

NORTH CAROLINA GENERAL ASSEMBLY
1965 SESSION

CHAPTER 310
HOUSE BILL 202

1 AN ACT TO IMPLEMENT ARTICLE IV OF THE CONSTITUTION OF NORTH
2 CAROLINA BY PROVIDING FOR A NEW CHAPTER OF THE GENERAL
3 STATUTES OF NORTH CAROLINA, TO BE KNOWN AS "CHAPTER 7A-JUDICIAL
4 DEPARTMENT", AND FOR OTHER PURPOSES.

5
6 The General Assembly of North Carolina do enact:

7
8 **Section 1.** A new Chapter is hereby inserted in the General Statutes of North
9 Carolina, to read as follows:

10 **CHAPTER 7A**
11 **JUDICIAL DEPARTMENT**

12 **Sec. 7A-1. Short Title.** This Chapter shall be known and may be cited as the "Judicial
13 Department Act of 1965".

14 **Sec. 7A-2. Purpose.** This Chapter is intended to implement Article IV of the Constitution of
15 North Carolina and promote the just and prompt disposition of litigation by:

16 (a) Providing a new Chapter in the General Statutes into which, at a time not later than
17 January 1, 1971, when the General Court of Justice is fully operational in all counties of the
18 State, all Statutes concerning the organization, jurisdiction and administration of each division
19 of the General Court of Justice may be placed;

20 (b) Amending certain laws with respect to the Superior Court Division to conform them
21 to the laws set forth in this Act, to the end that each trial division may be a harmonious part of
22 the General Court of Justice;

23 (c) Creating the District Court Division of the General Court of Justice, and the
24 Administrative Office of the Courts;

25 (d) Establishing in accordance with a fixed schedule the various district courts of the
26 District Court Division;

27 (e) Providing for the organization, jurisdiction and procedures necessary for the
28 operation of the District Court Division;

29 (f) Providing for the financial support of the Judicial Department, and for uniform costs
30 and fees in the trial divisions of the General Court of Justice;

31 (g) Providing for an orderly transition from the present system of courts to a uniform
32 system completely operational in all counties of the State not later than January 1, 1971; (h)
33 Repealing certain laws inconsistent with the foregoing purposes; and

34 (i) Effectuating other purposes incidental and supplemental to the foregoing
35 enumerated purposes.

36 **SUBCHAPTER I. GENERAL COURT OF JUSTICE**

37 Article 1. Judicial Power and Organization.

38 **Sec. 7A-3. Judicial Power.** Except for the judicial power vested in the Court for the Trial of
39 Impeachments, and except for such judicial power as may from time to time be vested by the
40 General Assembly in administrative agencies, the judicial power of the State is vested
41 exclusively in the General Court of Justice. Provided, that all existing courts of the State
42 inferior to the Superior Courts, including justice of the peace courts and mayor's courts, shall
43 continue to exist and to exercise the judicial powers vested in them by law until specifically

1 abolished by law, or until the establishment within the county of their situs of a district court, or
2 until January 1, 1971, whichever event shall first occur. Judgments of inferior courts which
3 cease to exist under the provisions of this Section continue in force and effect as though the
4 issuing court continued to exist, and the General Court of Justice is hereby vested with
5 jurisdiction to enforce such judgments.

6 **Sec. 7A-4. Composition and Organization.** The General Court of Justice constitutes a unified
7 judicial system for purposes of jurisdiction, operation and administration, and consists of an
8 Appellate Division, a Superior Court Division, and a District Court Division.

9 **SUBCHAPTER II. APPELLATE DIVISION OF**
10 **THE GENERAL COURT OF JUSTICE**

11 Article 1A. Appellate Division Organization and Terms.

12 **Sec. 7A-5. Appellate Division.** The Appellate Division of the General Court of Justice
13 consists of the Supreme Court of North Carolina. (Chapter 7, Subchapter I, Articles 1-6, of the
14 General Statutes, is applicable.)

15 **SUBCHAPTER III. SUPERIOR COURT DIVISION OF**
16 **THE GENERAL COURT OF JUSTICE**

17 Article 7. Organization.

18 **Sec. 7A-39.1. Superior Court Division.** The Superior Court Division of the General Court of
19 Justice consists of the several Superior Courts of the State. The Clerk of Superior Court in the
20 exercise of the judicial power conferred upon him as an ex officio judge of probate, and in the
21 exercise of other judicial powers conferred upon him by law in respect of special proceedings
22 and the administration of guardianships and trusts, is a judicial officer of the Superior Court
23 Division, and not a separate court. (Except as otherwise provided in this Chapter, Chapter 7,
24 Subchapter II, Articles 7-11 of the General Statutes is applicable.)

25 **Sec. 7A-43.1. Superior Court Solicitor; Temporary Incapacity; Acting Solicitor.** When a
26 Superior Court Solicitor becomes for any reason unable to perform his duties, the Attorney
27 General shall appoint an acting solicitor to serve during the period of disability. An acting
28 solicitor has all the power, authority and duties of the regular solicitor. He shall take the oath of
29 office prescribed for the regular solicitor, and receive forty-five dollars (\$45.00) per diem for
30 each day in which he performs the duties of solicitor.

31 This Section shall become effective on the first Monday in December, 1966.

32 **Sec. 7A-43.2. Superior Court Solicitor; Assistants.** A Superior Court Solicitor, with the
33 approval of the Administrative Officer of the Courts, may designate one or more qualified
34 attorneys to assist in the prosecution of the criminal dockets of his solicitorial district when:

35 (a) Criminal cases accumulate on the dockets of the district beyond the capacity of the
36 solicitor to keep the dockets reasonably current; or

37 (b) The prosecution of criminal cases in a specific location in the solicitorial district
38 would be better served.

39 Attorneys designated under the authority of this Section shall receive thirty-five dollars
40 (\$35.00) per diem for each day they prosecute in court, and they shall serve for such time as
41 may be authorized by the Administrative Officer of the Courts.

42 This Section shall become effective on the first Monday in December, 1966.

43 **Sec. 7A-43.3. County May Authorize Appointment of Assistant Solicitors.** In addition to
44 the assistant solicitors otherwise provided for in this Article, the board of commissioners of any
45 county may, in its discretion, authorize the solicitor to appoint a competent attorney to assist
46 him in the prosecution of the criminal docket of the Superior Court of the county.

47 The assistant solicitor so appointed serves at the pleasure of the solicitor, who assigns his
48 duties. The compensation of the assistant solicitor shall be fixed by the board of commissioners
49 after consultation with the solicitor, and it shall be paid from the general fund of the county.
50 The board may terminate the compensation at any time upon 30 days' notice.

51 This Section shall become effective on the first Monday in December, 1966.

Article 11. Special Regulations.

Sec. 7A-95. Reporting of Trials in the Superior Court. (a) Court reporting personnel shall be utilized, if available, for the reporting of trials in the Superior Court. If court reporters are not available in any county, electronic or other mechanical devices shall be provided by the Administrative Office of the Courts upon the request of the senior regular resident Superior Court Judge.

(b) The Administrative Office of the Courts shall from time to time investigate the state of the art and techniques of recording testimony, and shall provide such electronic or mechanical devices as are found to be most efficient for this purpose.

(c) If an electronic or other mechanical device is utilized, it shall be the duty of the Clerk of the Superior Court or some person designated by the clerk to operate the device while a trial is in progress, and the clerk shall thereafter preserve the record thus produced, and transcribe the record as required.

(d) Reporting of any trial may be waived by consent of the parties.

(e) Appointment of a reporter or reporters for Superior Court proceedings in each district shall be made by the senior regular resident Superior Court Judge. The compensation and allowances of reporters in each district shall be fixed by the senior regular resident Superior Court Judge, within limits determined by the Administrative Officer of the Courts, and paid by the State.

(f) This Section applies only to those districts wherein a district court is established.

Article 12. Clerk of Superior Court.

Sec. 7A-101. Clerk of Superior Court; Compensation. The Clerk of Superior Court is a full-time employee of the State and shall receive an annual salary, payable in equal monthly installments, based on the population of the county, as determined by the 1960 Federal decennial census, according to the following schedule:

Population	Salary
Less than 10,000	\$ 6,500.00
10,000 to 19,999	7,000.00
20,000 to 49,999	9,500.00
50,000 to 99,999	10,500.00
100,000 to 149,999	12,000.00
150,000 to 199,999	14,000.00
200,000 to 249,999	16,000.00
250,000 and above	18,000.00

When a county changes from one population group to another as a result of any future Federal decennial census, the salary of the clerk shall be changed to the salary appropriate for the new population group on July 1 of the first full biennium subsequent to the taking of the census (July 1, 1971; July 1, 1981; etc.), except that the salary of an incumbent clerk shall not be decreased by any change in population group during his term.

The salary set forth in this Section shall constitute the clerk's sole compensation, and he shall receive no fees, commissions or other compensation whatsoever, by virtue of his office, except that the authority of the board of county commissioners to use surplus facilities fees to supplement the operations of the General Court of Justice includes authority to supplement the salary of the Clerk of Superior Court.

Sec. 7A-102. Clerk of Superior Court; Assistants; Deputies; Employees. The numbers and salaries of assistant clerks, deputy clerks, and other employees in the office of each Clerk of Superior Court shall be determined by the Administrative Officer of the Courts, after consultation with the Clerk of Superior Court and with the board of county commissioners or its designated representative in each county, and the salaries shall be fixed with due regard to the salary levels and the economic situation in the county. All personnel in the clerk's office are

1 employees of the State. The Clerk of Superior Court appoints the assistants, deputies, and other
2 employees in his office, to serve at his pleasure.

3 **Sec. 7A-103. Clerk of Superior Court; Accounting for Fees and Other Receipts.** The
4 Administrative Office of the Courts and the Department of Administration, subject to the
5 approval of the State Auditor, shall establish procedures for the receipt, deposit, protection,
6 investment, and disbursement of all funds coming into the hands of the Clerk of Superior
7 Court. The fees to be remitted to counties and municipalities shall be paid to them monthly by
8 the Clerk of Superior Court.

9 The State Auditor shall conduct an annual post audit of the receipts, disbursements, and
10 fiscal transactions of each Clerk of Superior Court, and furnish a copy to the Administrative
11 Office of the Courts.

12 **Sec. 7A-104. Clerk of Superior Court; Bond.** Immediately upon his election or appointment,
13 the Clerk of Superior Court shall submit to the Administrative Office of the Courts, for
14 approval, a bond, conditioned upon the faithful performance of duty, and payable to the State.
15 The amount of the bond shall be fixed by the Administrative Office, and the premium shall be
16 paid by the State.

17 **Sec. 7A-105. Assistant and Deputy Clerks; Bonds.** The Administrative Office of the Courts
18 may require individual or blanket bonds for any and all assistant clerks, deputy clerks, or other
19 persons employed in the offices of the various Clerks of Superior Court, such bond or bonds to
20 be conditioned upon faithful performance of duty. The premiums shall be paid by the State.

21 **Sec. 7A-106. Application of Article.** The provisions of this Article apply in each county of
22 the State on and after the date that a district court is established therein.

23 **SUBCHAPTER IV. DISTRICT COURT DIVISION OF** 24 **THE GENERAL COURT OF JUSTICE**

25 Article 13. Creation and Organization of the District Court Division.

26 **Sec. 7A-130. Creation of District Court Division and District Court Districts; Seats of**
27 **Court.** The District Court Division of the General Court of Justice is hereby created. It consists
28 of various district courts organized in territorial districts. The numbers and boundaries of the
29 districts are identical to those of the Superior Court Judicial Districts. The district court shall sit
30 in the county seat of each county, and at such additional places in each county as the General
31 Assembly may authorize, except that sessions of court are not required at an additional seat of
32 court unless the chief district judge and the Administrative Officer of the Courts concur in a
33 finding that the facilities are adequate.

34 **Sec. 7A-131. Establishment of District Courts.** District courts are established, within
35 districts, in accordance with the following schedule:

36 (a) On the first Monday in December, 1966, the first, the twelfth, the fourteenth, the
37 sixteenth, the twenty-fifth, and the thirtieth districts;

38 (b) On the first Monday in December, 1968, the second, the third, the fourth, the fifth,
39 the sixth, the seventh, the eighth, the ninth, the tenth, the eleventh, the thirteenth, the fifteenth,
40 the eighteenth, the twentieth, the twenty-first, the twenty-fourth, the twenty-sixth, the twenty-
41 seventh, and the twenty-ninth districts;

42 (c) On the first Monday in December, 1970, the seventeenth, the nineteenth, the twenty-
43 second, the twenty-third, and the twenty-eighth districts.

44 **Sec. 7A-132. District Court Districts; Officers.** Each district court district shall have one or
45 more judges and one prosecutor. Each county within each district shall have at least one
46 magistrate.

47 For each district the General Assembly shall prescribe the numbers of district judges, and
48 the numbers of full-time assistant prosecutors. For each county within each district the General
49 Assembly shall prescribe a minimum and a maximum number of magistrates.

