

An assignment of error which is not supported by an exception previously noted in the case on appeal presents no question of law for the court to decide. State v. Thigpen, 10 N.C. App. 88, 178 S.E.2d 6 (1970).

Exceptions Not Grouped as Required.—Where appellant's exceptions are not grouped as required, they may not be considered. State v. Young, 11 N.C. App. 145, 180 S.E.2d 322 (1971).

When no exception is taken to the charge and it is not contained in the record on appeal, it is presumed that the court correctly instructed the jury on every principle of law applicable to the facts. Elsevier v. Gann Machine Shop, Inc., 9 N.C. App. 539, 176 S.E.2d 875 (1970).

Applied in State v. Brown, 9 N.C. App. 534, 176 S.E.2d 907 (1970).

Cited in State v. Greene, 278 N.C. 649, 180 S.E.2d 789 (1971).

27. Briefs.

Twenty-five copies of briefs of both parties shall be filed in all cases (except in pauper appeals, as provided in Rule 22). Such briefs may be sent up by counsel ready printed, or they may be printed or reproduced as provided by these rules if a proper deposit for cost is made, as specified in Rule 23. They must be of the size and style prescribed by such rule. The briefs are expected to cover all the points presented in the oral argument, though additional authorities may be cited, if discovered after brief is filed, by furnishing list to opposing counsel and handing memorandum of same to the clerk to be placed by him with the papers in the case, but counsel will not be permitted to consume time on the argument in the citation of additional authorities. At the end of the original of each brief filed shall appear the signature, office address and telephone number of counsel representing the party for whom the brief is filed.

Editor's Note.—The amendment adopted Jan. 20, 1971, added the last sentence.

28. Appellant's Brief.

Assignments of error not brought forward, etc.—

In accord with 1st paragraph in original. See Gibson v. Montford, 9 N.C. App. 251, 175 S.E.2d 776 (1970); Little v. Little, 9 N.C. App. 361, 176 S.E.2d 521 (1970); In re Rose, 9 N.C. App. 413, 176 S.E.2d 249 (1970); State v Brown, 9 N.C. App. 534, 176 S.E.2d 907 (1970); Clott v. Greyhound Lines, Inc., 9 N.C. App. 604, 177 S.E.2d 438 (1970).

In accord with 3rd paragraph in original. See State v. Lyles, 9 N.C. App. 448, 176 S.E.2d 254 (1970).

Where defendant attempted to assign as error other rulings of the court, but no

argument appeared in his brief, they are, therefore, deemed abandoned. State v. Young, 11 N.C. App. 145, 180 S.E.2d 322 (1971).

Even though based upon exceptions duly noted in the record and preserved in the statement of the case on appeal, assignments of error not set out in the appellant's brief, or in support of which no reason or argument is stated or authority cited, are deemed abandoned. State v. Greene, 278 N.C. 649, 180 S.E.2d 789 (1971).

Exceptions, etc.—

Exceptions not brought forward and argued in appellant's brief are deemed abandoned. Jackson v. Collins, 9 N.C. App. 548, 176 S.E.2d 878 (1970).

If the only exceptions appearing in the record are not set out in defendant's brief and no reason or argument is stated and no authority cited with respect thereto, this rule would require that the exceptions be deemed abandoned. State v. Cheek, 10 N.C. App. 273, 178 S.E.2d 132 (1970).

Assignments of error are ineffectual unless they are based on proper exceptions. State v. Blackshear, 10 N.C. App. 237, 178 S.E.2d 105 (1970).

Brief Should Point Out Numbered Exception and Page of Record Where It Appears.—This rule simply requires that appellant, in his brief, point out the numbered exception upon which he is relying and indicate upon what page of the printed record the exception may be found. State v. McDonald, 11 N.C. App. 497, 181 S.E.2d 744 (1971).

An appellant's brief does not comply with this rule where it does not contain, properly numbered, the several grounds of exception and assignment of error with reference to the pages of the record. State v. Blackshear, 10 N.C. App. 237, 178 S.E.2d 105 (1970).

Assignments based on pages in the record instead of numbered exceptions are inadequate. State v. Blackshear, 10 N.C. App. 237, 178 S.E.2d 105 (1970).

Applied in Dotson v. Allied Chem. Corp., 10 N.C. App. 123, 178 S.E.2d 27 (1970); State v. Herald, 10 N.C. App. 263, 178 S.E.2d 120 (1970); State v. Berryman, 10 N.C. App. 649, 179 S.E.2d 875 (1971); State v. Dickens, 11 N.C. App. 392, 181 S.E.2d 257 (1971).

48. Noncompliance with Rules.

For failure to docket, etc.—

The responsibility of docketing the record on appeal in the form provided for by the rules of the Court of Appeals is that of the appealing party and for failure to comply with the rules the appeal is subject to be dismissed ex mero motu. Resort Dev. Co. v. Phillips, 9 N.C. App. 158, 175 S.E.2d 782 (1970).

50. Case on Appeal—Extension of Time for Service of.

Extension May Be Granted after Expiration of Session at Which Judgment Was Entered.—Sections 15-180 and 1-282 do not authorize a trial judge to grant an appellant another extension of time to serve statement of case on appeal after the expiration of the session at which the judgment was entered. However, the trial judge is given authority to do this under this rule. State v. Lewis, 9 N.C. App. 323, 176 S.E.2d 1 (1970).

Order Granting Extension Dismissed Where Not Signed by Judge Who Signed Order Appealed from.—Criminal appeal is subject to dismissal when the order granting the extension of time to serve the case on appeal was not signed by the trial judge who signed the original order appealed from. State v. Shoemaker, 9 N.C. App. 273, 175 S.E.2d 781 (1970).

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(5) GENERAL RULES OF PRACTICE FOR THE SUPERIOR AND DISTRICT COURTS

10. Opening and Concluding Arguments.

Quoted in State v. Lee, 277 N.C. 205, 176 S.E.2d 765 (1970).

Appendix II. Rules of Practice in United States District Courts

United States District Court for the Middle District of North Carolina

Table of Rules

I. General Rules

Rule 2.

ATTORNEYS

(b) Eligibility and Admission.

(1) Any person who has been admitted to practice and is in good standing before the Supreme Court of North Carolina, and who is a resident of the State of North Carolina, is eligible for admission to the bar of this court.

(2) Eligible attorneys may be admitted to practice in this court by the court or by the full-time United States magistrate upon oral motion made by a member of the bar of this court. If the motion for admission is granted, the applicant shall take the following oath or affirmation:

> I do solemnly swear [affirm] that I have been admitted to practice before the Supreme Court of North Carolina, and that I am a member in good standing of that court; that I am a resident of the State of North Carolina; that to the best of my knowledge and ability, I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will demean myself as an attorney of this court uprightly and according to law, SO HELP ME GOD. [SUCH BE MY SOLEMN AFFIRMATION.]

(f) Disbarment and Discipline.

(1) The standards of conduct of the members of the bar of this court shall be those standards prescribed by the canons of professional ethics of the American Bar Association and the canons of ethics of the North Carolina State Bar as they are now written and as they are hereafter modified or amended.

(2) Upon notice and hearing, any member of the bar of this court may, for good cause shown, be disbarred, suspended from practice for a definite time, reprimanded, or subjected to such other discipline as the court may deem proper. Whenever any member of the bar of this court has been disbarred from practice by either the appellate or trial division of the General Court of Justice, the North Carolina State Bar, or as otherwise provided by North Carolint General Statutes § 84-28, and such disbarment has become final, such member shall be disbarred forthwith from practice in this court, without notice or a hearing, upon the filing in this court of a certified copy of the final order of disbarment.

(3) Any attorney who before his admission to the bar of this court, or during his disbarment or suspension, exercises any of the privileges of the members of the bar of this court, or pretends to be entitled to do so, shall be guilty of contempt of court and subject to appropriate punishment therefor.

(g) Public Discussion of Litigation by Attorneys.

(1) *Release of Information by Attorneys.* It is the duty of the lawyer or law firm not to release or authorize the release of information or opinion which a reasonable person would expect to be disseminated by means of public communication, in connection with pending or immiment criminal litigation with which he or the firm is associated, if there is a reasonable likelihood that such dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice.

(2) *Same: Pending Investigation.* With respect to a grand jury or other pending investigation of any criminal matter, a lawyer participating in or associated with the investigation shall refrain from making any extrajudicial statement which a reasonable person would expect to be disseminated by means of public communication, that goes beyond the public record or that is not necessary to inform the public that the investigation is underway, to describe the general scope of the investigation, to obtain assistance in the apprehension of a suspect, to warn the public of any dangers, or otherwise to aid in the investigation.

(3) *Same: From Arrest.* From the time of arrest, issuance of an arrest warrant, or the filing of a complaint, information, or indictment in any criminal matter until the commencement of trial or disposition without trial, a lawyer or law firm associated with the prosecution or defense shall not release or authorize the release of any extrajudicial statement which a reasonable person would expect to be disseminated by means of public communication, relating to that matter and concerning:

(i) The prior criminal record (including arrests, indictments, or other charges of crime), or the character or reputation of the accused, except that the lawyer or law firm may make a factual statement of the accused's name, age, residence, occupation, and family status, and if the accused has not been apprehended, a lawyer associated with the prosecution may release any information necessary to aid in his apprehension or to warn the public of any dangers he may present;

(ii) The existence or contents of any confession, admission, or statement given by the accused, or the refusal or failure of the accused to make any statement;

(iii) The performance of any examinations or tests or the accused's refusal or failure to submit to an examination or test;

(iv) The identity, testimony, or credibility of prospective witnesses, except that the lawyer or law firm may announce the identity of the victim if the announcement is not otherwise prohibited by law;

(v) The possibility of a plea of guilty to the offense charged or a lesser offense;

(vi) Any opinion as to the accused's guilt or innocence or as to the merits of the case or the evidence in the case.

(4) *Same: Matters of Record.* The foregoing shall not be construed to preclude the lawyer or law firm during this period, in the proper discharge of his or its official or professional obligations, from announcing the fact and circumstances of arrest (including time and place of arrest, resistance, pursuit, and use of weapons), the identity of the investigating and arresting officer or agency, and the length of the investigation; from making an announcement, at the time of seizure of any physical evidence other than a confession, admission or statement, which is limited to a description of the evidence seized; from disclosing the nature, substance, or text of the charge, including a brief description of the offense charged; from quoting or referring without comment to public records of the court in the case; from announcing the scheduling or result of any stage in the judicial process; from requesting assistance in obtaining evidence; or from announcing without further comment that the accused denies the charges made against him.

(5) *Same: During Trial.* During the trial of any criminal matter, including the period of selection of the jury, no lawyer or law firm associated with the prosecution or defense shall give or authorize any extrajudicial statement or interview, relating to the trial or the parties or issues in the trial which a reasonable person would expect to be disseminated by means of public communication, except that the lawyer or law firm may quote from or refer without comment to public records of the court in the case.

(6) *Same: After Trial.* After the completion of a trial or disposition without trial of any criminal matter, and prior to the imposition of sentence, a lawyer or law firm associated with the prosecution or defense shall refrain from making or authorizing any extrajudicial statement which a reasonable person would ex-

pect to be disseminated by means of public communication if there is a reasonable likelihood that such dissemination will affect the imposition of sentence.

(7) *Same: More Restrictive Rules.* Nothing in this rule is intended to preclude the formulation or application of more restrictive rules relating to the release of information about juvenile or other offenders, to preclude the holding of hearings or the lawful issuance of reports by legislative, administrative, or investigative bodies, or to preclude any lawyer from replying to charges of misconduct that are publicly made against him.

(8) *Same: Civil Actions.* A lawyer or law firm associated with a civil action shall not during its investigation or litigation make or participate in making an extrajudicial statement, other than a quotation from or reference to public records, which a reasonable person would expect to be disseminated by means of public communication if there is a reasonable likelihood that such dissemination will interfere with a fair trial and which relates to:

(i) Evidence regarding the occurrence or transaction involved;

(ii) The character, credibility, or criminal record of a party, witness, or prospective witness;

(iii) The performance or results of any examinations or tests or the refusal or failure of a party to submit to such;

(iv) His opinion as to the merits of the claims or defenses of a party, except as required by law or administrative rule;

(v) Any other matter reasonably likely to interfere with a fair trial of the action.

Editor's Note.—The amendment adopted Sept. 17, 1971, effective Jan. 1, 1972, substituted "may" for "shall," inserted "by the Court or by the full-time United States magistrate" and deleted "in open court" in the first sentence of subsection (b) (2), added present subsection (1) of section (f) and redesignated former subsections (1) and (2) of section (f) as (2) and (3), inserted the references to law firms throughout section (g) and made conforming changes so as to make that section applicable to law firms as well as attorneys, substituted "which a reasonable person would expect to be disseminated by means of public communication" for "for dissemination by any means of public communication" in subsections (1), (2), (3), (5) and (6) of section (g) and added subsection (8) of section (g). The amendment also inserted "or associated with" near the beginning of subsection (2) of section (g).

Only the sections changed by the amendment are set out.

Rule 3.

COURT SCHEDULE AND CONDUCT OF BUSINESS

(c) Court in Continuous Session. The court shall be in continuous session in all divisions of the district, and all civil matters are deemed to be in an open status and subject to call at any time upon reasonable notice to the interested parties.

(d) Place of Holding Court. Regular sessions of court, motion days, pretrial conferences, and other court business, will be conducted in the courtroom located in the United States Post Office Building in division headquarters, unless otherwise directed. On opening day of regular sessions, court shall commence at 10:00 a.m. On all other days, court shall commence at 9:30 a.m., unless otherwise announced.

(g) Preparation of Trial Calendars. All pending criminal cases are calendared for trial at each regular criminal session of court as a matter of course. Trial dates in civil cases will be announced by the court, if known, at the time of the final pre-trial conference.

(h) Release of Information by Courthouse Personnel. All courthouse personnel, including, among others, the United States marshal and his deputies, the Clerk of Court and his deputies, bailiffs, and court reporters, are prohibited from disclosing to any person, without authorization by the court, information relating to a case that is not part of the public records of the court. This proscription

applies to the divulgence of information concerning arguments and hearings held in chambers or otherwise outside the presence of the public.

Editor's Note.—The amendment adopted Sept. 17, 1971, effective Jan. 1, 1972, substituted "civil matters" for "matters, criminal and civil, not reached at regular sessions of court" and deleted "before the next regular session of court" following "any time" in section (c), corrected an error in punctuation in section (d), rewrote the second sentence of section (g) and deleted "pending criminal" preceding "case" near the end of the first sentence of section (h).