50 **Sec. 7A-133. Numbers of Judges and Full-time Assistant Prosecutors, by Districts;**
51 **Numbers of Magistrates and Additional Seats of Court, by Counties.** Each district court

1 district shall have the numbers of judges and full-time assistant prosecutors, and each county
 2 within the district shall have the numbers of magistrates and additional seats of court, as set
 3 forth in the following table:

4 Dist.	5 Judges	6 Full-time Asst. Pros.	7 County	8 Magistrates Min.-Max.	9 Additional Seats of Court
10 1	11 2	12 0	13 Camden	14 1 2	
			15 Chowan	16 1 3	
			17 Currituck	18 1 2	
			19 Dare	20 1 3	
			21 Gates	22 1 3	
			23 Pasquotank	24 2 3	
			25 Perquimans	26 1 3	
27 12	28 4	29 1	30 Cumberland	31 4 6	
			32 Hoke	33 1 3	
34 14	35 3	36 0	37 Durham	38 3 6	
39 16	40 3	41 1	42 Scotland	43 2 3	
			44 Robeson	45 7 12	46 Fairmont 47 Maxton 48 Red Springs 49 Rowland 50 St. Pauls
51 25	52 3	53 1	54 Burke	55 3 5	
			56 Caldwell	57 2 4	
			58 Catawba	59 4 6	60 Hickory
61 30	62 2	63 0	64 Cherokee	65 2 3	
			66 Clay	67 1 2	
			68 Graham	69 2 3	
			70 Jackson	71 2 3	
			72 Macon	73 2 3	
			74 Swain	75 2 3	
			76 Haywood	77 3 4	78 Canton

33 **Sec. 7A-134. Family Court Services.** In any district court district having a county with a
 34 population of 100,000 or more, according to the latest Federal decennial census, the chief
 35 district judge and the Administrative Officer of the Courts may determine that special
 36 counselor services should be made available in the district to the district judge or judges
 37 hearing domestic relations and juvenile cases. In this event, the chief district judge may appoint
 38 a chief counselor and such assistant counselors as the Administrative Officer may authorize, to
 39 provide investigative, supervisory, and other related services. The salaries of the chief
 40 counselor and the assistant counselors shall be determined by the Administrative Officer of the
 41 Courts, with due regard to the salary levels and the economic situation in the district, and all
 42 counselors shall be employees of the State. The chief counselor and his assistants shall serve at
 43 the pleasure of the chief district judge.

44 **Sec. 7A-135. Transfer of Pending Cases When Present Inferior Courts Replaced by**
 45 **District Courts.** On the date that the district court is established in any county, cases pending
 46 in the inferior court or courts of that county shall be transferred to the appropriate division of
 47 the General Court of Justice, and all records of these courts shall be transferred to the office of
 48 Clerk of Superior Court in that county pursuant to rule of Supreme Court.

49 Article 14. District Judges.

50 **Sec. 7A-140. District Judges; Number; Election; Term; Qualification; Oath.** There shall
 51 be at least one district judge for each district. Each district judge shall be elected by the

1 qualified voters of the district court district in which he is to serve at the time of the election for
2 members of the General Assembly. The number of judges for each district shall be determined
3 by the General Assembly. Each judge shall be a resident of the district for which elected, and
4 shall serve a term of four years, beginning on the first Monday in December following his
5 election.

6 Each district judge shall devote his full time to the duties of his office. He shall not practice
7 law during his term, nor shall he during such term be the partner or associate of any person
8 engaged in the practice of law.

9 Before entering upon his duties, each district judge, in addition to other oaths prescribed by
10 law, shall take the following oath of office: "I, _____, do solemnly
11 swear (affirm) that I will administer justice without favoritism to anyone; that I will do equal
12 law and right to all persons; that I will not knowingly or willingly take, by myself or any other
13 person, any fee, gift, gratuity or reward whatsoever, for any matter or thing by me done or to be
14 done by virtue of my office, except the salary and allowances by law provided; and that I will
15 faithfully and impartially discharge the duties of district judge to the best of my ability and
16 understanding, so help me, God."

17 **Sec. 7A-141. District Judges; Designation of Chief Judge; Assignment to Another District**
18 **for Duty.** When more than one judge is authorized in a district, the Chief Justice of the
19 Supreme Court shall designate one of the judges as chief district judge to serve in such capacity
20 at the pleasure of the Chief Justice. In a single judge district, the judge is the chief district
21 judge.

22 The Chief Justice may transfer a district judge from one district to another for temporary or
23 specialized duty.

24 **Sec. 7A-142. District Judgeships; Vacancies in Office.** A vacancy in the office of district
25 judge shall be filled for the unexpired term by appointment of the Governor from nominations
26 submitted by the bar of the judicial district. If the district bar fails to submit nominations within
27 two weeks from the date the vacancy occurs, the Governor may appoint to fill the vacancy
28 without waiting for nominations.

29 **Sec. 7A-143. District Judges; Suspension; Removal; Reinstatement.** The following shall be
30 grounds for suspension of a district judge or for his removal from office.

- 31 (a) Willful or habitual neglect or refusal to perform the duties of his office;
- 32 (b) Willful misconduct or maladministration in office;
- 33 (c) Corruption;
- 34 (d) Extortion;
- 35 (e) Conviction of a felony; or
- 36 (f) Mental or physical incapacity.

37 A proceeding to suspend or remove a district judge is commenced by filing with the Clerk
38 of Superior Court of the county where the judge resides a sworn affidavit charging the judge
39 with one or more grounds for removal. The clerk shall immediately bring the matter to the
40 attention of the senior regular resident Superior Court Judge for the district, who shall within 15
41 days either review and act on the charges or refer them for review and action within 15 days to
42 another Superior Court Judge residing in or regularly holding the courts of the district. If the
43 Superior Court Judge upon review finds that the charges if true constitute grounds for
44 suspension, he may enter an order suspending the district judge from performing the duties of
45 his office until a final determination of the charges on the merits. During suspension the salary
46 of the judge continues.

47 If suspension is ordered, the suspended judge shall receive immediate written notice of the
48 proceedings and a true copy of the charges, and the matter shall be set for hearing not less than
49 10 days nor more than 30 days thereafter. The matter shall be set for hearing before the judge
50 who originally examined the charges or before another regular Superior Court Judge resident in
51 or regularly holding the courts of the district. The hearing shall be open to the public. All

1 testimony offered shall be recorded. At the hearing the Superior Court Judge shall hear
2 evidence and make findings of fact and conclusions of law and if he finds that one of the above
3 grounds for removal exists, he shall enter an order permanently removing the district judge
4 from office, and terminating his salary. If he finds that no grounds exist, he shall terminate the
5 suspension.

6 The district judge may appeal from an order of removal to the Supreme Court on the basis
7 of error of law by the Superior Court. Pending decision of the case on appeal, the district judge
8 shall not perform any of the duties of his office. If, upon final determination, he is ordered
9 reinstated either by the Supreme Court or by the Superior Court upon remand, his salary shall
10 be restored from the date of the original order of removal.

11 **Sec. 7A-144. District Judges; Compensation.** Each judge shall receive a salary of fifteen
12 thousand dollars (\$15,000.00) per year, payable in equal monthly installments. The chief
13 district judge in each district shall receive five hundred dollars (\$500.00) additional
14 compensation per year. Each judge shall also receive reimbursement on the same basis as State
15 employees generally, for his necessary travel and subsistence expenses while attending court or
16 transacting official business at a place other than in his county of residence.

17 **Sec. 7A-145. District Judges; Holdover Judges; Duties; Vacancies; Terms; Compensation.**
18 A judge who becomes a district judge by holding over under the provisions of
19 Article IV, Section 21 of the Constitution (herein referred to as a holdover judge) shall perform
20 only such duties in each district as the chief district judge shall determine. A holdover judge
21 who is not assigned full-time duties, and who is a practicing attorney, may continue the practice
22 of law. A vacancy in the office of holdover judge shall not be filled.

23 The term of any judge taking office after the ratification of this Act to serve any existing
24 inferior court in a county shall, unless it has sooner expired, automatically expire on the date on
25 which a district court is established for that county.

26 The compensation of a holdover judge until the expiration of his term shall not be less than
27 that which he received during the last full year of his former judgeship. If he is assigned to full-
28 time duty as a district judge, he shall receive not less than the salary and allowances of a
29 regular district judge for the period of the assignment. If he is assigned to less than full-time
30 duties, which duties nevertheless require more time than he was devoting to his former
31 judgeship, he shall receive such additional compensation and allowances as may be determined
32 by the Administrative Officer of the Courts, but in no case more than that received by a regular
33 district judge.

34 **Sec. 7A-146. Administrative Authority and Duties of Chief District Judge.** The chief
35 district judge, subject to the general supervision of the Chief Justice of the Supreme Court, has
36 administrative supervision and authority over the operation of the district courts and
37 magistrates in his district. These powers and duties include, but are not limited to, the following
38 :

- 39 (a) Arranging schedules and assigning district judges for sessions of district courts;
- 40 (b) Arranging or supervising the calendaring of matters for trial or hearing;
- 41 (c) Supervising the Clerk of Superior Court in the discharge of the clerical functions of
42 the district court;
- 43 (d) Assigning matters to magistrates, and prescribing times and places at which
44 magistrates shall be available for the performance of their duties;
- 45 (e) Making arrangements with proper authorities for the drawing of civil court jury
46 panels and determining which sessions of district court shall be jury sessions;
- 47 (f) Arranging for the reporting of civil cases by court reporters or other authorized
48 means;
- 49 (g) Arranging sessions, to the extent practicable for the trial of specialized cases,
50 including traffic, domestic relations, and other types of cases, and assigning district judges to

1 preside over these sessions so as to permit maximum practicable specialization by individual
2 judges;

3 (h) Promulgating a schedule of traffic offenses for which magistrates and clerks of court
4 may accept written appearances, waivers of trial, and pleas of guilty, and establishing a
5 schedule of fines therefor;

6 (i) Assigning magistrates, in an emergency, to temporary duty outside the county of
7 their residence, but within the district; and

8 (j) Designating another district judge of his district as acting chief district judge, to act
9 during the absence or disability of the chief district judge.

10 **Sec. 7A-147. Specialized Judgeships.** (a) Prior to January 1 of each year in which elections
11 for district court judges are to be held, the Administrative Officer of the Courts may, with the
12 approval of the chief district judge, designate one or more judgeships in districts having three
13 or more judgeships, as specialized judgeships, naming in each case the specialty. Designations
14 shall become effective when filed with the State Board of Elections. Nominees for the position
15 or positions of specialist judge shall be made in the ensuing primary and the position or
16 positions shall be filled at the general election thereafter. The State Board of Elections shall
17 prepare primary and general election ballots to effectuate the purposes of this Section.

18 (b) The designation of a specialized judgeship shall in no way impair the right of the
19 chief district judge to arrange sessions for the trial of specialized cases and to assign any district
20 judge to preside over these sessions. A judge elected to a specialized judgeship has the same
21 powers as a regular district judge.

22 **Sec. 7A-148. Annual Conference of Chief District Judges.** The chief district judges of the
23 various district court districts shall meet at least once a year upon call of the Chief Justice of the
24 Supreme Court to discuss mutual problems affecting the courts and the improvement of court
25 operations, to prepare and adopt a uniform schedule of traffic offenses for which magistrates
26 and clerks of court may accept written appearances, waivers of trial and pleas of guilty, and
27 establish a schedule of fines therefor, and to take such further action as may be found
28 practicable and desirable to promote the uniform administration of justice.

29 Article 15. District Prosecutors.

30 **Sec. 7A-160. District Prosecutor; Appointment; Term; Duties; Oath.**

31 The senior regular resident Superior Court Judge shall appoint for a term of four years a
32 district court prosecutor for his district. The prosecutor shall be a resident of the district. The
33 prosecutor's term of office shall commence on the same day as that of the district judges in his
34 district. It shall be the duty of the prosecutor to prosecute on behalf of the State all criminal
35 actions in the district courts of his district, to advise the officers of justice in his district, and to
36 cooperate with the Superior Court Solicitor in criminal actions arising in the district court. The
37 district prosecutor shall take the oath of office prescribed for the Superior Court Solicitor.

38 The office of district prosecutor is full time, and he shall not practice law during his term of
39 office, nor shall he during such term be the partner or associate of any person engaged in the
40 practice of law.

41 **Sec. 7A-161. District Prosecutor; Compensation; Expenses.** Each district court prosecutor
42 shall receive a salary of eleven thousand dollars (\$11,000.00) per year, payable in equal
43 monthly installments. When engaged in official business out of his county of residence, he shall
44 receive reimbursement for travel and subsistence expenses on the same basis as State
45 employees generally.

46 **Sec. 7A-162. District Prosecutor; Suspension; Removal; Reinstatement.** A district
47 prosecutor may be suspended or removed from office, and reinstated, for the same causes and
48 under the same procedures as are applicable to a district court judge.

49 **Sec. 7A-163. District Court Prosecutor; Vacancies in Office; Temporary Incapacity;
50 Acting Prosecutor.** A vacancy in the office of district prosecutor shall be filled for the
51 unexpired term in the same manner as the original appointment.

1 If the prosecutor in a district which has no full-time assistant prosecutor becomes for any
2 reason unable to perform his duties, the senior regular resident Superior Court Judge for that
3 district may appoint an acting prosecutor to serve during the period of disability. An acting
4 prosecutor has all the power, authority and duties of the regular prosecutor. He shall take the
5 oath of office prescribed for the regular prosecutor, and receive from the State forty-five dollars
6 (\$45.00) per diem for each day in which he performs the duties of prosecutor.

7 **Sec. 7A-164. Assistant Prosecutors; Appointment; Compensation; Duties; Oath.** A district
8 prosecutor may appoint full-time assistant prosecutors in the number authorized by the General
9 Assembly. The number of full-time assistant prosecutors for each district shall be determined
10 with due regard to the population, geography and criminal case load of each district. An
11 assistant prosecutor serves at the pleasure of the prosecutor. He shall receive a salary of nine
12 thousand dollars (\$9,000.00) per year, payable in equal monthly installments, and the same
13 allowances for travel and subsistence expenses for travel outside his county of residence as the
14 district prosecutor. The duties of an assistant prosecutor are assigned by the district prosecutor,
15 and he takes the same oath of office as the prosecutor.

16 An assistant prosecutor shall not practice law during his term of office, nor shall he during
17 such term be the partner or associate of any person engaged in the practice of law.