As the rest of the rule was not changed by the amendment, only sections (c), (d), (g) and (h) are set out.

Rule 4.

NATURALIZATION

Petitions for naturalization will be regularly considered and acted upon, and appropriate ceremonies conducted in connection therewith, at Greensboro, on Friday after the third Monday in May and November of each year. A committee composed of three prominent residents of this district will be appointed from time to time to arrange for and conduct appropriate patriotic ceremonies in connection with all regularly held naturalization proceedings. The court may, in its discretion, at other times, consider and act upon petitions for naturalization by members of the armed services, and seamen on merchant vessels registered under the laws of the United States, and members of the immediate families and dependents of such personnel, and in other exceptional cases.

Editor's Note.—The amendment adopted Sept. 17, 1971, effective Jan. 1, 1972, substituted "third Monday in May and November" for "first Monday in June and December" in the first sentence and inserted "appropriate patriotic" in the second sentence.

Rule 6.

BRIEFS

(a) Service. Every brief required by these rules or an order of the court shall be served upon opposing parties or their counsel before it is presented to the clerk, and the brief shall clearly indicate the time and method of service. Briefs shall not become a part of the record in the case nor be considered to be a part of the "original papers" within the meaning of those words as used in Local Rule 10.

(c) Citation of Cases. Cases cited should include parallel citations, the year of the decision, and the court deciding the case. The following are illustrations of this rule:

(1) State Court citations:
  (a) Court of Appeals:
    Atkinson v. Wilkerson, 10 N.C. App. 643, 179 S.E.2d 872 (1971).
  (b) The Supreme Court:
    Link v. Link, 278 N.C. 181, 179 S.E.2d 697 (1971).

(2) District Court citations:
  (a) Published:
    First National Bank of Catawba County v. Wachovia Bank & Trust Co., N.A., 325 F. Supp. 523 (M.D.N.C. 1971).
  (b) Not published:
    Wise v. Richardson, No. C-191-S-70 (M.D.N.C., Aug. 11, 1971).

(3) Circuit Court of Appeals:
  (a) Published decisions:
    Mullins v. Oakley, 437 F.2d 1217 (4th Cir. 1971).
  (b) Decisions not published:
    Brown v. Hirst, No. 71-1291 (4th Cir., June 8, 1971).
    Cason v. State of North Carolina, mem. dec., No. 13,535 (4th Cir., July 14, 1970).
    Smith v. Jones, Misc. No. 15,356 (4th Cir., Aug. 10, 1971).

(4) United States Supreme Court citations:
McMann v. Richardson, 397 U.S. 759, 90 S. Ct. 1441, 25 L. Ed. 2d 763 (1970).

(5) If a petition for certiorari was filed in the United States Supreme Court, disposition of the case in the Supreme Court should always be shown with parallel citations. For example: Carson v. Warlick, 238 F.2d 724 (4th Cir. 1956), *cert. denied,* 653 U.S. 910, 77 S. Ct. 665, 1 L. Ed. 2d 664 (1957).

Editor's Note.—The amendment adopted Sept. 17, 1971, effective Jan. 1, 1972, added to the second sentence of section (a) the language beginning "nor be considered" and rewrote section (c). As section (b) was not changed by the amendment, it is not set out.

Rule 7.
JURORS

(a) Number of Jurors in Civil Jury Cases. In all civil jury cases the jury shall consist of six (6) members.

(b) Court Techniques to Insure a Fair Trial. In every case the court will endeavor to aid in the selection of an impartial jury. However, in the trial of criminal cases calculated to attract substantial public interest, in order to shield the jurors from prejudicial publicity and to insure the accused a fair trial, the court, on its own motion, or on the motion of either party, without disclosure of the identity of the movant, may, among other things, order a continuance, a change of venue, sequestration of jurors, sequestration of witnesses, expand the *voir dire* examination of prospective jurors and issue cautionary instructions.

(c) Examination of Jurors. The court shall conduct the examintion of prospective jurors.

(d) Same: Scope.

(1) In conducting the examination of jurors in civil cases, the court shall interrogate the jurors in such a fashion and manner as reasonably calculated to elicit from the jurors any prior knowledge of the case, and any connection they might have with the litigants and their attorneys, either personally, professionally, socially, economically or otherwise. The jurors shall also be asked if they know of any reason why they could not sit with the other jurors, hear the evidence in the case, the arguments of counsel, and the instructions of the court, and then render to each of the parties a fair and impartial trial and verdict.

(2) In criminal cases, the line of questioning set out in subsection (d) (1) of this rule shall be followed, where appropriate, and in addition the court shall determine whether any juror is or has been a law enforcement or peace officer.

(e) Same: Questions Requested by Counsel. After the court has completed its interrogation, counsel may request additional questions to be asked the jurors. If deemed by the court to be proper, the jurors will then be interrogated with respect to the matters requested by counsel.

(f) Jury Lists.

(1) The names of prospective jurors for any session of court or for a specific case shall not be disclosed prior to their reporting for duty except in compliance with instructions of the court. No juror shall be approached, either directly or through any member of his immediate family, in an effort to secure information concerning his background.

(2) The clerk shall make available to counsel for the parties, or to any party acting *pro se,* a jury list which sets forth the name, general address and occupation of each juror when court is opened for the session or case for which the jurors were summoned.

(g) Instructions to Jury. In all cases tried by a jury, the points on which

either party desires the jury to be instructed must be in writing and furnished to the court before jury arguments commence.

Editor's Note.—The amendment adopted Sept. 17, 1971, effective Jan. 1, 1972, changed the reference in present subsection (d) (2), rewrote present subsection (f) (1) and deleted "When the jurors report for duty at a session of court" at the beginning and added the language beginning "when court is opened" at the end of present subsection (f) (2).

The amendment adopted Oct. 14, 1971, effective Jan. 1, 1972, added present section (a) and redesignated former sections (a) through (f) as (b) through (g).

Rule 11.

TRIAL PUBLICITY

(a) Photographing and Reproduction of Court Proceedings. The taking of photographs in the courtroom or its environs, or radio or television broadcasting from the courtroom or its environs, during the progress of or in connection with judicial proceedings, including proceedings before a United States magistrate, whether or not court is actually in session, is prohibited. The word "environs" is defined to mean the offices and corridors on floors on which are located courtrooms or offices of the United States attorney, the United States marshal, the United States district court clerk or the United States probation officer. Proceedings, other than judicial proceedings, designed and conducted as ceremonies, such as administering oaths of office to appointed officials of the court, presentation of portraits, and similar ceremonial occasions, may be photographed in or broadcast from the courtroom, under the supervision of the court.

Editor's Note.—The amendment adopted Sept. 17, 1971, effective Jan. 1, 1972, deleted "commissioner or" following "United States" in the first sentence of section (a).

As section (b) was not changed by the amendment, it is not set out.

Rule 12.

ORDERS AND JUDGMENTS GRANTABLE BY CLERK

Pursuant to the provisions of Rule 77(c), Federal Rules of Civil Procedure, the clerk is authorized to grant and enter the following orders and judgments without further direction by the court, but his action may be suspended, altered or rescinded by the court for cause shown:

(1) Consent orders for the substitution of attorneys.

(2) Consent orders extending for not more than 60 days the time within which to answer or otherwise plead, answer interrogatories submitted under Rule 33, Federal Rules of Civil Procedure, or requests for admission as provided for in Rule 36, Federal Rules of Civil Procedure. Matters in bankruptcy and those matters set forth in Rule 6(b), Federal Rules of Civil Procedure, are not included in this authorization.

(3) Consent orders extending for not more than 60 days the time to file the record on appeal and to docket the appeal in the appellate court, except in criminal cases.

(4) Consent orders dismissing an action, except in bankruptcy proceedings and in causes to which Rule 23(c) and Rule 66, Federal Rules of Civil Procedure applies.

(5) Judgments of default as provided for in Rule 55(a) and 55(b) (1), Federal Rules of Civil Procedure.

(6) Orders canceling liability on bonds other than orders disbursing funds from the clerk's registry account.

(7) Orders changing the time of opening and adjourning court in absence of the judge.

(8) *Ex parte* orders authorized by Local Rule 21(h).

Editor's Note.—The amendment adopted Sept. 17, 1971, effective Jan. 1, 1972, substituted "60 days" for "30 days" near the beginning of subdivisions (2) and (3), added "other than orders disbursing funds from the clerk's registry account" at the end of subdivision (6), and added subdivision (8).

II. Civil Rules

Rule 17.

FORM OF PLEADINGS AND DOCUMENTS

(1) All pleadings and papers submitted for filing must designate the case number of the action and fully conform to the provisions of Rules 10 and 11, Federal Rules of Civil Procedure.

(2) Requests for temporary restraining orders or injunctive relief set forth in complaints shall be treated as any other prayers for relief. If facts and circumstances are deemed to warrant urgent, preferential consideration of a request for a temporary restraining order or injunctive relief, such request shall be set out in a motion complying with the requirements of Local Rule 21.

(3) Where the complaint discloses that none of the plaintiffs or defendants is a resident of the division in which the complaint is captioned for filing, the clerk shall change the caption so as to designate the filing of the complaint and the issuance of the summons in a division in which one of the plaintiffs or one of the defendants reside. The clerk shall promptly notify the plaintiff, or his counsel, of the division in which the case has thus been docketed. The same procedure shall be followed in civil cases removed from the state courts to the district court.

(4) Each paper presented to the clerk for filing shall be flat and unfolded, without manuscript cover, and firmly bound.

Editor's Note.—The amendment adopted Sept. 17, 1971, effective Jan. 1, 1972, added present subdivision (2) and redesignated former subdivisions (2) and (3) as (3) and (4).

Rule 18.

FILING FEE AND SECURITY FOR COSTS

(a) Initiating Civil Actions. In every civil action commenced in this court:

(1) There shall be paid to the clerk of the court at the time of filing of the complaint or petition a $15.00 filing fee, except that upon the filing of a habeas corpus petition, the fee shall be $5.00; and

(2) A $200.00 bond shall be filed, or cash deposited in the amount of $200.00 in lieu of such bond, as security for costs.

(b) Removal of Actions From State Courts. In every action removed from a state court to this court:

(1) There shall be paid to the clerk a $15.00 filing fee; and

(2) Filed with the record being removed a $200.00 removal bond, or cash deposited in the amount of $200.00 in lieu of such bond, as security for costs as required by 28 U.S.C. § 1446(d).

(c) Filing Notice of or Petition for Appeal. Upon the filing of any separate or joint notice of appeal or application for appeal or upon the receipt of any order allowing, or notice of the allowance of, an appeal or of a writ of certiorari $5.00 shall be paid to the clerk of the district court, by the appellant or petitioner. 28 U.S.C. § 1917.

Editor's Note.—The amendment adopted Sept. 17, 1971, effective Jan. 1, 1972, rewrote sections (a) and (b) and added section (c).

Rule 21.
MOTIONS IN CIVIL ACTIONS

(a) Must Be in Writing. All motions and objections to interrogatories and requests for admissions, unless made during a hearing or trial, shall be in writing.

(h) Extension of Time for Filing Response, Supporting Documents and Briefs. When it is reasonably shown in a motion or response, or in a written request, that the filing of a response, additional affidavits, briefs, depositions or other documents in support of or in opposition to a motion is necessary, and such documents are not then available, the clerk may enter an *ex parte* order specifying the time within which such response and/or additional documents shall be filed, or the clerk may approve such stipulation in regard thereto as may have been executed by counsel for the parties. A copy of any *ex parte* order so entered shall immediately be served upon opposing counsel. Applications by respondents for extensions of time under this rule shall be filed within five days from the date of service of the motion to which the response or supporting documents relate.

(l) Motions for Continuance. All motions to continue a pre-trial conference, hearing on a motion, or the trial of an action shall be presented to the court for its consideration, even though counsel have agreed to such continuance. No such continuance will be granted other than for good cause and upon such terms and conditions as the court may impose.

(n) Failure to File and Serve Motion Papers. If briefs are required, the failure of the movant or respondent to file a brief, or the failure of a respondent to file his response, within the times specified in this rule, shall constitute a waiver of the right thereafter to file such brief or response, except upon a showing of excusable neglect. A motion unaccompanied by a brief, when a brief is required, may, in the discretion of the court, be summarily denied. A response unaccompanied by a brief, when a brief is required, may, in the discretion of the court, be disregarded and the motion to which it expresses opposition considered and decided as an uncontested motion. If a respondent fails to file his response within the time required by this rule, the motion will be considered and decided as an uncontested motion, and normally will be granted without notice to the parties.

Editor's Note.—The amendment adopted Sept. 17, 1971, effective Jan. 1, 1972, made changes in sections (a), (h), (l) and (n). In section (a), the amendment substituted "and" for "including" following "motions" near the beginning of the section. In section (h), the amendment inserted "Response" in the catchline and "a response" and "response and/or" in the first sentence, inserted "briefs" and "the clerk may" the second time those words appear in the first sentence, deleted the former second sentence and rewrote the last sentence. In section (l), the amendment added "All" at the beginning of the first sentence and substituted the language beginning "shall be presented" for "shall not be granted by the mere agreement by counsel" at the end of the first sentence and deleted "Any such motion, verbal or written, must be considered by the court, and" at the beginning of the second sentence. In section (n), the amendment substituted "of the right thereafter to file" for "to file thereafter" in the first sentence and inserted "the motion to which it expresses opposition" in the third sentence.

As the rest of the rule was not changed by the amendment, only sections (a), (h), (l) and (n) are set out.

Rule 24.
MINORS AND INCOMPETENTS AS PARTIES

(g) Consent Judgments Approving Settlement; Contents.

(1) Before judgments approving compromise settlements of claims of minors or incompetents shall be presented to the court, the judgment shall be consented and agreed to by counsel for all parties to the action, by the next friend or guardian of the minor or incompetent and, in cases where the minor is at least 18 years of age, by the minor plaintiffs.

(2) The judgment presented should provide, *inter alia,* that the parties have

agreed to a settlement of all matters in controversy between them and the amount of the settlement; that the court has investigated the matter of the proposed settlement and considered the evidence offered by the parties; that the court is of the opinion, and finds as a fact, that the proposed compromise settlement is fair and reasonable and is for the best interests of the minor or incompetent; and that the court is of the opinion, and finds as a fact, that the compromise settlement agreement should be ratified, approved and confirmed by the court.