18 **Sec. 7A-165. Attorneys Appointed to Assist in Prosecution.** A district prosecutor, with the
19 approval of the Administrative Officer of the Courts, may designate one or more qualified
20 attorneys to assist in the prosecution of the criminal dockets of the district when:

21 (a) The criminal cases accumulate on the dockets of the district court beyond the
22 capacity of the prosecutor and his assistants to keep the dockets reasonably current; or

23 (b) A full-time assistant prosecutor becomes for any reason unable to perform his
24 duties; or

25 (c) The prosecution of criminal cases in a specific location would be better served

26 Attorneys designated under the authority of this Section shall receive thirty-five dollars
27 (\$35.00) per diem for each day they prosecute in court and shall serve for such time as may be
28 authorized by the Administrative Officer of the Courts.

29 Article 16. Magistrates.

30 **Sec. 7A-170. Magistrates; Office; Oath.** A magistrate is an officer of the district court.
31 Before entering upon the duties of his office, a magistrate shall take the oath of office provided
32 for a district judge, conformed to his office. The times and places at which each magistrate is
33 required to maintain regular office and court hours and to be otherwise available for the
34 performance of his duties is prescribed by the chief district judge of the district in which he is
35 resident, but a magistrate possesses all the powers of his office at all times during his term.

36 **Sec. 7A-171. Magistrates; Numbers; Terms; Appointment; Vacancies.** (a) The General
37 Assembly shall establish a minimum and a maximum quota of magistrates for each county. In
38 no county shall the minimum quota be less than one. A magistrate shall be a resident of the
39 county for which appointed.

40 (b) Not later than the first Monday in September of each even-numbered year, the
41 Administrative Officer of the Courts, after consultation with the chief district judge (or the
42 senior regular resident Superior Court Judge, if there is no chief district judge) shall prescribe
43 and notify the Clerk of Superior Court of the salaries to be paid to the various magistrates to be
44 appointed to fill the minimum quota established for the county. A salary shall be prescribed for
45 each office within the minimum quota upon consideration of the time which the particular
46 magistrate will be required by the chief district judge to devote to the performance of the duties
47 of his office. Not later than the first Monday in October of each even-numbered year, the Clerk
48 of Superior Court shall submit to the senior regular resident Superior Court Judge of his district
49 nominations of magistrates to fill the minimum quota established for his county, specifying as
50 to each nominee the salary level for which nominated. Not later than the first Monday in
51 November, the senior regular Superior Court Judge shall, from the nominations submitted by

1 the Clerk of Superior Court, appoint magistrates to fill the minimum quota established for each
2 county of his district, such appointments to be at the various salary levels prescribed by the
3 Administrative Officer of the Courts. The term of a magistrate so appointed shall be two years,
4 commencing on the first Monday in December of each even-numbered year.

5 (c) After the biennial appointment of the minimum quota of magistrates, additional
6 magistrates in a number not to exceed, in total, the maximum quota established for each county
7 may be appointed in the following manner. The chief district judge, with the approval of the
8 Administrative Officer of the Courts, may certify to the Clerk of Superior Court that the
9 minimum quota is insufficient for the efficient administration of justice and that a specified
10 additional number, not to exceed the maximum quota established for the county, is required at
11 salary levels specified by the Administrative Officer for each additional office. Within 15 days
12 after receipt of this certification the Clerk of Superior Court shall submit to the senior regular
13 resident Superior Court Judge of his district nominations of magistrates to fill the additional
14 offices, specifying as to each nominee the salary level for which nominated. Within 15 days
15 after receipt of the nominations the senior regular resident Superior Court Judge shall from the
16 nominations submitted appoint magistrates in the number and at the salary levels specified in
17 the certification. A magistrate so appointed shall serve a term commencing immediately and
18 expiring on the same day as the terms of office of magistrates appointed to fill the minimum
19 quota for the county.

20 (d) A vacancy in the office of magistrate is filled in the following manner. Whether the
21 magistrate in whose office a vacancy occurs was appointed to fill the minimum quota or as an
22 additional appointment, the Clerk of the Superior Court shall within 30 days after such vacancy
23 occurs submit to the senior regular resident Superior Court Judge nominations for the office
24 vacated and at the same salary level. Within 15 days after receipt of the nominations, the senior
25 regular resident Superior Court Judge shall appoint from the nominations received a magistrate
26 who shall take office immediately and serve for the remainder of the unexpired term.

27 **Sec. 7A-172. Magistrates; Compensation.** Magistrates shall receive not less than one
28 thousand two hundred dollars (\$1,200.00) and not more than six thousand dollars (\$6,000.00)
29 per year.

30 **Sec. 7A-173. Magistrates; Suspension; Removal; Reinstatement.** (a) A magistrate may be
31 suspended from performing the duties of his office by the chief district judge, or removed from
32 office by the senior regular resident Superior Court Judge or any regular Superior Court Judge
33 holding court in the district. Grounds for suspension or removal are the same as for a district
34 judge.

35 (b) Suspension from performing the duties of the office may be ordered upon filing of
36 sworn written charges in the office of Clerk of Superior Court for the county in which the
37 magistrate resides. If the chief district judge, upon examination of the sworn charges, finds that
38 the charges, if true, constitute grounds for removal, he may enter an order suspending the
39 magistrate from performing the duties of his office until a final determination of the charges on
40 the merits. During suspension the salary of the magistrate continues.

41 (c) If suspension is ordered, the magistrate against whom the charges have been made
42 shall be given immediate written notice of the proceedings and a true copy of the charges, and
43 the matter shall be set by the chief district judge for hearing before the senior regular resident
44 Superior Court Judge or a regular Superior Court Judge holding court in the district. The
45 hearing shall be held within the district not less than 10 days nor more than 30 days after the
46 magistrate has received a copy of the charges. The hearing shall be open to the public. All
47 testimony offered shall be recorded.

48 At the hearing the Superior Court Judge shall receive evidence, and make findings of fact
49 and conclusions of law. If he finds that grounds for removal exist, he shall enter an order
50 permanently removing the magistrate from office, and terminating his salary. If he finds that no
51 such grounds exist, he shall terminate the suspension.

1 (d) A magistrate may appeal from an order of removal to the Supreme Court on the
2 basis of error of law by the Superior Court Judge. Pending decision of the case on appeal, the
3 magistrate shall not perform any of the duties of his office. If, upon final determination, he is
4 ordered reinstated, either by the Supreme Court or by the Superior Court on remand, his salary
5 shall be restored from the date of the original order of removal.

6 **Sec. 7A-174. Magistrates; Bonding.** Prior to taking office, magistrates shall be bonded,
7 individually or collectively, in such amount or amounts as the Administrative Officer of the
8 Courts shall determine. The bond or bonds shall be conditioned upon the faithful performance
9 of the duties of the office of magistrate. The Administrative Officer shall procure such bond or
10 bonds from any indemnity or guaranty company authorized to do business in North Carolina,
11 and the premium or premiums shall be paid by the State.

12 **Sec. 7A-175. Magistrate; Record Keeping.** A magistrate shall keep such dockets, accounts,
13 and other records, under the general supervision of the Clerk of Superior Court, as may be
14 prescribed by the Administrative Office of the Courts.

15 **Sec. 7A-176. Office of Justice of the Peace Abolished.** The office of justice of the peace is
16 abolished in each county upon the establishment of a district court therein.

17 Article 17. Clerical Functions in the District Court.

18 **Sec. 7A-180. Functions of Clerk of Superior Court in District Court Matters.** In any
19 county wherein a district court is established, the Clerk of Superior Court thereupon:

20 (a) Has and exercises all of the judicial powers and duties in respect of actions and
21 proceedings pending from time to time in the district court of his county which are now or
22 hereafter conferred or imposed upon him by law in respect of actions and proceedings pending
23 in the Superior Court of his county;

24 (b) Performs all of the clerical, administrative and fiscal functions required in the
25 operation of the district court of his county in the same manner as he is required to perform
26 such functions in the operation of the Superior Court of his county;

27 (c) Immediately sets up and thereafter maintains, under the supervision of the
28 Administrative Office of the Courts, an office of consolidated records of all judicial
29 proceedings in the Superior Court Division and the District Court Division of the General Court
30 of Justice in his county. Such records shall include all those books, records and indexes
31 required to be maintained by G.S. 2-42, adapted in a form and style prescribed by the
32 Administrative Office of the Courts, for the purpose of maintaining uniform consolidated
33 records of both trial divisions of the General Court of Justice;

34 (d) Continues to maintain all books, indexes, registers and records required by law to be
35 maintained by the Clerk of Superior Court;

36 (e) Has the power to accept written appearances, waivers of trial and pleas of guilty to
37 certain traffic offenses in accordance with a schedule of offenses and fines promulgated by the
38 chief district judge, and, in such cases, to collect the fines and costs;

39 (f) Has the power to issue warrants of arrest valid throughout the State, and search
40 warrants valid throughout the county of the issuing clerk; and

41 (g) Continues to exercise all powers, duties and authority theretofore vested in or
42 imposed upon Clerks of Superior Court by general law, with the exception of jurisdiction in
43 juvenile matters.

44 **Sec. 7A-181. Functions of Assistant and Deputy Clerks of Superior Court in District
45 Court Matters.** In any county wherein a district court is established, assistant and deputy
46 Clerks of Superior Court thereupon:

47 (a) Have the same powers and duties with respect to matters in the District Court
48 Division as they have in the Superior Court Division; and

49 (b) Have the same powers as the Clerk of Superior Court with respect to the issuance of
50 warrants and acceptance of written appearances, waivers of trial and pleas of guilty to traffic
51 offenses.

1 **Sec. 7A-182. Clerical Functions at Additional Seats of Court.** In any county in which the
2 General Assembly has authorized the district court to hold sessions at a place or places in
3 addition to the county seat, the Clerk of Superior Court shall furnish assistant and deputy clerks
4 to the extent necessary to process efficiently the judicial business at such additional seat or
5 seats of court. Only such records as are necessary for the expeditious processing of current
6 judicial business shall be kept at the additional seat or seats of court. The office of the Clerk of
7 Superior Court at the county seat shall remain the permanent depository of official records.

8 Article 18. District Court Practice and Procedure Generally.

9 **Sec. 7A-190. District Courts Always Open.** The district courts shall be deemed always open
10 for the disposition of matters properly cognizable by them. But all trials on the merits shall be
11 conducted at trial sessions regularly scheduled as provided in this Chapter.

12 **Sec. 7A-191. Trials; Hearings and Orders in Chambers.** All trials on the merits shall be
13 conducted in open court and so far as convenient in a regular courtroom. All other proceedings,
14 hearings, and acts may be done or conducted by a judge in chambers in the absence of the clerk
15 or other court officials and at any place within the district; but no hearing may be held, nor
16 order entered, in any cause outside the district in which it is pending without the consent of all
17 parties affected thereby.

18 **Sec. 7A-192. By Whom Power of District Court to Enter Interlocutory Orders Exercised.**
19 Any district judge may hear motions and enter interlocutory orders in causes regularly
20 calendared for trial or for the disposition of motions, at any session to which the district judge
21 has been assigned to preside. The chief district judge and any district judge designated by
22 written order or rule of the chief district judge, may in chambers hear motions and enter
23 interlocutory orders in all causes pending in the district courts of the district. The designation is
24 effective from the time filed in the office of the Clerk of Superior Court of each county of the
25 district until revoked or amended by written order of the chief district judge.

26 **Sec. 7A-193. Civil Procedure in the District Court Division; in General.** Except as
27 otherwise provided in this Chapter, the civil procedure provided in Chapter 1 of the General
28 Statutes applies in the District Court Division of the General Court of Justice. Where there is
29 reference in Chapter 1 of the General Statutes to the Superior Court, it shall be deemed to refer
30 also to the district court in respect of causes in the District Court Division.

31 **Sec. 7A-194. Criminal Procedure in the District Court Division; in General.** Except as
32 otherwise provided in this Chapter, the criminal procedure provided in Chapter 15 of the
33 General Statutes applies in the District Court Division of the General Court of Justice.

34 **Sec. 7A-195. Special Procedures in Juvenile Cases.** Practices, procedures (including
35 procedures relating to appeals), and punishments applicable in the District Court Division in
36 cases involving juveniles shall be as set forth in Chapter 110, Article 2, of the General Statutes.

37 **Sec. 7A-196. Jury Trials in District Court.** (a) In civil cases in the district court there shall
38 be a right to trial by a jury of twelve.

39 (b) Any party may demand a trial by jury of any issue triable of right by a jury by filing
40 in the office of the Clerk of Superior Court a demand therefor in writing at any time after the
41 commencement of the action and not later than 10 days after the filing of the last pleading
42 directed to the issue, or after the entry of an order transferring the cause to the District Court
43 Division, whichever occurs first. The demand may be endorsed upon a pleading of the party.

44 (c) In his demand a party may specify the issues which he wishes so tried; otherwise he
45 shall be deemed to have demanded trial by jury for all the issues so triable. If he demands trial
46 by jury for less than all of the issues, any other party within 10 days after notice of the demand,
47 or such other time as the court may order, may file a demand for trial by jury of any other or all
48 of the issues of fact in the action.

49 (d) The failure of a party to file a demand as required by this Section constitutes a
50 waiver by him of trial by jury. A demand for trial by jury may not be withdrawn without the
51 consent of the parties. Notwithstanding the failure of a party to demand a jury in an action in

1 which demand might have been made of right, the court in its discretion, upon motion of a
2 party, may order a trial by jury of any or all issues.

3 (e) In criminal cases there shall be no jury trials in the district court. Upon appeal to
4 Superior Court trial shall be de novo, with jury trial as provided by law.

5 **Sec. 7A-197. Petit Jurors for District Court.** Unless otherwise provided in this Chapter, the
6 provisions of Chapter 9 of the General Statutes with respect to petit jurors for the trial of civil
7 actions in the Superior Court are applicable to the trial of civil actions in the district court.

8 **Sec. 7A-198. Reporting of Civil Trials in District Courts.** (a) Court reporting personnel shall
9 be utilized, if available, for the reporting of civil trials in the district court. If court reporters are
10 not available in any county, electronic or other mechanical devices shall be provided by the
11 Administrative Office of the Courts upon request of the chief district judge.

12 (b) The Administrative Office of the Courts shall from time to time investigate the state
13 of the art and techniques of recording testimony, and shall provide such electronic or
14 mechanical devices as are found to be most efficient for this purpose.

15 (c) If an electronic or other mechanical device is utilized, it shall be the duty of the
16 Clerk of the Superior Court or some other person designated by him to operate the device while
17 a trial is in progress, and the clerk shall thereafter preserve the record thus produced, and
18 transcribe the record as required.

19 (d) Reporting of any trial may be waived by consent of the parties.

20 (e) Reporting will not be provided in trials before magistrates.

21 (f) Appointment of a reporter or reporters for district court proceedings in each district
22 shall be made by the chief district judge. The compensation and allowances of reporters in each
23 district shall be fixed by the chief district judge, within limits determined by the Administrative
24 Officer of the Courts, and paid by the State.

25 Article 19. Small Claim Actions in District Court.

26 **Sec. 7A-210. Small Claim Action Defined.** For purposes of this Article a small claim action
27 is a civil action wherein:

28 (a) The amount in controversy, computed in accordance with Section 7A-243, does not
29 exceed three hundred dollars (\$300.00); and

30 (b) The only principal relief prayed is monetary, or the recovery of specific personal
31 property, or summary ejection, or any combination of the foregoing in properly joined claims;
32 and

33 (c) The plaintiff has requested assignment to a magistrate in the manner provided in this
34 Article.

35 The seeking of the ancillary remedy of claim and delivery does not prevent an action
36 otherwise qualifying as a small claim action under this Article from so qualifying.

37 **Sec. 7A-211. Small Claim Actions Assignable to Magistrates.** In the interest of speedy and
38 convenient determination, the chief district judge may in his discretion, by specific order or
39 general rule, assign to any magistrate of his district any small claim action pending in his
40 district if all the defendants are residents of the county in which the magistrate resides.

41 **Sec. 7A-212. Judgment of Magistrate in Civil Action Improperly Assigned or not**
42 **Assigned.** No judgment of the district court rendered by a magistrate in a civil action assigned
43 to him by the chief district judge is void, voidable, or irregular for the reason that the action is
44 not one properly assignable to the magistrate under this Article. The sole remedy for improper
45 assignment is appeal for trial de novo before a district judge in the manner provided in this
46 Article. No judgment rendered by a magistrate in a civil action is valid when the action was not
47 assigned to him by the chief district judge.

48 **Sec. 7A-213. Procedure for Commencement; Request for and Notice of Assignment of**
49 **Small Claim Action.** The plaintiff files his complaint in a small claim action in the office of
50 the Clerk of Superior Court of the county wherein he desires to commence the action. The
51 designation "Small Claim" on the face of the complaint is a request for assignment. If, pursuant

1 to order or rule, the action is assigned to a magistrate, the clerk issues a magistrate summons
2 substantially in the form prescribed in this Article as soon as practicable after the assignment is
3 made. The issuance of a magistrate summons commences the action. In the magistrate
4 summons directed to the defendant, and by separate written notice to the plaintiff, the clerk
5 gives notice of the assignment. The notice of assignment identifies the action, designates the
6 magistrate to whom assignment is made, and specifies the time, date and place of trial. By any
7 convenient means the clerk notifies the magistrate of the assignment and the setting.

8 **Sec. 7A-214. Time Within Which Trial is Set.** The time for trial of a small claim action is set
9 not later than 30 days after the action is commenced. By consent of all parties the time for trial
10 may be changed from the time set. For good cause shown, the magistrate to whom the action is
11 assigned may grant continuances from time to time.

12 **Sec. 7A-215. Procedure Upon Non-assignment of Small Claim Action.** Failure of the chief
13 district judge to assign a claim within five days after the filing of a complaint requesting its
14 assignment constitutes non-assignment. The chief district judge may sooner order non-
15 assignment. Upon non-assignment, the clerk immediately issues summons in the manner and
16 form provided for commencement of civil actions generally, whereupon process is served,
17 return made, and pleadings are required to be filed in the manner provided for civil actions
18 generally. Upon issuing civil summons, the clerk gives written notice of non-assignment to the
19 plaintiff. The plaintiff within five days after notice of non-assignment, and the defendant before
20 or with the filing of his answer, may request a jury trial. Failure within the times so limited to
21 request a jury trial constitutes a waiver of the right thereto. Upon the joining of issue, the clerk
22 places the action upon the civil issue docket for trial in the District Court Division.

23 **Sec. 7A-216. Form of Complaint in Small Claim Action.** The complaint in a small claim
24 action shall be in writing, signed by the party or his attorney, and verified. It need be in no
25 particular form, but is sufficient if in a form which enables a person of common understanding
26 to know what is meant. In any event, the forms prescribed in this Article are sufficient under
27 this requirement, and are intended to indicate the simplicity and brevity of statement
28 contemplated. Demurrers and motions to challenge the legal and formal sufficiency of a
29 complaint in an assigned small claim action shall not be used. But at any time after its filing,
30 the clerk, the chief district judge, or the magistrate to whom such an action is assigned may, on
31 oral or written ex parte motion of the defendant, or on his own motion, order the plaintiff to
32 perfect the statement of his claim before proceeding to its determination, and shall grant
33 extensions of time to plead and continuances of trial pending any perfecting of statement
34 ordered.

35 **Sec. 7A-217. Methods of Subjecting Person of Defendant to Jurisdiction in Small Claim
36 Action.** When by order or rule a small claim action is assigned to a magistrate, the defendant
37 may be subjected to the jurisdiction of the court over his person by the following methods: (a)
38 The defendant may be subjected to the jurisdiction of the court over his person in any small
39 claim action by personal service of process. When the defendant is under any legal disability,
40 he may only be subjected to personal jurisdiction by personal service of process in the manner
41 provided by law.

42 (b) When the defendant is not under any legal disability and when request is made
43 therefor by the plaintiff, service of process may be made upon the defendant by mail, as herein
44 provided. The plaintiff requests service upon defendant by mail by endorsement in writing
45 upon his complaint, which request shall include the address to be used in mailing. The clerk
46 mails to the defendant at the address given in the endorsement a copy of the complaint and a
47 magistrate summons substantially in the form provided in this Article. Service of process by
48 mail is made by certified mail, return receipt requested, and is complete upon return to the
49 office of the clerk of the receipt signed by the defendant. Service by mail is proved prima facie
50 by the signature of defendant upon the return receipt. The plaintiff bears the cost of service of
51 process by mail.

1 (c) When the defendant is under no legal disability, he may be subjected to the
2 jurisdiction of the court over his person by his written acceptance of service, or by his
3 voluntary appearance.

4 **Sec. 7A-218. Answer of the Defendant.** At any time prior to the time set for trial, the
5 defendant may file a written answer admitting or denying all or any of the allegations in the
6 complaint, or pleading new matter in avoidance. No particular form is required, but it is
7 sufficient if in a form to enable a person of common understanding to know the nature of the
8 defense intended. A general denial of all the allegations of the complaint is permissible.

9 Failure of defendant to file a written answer after being subjected to the jurisdiction of the
10 court over his person constitutes a general denial. No default judgments are rendered in small
11 claim actions unless the answer admits all the material allegations of the complaint.

12 **Sec. 7A-219. Certain Counterclaims; Crossclaims; Third Party Claims Not Permissible.**

13 No counterclaim, cross-claim or third party claim which would make the amount in controversy
14 exceed three hundred dollars (\$300.00) is permissible in a small claim action assigned to a
15 magistrate. No determination of fact or law in an assigned small claim action estops a party
16 thereto in any subsequent action which, except for this Section, might have been asserted under
17 the code of civil procedure as a counterclaim in the small claim action.

18 **Sec. 7A-220. No Other Pleadings.** There are no pleadings in assigned small claim actions
19 other than the complaint and answer. Any new matter pleaded in avoidance in the answer is
20 deemed denied or avoided. But on appeal from judgment of the magistrate for trial de novo
21 before a district judge, the judge shall allow appropriate counterclaims, cross-claims, third
22 party claims, replies, and answers to cross-claims.

23 **Sec. 7A-221. Objections to Venue and Jurisdiction Over Person.** By motion prior to filing
24 answer, or in the answer, the defendant may object that the venue is improper, or move for
25 change of venue, or object to the jurisdiction of the court over his person. These motions or
26 objections are heard on notice by the chief district judge or a district judge designated by order
27 or rule of the chief district judge. Assignment to the magistrate is suspended pending
28 determination of the objection, and the clerk gives notice of the suspension by any convenient
29 means to the magistrate to whom the action has been assigned. All these objections are waived
30 if not made prior to the date set for trial. If venue is determined to be improper, or is ordered
31 changed, the action is transferred to the district court of the new venue, and is not thereafter
32 assigned to a magistrate, but proceeds as in the case of civil actions generally.

33 **Sec. 7A-222. General Trial Practice and Procedure.** Trial of a small claim action before a
34 magistrate is without a jury. The rules of evidence applicable in the trial of civil actions
35 generally are observed. At the conclusion of plaintiff's evidence the magistrate may render
36 judgment of nonsuit if plaintiff has failed to establish a prima facie case. If a judgment of
37 nonsuit is not rendered the defendant may introduce evidence. At the conclusion of all the
38 evidence the magistrate may render judgment or may in his discretion reserve judgment for a
39 period not in excess of 10 days.

40 **Sec. 7A-223. Practice and Procedure in Small Claim Actions for Summary Ejectment.** If
41 a small claim action demanding summary ejectment is assigned to a magistrate, the practice
42 and procedure prescribed for commencement, form and service of process, assignment,
43 pleadings, and trial in small claim actions generally are observed, except that if the defendant
44 by written answer denies the title of the plaintiff, the action is placed on the civil issue docket
45 of the District Court Division for trial before a district judge. In such event, the clerk
46 immediately gives written notice of non-assignment to the plaintiff and so notifies the
47 magistrate to whom the action had been assigned by any convenient means. The plaintiff,
48 within five days after receipt of the notice, and the defendant, in his answer, may request trial
49 by jury. Failure to request jury trial within the time limited is a waiver of the right to trial by
50 jury.

1 **Sec. 7A-224. Practice and Procedure; Rendition and Entry of Judgment.** Judgment in a
2 small claim action is rendered in writing and signed by the magistrate. The judgment so
3 rendered is a judgment of the district court. Entry thereof is made by the Clerk of Superior
4 Court on the consolidated civil judgment docket, and the judgment is recorded and indexed as
5 are judgments of the district courts and Superior Court generally. Entry is made as soon as
6 practicable after rendition.

7 **Sec. 7A-225. Lien and Execution of Judgment.** From the time of docketing, the judgment
8 rendered by a magistrate in a small claim action constitutes a lien and is subject to execution in
9 the manner provided in Chapter 1, Article 28, of the General Statutes.

10 **Sec. 7A-226. Priority of Judgment When Appeal Taken.** When appeal is taken from a
11 judgment in a small claim action, the lien acquired by docketing merges into any judgment
12 rendered after trial de novo on appeal, continues as a lien from the first docketing, and has
13 priority over any judgment docketed subsequent to the first docketing.

14 **Sec. 7A-227. Stay of Execution on Appeal.** Appeal from judgment of a magistrate does not
15 stay execution. Execution may be stayed by order of the Clerk of Superior Court upon petition
16 by the appellant accompanied by undertaking in writing, executed by one or more sufficient
17 sureties approved by the clerk, to the effect that if judgment be rendered against appellant the
18 sureties will pay the amount thereof with costs awarded against the appellant.

19 **Sec. 7A-228. No New Trial; Appeal for Trial De Novo.** No new trial is allowed before the
20 magistrate. The sole remedy for a party aggrieved is by appeal for trial de novo before a district
21 judge. Appeal is perfected by serving written notice thereof on all other parties and by filing
22 written notice with the Clerk of Superior Court within 10 days after entry and indexing of the
23 judgment on the civil judgment docket. Notice of appeal may also be given orally in open court
24 upon announcement of or rendition of the judgment, and shall thereupon be noted in writing by
25 the magistrate upon the judgment.

26 **Sec. 7A-229. Trial De Novo on Appeal.** Upon appeal noted, the Clerk of Superior Court
27 places the action upon the civil issue docket of the District Court Division. The district judge
28 before whom the action is tried may order repleading or further pleading by some or all of the
29 parties; may try the action on stipulation as to the issues; or may try it on the pleadings as filed.

30 **Sec. 7A-230. Jury Trial on Appeal from Magistrate's Judgment.** The appellant in his notice
31 of appeal, and any appellee by written notice served on all other parties and on the Clerk of
32 Superior Court within five days after notice of appeal, may demand a jury on the trial de novo.
33 Failure to demand a jury is a waiver of the right thereto.

34 **Sec. 7A-231. Provisional and Incidental Remedies in Small Claim Actions.** The provisional
35 and incidental remedies of claim and delivery, subpoena duces tecum, and production of
36 documents are obtainable in small claim actions. The practice and procedure provided therefor
37 in respect of civil actions generally is observed, conformed as may be required. No other
38 provisional or incidental remedies are obtainable while the action is pending before the
39 magistrate.