(k) Payment of Judgment. The amount of the judgment shall be paid into the office of the clerk of this court and the clerk shall make such disbursements from the proceeds as provided by the judgment of the court. The balance of the proceeds of the judgment shall be paid to the legal guardian of the minor or incompetent, if within this state. If there is no such guardian, the balance of the proceeds shall be paid to the clerk of superior court of the county in this state in which the minor or incompetent resides. If the minor or incompetent does not reside within this state, the balance shall be paid to a legal guardian approved by the court.

Editor's Note.—The amendment adopted Sept. 17, 1971, effective Jan. 1, 1972, added "Consent" at the beginning and "Contents" at the end of the catchline to section (g) and deleted the catchlines "To be consented to" at the beginning of subsection (1) and "Contents" at the beginning of subsection (2) of section (g). The amendment also inserted "in this state" in the third sentence of section (k) and added the fourth sentence of section (k).

As the rest of the rule was not changed by the amendment, only sections (g) and (k) are set out.

Rule 25.

OPENING STATEMENTS IN CIVIL ACTIONS

At the commencement of the trial of civil actions, the party upon whom rests the burden of proof shall state, without argument, his cause of action and the evidence by which he expects to sustain his claim. The adverse party shall then state, without argument, his defense and the evidence by which he expects to sustain same. If the trial is to the jury, the opening statement shall be made immediately after the jury is sworn. If the trial is to the court, the opening statement shall be made immediately after the case is called for trial. Opening statements shall be subject to such time limitations as might be imposed by the court.

Editor's Note.—The amendment adopted Sept. 17, 1971, effective Jan. 1, 1972, substituted "sworn" for "empaneled" at the end of the third sentence.

III. Criminal Rules

Rule 34.

POST-CONVICTION MOTIONS

(a) Generally. Motions filed pursuant to 28 United States Code § 2255 making a collateral attack upon a sentence imposed by this court, and petitions for writs of habeas corpus filed in this court by persons in state custody, shall be in writing, signed and verified. Additionally, such motions and petitions shall be on forms supplied by the court, and, to the extent applicable, all information required by the form shall be fully and accurately given.

(b) Federal Prisoners. Upon the filing by a federal prisoner of a motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255, the clerk shall cause one copy of the motion to be delivered immediately to the United States attorney. The United States shall file an answer to each claim asserted, shall admit or deny the allegations or contentions upon which the petitioner relies and shall set forth affirmatively any other reason for denying relief. The United States shall attach to its answer certified copies of the indictment, plea of petitioner, and the judgment, or such of them, and such other records, as may be material to the issues joined.

The original of the answer and attachments shall be filed with the clerk and a copy of the answer shall be served on the petitioner or his counsel within twenty days after the service of the motion, unless a shorter time is ordered by the magistrate or court. The date and method of service on the petitioner shall be indicated on the original answer filed with the clerk.

(c) State Prisoners. Upon the filing by a state prisoner of an application for a writ of habeas corpus under the provisions of 28 U.S.C. §§ 2241, et seq., the clerk shall cause one copy of the application to be mailed immediately to the respondent. The respondent shall file answer to each claim asserted, shall admit or deny the allegations or contentions upon which the petitioner relies, and shall set forth affirmatively any other reason for denying relief. The respondent shall attach to his answer certified copies of the indictment, plea of petitioner, and the judgment, or such of them, and such other records, including the records of any post-conviction proceedings, as may be material to the issues joined.

The original of the answer and attachments shall be filed with the clerk and a copy of the answer shall be served on the petitioner or his counsel within twenty days (forty days in cases brought under 28 U.S.C. § 2254) after service of the application unless a shorter time is ordered by the magistrate or the court. The date and method of service on the petitioner shall be indicated on the original answer filed with the clerk.

Editor's Note.—The amendment adopted Sept. 17, 1971, effective Jan. 1, 1972, designated the former provisions of this rule as section (a) and added sections (b) and (c). Sections (b) and (c) had been previously adopted by order dated Dec. 2, 1970, and designated therein as (a) and (b).

The amendment adopted Nov. 12, 1971, inserted "(forty days in cases brought under 28 U.S.C. § 2254)" in the first sentence of the second paragraph of section (c) and also inserted "the" preceding "court" near the end of that sentence.

Rule 35.

REPRESENTATION OF INDIGENT DEFENDANTS

The plan of the court for the representation of defendants who are financially unable to obtain an adequate defense, and for the furnishing of expert and other services, pursuant to the Criminal Justice Act of 1964, as amended, provides for representation by private attorneys. For the purpose of preparing and certifying panels of attorneys from which appointments will be made, the Court has appointed a District Committee, and Division Committees in each of the six divisions of the district, composed of experienced attorneys. A member of the District Committee resides in each of the six divisions of the court, and Division Committees have a member from each county in each division. Local bar associations have also been invited to participate in the preparation and certification of panels of attorneys from which appointments will be made. Because of the length of the plan, it is not being reproduced in these rules. A copy is available, however, through the clerk. Every effort has been made to insure that all qualified members of the Bar will be given an equal opportunity to participate in the representation of defendants under the Act. The panels will be revised annually. The court may, in the exercise of its discretion, appoint attorneys to represent defendants under the Act whose names do not appear on the panels.

Editor's Note.—The amendment adopted Sept. 17, 1971, effective Jan. 1, 1972, inserted "as amended" in the first sentence.

IV. Bankruptcy Rules

Rule 36.

FILING FEES

(d) Petitions in Pending Cases. The filing fees for petitions in pending cases are as follows:

(1) Petition to reclaim property from a bankrupt estate, $10.00.
(2) Petition to review an order of the referee, $10.00.
(3) Objections to the discharge, $10.00.
(4) Petition to determine dischargeability of claims, $10.00.
(5) Amendments to schedule of creditors after notice to creditors, $10.00.

Comment: Filing fees for petitions filed with the referee shall accompany the petitions when filed with checks payable to the clerk of court.

Editor's Note.—The amendment adopted Sept. 17, 1971, effective Jan. 1, 1972, added present subdivision (4) of section (d) and redesignated former subdivision (4) of section (d) as (5).

As the rest of the rule was not changed by the amendment, only section (d) is set out.

Rule 44.

OBJECTIONS TO DISCHARGE OF BANKRUPT AND DISCHARGEABILITY OF CLAIMS

(a) Objections to Discharge of Bankrupt. The objection to the discharge may contain one or more specifications of the grounds of opposition to such discharge. Each specification should be numbered and reference made to the applicable subparagraph of Section 14 c of the Bankruptcy Act. Each specification should allege the essential facts and all the elements constituting the bar to discharge and not merely allege generalities or conclusions. A specification alleged in the words of the statute alone is not sufficient except where the specification is under Section 14 c (2) of the Bankruptcy Act (11 USC § 32) for failing to keep accounts and records from which the bankrupt's financial condition and business transactions might be ascertained. A copy of the objections should be served upon the bankrupt or his attorney in the manner set out in Local Rule 42(c).

(b) Objections to Dischargeability of Claims. Since the court (referee in bankruptcy) has exclusive jurisdiction to determine whether a claim is discharged in bankruptcy, a petition for such determination must be filed with the referee within the time fixed by order of the court. The petition should contain sufficient facts to indicate the nature of the claim, the grounds for the nondischargeability, and the amount of judgment prayed for. A copy of the petition should be served upon the bankrupt or his attorney in the manner set forth in Local Rule 42(c).

Comment: Section 17 of the Bankruptcy Act (11 USC § 35) contains a list of the types of claims which are not discharged in bankruptcy. The court now has exclusive jurisdiction to determine what claims are not discharged. It also has further exclusive jurisdiction to determine the amount due and owing and render a judgment for the same. This is a judgment in the federal court and is enforced as an ordinary judgment of such court. For filing fees see Local Rule 36 (d) (3) & (4). Official Form No. 44, Specifications of Objection to Discharge (of bankrupt) is set forth as Form No. 4 in the Appendix of these rules.

Editor's Note.—The amendment adopted Sept. 17, 1971, effective Jan. 1, 1972, designated the former provisions of this rule as section (a), added the last sentence of section (a) and added section (b).

V. United States Magistrates

[*Cite these Rules as:* Local Rule .....]

Rule 50.

JURISDICTION AND DUTIES OF UNITED STATES MAGISTRATES

In accordance with Rule 83, Federal Rules of Civil Procedure, and Rule 57, Federal Rules of Criminal Procedure, and, specifically, pursuant to the provisions of 28 U.S.C. § 636(b), the following additional duties are hereby specified for the full-time United States magistrate in Greensboro, North Carolina.

(a) Habeas Corpus, State Prisoners.

All petitions for writ of habeas corpus shall be transmitted to the clerk in Greensboro. [Local Rule 3(a).] The clerk shall forthwith assign the petitions in rotation to the judges in the district. If at any time one or more additional judges may be appointed and qualified, the clerk shall include the additional judge or judges in the rotation system. In the event of illness of a judge or the inability to act, the chief judge or the next active judge in point of service may modify this procedure on a temporary or permanent basis without the necessity of a formal order.

After a petition has been assigned to a judge, the clerk shall forthwith deliver it to the full-time United States magistrate in Greensboro.

The full-time magistrate is specifically authorized to enter orders permitting the filing of such petitions in forma pauperis. If the full-time magistrate deems the petition to be frivolous or otherwise inappropriate for filing, the full-time magistrate shall report, verbally or in writing as directed by the judge, and the judge shall enter his order thereon.

The full-time magistrate shall thereafter report and recommend, either orally or in writing, to the judge whether in the opinion of the full-time magistrate, it is proper to grant a plenary hearing. If the full-time magistrate is of the opinion that no plenary hearing is required, he shall submit in writing an outline of the facts and conclusions which support his position, which said facts and conclusions may be adopted, modified, or rejected, or in the discretion of the judge, used merely as a guide for independent findings and conclusions by the judge. In any event, all orders granting plenary hearings or dismissing petitions shall be entered by the judge.

In the discretion of the judge, the full-time magistrate may be requested to attend any plenary hearing for the purpose of preparing an outline of the facts and conclusions to be ultimately prepared by the judge.

(b) Civil Rights, 42 U.S.C. § 1983.

State prisoner matters seeking relief under 42 U.S.C. § 1983, including motions to appeal in forma pauperis, and related requests involving proceedings other than habeas corpus such as declaratory judgment actions, which are generally the purported equivalent of habeas corpus petitions, are to be assigned by the clerk to a judge in rotation as described above, and thereafter delivered to the full-time magistrate for further proceedings substantially in accord with the procedure prescribed for handling habeas corpus petitions, including specifically the right of the full-time magistrate to permit the filing of any petition or complaint in forma pauperis. If the petition or complaint is deemed to be frivolous, or is otherwise inappropriate for filing in forma pauperis, the magistrate may report, verbally or in writing as directed by the judge, and the judge shall enter his order thereon.

The clerk shall submit motions to appeal in forma pauperis to the full-time magistrate who shall report and recommend, either orally or in writing, to the judge whether, in the opinion of the full-time magistrate, the motion should be granted or denied.

(c) Proceedings Under 28 U.S.C. § 2255.

Federal prisoner cases, including complaints relating to treatment in jails and penitentiaries accorded to federal prisoners, shall be assigned to the trial judge or,

if the trial judge is not available, to any other judge. In the discretion of the judge to which the proceedings have been assigned, such cases may be referred to the full-time magistrate for proceedings substantially as prescribed in habeas corpus matters.

(d) Record of Proceedings.

(1) The United States magistrate disposing of a case involving a petty offense, as defined in 18 U.S.C. § 1, or a minor offense, as defined in 18 U.S.C. § 3401, shall file with the clerk a record of the proceedings prepared on forms and dockets to be furnished by the Administrative Office of the United States Courts. The record of proceedings, including the court reporter's notes, transcript, tape or other recording of the proceedings, with the original papers, shall be filed with the clerk not later than 20 days following the date of final disposition.

(2) All fines collected or collateral forfeited shall be transmitted immediately to the clerk.

(3) In all other cases, as soon as a defendant is discharged or, after having been bound over, is either confined on final commitment or released on bail, the magistrate is required within 20 days thereafter to transmit to the clerk of court his entire file of the case, including, if issued or received by him, the original complaint, warrant of arrest with the officer's return thereon, temporary and final commitments with returns thereon and his completed transcript reflecting the entire record of the proceedings before the magistrate.

(e) Warrants of Arrest.

The approval of the United States attorney or one of his designated assistants shall be secured by United States magistrates prior to the issuance of warrants on complaints of local police officers or private individuals.

(f) Appeals.

Upon appeal from a judgment of a United States magistrate as provided in 18 U.S.C. § 3402 and Rule 11, Rules for United States Magistrates, the appellant shall, within 15 days, serve and file a brief. The United States attorney shall serve and file a brief within 15 days after receipt of a copy of the appellant's brief. The appellant may serve and submit a reply brief within 5 days after receipt of the appellee's brief. Not later than forty (40) days after the filing of the magistrate's certificate, the appeal shall be placed by the clerk upon the court calendar for disposition.

(g) Special Master References.

In addition to the matters heretofore mentioned, particular cases may, in the discretion of the chief judge or judges of this court, be referred to the full-time magistrate as special master pursuant to the Federal Rules of Civil Procedure. This includes, but is not limited to, the supervision of pre-trial and discovery procedures in multidistrict litigation. If such reference is made, a special order shall be entered thereon. Where the parties are financially able to pay compensation for such services, any fee allowed by the court shall be assessed as taxable costs and paid to the Treasury of the United States or in such manner as directed by the Administrative Office of the United States Courts. No such reference shall be made unless consistent with the full-time magistrate's other duties which are accorded a higher priority.

(h) Pre-Trial and Discovery.

Upon direction by the court, actions ready for initial pre-trial or hearings on discovery motions, shall be noticed for hearing by the clerk before the full-time magistrate or one of the judges of the court. Authority is hereby given the full-time magistrate to conduct initial, interim, and/or final pre-trial conferences, to determine discovery motions, refine the issues, approve stipulations of facts, schedule dates for completion of various stages of the proceedings and generally supervise the aspects of the action relating to discovery. He may also hear and determine motions relating to security for costs; motions to extend time for pleading; motions for leave to amend pleadings or to file amended pleadings; motions

for substitution of counsel or parties; motion to add parties, to intervene, or to file third-party complaints; motions to sever or to consolidate and motions to set aside default judgments.

Part-time United States magistrates shall exercise the jurisdiction and powers set forth in their respective orders of appointment.