40 **Sec. 7A-232. Forms.** The following forms are sufficient for the purposes indicated under this
41 Article. Substantial conformity is sufficient.

42 FORM 1.

43 MAGISTRATE SUMMONS

44 NORTH CAROLINA

General Court of Justice
District Court Division
Before the Magistrate

45
46COUNTY

47 A. B., Plaintiff)

48)

49 v.)

50)

51 C. D., Defendant)

SUMMONS

1 To the above-named Defendant:
2 You are hereby summoned to appear before His Honor _____,
3 Magistrate of the District Court, at _____ (time)_____, on _____ (date)_____, at the
4 _____ (address)_____ in the _____ city_____, then and there to defend against
5 proof of the claim stated in the complaint filed in this action, copy of which is served herewith.
6 You may file written answer making defense to the claim in the office of the Clerk of the
7 Superior Court of _____ County in _____, N.C., not later than the time set
8 for trial. If you do not file answer plaintiff must nevertheless prove his claim before the
9 Magistrate. But if you fail to appear and defend against the proof offered, judgment for the
10 relief demanded in the complaint may be rendered against you.

11 This _____ day of _____ (month)_____, 19_____.

12 _____
13 Clerk of Superior Court

14 _____ County

15 FORM 2.

16 NOTICE OF NON-ASSIGNMENT OF ACTION

17 NORTH CAROLINA

General Court of Justice

District Court Division

18COUNTY

19 A. B., Plaintiff)

20)

21 v.)

22)

23 C. D., Defendant)

24 NOTICE OF NON-ASSIGNMENT
25 OF ACTION

26 To the above-named Plaintiff:

27 Take notice that the civil action styled as above which you requested be assigned for trial
28 before a Magistrate will not be assigned. Thirty-day summons to answer is being issued for
29 service upon defendant, and upon the joining of issue this action will be placed on the civil
30 issue docket for trial before a district judge.

31 This _____ day of _____ (month)_____, 19_____.

32 _____
33 Clerk of Superior Court

34 _____ County

35 FORM 3.

36 NOTICE OF NON-ASSIGNMENT OF ACTION

37 NORTH CAROLINA

General Court of Justice

District Court Division

Before the Magistrate

38COUNTY

39 A. B., Plaintiff)

40)

41 v.)

42)

43 C. D., Defendant)

44 NOTICE OF NON-ASSIGNMENT
45 OF ACTION

46 To the above-named Plaintiff:

47 Take notice that the civil action styled as above, commenced by you as plaintiff, has been
48 assigned for trial before His Honor _____, Magistrate of the District Court, at
49 _____, _____(time)_____ on _____(date)_____, at
50 _____(address)_____ in _____(city)_____, N.C.

51 _____
Clerk of Superior Court

_____ County

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FORM 4.
COMPLAINT ON A PROMISSORY NOTE

NORTH CAROLINA

General Court of Justice
District Court Division
SMALL CLAIM

.....COUNTY

A. B., Plaintiff)
)
v.)
)
C. D., Defendant)

COMPLAINT

1. Plaintiff is a resident of _____ County; defendant is a resident of _____ County.

2. Defendant on or about January 1, 1964, executed and delivered to plaintiff a promissory note (in the following words and figures: (here set out the note verbatim)); (a copy of which is annexed as Exhibit _____); (whereby defendant promised to pay to plaintiff or order on June 1, 1964, the sum of two hundred and fifty dollars (\$250.00) with interest thereon at the rate of six per cent (6%) per annum).

3. Defendant owes the plaintiff the amount of said note and interest.
Wherefore plaintiff demands judgment against defendant for the sum of two hundred and fifty dollars (\$250.00), interest and costs.

This _____ day of _____, 19_____.

(signed) A. B., Plaintiff
(or E. F., Attorney for Plaintiff)

(Verification)

Service by mail is, is not, requested.

(signed) A. B., Plaintiff
(or E. F., Attorney for Plaintiff)

FORM 5.
COMPLAINT ON AN ACCOUNT

(Caption as in form 4)

1. (Allegation of residence of parties)
2. Defendant owes plaintiff two hundred and fifty dollars (\$250.00) according to the account annexed as Exhibit A.
Wherefore (etc., as in form 4).

FORM 6.
COMPLAINT FOR GOODS SOLD AND DELIVERED

(Caption as in form 4)

1. (Allegation of residence of parties)
2. Defendant owes plaintiff two hundred and fifty dollars (\$250.00) for goods sold and delivered to defendant between June 1, 1965, and December 1, 1965.
Wherefore (etc. as in form 4).

FORM 7.
COMPLAINT FOR MONEY LENT

(Caption as in form 4)

1. (Allegation of residence of parties)
2. Defendant owes plaintiff two hundred and fifty dollars (\$250.00) for money lent by plaintiff to defendant on or about June 1, 1965.
Wherefore (etc. as in form 4).

FORM 8.
COMPLAINT FOR CONVERSION

1 (Caption as in form 4)

2 1. (Allegation of residence of parties)

3 2. On or about June 1, 1965, defendant converted to his own use a set of plumbing tools of
4 the value of two hundred and fifty dollars (\$250.00), the property of plaintiff.

5 Wherefore (etc., as in form 4).

6 FORM 9.

7 COMPLAINT FOR INJURY TO PERSON OR PROPERTY

8 (Caption as in form 4)

9 1. (Allegation of residence of parties)

10 2. On or about June 1, 1965, at the intersection of Main and Church Streets in the Town of
11 Ashley, N. C, defendant (intentionally struck plaintiff a blow in the face) (negligently drove a
12 bicycle into plaintiff) (intentionally tore plaintiff's clothing) (negligently drove a motorcycle
13 into the side of plaintiff's automobile).

14 3. As a result (plaintiff suffered great pain of body and mind, and incurred expenses for
15 medical attention and hospitalization in the sum of one hundred and fifty dollars (\$150.00)
16 (plaintiff suffered damage to his property above described in the sum of two hundred and fifty
17 dollars(\$250.00).

18 Wherefore (etc. as in form 4).

19 FORM 10.

20 COMPLAINT TO RECOVER POSSESSION OF CHATTEL

21 (Caption as in form 4)

22 1. (Allegation of residence of parties)

23 2. Defendant has in his possession a set of plumber's tools of the value of two hundred
24 dollars (\$200.00), the property of plaintiff. Plaintiff is entitled to immediate possession of the
25 same but defendant refuses on demand to deliver the same to plaintiff.

26 3. Defendant has unlawfully kept possession of the property above described since on or
27 about June 1, 1965, and has thereby deprived plaintiff of its use, to his damage in the sum of
28 fifty dollars (\$50.00).

29 Wherefore plaintiff demands judgment against defendant for the recovery of possession of
30 the property above described and for the sum of fifty dollars (\$50.00), interest and costs, (etc.,
31 as in form 4).

32 FORM 11.

33 COMPLAINT IN SUMMARY EJECTMENT

34 (Caption as in form 4)

35 1. (Allegation of residence of parties)

36 2. Defendant entered into possession of a tract of land (briefly described) as a lessee of
37 plaintiff (or as lessee of E. F. who, after making the lease, assigned his estate to the plaintiff);
38 the term of defendant expired on the 1st day of June, 1965 (or his term has ceased by
39 nonpayment of rent, or otherwise, as the fact may be); the plaintiff has demanded possession of
40 the premises of the defendant, who refused to surrender it, but holds over; the estate of plaintiff
41 is still subsisting, and the plaintiff is entitled to immediate possession.

42 3. Defendant owes plaintiff the sum of fifty dollars (\$50.00) for rent of the premises
43 from the last of May, 1965, to the 1st day of June, 1965, and one hundred dollars (\$100.00) for
44 the occupation of the premises since the 1st day of June, 1965, to the present.

45 Wherefore, plaintiff demands judgment against defendant that he be put in immediate
46 possession of the premises, and that he recover the sum of one hundred and fifty dollars
47 (\$150.00), interest and costs, (etc., as in form 4).

48 **SUBCHAPTER V. JURISDICTION AND POWERS OF THE**
49 **TRIAL DIVISIONS OF THE GENERAL COURT OF JUSTICE**

50 Article 20. Original Civil Jurisdiction of the Trial Divisions.

1 **Sec. 7A-240. Original Civil Jurisdiction Vested in the Trial Divisions.** Except for the
2 original jurisdiction in respect of claims against the State which is vested in the Supreme Court,
3 original general jurisdiction of all justiciable matters of a civil nature cognizable in the General
4 Court of Justice is vested in the aggregate in the Superior Court Division and the District Court
5 Division as the trial divisions of the General Court of Justice. Except in respect of proceedings
6 in probate and the administration of decedents' estates, the original civil jurisdiction so vested
7 in the trial divisions is vested concurrently in each division.

8 **Sec. 7A-241. Original Jurisdiction in Probate and Administration of Decedents' Estates.**
9 Exclusive original jurisdiction for the probate of wills and the administration of decedents'
10 estates is vested in the Superior Court Division, and is exercised by the Superior Courts and by
11 the Clerks of Superior Court as ex officio judges of probate according to the practice and
12 procedure provided by law.

13 **Sec. 7A-242. Concurrently Held Original Jurisdiction Allocated Between the Trial**
14 **Divisions.** For the efficient administration of justice in respect of civil matters as to which the
15 trial divisions have concurrent original jurisdiction, the respective divisions are constituted
16 proper or improper for the trial and determination of specific actions and proceedings in
17 accordance with the allocations provided in this Article. But no judgment rendered by any court
18 of the trial divisions in any civil action or proceeding as to which the trial divisions have
19 concurrent original jurisdiction is void or voidable for the sole reason that it was rendered by
20 the court of a trial division which by such allocation is improper for the trial and determination
21 of the civil action or proceeding.

22 **Sec. 7A-243. Proper Division for Trial of Civil Actions Generally Determined by Amount**
23 **in Controversy.** Except as otherwise provided in this Article, the District Court Division is the
24 proper division for the trial of all civil actions in which the amount in controversy is five
25 thousand dollars (\$5,000.00) or less; and the Superior Court Division is the proper division for
26 the trial of all civil actions in which the amount in controversy exceeds five thousand dollars
27 (\$5,000.00).

28 For purposes of determining the amount in controversy, the following rules apply whether
29 the relief prayed is monetary or non-monetary, or both, and with respect to claims asserted by
30 complaint, counterclaim, cross-complaint or third party complaint:

31 (a) The amount in controversy is computed without regard to interest and cost.

32 (b) Where monetary relief is prayed, the amount prayed for is in controversy unless the
33 pleading in question shows to a legal certainty that the amount claimed cannot be recovered
34 under the applicable measure of damages. The value of any property seized in attachment,
35 claim and delivery, or other ancillary proceeding, is not in controversy and is not considered in
36 determining the amount in controversy.

37 (c) Where no monetary relief is sought, but the relief sought would establish, enforce,
38 or avoid an obligation, right or title, the value of the obligation, right, or title is in controversy.
39 The judge may require by rule or order that parties make a good faith estimate of the value of
40 any nonmonetary relief sought.

41 (d) (1) Except as provided in subparagraph (3) of this subsection, where a single party
42 asserts two or more properly joined claims, the claims are aggregated in computing the amount
43 in controversy.

44 (2) Except as provided in subparagraph (3), where there are two or more parties
45 properly joined in an action and their interests are aligned, their claims are
46 aggregated in computing the amount in controversy.

47 (3) No claims are aggregated which are mutually exclusive and in the
48 alternative, or which are successive, in the sense that satisfaction of one
49 claim will bar recovery upon the other.

50 (4) Where there are two or more claims not subject to aggregation the highest
51 claim is the amount in controversy.

1 (e) Where the value of the relief to a claimant differs from the cost thereof to an
2 opposing party, the higher amount is used in determining the amount in controversy.

3 **Sec. 7A-244. Domestic Relations.** The District Court Division is the proper division, without
4 regard to the amount in controversy, for the trial of civil actions and proceedings for
5 annulment, divorce, alimony, child support, and child custody.

6 **Sec. 7A-245. Injunctive and Declaratory Relief to Enforce or Invalidate Statutes;
7 Constitutional Rights.** (a) The Superior Court Division is the proper division, without regard
8 to the amount in controversy, for the trial of civil actions where the principal relief prayed is (1)
9 injunctive relief against the enforcement of any statute, ordinance, or regulation;(2) injunctive
10 relief to compel enforcement of any statute, ordinance, or regulation; (3) declaratory relief to
11 establish or disestablish the validity of any statute, ordinance, or regulation; or (4) the
12 enforcement or declaration of any claim of constitutional right.

13 (b) When a case is otherwise properly in the District Court Division, a prayer for
14 injunctive or declaratory relief by any party not a plaintiff on grounds stated in this Section is
15 not ground for transfer.

16 **Sec. 7A-246. Special Proceedings; Guardianship and Trust Administration.** The Superior
17 Court Division is the proper division, without regard to the amount in controversy, for the
18 hearing and trial of all special proceedings and of all proceedings involving the appointment of
19 guardians and the administration by legal guardians and trustees of express trusts of the estates
20 of their wards and beneficiaries, according to the practice and procedure provided by law for
21 the particular proceeding.

22 **Sec. 7A-247. Mandamus; Quo Warranto.** The Superior Court Division is the proper
23 division, without regard to the amount in controversy, for the trial of all civil actions seeking as
24 principal relief the remedies of mandamus and quo warranto, according to the practice and
25 procedure provided for obtaining each remedy.

26 **Sec. 7A-248. Condemnation Actions and Proceedings.** The Superior Court Division is the
27 proper division, without regard to the amount in controversy, for the trial of all actions and
28 proceedings wherein property is being taken by condemnation in exercise of the power of
29 eminent domain, according to the practice and procedure provided by law for the particular
30 action or proceeding. Nothing in this Section is in derogation of the validity of such
31 administrative or quasi-judicial procedures for value appraisal as may be provided for the
32 particular action or proceeding prior to the raising of justiciable issues of fact or law requiring
33 determination in the Superior Court.