In criminal actions, when consistent with other duties imposed upon the full-time magistrate, authority is hereby given to the magistrate to enter and determine all motions relating solely to pre-trial discovery. He may consider and determine motions relating to depositions, discovery and inspection; motions relating to subpoenas; motions for mental or other examination; motions for appointment of interpreters or expert witnesses; motions for bill of particulars; and motions for release or substitution of counsel.

Any order entered by the full-time magistrate pursuant to the powers and duties given herein may be appealed within five days to a judge of the court.

(i) Miscellaneous.

The judges may, in their discretion, request the full-time magistrate to perform such other duties as may be authorized by law and which are not inconsistent with the Constitution and laws of the United States.

Editor's Note.—This rule was adopted by order dated Dec. 2, 1970, and was formerly designated Rule 17. It was renumbered Rule 50 by amendment adopted Sept. 17, 1971, effective Jan. 1, 1972.

Rule 51.

REFERENCE OF MINOR OFFENSE CASES TO UNITED STATES MAGISTRATES

(a) Information Filed in the District. Where a defendant, against whom an information charging a minor offense is pending in this court, is brought before a magistrate, the magistrate may proceed in the manner prescribed by the Rules of Procedure for the Trial of Minor Offenses before United States Magistrates.

(b) Transfer Under Rule 20 of the Federal Rules of Criminal Procedure. Upon the transfer, under Rule 20 of the Federal Rules of Criminal Procedure, of an information or indictment charging a minor offense, the case shall be referred immediately to a magistrate who may take the plea and impose sentence in accordance with the rules for the trial of minor offenses, if the defendant consents in writing to this procedure.

Editor's Note.—This rule was adopted by order dated and effective on Sept. 17, 1971.

Rule 52.

FORFEITURE OF COLLATERAL SECURITY IN LIEU OF APPEARANCE

Pursuant to Rule 8, Rules of Procedure, United States magistrates, in the interest of justice, good court administration and sound law enforcement, for the petty offenses listed below, whether originating under the applicable federal statute or regulations or applicable state statute by virtue of the Assimilated Crimes Act, 18 U.S.C. § 13, occurring within the territorial jurisdiction of the United States magistrate, collateral may be posted in lieu of the appearance of the offender unless (1) the offense is denominated as one for which appearance is mandatory or (2) it is the opinion of the arresting or citing officer that the offense charged was aggravated.

Upon the failure of the person charged with an offense or offenses to appear before the United States magistrates for trial of the offense or offenses listed below, except those offenses denominated "mandatory appearance," and not aggravated, as provided above, the collateral in the amount listed opposite the offense shall be

forfeited to the United States. The posting of said collateral shall signify that the offender does not contest the charge nor request a hearing before the United States magistrate, and said collateral shall be administratively forfeited.

The clerk shall certify the record of any forfeiture of collateral for a traffic violation to the proper state authority.

No forfeiture of collateral will be permitted for a subsequent offense or offenses not arising out of the same facts or sequence of events resulting in the original offense or offenses.

There shall be maintained in the office of the clerk and with each United States magistrate a current list of the petty offenses and fines applicable thereto for which forfeiture of collateral security may be accepted.

Pursuant to the foregoing provisions, the offenses for which collateral may be posted in lieu of appearance by the person charged with the said offense are:

1. NATIONAL PARK SERVICE VIOLATIONS

(Title 36, Chapter I, Code of Federal Regulations)

Section Number	*Offense*	*Collateral*
2.1	Abandoned and unattended property	$ 25.00
2.2	Aircraft	25.00
2.3	Audio devices	25.00
2.4	Begging and soliciting	25.00
2.5	Camping	25.00
2.6	Closing of areas	25.00
2.8(a)(b)	Dogs, cats and other pets	25.00
2.9(b)	Explosives	15.00
2.10	False report	25.00
2.12	Fires	25.00
2.13	Fishing	25.00
	Use of bait on sports fishing stream	50.00
	Exceeding creel limit	25.00
	Each fish in excess of creel limit	10.00
2.14	Fraudulently obtaining accommodations	25.00
2.17	Lost and found articles	15.00
2.18	Picnicking	25.00
2.19	Portable engines and motors	25.00
2.20	Preservation of public property, natural features, curiosities, and resources (minor such as flower picking)	15.00
2.21	Public assemblies, meetings	50.00
2.22	Report of injury or damage	25.00
2.23	Saddle and pack animals	25.00
2.24	Sanitation	25.00
2.25	Scientific specimens	25.00
2.26	Skating, skateboards	25.00
2.27	Special events	25.00
2.28	Swimming and bathing	25.00
2.29	Tampering with vehicle or vessel	100.00
2.30	Travel on trails	50.00
2.31	Water skiing	25.00
2.32(a)(2)	Feeding bears, etc.	25.00
2.33	Winter sports	25.00
4.3	Bicycles	25.00
4.4	Commercial towing services	25.00
4.7	Entrances and exits	25.00
4.8	Excessive acceleration	75.00
4.9	False report	25.00

Section Number	*Offense*	*Collateral*
4.13	Obstructing traffic	50.00
4.15	Report of vehicle accident	25.00
4.16	Right-of-way	50.00
4.18	Traffic control and signs	25.00
4.19	Travel on roads	25.00
5.1	Advertisements	75.00
5.2	Alcoholic beverages; sale of intoxicants	75.00
5.3	Business operations	25.00
5.4	Commercial passenger-carrying motor vehicles	25.00
5.5	Commercial photography	100.00
5.6	Commercial vehicles:	
	Pickup trucks, station wagons, vans, and cars	25.00
	Trucks over one and one-half tons and semitrailers	100.00
5.7	Construction of buildings or other facilities	100.00
5.8	Discrimination in employment practices	50.00
5.9	Discrimination in furnishing public accommodations and transportation services	50.00
5.10	Eating, drinking or lodging establishments	50.00
5.11	Impounding of animals (Plus costs of capturing and feeding)	50.00
5.12	Memorialization	25.00
5.13	Nuisances	25.00
5.14	Prospecting, mining and mineral leasing	50.00
5.15	Residence on federal lands	50.00
5.16	Trespass on federal lands	50.00
6.7	Wrongful entry	10.00
7.14(b)	Beer and alcoholic beverages (1)	25.00
	(2)	50.00
7.34(b)	Fishing	25.00
7.34(d)	Parking and crossing permits for hunters	25.00
7.34(f)	Commercial hauling	50.00
7.34(g)	Commercial automobiles and buses	50.00
7.34(k)	Bicycles	15.00
7.34(l)	Boating	25.00
7.58	Cape Hatteras National Seashore Recreational Area; hunting	25.00

MANDATORY APPEARANCE VIOLATIONS

Section Number	*Offense*
2.7	Disorderly conduct.
2.8(c-e)	Dogs, cats and other pets.
2.9(a)	Explosives.
2.11	Firearms, traps and other weapons.
2.12(c)(d)	Fires.
2.16	Intoxication; drug incapacitation.
2.20	Preservation of public property, natural features, curiosities, and resources (major such as destruction of government property).
2.32	Wildlife; hunting:
	Small game,
	Bear, boar or deer hunting.

2. NATIONAL PARK SERVICE VIOLATIONS

(Title 36, Chapter II, Code of Federal Regulations)

Section Number	*Offense*	*Collateral*
251.25(a)	Failure to pay entrance fees as directed by Forest Supervisor	$ 10.00
251.86	Driving in Wilderness Area	50.00
251.92	Sanitation	25.00
251.93(b)	Destroying or removing natural feature or plant	25.00
251.93(d)	Selling merchandise	25.00
251.93(e)	Distributing literature	25.00
251.94	Audio devices	25.00
251.95	Occupancy of developed recreation sites	25.00
251.96(b)	Parking in unauthorized places	25.00
251.96(d)	Motorcycles on trails	50.00
251.96(e)	Driving vehicles for other than ingress or egress	25.00
251.96(g)	Excessively accelerating engine	75.00
261.8	Hunting, trapping and fishing:	
	Exceeding creel limit	25.00
	Each fish in excess of creel limit	10.00
	All other hunting, trapping and fishing violations	25.00
261.11(a)	Squatting	50.00
261.11(b)	Conducting business enterprise	25.00
261.11(d)	Littering	25.00
261.11(e)	Discharging firearms	100.00
261.11(h)	Reckless driving—boating	100.00
261.11(i)	Entering permanently closed area	100.00
261.11(j)	Violation of Supervisor Regulations	25.00
261.11(k)	Trespass in closed areas	25.00
261.11(l)	Blocking passage	25.00
261.11(m)	Entering Wilderness without permit	25.00

MANDATORY APPEARANCE VIOLATIONS

Section Number	*Offense*
251.93(a)	Indecent conduct.
251.93(c)	Destroying government property.
251.93(f)	Discharging firearms.
261.1	Interfering with Forest Officers.
261.2	Fire uses restricted.
261.4	Protection of property.
261.6	Timber uses restricted.
261.7	Unauthorized livestock use.
261.8	Fishing out of season.
	Illegal possession of big game (bear, boar, deer and/or turkey).
	Illegal possession of small game (rabbits, squirrel, and/or birds).
	Spotlighting.
	Trespass firearms.
261.11(c)	Placing stock in enclosure without permit.
261.11(f)	Illegal grazing.

3. NATIONAL FISH AND WILDLIFE VIOLATIONS

(Title 50, Chapter I, Code of Federal Regulations & Title 16, United States Code)

Section Number	*Offense*	*Collateral*
	THE MIGRATORY BIRD TREATY ACT	
16 U.S.C. 703	Take or possess migratory nongame birds	$ 50.00
	Each nongame bird	10.00
	Sell, barter, or trade nongame birds	150.00
	MIGRATORY GAME BIRDS	
10.3(b)(1)	Take with illegal device	100.00
10.3(b)(2)	Take with unplugged shotgun	100.00
10.3(b)(3-9)	Take with unlawful methods or devices	200.00
10.4(c)(d)	Exceed daily bag or possession limit	100.00
	Each bird in excess of limit	25.00
10.4(f)(g)	Hunt along or in National Wildlife Refuge	100.00
10.7-8	Unlawful importation	100.00
10.9(a)	Possess or transport in excess of daily bag in field	100.00
	Each bird in excess of limit	25.00
10.9(b-d)	Violation of tagging regulations	100.00
10.11	Possess live wounded birds	100.00
	Each bird so possessed	25.00
10.14	Failure to retrieve	100.00
	Each bird not retrieved	25.00
10.41-53	Take before or after legal hours	100.00
	Miscellaneous regulations adopted for special areas or conditions	50.00
	MIGRATORY BIRD HUNTING STAMP ACT	
16 U.S.C. 718	Take migratory waterfowl without duck stamp	25.00
	MIGRATORY BIRD CONSERVATION ACT—NATIONAL WILDLIFE REFUGES	
16 U.S.C. 715		
26.2-32	Unlawful entry or use	$ 25.00
28.1	Special regulations or posted notices	25.00
28.21(a-g)	Boating violations other than operating under the influence of alcohol or drugs	25.00
28.22	Water skiing	25.00
32.2(d)	Violation of State Game Law on National Wildlife Refuge	25.00
32.2(e)	Failure to comply with terms or conditions of access	25.00
33.2(d)		
32.2(f)	Failure to comply with special regulations	50.00
33.2(e)		
33.2(c)	State Fish Law violations on National Wildlife Refuge	25.00
	FISH AND WILDLIFE ACT—NATIONAL FISH HATCHERIES	
16 U.S.C. 742		
70.4(b)	Unlawful taking of fish	100.00
70.4(c)	Unlawful hunting	100.00
70.4(d)	Disturbing spawning fish	100.00
71.2(d)	Violation of State Game Law on National Fish Hatchery	25.00
71.2(e)	Failure to comply with terms or conditions of access	25.00
71.12(d)		
71.2(f)	Failure to comply with special regulations	50.00
71.12(e)		
71.12(c)	Violation of State Fish Law on National Fish Hatchery	25.00

NATIONAL FISH AND WILDLIFE VIOLATIONS

MANDATORY APPEARANCE VIOLATIONS

Section Number	*Offense*
	MIGRATORY GAME BIRDS
10.4(a)	Possess freshly killed birds, closed season
10.41-53	Take more than one hour before or after hours
	Take during closed season
16.2	Take, sell, import, export, transport, possess or dispose of without permit
16 U.S.C. 851	Unlawful interstate transportation of fish
	LACEY ACT
16 U.S.C. 667(e)	Unlawful interstate transportation of game
13	Unlawful importation of prohibited species of fish or game or birds
	Unlawful possession or transportation of prohibited species of fish or animals or birds
	BALD EAGLE ACT
16 U.S.C. 668	Unlawfully sell or take
11	Unlawful possession or transportation
	MIGRATORY BIRD CONSERVATION ACT—NATIONAL WILDLIFE REFUGES
28.8	Unlawful trespassing with firearms

4. GENERAL SERVICES ADMINISTRATION VIOLATIONS

(Title 41, Chapter 101, Code of Federal Regulations)

Section Number	*Offense*	*Collateral*
19.301	Recording presence	$ 25.00
19.302	Preservation of property	15.00
19.303	Conformity with signs and emergency directions	15.00
19.304	Disturbances	25.00
19.305	Gambling	25.00
19.307	Soliciting, vending, and debt collection	25.00
19.307(a)	Distribution of handbills	15.00
19.308	Photographs for news, advertising or commercial purposes	15.00
19.309	Dogs and other animals	15.00
19.310	Vehicular and pedestrian traffic	15.00
19.312	Nondiscrimination	50.00
19.311	Weapons and explosives	
19.306	Alcoholic beverages and narcotics	

5. TRAFFIC OFFENSES TO WHICH NORTH CAROLINA LAW IS APPLICABLE

	Collateral
A. Speeding violations:	
0-5 mph over applicable limit	$ 15.00
6-10 mph over applicable limit	20.00
11-15 mph over applicable limit	25.00
B. Other violations:	
Driving without, or with expired, operator's or chauffeur's license (except when revoked or suspended), or knowingly permitting an owned vehicle to be so operated	40.00
Driving the wrong way on a dual-lane highway	40.00
Littering	30.00

	Collateral
Improper passing	$ 25.00
Failure to dim lights	25.00
Height and width violations	25.00
Illegal transportation one quart or less taxpaid alcoholic beverage with seal broken in passenger area of motor vehicle (G.S. 18-51(1))	25.00
Driving too slowly	20.00
Any parking violation	15.00
Violation of vehicle inspection law	15.00
Exceeding a safe speed	15.00
Following too closely	15.00
Failure to stop for a red light or stop sign	15.00
Failure to yield right-of-way	15.00
Improper turn and/or improper signal	15.00
Driving the wrong way on a one-way city street	15.00
Improper vehicle equipment	15.00
Violation of the vehicle registration laws, except involving stolen or altered registration plates or certificates	15.00
Any other traffic violation for which court appearance is not mandatory	15.00

MANDATORY APPEARANCE VIOLATIONS

All pleas of not guilty.