34 **Sec. 7A-249. Corporate Receiverships.** The Superior Court Division is the proper division,
35 without regard to the amount in controversy, for actions for corporate receiverships under
36 Chapter I, Article 38, of the General Statutes.

37 **Sec. 7A-250. Review of Decisions of Administrative Agencies.** The Superior Court Division
38 is the proper division, without regard to the amount in controversy, for review by original
39 action or proceeding, or by appeal, of the decisions of administrative agencies, according to the
40 practice and procedure provided for the particular action, or proceeding, or appeal.

41 **Sec. 7A-251. Appeal from Clerk to Judge.** In all matters properly cognizable in the Superior
42 Court Division which are heard originally before the Clerk of Superior Court, appeals lie to the
43 Judge of Superior Court having jurisdiction from all orders and judgments of the clerk for
44 review in all matters of law or legal inference, in accordance with the procedure provided in
45 Chapter 1 of the General Statutes.

46 **Sec. 7A-252. Application of Article.** The provisions of this Article apply in each county of
47 the State on and after the date that a district court is established therein.

48 Article 21. Institution, Docketing, and Transferring Civil Causes in the Trial Divisions.

49 **Sec. 7A-255. Clerk of Superior Court Processes all Actions and Proceedings in Trial
50 Divisions.** All civil actions and proceedings in the General Court of Justice are instituted in,
51 and the original records thereof are maintained in, the office of the Clerk of Superior Court,

1 without regard to the trial divisions in which the cause is pending from time to time. When the
2 commencement of an action or proceeding requires issuance of summons, the Clerk of Superior
3 Court issues the summons, and such summons runs and is valid throughout the State without
4 regard to the trial division in which the action or proceeding may be pending from time to time.

5 **Sec. 7A-256. Causes Docketed and Retained in Originally Designated Trial Division until**
6 **Transferred.** Upon the institution of any action or proceeding in the General Court of Justice
7 the party instituting it designates upon the face of the originating pleading or other originating
8 paper when filed, which trial division of the General Court of Justice he deems proper for
9 disposition of the cause. The clerk docketts the cause for the trial division so designated and the
10 cause is retained for complete disposition in that division unless thereafter transferred in
11 accordance with the provisions of this Article. If no designation is made the clerk docketts the
12 cause for the Superior Court Division, and the cause is retained for complete disposition in that
13 division unless thereafter transferred in accordance with the provisions of their Article.

14 **Sec. 7A-257. Waiver of Proper Division.** Any party may move for transfer between the trial
15 divisions as provided in this Article. Failure of a party to move for transfer within the time
16 prescribed is a waiver of any objection to the division, except that there shall be no waiver of
17 the jurisdiction of the Superior Court Division in probate of wills and administration of
18 decedents' estates. Where more than one party is aligned in interest, any party may move for
19 transfer of the entire case, notwithstanding waiver by other parties or co-parties. A waiver of
20 objection to the division does not prevent the judge from ordering a transfer on his own motion
21 as provided in this Article.

22 **Sec. 7A-258. Motion to Transfer.** (a) Any party, including the plaintiff, may move on notice
23 to all parties to transfer the civil action or special proceeding to the proper division when the
24 division in which the case is pending is improper under the rules stated in this Article.

25 (b) A motion to transfer is filed in the action or proceeding sought to be transferred, but
26 it is heard and determined by a Judge of the Superior Court Division whether the case is
27 pending in that division or not. A regular resident Superior Court Judge of the district in which
28 the action or proceeding is pending, any special Superior Court Judge residing in the district, or
29 any Superior Court Judge presiding over any courts of the district may hear and determine such
30 motion. The motion is heard and determined within the district, except by consent of the
31 parties.

32 (c) A motion to transfer by any party other than the plaintiff must be filed within 30
33 days after the moving party is served with a copy of the pleading which justifies transfer. A
34 motion to transfer by the plaintiff, if based upon the pleading of any other party, must be filed
35 within 20 days after the pleading has been filed. A motion to transfer by any party, based upon
36 an amendment to his own pleading must be made not later than 10 days after such amendment
37 is filed. In no event is a motion to transfer made or determined after the case has been called for
38 trial. Failure to move for transfer within the required time is a waiver of any objection to the
39 division in which the case is pending, except in matters of probate of wills or administration of
40 decedents' estates.

41 (d) A motion to transfer is in writing and contains:

- 42 (1) A short and direct statement of the grounds for transfer with specific
43 reference to the provision of this Chapter which determines the proper
44 division; and
- 45 (2) A statement by an attorney for the moving party, or if the party is not
46 represented by counsel, a statement by the party that the motion is made in
47 the good faith belief that it may be properly granted and that he intends no
48 amendment which would affect propriety of transfer.

49 (e) A motion to transfer is made on notice to all parties.

50 (f) Objection to the jurisdiction of the court over person or property is waived when a
51 motion to transfer is filed unless such objection is raised at the time of filing or before. In no

1 other case does the filing of a motion to transfer waive any rights under other motions or
2 pleadings, nor does it prevent the filing of other motions or pleadings. The filing of a motion to
3 transfer does not stay further proceedings in the case except that: (1) involuntary dismissal is not
4 ordered while a motion to transfer is pending; (2) assignment to a magistrate is not ordered
5 while a motion to transfer is pending; and (3) a change of venue is not ordered while a motion
6 to transfer is pending, except by consent. When a change of venue is ordered by consent while
7 a motion to transfer is pending, the motion to transfer is determined in the new venue. The
8 filing of a motion to transfer does not enlarge the time for filing responsive pleadings, nor does
9 the filing of any other motion or pleading waive any rights under the motion to transfer.

10 (g) The motion for transfer provided herein is the sole method for seeking a transfer,
11 and no transfer is effected by the use of mandamus, injunction, prohibition, certiorari, or other
12 extraordinary writs.

13 (h) Transfer is effected when an order of transfer is filed. When transfer is ordered, the
14 clerk makes appropriate entries on the dockets of each division and transfers the file of the case
15 to the new division. No further proceedings are taken in the division from which the case is
16 transferred. Papers filed after a transfer are properly filed notwithstanding any erroneous
17 reference to the division from which the case is transferred. All orders made prior to transfer,
18 including restraining orders, remain effective after transfer, as if no transfer had been made,
19 until modified or set aside in the division to which the case is transferred.

20 (i) A claim of new or different relief asserted after transfer has been effected does not
21 authorize a second transfer.

22 **Sec. 7A-259. Transfer Without Motion.** If no party has moved for transfer within the time
23 allowed to parties, any Superior Court Judge who may hear and determine motions to transfer
24 may order a transfer upon his own motion for the purpose of efficient administration of the trial
25 divisions at any time before the case is calendared for trial. Transfer is not made on the judge's
26 own motion unless the pleadings clearly show that the case is pending in an improper division.
27 No hearing is held on such transfers, but the parties are given prompt notice when transfer is
28 effected. Nothing in this Section affects the power of the clerk to transfer matters and
29 proceedings pending before him when an issue of fact is raised.

30 **Sec. 7A-260. Review of Transfer Matters.** Orders transferring or refusing to transfer are not
31 immediately appealable, even for abuse of discretion. Such orders are reviewable only by the
32 Supreme Court on appeal from a final judgment. If, on review, such an order is found
33 erroneous, reversal or remand is not granted unless prejudice is shown. If, on review, a new
34 trial or partial new trial is ordered for other reasons, the Supreme Court may specify the proper
35 division for new trial and order a transfer thereto.

36 **Sec. 7A-261. Application of Article.** The provisions of this Article apply in each county of
37 the State on and after the date that a district court is established therein.

38 Article 22. Jurisdiction of the Trial Divisions in Criminal Actions.

39 **Sec. 7A-270. Generally.** General jurisdiction for the trial of criminal actions is vested in the
40 Superior Court and the District Court Divisions of the General Court of Justice.

41 **Sec. 7A-271. Jurisdiction of Superior Court Division in Criminal Actions.** The Superior
42 Court has exclusive, original jurisdiction over all criminal actions not assigned to the District
43 Court Division by this Article, except that the Superior Court has jurisdiction to try a
44 misdemeanor:

45 (a) which is a lesser included offense of a felony on which an indictment has been
46 returned, or a felony information as to which an indictment has been properly waived; or

47 (b) when the charge is initiated by presentment; or

48 (c) which may be properly consolidated for trial with a felony under G.S. 15-152; or

49 (d) to which a plea of guilty or nolo contendere is tendered in lieu of a felony charge.

50 **Sec. 7A-272. Jurisdiction of District Court Division in Criminal Actions.** (a) Except as
51 provided in this Article, the district court has exclusive, original jurisdiction for the trial of

1 criminal actions, including municipal ordinance violations, below the grade of felony, and the
2 same are hereby declared to be petty misdemeanors.

3 (b) The district court has jurisdiction to conduct preliminary examinations and to bind
4 the accused over for trial upon waiver of preliminary examination or upon a finding of probable
5 cause, making appropriate orders as to bail or commitment.

6 **Sec. 7A-273. Power of Magistrate in Crminal Actions.** In criminal actions, any magistrate
7 has power:

8 (a) In misdemeanor cases, other than traffic offenses, in which the maximum
9 punishment which can be adjudged cannot exceed imprisonment for thirty days, or a fine of
10 fifty dollars (\$50.00), exclusive of costs, to accept guilty pleas and enter judgment;

11 (b) In misdemeanor cases involving traffic offenses, to accept written appearances,
12 waivers of trial and pleas of guilty, in accordance with a schedule of offenses and fines
13 promulgated by the chief district judge;

14 (c) In any misdemeanor case, to conduct a preliminary examination and bind the
15 accused over to the district court for trial upon a waiver of examination or upon a finding of
16 probable cause, making appropriate orders as to bail or commitment;

17 (d) To issue arrest warrants valid throughout the State;

18 (e) To issue peace and search warrants valid throughout the county; and

19 (f) To grant bail before trial for any non-capital offense.

20 **Sec. 7A-274. Power to Issue Warrants and Set Bail Restricted.** The power of mayors, law
21 enforcement officers, and other persons not officers of the General Court of Justice to issue
22 arrest, search, or peace warrants, or to set bail, is terminated in any district court district upon
23 the establishment of a district court therein.

24 **Sec. 7A-275. Application of Article.** The provisions of this Article apply in each county of
25 the State on and after the date a district court has been established therein.

26 Article 23. Jurisdiction in Juvenile Matters.

27 **Sec. 7A-277. District Court Jurisdiction Over Juveniles.** The District Court Division shall
28 have exclusive, original jurisdiction of cases involving juveniles, as such jurisdiction is set
29 forth in Chapter 110, Article 2, of the General Statutes. This jurisdiction shall be exercised
30 solely by the district judge.

31 Article 24. Jurisdiction and Procedure in Civil Appeals from District Courts.

32 **Sec. 7A-280. Appellate Jurisdiction of the Superior Courts.** The Superior Courts have appellate
33 jurisdiction in civil cases to review for error of law or legal inference:

34 (a) Every final judgment of the district courts of their respective judicial districts;

35 (b) Every order or determination of the district judges of their respective judicial
36 districts upon or involving a matter of law or legal inference which:

37 (1) affects a substantial right claimed in any action or proceeding, or

38 (2) in effect determines the action and prevents a judgment from which an
39 appeal might be taken, or

40 (3) discontinue the action, or

41 (4) grants or refuses a new trial.

42 **Sec. 7A-281. Supervisory Power of Superior Courts in Respect of District Courts.** The
43 Superior Courts have power to issue any remedial writs necessary to give general supervision
44 and control over the proceedings of the district courts of their respective judicial districts.

45 **Sec. 7A-282. By Whom Appeal from Judgment or Order of District Court may be Taken.**
46 Any party aggrieved by any judgment, order or determination of the district court described in
47 Section 7A-280, may appeal to the Superior Court in the manner provided in this Article.

48 **Sec. 7A-283. By Whom Appellate Jurisdiction of Superior Courts Exercised; Appellate
49 Sessions.** The appellate jurisdiction of the Superior Courts may be exercised by any Judge of
50 the Superior Court assigned to hold trial or appellate sessions, in respect of causes regularly
51 docketed on the appellate docket and calendared for determination at such sessions. The

1 Supreme Court may schedule regular or special appellate sessions of the Superior Court in
2 addition to its trial sessions.

3 **Sec. 7A-284. Review by Supreme Court of Appellate Judgments of the Superior Courts.**

4 The Supreme Court has appellate jurisdiction in civil cases to review for errors of law or legal
5 inference all appellate judgments of the Superior Courts rendered upon review of the judgments
6 or orders of the district courts. Any party aggrieved by an appellate judgment of the Superior
7 Court in a civil case may as of right appeal therefrom to the Supreme Court according to the
8 practice and procedure provided.

9 **Sec. 7A-285. Procedure in Appeals from Appellate Judgments of the Superior Courts.**

10 The Supreme Court is authorized to promulgate rules which shall govern the practice and
11 procedure for taking and prosecuting appeals from the appellate judgments of the Superior
12 Courts in civil cases. No rules promulgated pursuant to this Section shall abridge the right of
13 appeal provided in Section 7A-284, nor require a different procedure for appeals from the
14 district courts to the Superior Courts than that provided in Section 7A-286. But nothing
15 contained herein shall be construed to affect the power of the Supreme Court to dismiss any
16 appeal not taken or prosecuted in accordance with such rules as it may promulgate under this
17 Section.

18 **Sec. 7A-286. Rules Governing Appeals from District Court to Superior Court.** Appeals in
19 civil cases from the district court to the Superior Court shall be taken and prosecuted in
20 accordance with the following rules.