All felonies.

Any violation resulting in personal injury.

Driving under the influence. G.S. 20-138; G.S. 20-139.

Careless and reckless driving. G.S. 20-140; G.S. 20-140.1.

Exceeding the applicable speed limit by over 15 mph.

Racing (prearranged, spontaneous, permitting such use of an owned vehicle, betting on prearranged racing). G.S. 20-141.3.

Passing stopped school, school activity, or church bus.

Failure to yield right-of-way to emergency vehicles.

Failure to obey directions of a traffic officer, or of a fireman at the scene of a fire.

Illegal transportation of liquor (more than one quart).

Leaving the scene of an accident in which involved, or failing to report such an accident. G.S. 20-166; G.S. 20-166.1.

Driving while license suspended or revoked, or permitting an owned vehicle to be so operated. G.S. 20-28; G.S. 20-34.

Driving with false, forged or altered driver's license, or permitting an owned vehicle to be so operated.

Any violation of the financial responsibility laws. (Chapter 20, Articles 9A and 13).

Any violation of the vehicle registration laws involving stolen or altered registration plates or certificates.

Any violation involving a false affidavit, or false statement under oath, or perjury. G.S. 20-17(5); G.S. 20-31; G.S. 20-313.1.

Any violation charged in the same warrant or summons with a mandatory appearance violation.

Editor's Note.—This rule was adopted by order dated Dec. 2, 1970, and was formerly designated Rule 36. It was renumbered Rule 52 by amendment adopted Sept. 17, 1971, effective Jan. 1, 1972.

Appendix of Forms

FORM 2

(See Local Rule 42)

Official Caption and Verification

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
In Bankruptcy No. .....

In the Matter of
.....
Bankrupt } PETITION

To the Honorable ..... Referee in Bankruptcy:

(CONTENTS OF PETITION)

.....
Petitioner

.....
Attorney for Petitioner

(As to requirement of verification see Local Rule 42(b))

STATE OF .....
COUNTY OF .....

I, ..., the Petitioner named in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information and belief.

.....
Petitioner

Sworn to and subscribed before me this the .... day of ....., 196...

.....
Notary Public (or other official)
My commission expires .....

Form 3

(See Local Rule 40(b))

Division of Attorneys' Fees, Affidavit

(Caption as in Form No. 2)

....., being duly sworn deposes and says:

That he is a petitioner in the above bankruptcy proceeding for compensation as ....., that no agreement has been made directly or indirectly by him, and no understanding exists between him and any other person for a division of compensation except as follows: .....; and that no division of fees prohibited in Section 62 c of the Bankruptcy Act will be made by the applicant.

.....
Applicant

(Verification)
See Form No. 2

FORM 4

(See Local Rule 44)

Specification of Objections to Discharge

(Caption as in Form No. 2)

....., of ..... in the County of ....., State of ....., the trustee of the estate (or a creditor) of the above named bankrupt (or the United States attorney for said district or the attorney designated by the Attorney General of the United States), having examined into the acts and conduct of said bankrupt and being satisfied that probable grounds exist for the denial of the discharge of said bankrupt and that the public interest so warrants, does hereby oppose the granting to said bankrupt of a discharge from his debts and specifies the following as grounds of objection: (Here specify in separately numbered paragraphs the grounds of objection).

.....
Trustee (or creditor, etc.)

(Verification)
See Form No. 2

The United States District Court for the Eastern District of North Carolina

Rules of Court

I. General Rules.

I. General Rules

Rule 19. United States Magistrates.

In accordance with the provisions of 28 U.S.C. § 636(b), the judges of the United States District Court for the Eastern District of North Carolina hereby establish this rule specifying the additional duties to be performed by the part-time United States magistrates specially designated by the court within the Eastern District of North Carolina.

1. *Habeas Corpus—State Prisoners*

(a) In conformity with a practice heretofore established, all petitions for writs of habeas corpus shall be filed with or transmitted to the clerk at Raleigh, North Carolina, who shall forthwith assign the petitions in rotation to the judges of the district and mark the record accordingly. However, at the direction or under the supervision of the judges of the district, the clerk shall transmit and deliver forthwith any number or percentage of the total number or all of the petitions before the court, along with supporting documents to any magistrate specially designated by the court for his consideration as set out below.

(b) The magistrate is specifically authorized to enter orders permitting the filing of said petition in forma pauperis. If the magistrate deems the petition to be frivolous, or otherwise inappropriate for filing in forma pauperis, the magistrate shall report, verbally or in writing as directed by the judge to whom the case has been assigned, and said judge shall enter his order thereon.

(c) The magistrate shall thereafter report and recommend, either orally or in writing, to the judge whether, in the opinion of the magistrate, it is proper to grant a plenary hearing. If the magistrate is of the opinion that no plenary hearing is required, he shall submit in writing an outline of the facts and conclusions which support his opinion, or a report in the form of a proposed order, to the judge to whom the case has been assigned, which said facts and conclusions may be adopted, modified or rejected or, in the discretion of the judge, used merely as a guide for independent findings and conclusions by the judge. In any event, all orders granting plenary hearings or dismissing petitions shall be entered by the judge.

(d) In the discretion of the judge to whom said case has been assigned the magistrate may be requested to attend any plenary hearing for the purpose of preparing an outline of the facts and conclusions, or a report in the form af a proposed order, for the submission thereof to the judge who shall ultimately prepare same.

2. *Civil Rights Statute—42 U.S.C. § 1983*

State prisoner complaints seeking relief under 42 U.S.C. § 1983, are to be assigned by the clerk to the judges under the rotation system of the district. However,

under the direction or supervision of the judges of the district, the clerk shall transmit the complaint along with supporting documents to any magistrate for his consideration and for proceedings substantially as prescribed in habeas corpus matters.

The magistrate is specifically authorized to enter orders permitting the filing of said complaint in forma pauperis. If the magistrate deems the complaint to be frivolous, or otherwise inappropriate for filing in forma pauperis, the magistrate shall report, verbally or in writing, as directed by the judge to whom the case has been assigned and said judge shall enter his order thereon.

3. *Motions under 28 U.S.C. § 2255*

These motions are to be assigned by the clerk to the trial judge or, if the trial judge is not available, to any other judge. However, at the direction of the judge to whom the motion has been assigned, the clerk shall transmit the motion along with supporting documents to any magistrate for his consideration and for proceedings substantially as prescribed in habeas corpus matters.

The magistrate is specifically authorized to enter orders permitting the filing of said motion in forma pauperis. If the magistrate deems the motion to be frivolous, or otherwise inappropriate for filing in forma pauperis, the magistrate shall report, verbally or in writing, as directed by the judge to whom the case has been assigned and said judge shall enter his order thereon.

4. *Pre-trial and Discovery*

(a) In civil actions authority is given to the magistrates specially designated for that purpose to conduct pre-trial conferences, and to enter such orders thereon as would have otherwise been entered by the judge with respect to discovery, simplification of issues, stipulation of facts, scheduling of prescribed dates for various stages of proceedings, and other matters pertaining thereto, as prescribed by the Federal Rules of Civil Procedure and Civ. Rule 7, U.S.Dist.Ct., E.D.N.C. The magistrate shall not enter any order granting a continuance of any case pending before a district judge, but may grant continuances of matters pending before the magistrate. The action taken hereunder shall be upon the written authority of the judge to whom the case is assigned.

(b) In criminal actions authority is given to the magistrates specially designated for that purpose to hear and determine all motions relating solely to pretrial discovery. Motions to suppress shall be heard by the judge. The action taken hereunder shall be upon the written authority of the judge to whom the case is assigned.

5. *Miscellaneous*

The judges may, in their discretion, request the magistrates to perform such other duties as may be authorized by law and which are not inconsistent with the Constitution and laws of the United States.

6. *Forfeiture of Collateral in Lieu of Appearance*

Pursuant to Rule 9, Rules of Procedure, United States magistrates, in the interest of justice, good court administration and sound law enforcement, for the petty offenses listed below, whether originating under the applicable federal statute or regulations or applicable state statute by virtue of the Assimilated Crimes Act, 18 U.S.C. § 13, occurring within the territorial jurisdiction of the United States magistrate, collateral may be posted in lieu of the appearance of the offender unless (1) the offense is denominated as one for which appearance is mandatory or (2) it is the opinion of the arresting or citing officer that the offense charged was aggravated.

Upon the failure of the person charged with an offense or offenses to appear before the United States magistrate for trial of the offense or offenses listed below, except those offenses denominated "mandatory appearance," and not aggravated, as provided above, the collateral in the amount listed opposite the offense shall be forfeited to the United States. The posting of said collateral shall signify that the offender does not contest the charge nor request a hearing before the United States magistrate, and said collateral shall be administratively forfeited.

The clerk shall certify the record of any forfeiture of collateral for a traffic violation to the proper state authority.

No forfeiture of collateral will be permitted for a subsequent offense or offenses not arising out of the same facts or sequence of events resulting in the original offense or offenses.

There shall be maintained in the office of the clerk and with each United States magistrate a current list of the petty offenses and fines applicable thereto for which forfeiture of collateral security may be accepted.

Pursuant to the foregoing provisions, the offenses for which collateral may be posted in lieu of appearance by the person charged with the said offense are:

NATIONAL PARK SERVICE VIOLATIONS

Title 36, Chapter I, Code of Federal Regulations

Section Number	*Offense*	*Collateral*
2.1	Abandoned and unattended property	$ 25.00
2.2	Aircraft	25.00
2.3	Audio devices	25.00
2.4	Begging and soliciting	25.00
2.5	Camping	25.00
2.6	Closing of areas	25.00
2.8(a)(b)	Dogs, cats and other pets	25.00
2.9(b)	Explosives	15.00
2.10	False report	25.00
2.12	Fires	25.00
2.13	Fishing	25.00
	Use of bait on sports fishing stream	50.00
	Exceeding creel limit	25.00
	Each fish in excess of creel limit	10.00
2.14	Fraudulently obtaining accommodations	25.00
2.17	Lost and found articles	15.00
2.18	Picnicking	25.00
2.19	Portable engines and motors	25.00
2.20	Preservation of public property, natural features, curiosities, and resources (minor such as flower picking)	15.00
2.21	Public assemblies, meetings	50.00
2.22	Report of injury or damage	25.00
2.23	Saddle and pack animals	25.00
2.24	Sanitation	25.00
2.25	Scientific specimens	25.00
2.26	Skating, skateboards	25.00
2.27	Special events	25.00
2.28	Swimming and bathing	25.00
2.29	Tampering with vehicle or vessel	100.00
2.30	Travel on trails	50.00
2.31	Water skiing	25.00
2.32(a)(2)	Feeding bears, etc.	25.00
2.33	Winter sports	25.00
4.3	Bicycles	25.00
4.4	Commercial towing services	25.00
4.7	Entrances and exits	25.00
4.8	Excessive acceleration	75.00
4.9	False report	25.00
4.13	Obstructing traffic	50.00
4.15	Report of vehicle accident	25.00

Section Number	*Offense*	*Collateral*
4.16	Right-of-way	50.00
4.18	Traffic control and signs	25.00
4.19	Travel on roads	25.00
5.1	Advertisements	75.00
5.2	Alcoholic beverages; sale of intoxicants	75.00
5.3	Business operations	25.00
5.4	Commercial passenger-carrying motor vehicles	25.00
5.5	Commercial photography	100.00
5.6	Commercial vehicles:	
	Pickup trucks, station wagons, vans, and cars	25.00
	Trucks over one and one-half tons and semitrailers	100.00
5.7	Construction of buildings or other facilities	100.00
5.8	Discrimination in employment practices	50.00
5.9	Discrimination in furnishing public accommodations and transportation services	50.00
5.10	Eating, drinking or lodging establishments	50.00
5.11	Impounding of animals (Plus costs of capturing and feeding)	50.00
5.12	Memorialization	25.00
5.13	Nuisances	25.00
5.14	Prospecting, mining and mineral leasing	50.00
5.15	Residence on federal lands	50.00
5.16	Trespass on federal lands	50.00
6.7	Wrongful entry	10.00
7.14(b)	Beer and alcoholic beverages (1)	25.00
	(2)	50.00
7.34(b)	Fishing	25.00
7.34(d)	Parking and crossing permits for hunters	25.00
7.34(f)	Commercial hauling	50.00
7.34(g)	Commercial automobiles and buses	50.00
7.34(k)	Bicycles	15.00
7.34(l)	Boating	25.00
7.58	Cape Hatteras National Seashore Recreational Area; hunting	25.00

MANDATORY APPEARANCE VIOLATIONS

Section Number	*Offense*
2.7	Disorderly conduct.
2.8(c-e)	Dogs, cats and other pets.
2.9(a)	Explosives.
2.11	Firearms, traps and other weapons.
2.12(c)(d)	Fires.
2.16	Intoxication; drug incapacitation.
2.20	Preservation of public property, natural features, curiosities, and resources (major such as destruction of government property).
2.32	Wildlife; hunting:
	Small game,
	Bear, boar or deer hunting.

NATIONAL FOREST SERVICE VIOLATIONS

Title 36, Chapter II, Code of Federal Regulations

Section Number	*Offense*	*Collateral*
251.25(a)	Failure to pay entrance fees as directed by Forest Supervisor	$ 10.00
251.86	Driving in Wilderness Area	50.00
251.92	Sanitation	25.00
251.93(b)	Destroying or removing natural feature or plant	25.00
251.93(d)	Selling merchandise	25.00
251.93(e)	Distributing literature	25.00
251.94	Audio devices	25.00
251.95	Occupancy of developed recreation sites	25.00
251.96(b)	Parking in unauthorized places	25.00
251.96(d)	Motorcycles on trails	50.00
251.96(e)	Driving vehicles for other than ingress or egress	25.00
251.96(g)	Excessively accelerating engine	75.00
261.8	Hunting, trapping and fishing:	
	Exceeding creel limit	25.00
	Each fish in excess of creel limit	10.00
	All other hunting, trapping and fishing violations	25.00
261.11(a)	Squatting	50.00
261.11(b)	Conducting business enterprise	25.00
261.11(d)	Littering	25.00
261.11(e)	Discharging firearms	100.00
261.11(h)	Reckless driving—boating	100.00
261.11(i)	Entering permanently closed area	100.00
261.11(j)	Violation of Supervisor Regulations	25.00
261.11(k)	Trespass in closed areas	25.00
261.11(l)	Blocking passage	25.00
261.11(m)	Entering Wilderness without permit	25.00

MANDATORY APPEARANCE VIOLATIONS

Section Number	*Offense*
251.93(a)	Indecent conduct.
251.93(c)	Destroying Government property.
251.93(f)	Discharging firearms.
261.1	Interfering with Forest Officers.
261.2	Fire uses restricted.
261.4	Protection of property.
261.6	Timber uses restricted.
261.7	Unauthorized livestock use.
261.8	Fishing out of season.
	Illegal possession of big game (bear, boar, deer and/or turkey).
	Illegal possession of small game (rabbits, squirrel, and/or birds).
	Spotlighting.
	Trespass firearms.
261.11(c)	Placing stock in enclosure without permit.
261.11(f)	Illegal grazing.

NATIONAL FISH AND WILDLIFE VIOLATIONS

Title 50, Chapter I, Code of Federal Regulations & Title 16 United States Code

Section Number	*Offense*	*Collateral*
THE MIGRATORY BIRD TREATY ACT:		
16 U.S.C. 703	Take or possess migratory nongame birds	$ 50.00
	Each nongame bird	10.00
	Sell, barter, or trade nongame birds	150.00
MIGRATORY GAME BIRDS:		
10.3(b)(1)	Take with illegal device	100.00
10.3(b)(2)	Take with unplugged shotgun	100.00
10.3(b)(3-9)	Take with unlawful methods or devices	200.00
10.4(c)(d)	Exceed daily bag or possession limit	100.00
	Each bird in excess of limit	25.00
10.4(f)(g)	Hunt along or in National Wildlife Refuge	100.00
10.7-8	Unlawful importation	100.00
10.9(a)	Possess or transport in excess of daily bag in field	100.00
	Each bird in excess of limit	25.00
10.9(b-d)	Violation of tagging regulations	100.00
10.11	Possess live wounded birds	100.00
	Each bird so possessed	25.00
10.14	Failure to retrieve	100.00
	Each bird not retrieved	25.00
10.41-53	Take before or after legal hours	100.00
	Miscellaneous regulations adopted for special areas or conditions	50.00
MIGRATORY BIRD HUNTING STAMP ACT:		
16 U.S.C. 718	Take migratory waterfowl without duck stamp	25.00
MIGRATORY BIRD CONSERVATION ACT—NATIONAL WILDLIFE REFUGES:		
16 U.S.C. 715		
26.2-32	Unlawful entry or use	25.00
28.1	Special regulations or posted notices	25.00
28.21(a-g)	Boating violations other than operating under the influence of alcohol or drugs	25.00
28.22	Water skiing	25.00
32.2(d)	Violation of State Game Law on National Wildlife Refuge	25.00
32.2(e)	Failure to comply with terms or conditions of access	25.00
33.2(d)		
32.2(f)	Failure to comply with special regulations	50.00
33.2(e)		
33.2(c)	State Fish Law violations on National Wildlife Refuge	25.00
FISH AND WILDLIFE ACT—NATIONAL FISH HATCHERIES:		
16 U.S.C. 742		
70.4(b)	Unlawful taking of fish	100.00
70.4(c)	Unlawful hunting	100.00
70.4(d)	Disturbing spawning fish	100.00
71.2(d)	Violation of State Game Law on National Fish Hatchery	25.00
71.2(e)	Failure to comply with terms or conditions of access	25.00
71.12(d)		
71.2(f)	Failure to comply with special regulations	50.00
71.12(e)		
71.12(c)	Violation of State Fish Law on National Fish Hatchery	25.00

MANDATORY APPEARANCE VIOLATIONS

Section Number	*Offense*
MIGRATORY GAME BIRDS:	
10.4(a)	Possess freshly killed birds, closed season
10.41-53	Take more than one hour before or after hours Take during closed season
16.2	Take, sell, import, export, transport, possess or dispose of without permit
BLACK BASS ACT:	
16 U.S.C. 851	Unlawful interstate transportation of fish
LACEY ACT:	
16 U.S.C. 667(e)	Unlawful interstate transportation of game
13	Unlawful importation of prohibited species of fish or game or birds Unlawful possession or transportation of prohibited species of fish or animals or birds
BALD EAGLE ACT:	
16 U.S.C. 668	Unlawfully sell or take
11	Unlawful possession or transportation
MIGRATORY BIRD CONSERVATION ACT—NATIONAL WILDLIFE REFUGES:	
28.8	Unlawful trespassing with firearms

TRAFFIC OFFENSES TO WHICH NORTH CAROLINA LAW IS APPLICABLE

	Collateral
A. Speeding violations:	
0-5 mph over applicable limit	$ 15.00
6-10 mph over applicable limit	20.00
11-15 mph over applicable limit	25.00
B. Other violations:	
Driving without, or with expired, operator's or chauffeur's license (except when revoked or suspended), or knowingly permitting an owned vehicle to be so operated	40.00
Driving the wrong way on a dual-lane highway	40.00
Litterbugging	30.00
Improper passing	25.00
Failure to dim lights	25.00
Height and width violations	25.00
Illegal transportation one quart or less taxpaid alcoholic beverage with seal broken in passenger area of motor vehicle (G.S. 18-51 (1))	25.00
Driving too slowly	20.00
Any parking violation	15.00
Violation of vehicle inspection law	15.00
Exceeding a safe speed	15.00
Following too closely	15.00
Failure to stop for a red light or stop sign	15.00
Failure to yield right-of-way	15.00
Improper turn and/or improper signal	15.00
Driving the wrong way on a one-way city street	15.00
Improper vehicle equipment	15.00
Violation of the vehicle registration laws, except involving stolen or altered registration plates or certificates	15.00
Any other traffic violation for which court appearance is not mandatory	15.00

MANDATORY APPEARANCE VIOLATIONS

All pleas of not guilty.
All felonies.
Any violation resulting in personal injury.
Driving under the influence. G.S. 20-138; G.S. 20-139.
Careless and reckless driving. G.S. 20-140; G.S. 20-140.1.
Exceeding the applicable speed limit by over 15 mph.
Racing (prearranged, spontaneous, permitting such use of an owned vehicle, betting on prearranged racing). G.S. 20-141.3.
Passing stopped school, school activity, or church bus.
Failure to yield right-of-way to emergency vehicles.
Failure to obey directions of a traffic officer, or of a fireman at the scene of a fire.
Illegal transportation of liquor (more than one quart).
Leaving the scene of an accident in which involved, or failing to report such an accident. G.S. 20-166; G.S. 20-166.1.
Driving while license suspended or revoked, or permitting an owned vehicle to be so operated. G.S. 20-28; G.S. 20-34.
Driving with false, forged or altered driver's license, or permitting an owned vehicle to be so operated.
Any violation of the financial responsibility laws.
(Chapter 20, Articles 9A and 13).
Any violation of the vehicle registration laws involving stolen or altered registration plates or certificates.
Any violation involving a false affidavit, or false statement under oath, or perjury. G.S. 20-17(5); G.S. 20-31; G.S. 20-313.1.
Any violation charged in the same warrant or summons with a mandatory appearance violation.

GENERAL SERVICES ADMINISTRATION VIOLATIONS

Title 41, Chapter 101, Code of Federal Regulations

Section Number	*Offense*	*Collateral*
19.301	Recording presence	$ 25.00
19.302	Preservation of property	15.00
19.303	Conformity with signs and emergency directions	15.00
19.304	Disturbances	25.00
19.305	Gambling	25.00
19.307	Soliciting, vending, and debt collection	25.00
19.307(a)	Distribution of handbills	15.00
19.308	Photographs for news, advertising or commercial purposes	15.00
19.309	Dogs and other animals	15.00
19.310	Vehicular and pedestrian traffic	15.00
19.312	Nondiscrimination	50.00

GENERAL SERVICES ADMINISTRATION VIOLATIONS

MANDATORY APPEARANCE VIOLATIONS

Section Number	*Offense*
19.311	Weapons and explosives.
19.306	Alcoholic beverages and narcotics.

7. Central Violations Bureau

A Central Violations Bureau is hereby established, under the jurisdiction of the clerk of court at Raleigh and staffed by designated employees in his office, to

serve all magistrates and divisions within the district. The Bureau is authorized and empowered to perform all functions prescribed for the Central Violations Bureau by Section XVI, Disposition of Petty Offense, Operations Manual for United States Magistrates, dated January, 1971.

8. *Violation Notices*

In both mandatory and voluntary court appearance cases, the law-enforcement officer shall transmit copies 1 and 2 of the Violation Notice to the Central Violations Bureau, Clerk, U. S. District Court, P. O. Box 25670, Raleigh, North Carolina, 27611, within 24 hours. The officer keeps copy 3 for his agency files and copy 4 is given to the alleged violator. In voluntary court appearance cases the alleged violator may indicate on copy 4 that he wishes to have a hearing, and mail copy 4 to the Central Violations Bureau. The Central Violations Bureau will determine which magistrate is to conduct the hearing, based upon: (a) instructions from the court; (b) agreed upon arrangements with the magistrates; (c) the place where the violation occurred; (d) the availability to the magistrates of a reporter or sound recording equipment; and (e) the convenience of the alleged violator. The Central Violations Bureau will send the designated magistrate a list of scheduled appearance which will serve as the magistrate's calendar. The magistrate shall notify the alleged violator, the officer, and any other necessary persons the date, time and place of the hearing.

9. *Reference of a Minor Offense Case to a Magistrate*

(a) *Information Filed in the District.* Where an information charging a minor offense is pending in this court, the clerk is authorized and directed to refer the case immediately to a magistrate to be designated by the clerk based upon: (a) instructions from the court; (b) agreed-upon arrangements with the magistrates; (c) the place where the alleged offense occurred; (d) the availability to the magistrate of a reporter or sound recording equipment; and (e) the convenience of the defendant. The designated magistrate shall proceed in the manner prescribed by the Rules of Procedure for the Trial of Minor Offenses before United States Magistrates.

(b) *Transfer Under Rule 20 of the Federal Rules of Criminal Procedure.* Upon the transfer, under Rule 20 of the Federal Rules of Criminal Procedure, of an information or indictment charging a minor offense, the clerk is authorized and directed to refer the case immediately to a magistrate to be designated by the clerk as prescribed in subsection (a). The designated magistrate shall proceed in the manner prescribed by the Rules of Procedure for the Trial of Minor Offenses before United States Magistrates.

Editor's Note.—This rule was adopted by order dated Jan. 26, 1971, and made effective May 1, 1971.

The amendment adopted March 25, 1971 added subdivisions 7 and 8.

The first amendment adopted April 15, 1971 added subdivision 9.

The second amendment adopted April 15, 1971 added to subdivision 6 the schedules headed "General Services Administration Violations" and headed "General Services Administration Violations—Mandatory Appearance Violations."

The United States District Court for the Western District of North Carolina

Rules of Court

I. General Rules

I. General Rules

Rule 11. Fair Trial and Free Press in Criminal Cases.

A. It is the duty of the lawyer not to release or authorize the release of information or opinion for dissemination by any means of public communication, in connection with pending or imminent criminal litigation with which he is associated, if there is a reasonable likelihood that such dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice.

With respect to a grand jury or other pending investigation of any criminal matter, a lawyer participating in the investigation shall refrain from making any extrajudicial statement, for dissemination by any means of public communication, that goes beyond the public record or that is not necessary to inform the public that the investigation is underway, to describe the general scope of the investigation, to obtain assistance in the apprehension of a suspect, to warn the public of any dangers, or otherwise to aid in the investigation.

From the time of arrest, issuance of an arrest warrant or the filing of a complaint, information, or indictment in any criminal matter until the commencement of trial or disposition without trial, a lawyer associated with the prosecution or defense shall not release or authorize the release of any extrajudicial statement, for dissemination by any means of public communication, relating to that matter and concerning:

(1) The prior criminal record (including arrests, indictments, or other charges of crime), or the character or reputation of the accused, except that the lawyer may make a factual statement of the accused's name, age, residence, occupation, and family status, and if the accused has not been apprehended, a lawyer associated with the prosecution may release any information necessary to aid in his apprehension or to warn the public of any dangers he may present;

(2) The existence of contents of any confession, admission, or statement given by the accused, or the refusal or failure of the accused to make any statement;

(3) The performance of any examinations or tests or the accused's refusal or failure to submit to an examination or test;

(4) The identity, testimony, or credibility of prospective witnesses, except that the lawyer may announce the identity of the victim if the announcement is not otherwise prohibited by law;

(5) The possibility of a plea of guilty to the offense charged or a lesser offense;

(6) Any opinion as to the accused's guilt or innocence or as to the merits of the case or the evidence in the case.

The foregoing shall not be construed to preclude the lawyer during this period, in the proper discharge of his official or professional obligations, from announcing the fact and circumstances of arrest (including time and place of arrest, resistance, pursuit, and use of weapons), the identity of the investigating and arresting officer or agency, and the length of the investigation; from making an announcement, at the time of seizure of any physical evidence other than a confession, admission or statement, which is limited to a description of the evidence seized; from disclosing the nature, substance, or text of the charge, including a brief description of the offense charged; from quoting or referring without comment to public records

of the court in the case; from announcing the scheduling or result of any stage in the judicial process; from requesting assistance in obtaining evidence; or from announcing without further comment that the accused denies the charges made against him.

During the trial of any criminal matter, including the period of selection of the jury, no lawyer associated with the prosecution or defense shall give or authorize any extrajudicial statement or interview, relating to the trial or the parties or issues in the trial, for dissemination by any means of public communication, except that the lawyer may quote from or refer without comment to public records of the court in the case.

After the completion of a trial or disposition without trial of any criminal matter, and prior to the imposition of sentence, a lawyer associated with the prosecution or defense shall refrain from making or authorizing any extrajudicial statement for dissemination by any means of public communication if there is a reasonable likelihood that such dissemination will affect the imposition of sentence.

Nothing in this rule is intended to preclude the formulation or application of more restrictive rules relating to the release of information about juvenile or other offenders, to preclude the holding of hearings or the lawful issuance of reports by legislative, administrative, or investigative bodies, or to preclude any lawyer from replying to charges of misconduct that are publicly made against him.