21 **RULE 1. Scope of Rules**

22 (a) **Scope of Rules.** These rules govern procedure in appeals in civil cases to the
23 Superior Courts from the district courts, and in applications for writs or other relief which a
24 Superior Court or a judge thereof is competent to give.

25 (b) **Rules Not to Affect Jurisdiction.** These rules shall not be construed to extend or
26 limit the jurisdiction of the Superior Courts as established by law.

27 **RULE 2. Suspension of Rules**

28 In the interest of expediting decision upon any matter before it, or for other good cause
29 shown, a Superior Court may, except in respect to the time allowed for filing notice of appeal,
30 suspend the requirements or provisions of these rules on application of a party or on its own
31 motion and may order proceedings in accordance with its direction.

32 **RULE 3. Appeal as of Right; How Taken**

33 (a) **Filing the Notice of Appeal.** An appeal permitted by law as of right from a district
34 court to a Superior Court shall be taken by filing a notice of appeal in the office of the Clerk of
35 Superior Court. Failure of an appellant to take any step other than the timely filing of a notice
36 of appeal does not affect the validity of the appeal, but is ground only for such action as the
37 Superior Court deems appropriate, which may include dismissal of the appeal.

38 (b) **Joint Appeals.** If two or more persons are entitled to appeal from a judgment or
39 order of the district court and their interests are such as to make joinder practicable, they may
40 file a joint notice of appeal, or may join in appeal after filing separate notices of appeal, and
41 they may thereafter proceed on appeal as a single appellant.

42 (c) **Contents of the Notice of Appeal.** The notice of appeal shall specify the party or
43 parties taking the appeal; shall designate the judgment, order or part thereof appealed from; and
44 shall name the court to which the appeal is taken.

45 (d) **Service of the Notice of Appeal.** The Clerk of Superior Court shall serve notice of
46 the filing of a notice of appeal by mailing a copy thereof to counsel of record of each party
47 other than the appellant, or, if a party is not represented by counsel, to the party at his last
48 known address. The clerk shall note on each copy served the date on which the notice of appeal
49 was filed. If an appellant is represented by counsel, his counsel shall provide the clerk with
50 sufficient copies of the notice of appeal to permit the clerk to comply with the requirements of
51 this Rule. Failure of the clerk to serve notice shall not affect the validity of the appeal. The

1 notice shall be sufficient notwithstanding the death of a party or his counsel. The clerk shall
2 note in the docket the names of the parties to whom he mails copies, with the date of mailing.

3 **RULE 4. Time for Filing the Notice of Appeal**

4 (a) Generally. In all civil cases the notice of appeal shall be filed in the office of the
5 Clerk of Superior Court within 10 days of the date of the entry of the judgment or order
6 appealed from. If a timely notice of appeal is filed by a party, any other party may file a notice
7 of appeal within seven days of the date on which the first notice of appeal was filed or within
8 the time otherwise prescribed by this subdivision, whichever period last expires. A judgment or
9 order is entered within the meaning of this Rule when it is noted in the civil judgment docket.

10 Upon a showing of excusable neglect, the district court may extend the time for filing the
11 notice of appeal by any party for a period not to exceed 10 days from the expiration of the
12 original time prescribed by this Rule.

13 **RULE 5. Bond for Costs on Appeal in Civil Cases Unless an appellant is exempted by law,**
14 **or has filed a supersedeas bond or other undertaking which includes security for the payment of**
15 **costs on appeal, in civil cases a bond for costs on appeal or equivalent security shall be filed by**
16 **the appellant in the office of the Clerk of the Superior Court with the notice of appeal. The**
17 **bond or equivalent security shall be in the sum or value of one hundred dollars (\$100.00),**
18 **unless the district court fixes a different amount. A bond for costs on appeal shall have**
19 **sufficient surety, and it or any equivalent security shall be conditioned to secure the payment of**
20 **costs if the appeal is dismissed or the judgment affirmed, or of such costs as the Superior Court**
21 **may direct if the judgment is modified. If a bond or equivalent security in the sum or value of**
22 **one hundred dollars (\$100.00) is given, no approval thereof is necessary. After a bond for costs**
23 **on appeal is filed an appellee may raise for determination of the Clerk of the Superior Court**
24 **objections to the form of the bond or to the sufficiency of the surety. The provisions of Rule 7**
25 **(b) apply to a surety upon a bond given pursuant to this Rule.**

26 **RULE 6. Scope of Review**

27 (a) **Statement of Issues in Lieu of Assignment of Error.** Assignments of error are not
28 required. In lieu thereof the appellant shall state in his brief and, when required, in the
29 designation of record required in Rule 8 (b), the issues of law or legal inference upon which he
30 bases his appeal.

31 (b) **Form of Statement of Issues.** The statement of issues shall be brief and clear, and
32 shall contain a reference to the portion of the record on appeal where the asserted error appears,
33 e.g., "Issue 2. Whether the district court erred in granting defendant's motion for nonsuit made
34 at the conclusion of plaintiff's evidence. Transcript, p. 25".

35 (c) **Scope of Review.** The scope of review to which an appellant is entitled is limited by
36 his statement of issues as required by these Rules, but the Superior Court may nevertheless in
37 its discretion notice any error appearing of record. Error may be noted notwithstanding the
38 absence of formal exception thereto on trial if the record shows that at the time the order or
39 ruling asserted as error was entered the appellant made known to the court the action he desired
40 the court to take, or his objection to action taken by the court together with the grounds
41 therefor, or that he had no opportunity to object to the order or ruling at the time it was made.

42 **RULE 7. Stay of Judgment or Order of the District Court Pending Appeal (a) Stay Must**
43 **Ordinarily be Sought in District Court; Motion for Stay in Superior Court.** Application for a
44 stay of the judgment or order of a district court pending appeal, or for approval of a supersedeas
45 bond, or for an order suspending, modifying, restoring or granting an injunction during the
46 pendency of an appeal must ordinarily be made in the first instance in the district court. After a
47 notice of appeal is filed, a motion for such relief may be made to a Judge of the Superior Court,
48 but the motion shall show that application to the district court for the relief sought is not
49 practicable, or that application has been made to the district court and denied, with the reasons
50 given by it for denial, or that the action of the district court did not afford the relief to which the
51 moving party considers himself to be entitled. The motion shall also show the reasons for the

1 relief requested and the facts relied upon, and if the facts are subject to dispute the motion shall
2 be supported by affidavits or other sworn statements or copies thereof. With the application
3 shall be filed such parts of the record as are relevant.

4 (b) Stay May be Conditioned Upon Giving of Bond; Proceedings Against Sureties.
5 Relief available in the Superior Court under this Rule may be conditioned upon the filing of a
6 bond or other appropriate security. If security is given in the form of a bond or stipulation or
7 other undertaking with one or more sureties, each surety submits himself to the jurisdiction of
8 the district court and irrevocably appoints the Clerk of the Superior Court as his agent upon
9 whom any papers affecting his liability on the bond or undertaking may be served. His liability
10 may be enforced on motion in the district court without the necessity of an independent action.
11 The motion and such notice of the motion as the district court prescribes may be served on the
12 Clerk of the Superior Court, who shall forthwith mail copies to the sureties if their addresses
13 are known.

14 RULE 8. The Record on Appeal (a) Composition of the Record on Appeal. The original
15 papers and exhibits filed in the cause, the transcript of proceedings, if any, and a certified copy
16 of all docket and minute entries, prepared by the Clerk of the Superior Court, shall constitute
17 the record on appeal in all cases.

18 (b) The Transcript of Proceedings; Duty of Appellant to Order; Notice to Appellee if
19 Partial Transcript is Ordered. Within five days after filing the notice of appeal the appellant
20 shall order from the reporter or clerk a transcript of such parts of the proceedings not already on
21 file as he deems necessary for inclusion in the record. Unless the entire transcript is to be
22 included, the appellant shall, within the time above provided, file and serve on the appellee a
23 description of the parts of the transcript which he intends to include in the record and a
24 statement of the issues which he intends to present on the appeal. If the appellee deems a
25 transcript of other parts of the proceedings to be necessary he shall immediately order such
26 parts from the reporter or clerk, or procure an order from the district court requiring the
27 appellant to so do. At the time of ordering, a party must make satisfactory arrangements with
28 the reporter or clerk for payment of the cost of the transcript.

29 (c) Statement of the Evidence or Proceedings When no Report was Made or When the
30 Transcript is Unavailable. If no report of the evidence or proceedings at a hearing or trial was
31 made, or if a transcript is unavailable, the appellant may prepare a statement of the evidence or
32 proceedings from the best available means, including his recollection. The statement shall be
33 served on the appellee, who may serve objections or propose amendments thereto within 10
34 days after service. Thereupon the statement and any objections or proposed amendments shall
35 be submitted to the district court for settlement and approval and as settled and approved shall
36 be included by the Clerk of the Superior Court in the record on appeal.

37 (d) Agreed Statements as the Record on Appeal. In lieu of the record on appeal as
38 denned in subdivision (a) of this Rule, the parties may prepare, and sign a statement of the case
39 showing how the issues presented by the appeal arose and were decided in the district court and
40 setting forth only so many of the facts averred and proved or sought to be proved as are
41 essential to a decision of the issues presented. If the statement conforms to the truth, it, together
42 with such additions as the court may consider necessary fully to present the issues raised by the
43 appeal, shall be approved by the district court and shall then be certified to the Superior Court
44 as the record on appeal and docketed on the appellate docket of the Superior Court by the Clerk
45 of Superior Court within the time provided in Rule 9.

46 (e) Correction or Modification of the Record. If any difference arises as to whether the
47 record truly discloses what occurred in the district court, the difference shall be submitted to
48 and settled by that court and the record made to conform to the truth. If anything material to
49 either party is omitted from the record by error or accident or is misstated therein the parties by
50 stipulation, or the district court, either before or after the record is docketed on the appellate
51 docket of the Superior Court, or the Superior Court on proper suggestion or of its own

1 initiative, may direct that the omission or misstatement be corrected, and if necessary that a
2 supplemental record be certified and transmitted. All other questions as to the form and content
3 of the record shall be presented to the Superior Court.

4 RULE 9. Assembly of the Record (a) Time for Assembly, Duty of Appellant. The record on
5 appeal, including the transcript necessary for the determination of the appeal, shall be
6 assembled within 30 days after the filing of the notice of appeal unless the time is shortened or
7 extended by an order entered under subdivision (c) of this Rule. Promptly after filing the notice
8 of appeal the appellant shall comply with the provisions of Rule 8 (b) and shall take any other
9 action necessary to enable the clerk to assemble the record. If more than one appeal is filed,
10 each appellant shall comply with the provisions of Rule 8 (b) and this subdivision, and a single
11 record shall be assembled within 30 days after the filing of the final notice of appeal.

12 (b) Duty of Clerk With Respect to the Record. When the record is complete for
13 purposes of the appeal, the Clerk of the Superior Court shall number the documents comprising
14 the record, and shall file with the record a numbered list of the documents, identifying each
15 with reasonable definiteness. Assembly is complete when the Clerk of Superior Court files this
16 list. The Clerk of the Superior Court shall indicate, by endorsement on the face of the record or
17 otherwise, the date upon which assembly is completed.

18 (c) Extension of Time for Assembly of the Record; Reduction of Time.

19 The district court may extend the time for assembling the record. The request for extension
20 must be made within the time originally prescribed or within an extension previously granted,
21 and the district court shall not extend the time to a day more than 60 days from the date of
22 filing of the first notice of appeal. If the district court is without authority to grant the relief
23 sought or has denied a request therefor, the Superior Court may on motion extend the time for
24 assembling the record or may permit the record to be assembled and docketed after the
25 expiration of the time allowed or fixed. A motion for an extension of time for assembling the
26 record made in either court shall show that the inability of the appellant to cause timely
27 assembly of the record is due to causes beyond his control or to circumstances which may be
28 deemed excusable neglect. If a request for an extension of time for assembling the record has
29 been previously denied, the motion shall set forth the denial and shall state the reasons therefor,
30 if any were given.

31 RULE 10. Docketing the Appeal; Filing of the Record.

32 (a) Docketing the Appeal. The clerk shall docket the appeal upon the appellate docket
33 of the Superior Court immediately upon completion of the assembly of the record. An appeal
34 shall be docketed under the title given to the action in the district court with such addition as is
35 necessary to indicate the identity of the appellant. The clerk shall immediately give notice to all
36 parties of the date on which the appeal was docketed.

37 (b) Dismissal for Failure of Appellant to Cause Timely Assembly or to Docket Appeal.
38 If the appellant shall fail to cause timely assembly of the record, the appellee may file a motion
39 in the Superior Court to dismiss the appeal. The motion shall be supported by a certificate of
40 the Clerk of the Superior Court showing the date and substance of the judgment or order from
41 which the appeal was taken, the date on which the notice of appeal was filed, and the expiration
42 date of any order extending the time for assembling the record; and by proof that seven days'
43 notice in writing has been served on the appellant that application will be made for dismissal of
44 the appeal. The clerk shall docket the appeal for the purpose of permitting the court to entertain
45 the motion.

46 RULE 11. Appeals in Forma Pauperis; General Provisions (a) Application for Leave to
47 Proceed on Appeal in Forma Pauperis. A party who desires to proceed on appeal in forma
48 pauperis shall file in the district court a motion for leave so to proceed together with an
49 affidavit showing his inability to pay the fees and costs of the appeal or to give security
50 therefor, his belief that he is entitled to redress, and a statement of the issues he intends to
51 present on appeal. If the motion is granted, the party may proceed on appeal without further

1 application to the Superior Court and without payment of fees or costs or the giving of security
2 therefor. If the motion is denied, the district court shall state the reasons for the denial.