B. All courthouse personnel, including among others, marshals, deputy marshals, court clerks, bailiffs, and court reporters shall not disclose to any person, without authorization by the court, information concerning arguments and hearings in criminal cases held in chambers or otherwise outside the presence of the public, or disclose any other information relating to a pending criminal case that is not a part of the public records of this court.

C. In a widely publicized or sensational case, the court, on motion of either party or on its own motion, may issue a special order governing such matters as extrajudicial statements by parties and witnesses likely to interfere with the rights of the accused to a fair trial by an impartial jury, the seating and conduct in the courtroom of spectators and news media representatives, the management and sequestration of jurors and witnesses, and any other matters which the court may deem appropriate for inclusion in such an order.

Editor's Note.—This rule was adopted by order dated April 29, 1969.

Rule 12. Forfeiture of Collateral Security in Lieu of Appearance.

Pursuant to Rule 8, Rules of Procedure, United States magistrates, in the interest of justice, good court administration and sound law enforcement, for the petty offenses listed below, whether originating under the applicable federal statutes or regulations or applicable state statute by virtue of the Assimilated Crimes Act, 18 U.S.C. § 13, occurring within the territorial jurisdiction of the United States magistrate, collateral may be posted in lieu of the appearance of the offender unless (1) the offense is denominated as one for which appearance is mandatory or (2) it is the opinion of the arresting or citing officer that the offense charged was aggravated.

Upon the failure of the person charged with an offense or offenses to appear before the United States magistrate for trial of the offense or offenses listed below, except those offenses denominated "mandatory appearance," and not aggravated, as provided above, the collateral in the amount listed opposite the offense shall be forfeited to the United States. The posting of said collateral shall signify that the offender does not contest the charge nor request a hearing before the United States magistrate, and said collateral shall be administratively forfeited.

The clerk shall certify the record of any forfeiture of collateral for a traffic violation to the proper state authority.

No forfeiture of collateral will be permitted for a subsequent offense or offenses

not arising out of the same facts or sequence of events resulting in the original offense or offenses.

There shall be maintained in the office of the clerk and with each United States magistrate a current list of the petty offenses and fines applicable thereto for which forfeiture of collateral security may be accepted.

Pursuant to the foregoing provisions, the offenses for which collateral may be posted in lieu of appearance by the person charged with the said offense are:

NATIONAL PARK SERVICE VIOLATIONS

Title 36, Chapter I, Code of Federal Regulations

Section Number	*Offense*	*Collateral*
2.1	Abandoned and unattended property	$ 25.00
2.2	Aircraft	25.00
2.3	Audio devices	25.00
2.4	Begging and soliciting	25.00
2.5	Camping	25.00
2.6	Closing of areas	25.00
2.8(a)(b)	Dogs, cats and other pets	25.00
2.9(b)	Explosives	15.00
2.10	False report	25.00
2.12	Fires	25.00
2.13	Fishing	25.00
	Use of bait on sports fishing stream	50.00
	Exceeding creel limit	25.00
	Each fish in excess of creel limit	10.00
2.14	Fraudulently obtaining accommodations	25.00
2.17	Lost and found articles	15.00
2.18	Picnicking	25.00
2.19	Portable engines and motors	25.00
2.20	Preservation of public property, natural features, curiosities, and resources (minor such as flower picking)	15.00
2.21	Public assemblies, meetings	50.00
2.22	Report of injury or damage	25.00
2.23	Saddle and pack animals	25.00
2.24	Sanitation	25.00
2.25	Scientific specimens	25.00
2.26	Skating, skateboards	25.00
2.27	Special events	25.00
2.28	Swimming and bathing	25.00
2.29	Tampering with vehicle or vessel	100.00
2.30	Travel on trails	50.00
2.31	Water skiing	25.00
2.32(a)(2)	Feeding bears, etc.	25.00
2.33	Winter sports	25.00
4.3	Bicycles	25.00
4.4	Commercial towing services	25.00
4.7	Entrances and exits	25.00
4.8	Excessive acceleration	75.00
4.9	False report	25.00
4.13	Obstructing traffic	50.00
4.15	Report of vehicle accident	25.00
4.16	Right-of-way	50.00
4.18	Traffic control and signs	25.00
4.19	Travel on roads	25.00
5.1	Advertisements	75.00

Section Number	*Offense*	*Collateral*
5.2	Alcoholic beverages; sale of intoxicants	75.00
5.3	Business operations	25.00
5.4	Commercial passenger-carrying motor vehicles	25.00
5.5	Commercial photography	100.00
5.6	Commercial vehicles:	
	Pickup trucks, station wagons, vans and cars	25.00
	Trucks over one and one-half tons and semitrailers	100.00
5.7	Construction of buildings or other facilities	100.00
5.8	Discrimination in employment practices	50.00
5.9	Discrimination in furnishing public accommodations and transportation services	50.00
5.10	Eating, drinking or lodging establishments	50.00
5.11	Impounding of animals (Plus costs of capturing and feeding)	50.00
5.12	Memorialization	25.00
5.13	Nuisances	25.00
5.14	Prospecting, mining and mineral leasing	50.00
5.15	Residence on federal lands	50.00
5.16	Trespass on federal lands	50.00
6.7	Wrongful entry	10.00
7.14(b)	Beer and alcoholic beverages (1)	25.00
	(2)	50.00
7.34(b)	Fishing	25.00
7.34(d)	Parking and crossing permits for hunters	25.00
7.34(f)	Commercial hauling	50.00
7.34(g)	Commercial automobiles and buses	50.00
7.34(k)	Bicycles	15.00
7.34(l)	Boating	25.00
7.58	Cape Hatteras National Seashore Recreational Area; hunting	25.00

MANDATORY APPEARANCE VIOLATIONS

Section Number	*Offense*
2.7	Disorderly conduct.
2.8(c-e)	Dogs, cats and other pets.
2.9(a)	Explosives.
2.11	Firearms, traps and other weapons.
2.12(c)(d)	Fires.
2.16	Intoxication; drug incapacitation.
2.20	Preservation of public property, natural features, curiosities, and resources (major such as destruction of government property).
2.32	Wildlife; hunting: Small game, Bear, boar or deer hunting.

NATIONAL FOREST SERVICE VIOLATIONS

Title 36, Chapter II, Code of Federal Regulations

Section Number	*Offense*	*Collateral*
251.25(a)	Failure to pay entry fees as directed by Forest Supervisor	$ 10.00
251.86	Driving in Wilderness Area	50.00
251.92	Sanitation	25.00

Section Number	*Offense*	*Collateral*
251.93(b)	Destroying or removing natural feature or plant	25.00
251.93(d)	Selling merchandise	25.00
251.93(e)	Distributing literature	25.00
251.94	Audio devices	25.00
251.95	Occupancy of developed recreation sites	25.00
251.96(b)	Parking in unauthorized places	25.00
251.96(d)	Motorcycles on trails	50.00
251.96(e)	Driving vehicles for other than ingress or egress	25.00
251.96(g)	Excessively accelerating engine	75.00
261.8	Hunting, trapping and fishing:	
	Exceeding creel limit	25.00
	Each fish in excess of creel limit	10.00
	All other hunting, trapping and fishing violations	25.00
261.11(a)	Squatting	50.00
261.11(b)	Conducting business enterprises	25.00
261.11(d)	Littering	25.00
261.11(e)	Discharging firearms	100.00
261.11(h)	Reckless driving—boating	100.00
261.11(i)	Entering permanently closed area	100.00
261.11(j)	Violation of Supervisor Regulations	25.00
261.11(k)	Trespass in closed areas	25.00
261.11(l)	Blocking passage	25.00
261.11(m)	Entering Wilderness without permit	25.00

MANDATORY APPEARANCE VIOLATIONS

251.93(a)	Indecent conduct.
251.93(c)	Destroying government property.
251.93(f)	Discharging firearms.
261.1	Interfering with Forest Officers.
261.2	Fire uses restricted.
261.4	Protection of property.
261.6	Timber uses restricted.
261.7	Unauthorized livestock use.
261.8	Fishing out of season.
	Illegal possession of big game (bear, boar, deer and/or turkey).
	Illegal possession of small game (rabbits, squirrel, and/or birds).
	Spotlighting.
	Trespass firearms.
261.11(c)	Placing stock in enclosure without permit.
261.11(f)	Illegal grazing.

NATIONAL FISH AND WILDLIFE VIOLATIONS

Title 50, Chapter I, Code of Federal Regulations and Title 16 United States Code

Section Number	*Offense*	*Collateral*
The Migratory Bird Treaty Act:		
16 U.S.C. 703	Take or possess migratory nongame birds	$ 50.00
	Each nongame bird	10.00
	Sell, barter, or trade nongame birds	150.00
Migratory Game Birds:		
10.3(b)(1)	Take with illegal device	100.00

Section Number	*Offense*	*Collateral*
10.3(b)(2)	Take with unplugged shotgun	100.00
10.3(b)(3-9)	Take with unlawful methods or devices	200.00
10.4(c)(d)	Exceed daily bag or possession limit	100.00
	Each bird in excess of limit	25.00
10.4(f)(g)	Hunt along or in National Wildlife Refuge	100.00
10.7-8	Unlawful importation	100.00
10.9(a)	Possess or transport in excess of daily bag in field	100.00
	Each bird in excess of limit	25.00
10.9(b-d)	Violation of tagging regulations	100.00
10.11	Possess live wounded birds	100.00
	Each bird so possessed	25.00
10.14	Failure to retrieve	100.00
	Each bird not retrieved	25.00
10.41-53	Take before or after legal hours	100.00
	Miscellaneous regulations adopted for special areas or conditions	50.00
MIGRATORY BIRD HUNTING STAMP ACT:		
16 U.S.C. 718	Take migratory waterfowl without duck stamp	25.00
MIGRATORY BIRD CONSERVATION ACT—NATIONAL WILDLIFE REFUGES:		
16 U.S.C. 715		
26.2-32	Unlawful entry or use	25.00
28.1	Special regulations or posted notices	25.00
28.21(a-g)	Boating violations other than operating under the influence of alcohol or drugs	25.00
28.22	Water skiing	25.00
32.2(d)	Violation of State Game Law on National Wildlife Refuge	25.00
32.2(e)	Failure to comply with terms or conditions of access	25.00
33.2(d)		
32.2(f)	Failure to comply with special regulations	50.00
33.2(e)		
33.2(c)	State Fish Law violations on National Wildlife Refuge	25.00
FISH AND WILDLIFE ACT—NATIONAL FISH HATCHERIES:		
16 U.S.C. 742		
70.4(b)	Unlawful taking of fish	100.00
70.4(c)	Unlawful hunting	100.00
70.4(d)	Disturbing spawning fish	100.00
71.2(d)	Violation of State Game Law on National Fish Hatchery	25.00
71.2(e)	Failure to comply with terms or conditions of access	25.00
71.12(d)		
71.2(f)	Failure to comply with special regulations	50.00
71.12(e)		
71.12(c)	Violation of State Fish Law on National Fish Hatchery	25.00

MANDATORY APPEARANCE VIOLATIONS

MIGRATORY GAME BIRDS:	
10.4(a)	Possess freshly killed birds, closed season
10.41-53	Take more than one hour before or after hours
	Take during closed season
16.2	Take, sell, import, export, transport, possess or dispose of without permit
BLACK BASS ACT:	
16 U.S.C. 851	Unlawful interstate transportation of fish

Section Number	*Offense*
Lacey Act:	
16 U.S.C. 667(e)	Unlawful interstate transportation of game
13	Unlawful importation of prohibited species of fish or game or birds
	Unlawful possession or transportation of prohibited species of fish or animals or birds
Bald Eagle Act:	
16 U.S.C. 668	Unlawfully sell or take
11	Unlawful possession or transportation
Migratory Bird Conservation Act—National Wildlife Refuges:	
28.8	Unlawful trespassing with firearms

TRAFFIC OFFENSES TO WHICH NORTH CAROLINA LAW IS APPLICABLE

	Collateral
A. Speeding violations:	
0-5 mph over applicable limit	$ 15.00
6-10 mph over applicable limit	20.00
11-15 mph over applicable limit	25.00
B. Other violations:	
Driving without, or with expired, operator's or chauffeur's license (except when revoked or suspended), or knowingly permitting an owned vehicle to be so operated	40.00
Driving the wrong way on a dual-lane highway	40.00
Litterbugging	30.00
Improper passing	25.00
Failure to dim lights	25.00
Height and width violations	25.00
Illegal transportation one quart or less taxpaid alcoholic beverage with seal broken in passenger area of motor vehicle (G.S. 18-51(1))	25.00
Driving too slowly	20.00
Any parking violation	15.00
Exceeding a safe speed	15.00
Following too closely	15.00
Failure to stop for a red light or stop sign	15.00
Failure to yield right-of-way	15.00
Improper turn and/or improper signal	15.00
Driving the wrong way on a one-way city street	15.00
Violation of the vehicle registration laws, except involving stolen or altered registration plates or certificates	15.00
Any other traffic violation for which court appearance is not mandatory	15.00

MANDATORY APPEARANCE VIOLATIONS

All pleas of not guilty.
All felonies.
Any violation resulting in personal injury.
Driving under the influence. G.S. 20-138; G.S. 20-139.
Careless and reckless driving. G.S. 20-140; G.S. 20-140.1.
Exceeding the applicable speed limit by over 15 mph.
Racing (prearranged, spontaneous, permitting such use of an owned vehicle, betting on prearranged racing). G.S. 20-141.3.
Passing stopped school, school activity, or church bus.
Failure to yield right-of-way to emergency vehicles.
Failure to obey directions of a traffic officer, or of a fireman at the scene of a fire.

Illegal transportation of liquor (more than one quart).

Leaving the scene of an accident in which involved, or failing to report such an accident. G.S. 20-166; G.S. 20-166.1.

Driving while license suspended or revoked, or permitting an owned vehicle to be so operated. G.S. 20-28; G.S. 20-34.

Driving with false, forged or altered driver's license, or permitting an owned vehicle to be so operated.

Any violation of the financial responsibility laws. (Chapter 20, Articles 9A and 13).

Any violation of the vehicle registration laws involving stolen or altered registration plates or certificates.

Editor's Note.—This rule was adopted by order made effective for all offenses listed which arise on or after Jan. 1, 1971.

Appendix IX. Rules Governing Admission to Practice of Law

(Approved by the Supreme Court November 4, 1970.)

Editor's Note.—These rules were adopted by the Council of the North Carolina State Bar at its regular quarterly meeting in October, 1970, and approved by the Supreme Court Nov. 4, 1970. The rules appearing in Replacement Volume 4A were adopted in and approved Feb. 22, 1968.

RULE I

Compliance Necessary

Section 1. No person shall be admitted to the practice of law in North Carolina unless he has complied with these rules and the laws of the State.

RULE II

Definitions

Section 1. The term "Board" as herein used refers to the "Board of Law Examiners of North Carolina."

Section 2. The term "Secretary" as herein used refers to the Secretary of the Board of Law Examiners of North Carolina.

RULE III

Applicants

Section 1. For the purpose of these rules, applicants are classified either as "general applicants" or as "comity applicants." To be classified as a "general applicant" and certified as such for admission to practice law, an applicant must satisfy the requirements of Rule VI hereof. To be classified as a "comity applicant" and certified as such for admission to practice law, a person shall satisfy the requirements of Rule VII hereof.

Section 2. As soon as possible after the filing date for applications, the Secretary shall make public a list of both general and comity applicants for the ensuing examination.

RULE IV

Registration

Section 1. Every person seeking admission to practice law in the State of North Carolina as a general applicant shall register, by filing with the Secretary, upon forms prescribed by the Board.

Section 2. Each registration form shall be complete in every detail and must be accompanied by such other evidence or documents as may be prescribed by the Board.

Section 3. Registrations shall be filed with the Secretary at least 18 months prior to August 1 of the year in which the applicant expects to take the bar examination.

Section 4. Each registration by a resident of the State of North Carolina must be accompanied by a fee of ten dollars ($10.00) and each registration by a nonresident shall be accompanied by a fee of twenty-five dollars ($25.00). An additional fee of twenty-five dollars ($25.00) shall be charged all applicants who file a late registration, both resident and nonresident. All said fees shall be payable to the Board. No part of a registration fee shall be refunded for any reason whatsoever.

It is difficult to image a justifiable purpose for § 3 of this rule which requires registration 18 months prior to taking the examination; but the court expresses no opinion as to its constitutional validity. Keenan v. Board of Law Examiners, 317 F. Supp. 1350 (E.D.N.C. 1970).

Belated Registration Allowed as of Course.—Section 4 of this rule provides for an additional "late registration" fee of $25. Apparently upon payment of such a fee belated registration is allowed as a matter of course. Keenan v. Board of Law Examiners, 217 F. Supp. 1350 (E.D.N.C. 1970).

RULE V

Applications of General Applicants

Section 1. After complying with the registration provisions of Rule IV, applications for admission to an examination must be made upon forms supplied by the Board and must be complete in every detail. Every supporting document required by the application form must be submitted with each application.

Section 2. Applications must be received and filed with the Secretary not later than 12:00 o'clock noon, Eastern Standard Time, on the 10th day of January in the year the applicant applies to take the bar examination.

Section 3. Every application by a general applicant who is a resident of the State of North Carolina shall be accompanied by a fee of sixty-five dollars ($65.00). Every application by a general applicant who is not a resident of the State of North Carolina shall be accompanied by a fee of sixty-five dollars ($65.00) plus such fee as the National Conference of Bar Examiners or its successor may charge from time to time for processing an application of a nonresident.

Section 4. No part of the fee required by Section 3 of this Rule V shall be refunded to the applicant unless the applicant shall file with the Secretary a written request to withdraw as an applicant, not later than the 15th day of June before the next examination, in which event not more than one half of the fee may be refunded to the applicant in the discretion of the Board; provided, however, no part of any fee paid to the National Conference of Bar Examiners or its successor shall be refunded.

RULE VI

Requirements for General Applicants

Section 1. Before being certified (licensed) by the Board to practice law in the State of North Carolina, a general applicant shall:

(1) Be of good moral character and have satisfied the requirements of Rule VIII hereof;

(2) Have registered as a general applicant in accordance with the provisions of Rule IV hereof;

(3) Possess the legal educational qualifications as prescribed in Rule IX hereof;
(4) Be a citizen of the United States;
(5) Be of the age of at least 21 years;
(6) Be and continuously have been domiciled and physically present in the State of North Carolina from the 15th day of June to the 15th day of August of the year in which the applicant takes the bar examination.
(7) If a nonresident, file with the Board a declaration of the applicant's intent in good faith, in the form prescribed by the Board, to become a citizen and resident of the State of North Carolina.
(8) Have filed formal application as a general applicant in accordance with Rule V hereof;
(9) Stand and pass a written bar examination as prescribed in Rule XI hereof.

Former Subdivision (6) Unconstitutional.—Subdivision (6) of this rule, before its amendment in 1970, was held unconstitutional because it created an unreasonable, arbitrary classification, unnecessarily burdened the plaintiffs' right to travel, and arbitrarily denied the plaintiffs an opportunity to practice their profession. Keenan v. Board of Law Examiners, 317 F. Supp. 1350 (E.D.N.C. 1970).

RULE VII

Requirements for Comity Applicants

Section 1. Any attorney at law immigrating or who has heretofore immigrated to North Carolina from a sister state or from the District of Columbia or a territory of the United States, upon written application, may be certified (licensed) by the Board to practice law in the State of North Carolina, without written examination, in the discretion of the Board, provided each such applicant shall:

(1) Be a citizen of the United States;
(2) File written application with the Secretary, upon such form as may be prescribed by the Board, six months before the application shall be considered by the Board;
(3) Pay to the Board with each written application a fee of two hundred fifty dollars ($250.00), not more than one hundred twenty-five dollars ($125.00) of which may be refunded to the applicant in the discretion of the Board, if admission to practice law in the State of North Carolina is denied;
(4) Be and continuously have been a bona fide citizen and resident of the State of North Carolina for a period of at least 60 days immediately prior to the consideration of his application to practice law in the State of North Carolina;
(5) Prove to the satisfaction of the Board that he has been actively and substantially engaged in the practice of law in the state or states of his former residence during at least five years out of the last eight years immediately preceding the filing of his application with the Secretary. Serving as a judge of a court of record or as a full-time teacher in a law school approved by the Board may be deemed practicing law within the meaning of this rule, and time spent teaching law in North Carolina on a full-time basis in a law school approved by the Board may be considered as "practice of law in the state or states of his former residence." Time spent in active military service of the United States, not to exceed five years, may be excluded in computing the eight-year period referred to hereinabove;
(6) Satisfy the Board that the state or states of the applicant's former residence in which he practiced law will admit attorneys to the practice of

law in said states, who are licensed to practice law in the State of North Carolina without a written examination;

(7) Be in good professional standing in the state of his former residence;

(8) Furnish to the Board such evidence as may be necessary to satisfy the Board of his good moral character;

(9) Applicants admitted to the practice of law in another state after August 1971 must meet the educational requirements of Rule IX as hereinafter set out.

Section 2. Every person filing an application under this rule for admission by comity shall be bound by the actions and decisions of the Board, which actions and decisions shall be in the sole discretion of the Board, and the Board's actions on such applications under this rule shall be final.

Section 3. No license shall be issued to any applicant for admission under this Rule VII except at the time of the annual examination of the general applicants, provided the Board, when in session at any other time, may in its discretion grant an interim permission to such comity applicants to practice law until license shall be issued.

RULE VIII

Moral Character

Section 1. Every applicant shall be of good moral character, and the applicant shall have the burden of proving that he is possessed of good moral character, or removing any and all reasonable suspicion of moral unfitness; and that he is entitled to the high regard and confidence of the public.

Section 2. All information furnished to the Board by an applicant, and all answers and questions upon forms furnished by the Board, shall be deemed material and such forms and information shall be and become a permanent record of the Board.

Section 3. No one shall be certified (licensed) to practice law in this State by examination or comity:

(1) Who fails to disclose fully to the Board whether requested to do so or not the facts relating to any disciplinary proceedings or charges as to his professional conduct, whether same have been terminated or not, in this or any other state, or any Federal Court or other jurisdiction, or

(2) Who fails to disclose fully to the Board, whether requested to do so or not, any and all facts relating to any civil or criminal proceedings, charges, or investigations, whether the same have been terminated or not in this or any other state or in any of the Federal Courts or other jurisdictions.

Section 4. Every applicant shall appear before a Bar Candidate Committee appointed by the Chairman of the Board in the Judicial District in which he resides, or in such other judicial district as the Board in its sole discretion may designate to the candidate, to be examined about any matter pertaining to his moral character. The applicant shall give such information to the Committee as may be required on such forms as may be provided by the Board. A Bar Candidate Committee may require the applicant to make more than one appearance before the Committee and to furnish to the Committee such information and documents as it may reasonably require pertaining to the moral fitness of the applicant to be certified (licensed) to practice law in North Carolina. Each applicant will be advised by the Secretary or the Chairman of such Committee of the time and place of the applicant's appearance before the Bar Candidate Committee.

Section 5. All investigations in reference to the moral character of an applicant may be informal, but shall be thorough, with the object of ascertaining

the truth. Neither the hearsay rule, nor any other technical rule of evidence need be observed.

Section 6. Every applicant may be required to appear before the Board to be examined about any matter pertaining to his moral character.

Section 7. No new application, or petition for reconsideration of a previous application, from an applicant who has been denied permission to take the bar examination by the Board on the grounds of failure to prove good moral character shall be considered by the Board within a period of three years next after the date of such denial unless, for good cause shown, permission for reapplication or petition for a reconsideration is granted by the Board at the time of such denial. If, after consideration of the new application or a petition for reconsideration, the decision of the Board again is adverse, no further applications or petitions from such applicant shall be considered by the Board more often than once in any 12-month period.

RULE IX

Educational Requirements

Section 1. General Education. Each applicant to take the examination, prior to beginning the study of law, must have completed, at an accredited college or university an amount of academic work equal to three fourths of the work required for a bachelor's degree at the university of the state in which the college is located. With his application he shall file an affidavit from such college furnishing all information that the Board shall require.

Section 2. Every general applicant applying for admission to practice law in the State of North Carolina, before being granted a certificate (license) to practice law, commencing with the examination in August 1971, shall file with the Secretary a certificate from the President, Dean or other proper official of the Law School approved by the Council of The North Carolina State Bar, a list of which is available in the office of the Secretary, or shall otherwise show to the satisfaction of the Board of Law Examiners that the applicant has received a law degree or that the applicant has successfully completed the courses required by the Council of The North Carolina State Bar, being the same courses as those set out in Rule XI, § 3, hereof.

RULE X

Protest

Section 1. Any person may protest the application of any applicant to be admitted to the practice of law either by examination or as a matter of comity.

Section 2. Such protest shall be made in writing, signed by the person making the protest and bearing his home and business address, and shall be filed with the Secretary prior to the date on which the applicant is to be examined.

Section 3. The Secretary shall notify immediately the applicant of the protest and of the charges therein made; and the applicant thereupon may file with the Secretary a written withdrawal as a candidate for admission to the practice of law at that examination.

Section 4. In case the applicant does not withdraw as a candidate for admission to the practice of law at that examination, the person or persons making the protest and the applicant in question shall appear before the Board at a time and place to be designated by the Board. In the event time will not permit a hearing on the protest prior to the examination, the applicant may take the written examination; however, if the applicant passes the written examination, no certifi-

cate (license) to practice law shall be issued to him as provided by Rule XII until final disposition of the protest in favor of the applicant.

Section 5. Nothing herein contained shall prevent the Board on its own motion from withholding its certificate (license) to practice law until it has been fully satisfied as to the moral fitness of the applicant as provided by Rule VIII.

RULE XI

Examinations

Section 1. One written examination shall be held each year for those applying to be admitted to the practice of law in North Carolina as general applicants.

Section 2. The examination shall be held in the City of Raleigh and shall commence on the first Tuesday in August.

Section 3. The examination shall deal with the following subjects: Business Associations (including agency, corporations, and partnerships), Civil Procedure, Constitutional Law, Contracts, Criminal Law and Procedure, Evidence, Legal Ethics, Real Property, Security Transactions including The Uniform Commercial Code, Taxation, Torts, Trusts, Wills, Decedents' Estates and Equity.

Section 4. The Board shall determine what shall constitute the passing of an examination.

Section 5. No person shall be permitted to take the examination more than five times within any 10-year period.

RULE XII

Certificate or License

Section 1. Upon compliance with the rules of the Board, and all orders of the Board, the Secretary, upon order of the Board shall issue a certificate (license) to practice law in North Carolina to each applicant as may be designated by the Board in the form and manner as may be prescribed by the Board, and at such times as prescribed by the Board.

RULE XIII

Appeals

Section 1. Any applicant may appeal from an adverse ruling or determination of the Board of Law Examiners as to his eligibility to take the bar examination.

After an applicant successfully passed the bar examination, he may appeal from any adverse ruling or determination withholding his certificate (license) to practice law from him.

Section 2. Any appealing applicant within 10 days after notice of such ruling or determination, shall give notice of appeal in writing and file with the Secretary his written exceptions to the ruling or determination, which exceptions shall state the grounds of objection to such ruling or determination.

Section 3. The record on appeal to the Superior Court shall consist of the following:

(a) The papers filed by the applicant with the Board under its rules.
(b) A certified copy of the evidence taken by the Board upon the question or questions appealed.
(c) The rulings and determinations of the Board.

(d) The notice of appeal.
(e) The exceptions.

Within 60 days of receipt of the exceptions filed by the applicant with the Board, the Secretary shall certify such record at the expense of the applicant.

Section 4. Such appeal shall lie to the Superior Court of Wake County and shall be heard by the Presiding Judge, without a jury. The findings of fact by the Board, when supported by evidence or reliable information, shall be conclusive and binding upon the Court. If the Court is of the opinion that the Board was in error, it shall so specify and remand the matter to the Board, which may appeal as hereinafter provided. Such appeal shall operate as a supersedeas. In case no appeal is taken by the Board, it shall proceed in accordance with the judgment of the Court.

Section 5. The said applicant, or the Board of Law Examiners, may appeal to the Supreme Court from any order or judgment of the Superior Court. If the said cause is remanded by the Supreme Court to the Superior Court, then the Superior Court shall remand the same to the Board of Law Examiners, to be proceeded with in accordance with the opinion of the Supreme Court.

Appendix XI. Comparative Tables

(4) TABLE OF LAWS CODIFIED SUBSEQUENT TO 1919

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DEPARTMENT OF JUSTICE

Raleigh, North Carolina

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I, Robert Morgan, Attorney General of North Carolina, do hereby certify that the foregoing 1971 Supplement to the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Division of Legislative Drafting and Codification of Statutes of the Department of Justice of the State of North Carolina.

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