3 (b) Application to the Superior Court. If the motion for leave to proceed on appeal in
4 forma pauperis is denied by the district court, a motion for leave so to proceed may be filed in
5 the Superior Court within 30 days after entry of the order of denial. The motion shall be
6 accompanied by a copy of the affidavit filed in the district court and by a statement of reasons
7 for denial given by the district court.

8 RULE 12. Filing and Service (a) Filing. Papers required or permitted to be filed must be
9 placed in the custody of the clerk within the time fixed for filing. Filing may be accomplished
10 by mail addressed to the clerk, but filing shall not be timely unless the papers are actually
11 received within the time fixed for filing.

12 (b) Service for all Papers Required. Copies of all papers filed by any party and not
13 required by these Rules to be served by the clerk shall, at or before the time of filing, be served
14 by the party or person acting for him or all other parties to the appeal or review. Service on a
15 party represented by counsel shall be made on counsel.

16 (c) Manner of Service. Service may be personal or by mail. Personal service includes
17 delivery of the copy to a clerk or other responsible person at the office of counsel. Service by
18 mail is complete on mailing.

19 (d) Proof of Service. Papers presented for filing shall contain an acknowledgement of
20 service by the person served or proof of service in the form of a statement of the date and
21 manner of service, and of the names of the persons served, certified by the person who made
22 service.

23 Proof of service may appear on or be affixed to the papers filed. The clerk may permit
24 papers to be filed without acknowledgement or proof of service but shall require such to be
25 filed promptly thereafter.

26 RULE 13. Briefs (a) Brief of the Appellant. The brief of the appellant shall contain under
27 appropriate headings and the order here indicated:

- 28 (1) A table of contents, with page references, and a table of cases (alphabetically
29 arranged), statutes and other authorities cited, with references to the pages of
30 the brief where they are cited.
- 31 (2) A statement of the issues presented for review.
- 32 (3) A statement of the case. The statement shall first indicate briefly the nature
33 of the case and its disposition in the court below, e.g.: "The plaintiff brought
34 this action in the district court to recover damages for personal injury. The
35 jury returned a verdict for the plaintiff. On motion of the defendant the trial
36 judge set aside the verdict and ordered a new trial on the ground that the
37 verdict was contrary to the weight of the evidence. From this order the
38 plaintiff appeals."

39 There shall follow a statement of the facts relevant to the issues presented for review, with
40 references to the pages of the parts of the record at which material facts appear, as indicated in
41 subdivision (e).

- 42 (4) An argument. The argument may be preceded by a summary. The argument
43 shall contain the contentions of the appellant with respect to the issues
44 presented, and the reasons therefor, with citations to the authorities, statutes
45 and pages of the record relied on.
- 46 (5) A short conclusion stating the precise relief sought.

47 (b) Brief of the Appellee. The brief of the appellee shall conform to the requirements of
48 subdivision (a) (1)-(4), except that a statement of the issues or of the case need not be made
49 unless the appellee is dissatisfied with the statement of the appellant.

1 (c) Reply Brief. The appellant may file a brief in reply to the brief of the appellee. The
2 reply brief shall be confined to new matter raised in the brief of the appellee. No further briefs
3 may be filed except with leave of court.

4 (d) References in Briefs to Parties. Counsel will be expected in their briefs and oral
5 arguments to keep to a minimum references to parties by such formal designations as
6 "appellant" and "appellee." Use of names or descriptive terms such as "the employee," "the
7 injured person," "the 1957 Ford," etc., is preferred.

8 (e) References in Briefs to the Record. Whenever a reference is made in the briefs to
9 the record, the reference must be to particular parts of the record, suitably designated, and to
10 specific pages of each part, e.g., Answer, p. 2; Demurrer, p. 2; Transcript, p. 20. Intelligible
11 abbreviations may be used. If reference is made to an exhibit, reference shall be made to the
12 pages of the transcript on which the exhibit was identified, offered, and received or rejected.

13 (f) Consequence of Failure to File Briefs. If an appellant fails to file his brief within the
14 time provided by Rule 15, or within the time as extended, an appellee may move for dismissal
15 of the appeal. If an appellee fails to file his brief, he will not be heard at oral argument except
16 by permission of the court.

17 (g) Form of Briefs. Briefs may be produced by typewriting or by any duplicating or
18 copying process capable of producing a clear image on white paper. Legible carbon copies of
19 briefs may be used. The typing in briefs shall be double spaced upon standard letter-size sheets,
20 stapled or otherwise attached on the left margin.

21 RULE 14. Hearing of Appeal

22 (a) Setting and Notice of Hearing; Postponement. The clerk shall calendar the appeal
23 for hearing at the next convenient trial or appellate session of Superior Court in his county
24 scheduled to commence after the time for filing briefs has expired, and shall immediately notify
25 all parties of the calendaring.

26 (b) Time Allowed for Argument. Unless otherwise provided by rule of court, each side
27 will be allowed 30 minutes for argument.

28 (c) Reproduction of Statutes, Rules, Regulations, etc. If determination of the issues
29 presented requires the study of statutes, rules, regulations, etc., or relevant parts thereof, they
30 shall be reproduced in the brief or in an addendum, or they may be supplied to the court in
31 pamphlet form.

32 (d) Length of Briefs. Except by permission of the court, briefs shall not exceed 10 pages
33 of standard letter-size sheets, exclusive of pages containing the table of contents, tables of
34 citations and any addendum containing statutes, rules, regulations, etc.

35 RULE 15. Filing and Service of Briefs

36 (a) Time for Filing Briefs. The appellant shall serve and file his brief within 20 days
37 after the date on which the appeal is docketed on the appellate docket of the Superior Court.
38 The appellee shall serve and file his brief within 20 days after the service of the brief of the
39 appellant. The appellant may serve and file a reply brief within 10 days after service of the brief
40 of the appellee, but, except for good cause shown, a reply brief must be filed at least three days
41 before argument.

42 (b) Number of Copies to be Filed and Served. Two copies of each brief shall be filed
43 with the clerk unless otherwise ordered by the court, and one copy of each brief shall be served
44 on counsel for each party separately represented.

45 (c) Order and Content of Argument. The appellant is entitled to open and conclude the
46 argument. The opening argument shall include a fair statement of the case. Counsel will not be
47 expected to read at length from briefs, records or authorities.

48 (d) Nonappearance of Counsel; Failure to File Briefs. If counsel for a party fails to
49 appear to present argument, the court may hear argument on behalf of a party whose counsel is
50 present, and the case will be decided on the briefs unless the court shall otherwise order.

1 (e) Submission on Briefs. By agreement of the parties, a case may be submitted for
2 decision on the briefs, but the court may direct that the case be argued.

3 **RULE 16. Entry of Judgment.**

4 The notation of a judgment in the civil judgment docket constitutes entry of the judgment.
5 The judge shall prepare and sign the judgment and file it with the clerk. Written opinions are
6 not required, but may be filed in the discretion of the judge. The clerk shall promptly mail to all
7 parties a copy of the judgment, with opinion, if any, and notice of the date of entry of the
8 judgment.

9 **RULE 17. Costs**

10 If an appeal is dismissed, costs shall be taxed against the appellant unless otherwise agreed
11 by the parties or ordered by the court. When a judgment is affirmed, costs shall be taxed against
12 the appellant unless otherwise ordered. When a judgment is reversed, costs shall be taxed
13 against the appellee unless otherwise ordered. When a judgment is affirmed or reversed in part,
14 or vacated, costs shall be allowed only as ordered by the court.

15 **RULE 18. Petition for Rehearing** A petition for rehearing, addressed to the judge who heard
16 the appeal, may be filed within 10 days after entry of judgment unless the time is shortened or
17 enlarged by order. The petition shall state with particularity the points of law or fact which in
18 the opinion of the petitioner the court has overlooked or misapprehended. Oral argument in
19 support of the petition will not be permitted. No reply to a petition for rehearing will be
20 received unless requested by the court, but a petition for rehearing will ordinarily not be
21 granted in the absence of such a request. Two copies of the petition shall be filed with the clerk.

22 **Sec. 7A-287. Application of Article.** The provisions of this Article apply in each county of
23 the State on and after the date that a district court is established therein.

24 **Article 25. Jurisdiction and Procedure in Criminal Appeals from District Courts.**

25 **Sec. 7A-288. Appeals From District Court in Criminal Cases; Notice; Appeal Bond.** Any
26 defendant convicted in district court before the judge may appeal to the Superior Court for trial
27 de novo. Notice of appeal may be given orally in open court, or to the clerk within 10 days of
28 entry of judgment. Upon receiving notice of appeal, the clerk shall transfer the case to the
29 Superior Court criminal docket. Appeal bond may be set by the judge in his discretion.

30 **Article 26. Additional Powers of District Court Judges and Magistrates.**

31 **Sec. 7A-291. Additional Powers of District Court Judges.** In addition to the jurisdiction and
32 powers assigned in this Chapter, a district court judge has the following powers:

- 33 (a) To administer oaths;
34 (b) To punish for contempt;
35 (c) To compel the attendance of witnesses and the production of evidence;
36 (d) To set bail;
37 (e) To issue arrest warrants valid throughout the State, and search warrants valid
38 throughout the district of issue; and
39 (f) To issue all process and orders necessary or proper in the exercise of his powers and
40 authority, and to effectuate his lawful judgments and decrees.

41 **Sec. 7A-292. Additional Powers of Magistrates.** In addition to the jurisdiction and powers
42 assigned in this Chapter to the magistrate in civil and criminal actions, each magistrate has the
43 following additional powers:

- 44 (a) To administer oaths;
45 (b) To punish for contempt;
46 (c) When authorized by the chief district judge, to take depositions and examinations
47 before trial;
48 (d) To issue subpoenas and capiases valid throughout the county; and
49 (e) To perform any civil, quasi-judicial or ministerial function assigned by general law
50 to the office of justice of the peace.

51 **SUBCHAPTER VI. REVENUES AND EXPENSES**

1 **OF THE JUDICIAL DEPARTMENT**

2 Article 27. Expenses of the Judicial Department.

3 **Sec. 7A-300. Expenses of the Judicial Department paid from State funds.** (a) The
4 operating expenses of the Judicial Department shall be paid from State funds, out of
5 appropriations for this purpose made by the General Assembly. The Administrative Office of
6 the Courts shall prepare budget estimates to cover these expenses, including therein the
7 following items and such other items as are deemed necessary for the proper functioning of the
8 Judicial Department:

- 9 (1) Salaries, departmental expense, printing and other costs of the Supreme
10 Court;
11 (2) Salaries and expenses of Superior Court Judges, solicitors, and assistant
12 solicitors;
13 (3) Salaries, travel expenses, departmental expense, printing and other costs of
14 the Administrative Office of the Courts;
15 (4) Salaries and travel expenses of district Judges (including holdover Judges),
16 prosecutors, assistant prosecutors, acting prosecutors, magistrates, and
17 family court counselors;
18 (5) Salaries and travel expenses of Clerks of Superior Court, their assistants,
19 deputies, and other employees, and the expenses of their offices, including
20 supplies and materials, postage, telephone and telegraph, bonds and
21 insurance, equipment, and other necessary items;
22 (6) Fees and travel expenses of jurors, and of witnesses required to be paid by
23 the State;
24 (7) Compensation and allowances of court reporters;
25 (8) All other expenses arising out of the operations of the Judicial Department
26 which by law are made the responsibility of the State.

27 (b) The expense items enumerated in (4) through (7) of Subsection (a) shall not be paid
28 from State funds in any judicial district until the district court has been established in the
29 district.

30 **Sec. 7A-301. Disbursement of Expenses of the Judicial Department.** The salaries and
31 expenses of all personnel in the Judicial Department and other operating expenses shall be paid
32 out of the State Treasury upon warrants duly drawn thereon, except that the Administrative
33 Office of the Courts and the Department of Administration, with the approval of the State
34 Auditor, may establish alternative procedures for the prompt payment of juror fees, witness
35 fees, and other small expense items.

36 **Sec. 7A-302. Counties and Municipalities Responsible for Physical Facilities.** In each
37 county in which a district court has been established, courtrooms and related judicial facilities
38 (including furniture), as defined in this subchapter, shall be provided by the county, except that
39 courtrooms and related judicial facilities may, with the approval of the Administrative Officer
40 of the Courts, after consultation with county and municipal authorities, be provided by a
41 municipality in the county. To assist a county or municipality in meeting the expense of
42 providing courtrooms and related judicial facilities, a part of the costs of court, known as the
43 "facilities fee," collected for the State by the Clerk of Superior Court, shall be remitted to the
44 county or municipality providing the facilities.

45 **Sec. 7A-303. Equipment and Supplies in Clerk's Office.** Upon the establishment of the
46 district court in any county, supplies and all equipment in the office of the Clerk of Superior
47 Court shall become the property of the State.

48 Article 28. Uniform Costs and Fees in the Trial Divisions.

49 **Sec. 7A-304. Costs in Criminal Actions.** (a) In every criminal case in the Superior or District
50 Court, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere, or
51 where costs are assessed against the prosecuting witness, the following costs shall be assessed:

- 1 (1) For each arrest or personal service of criminal process, including citations,
2 the sum of two dollars (\$2.00), to be remitted to the county wherein the
3 arrest was made or process was served, except that in those cases in which
4 the arrest was made or process served by a law enforcement officer
5 employed by a municipality, the fee shall be paid to the municipality
6 employing the officer.
- 7 (2) For the use of the courtroom and related judicial facilities, the sum of two
8 dollars (\$2.00) in the district court, including cases before a magistrate, and
9 the sum of fifteen dollars (\$15.00) in Superior Court, to be remitted to the
10 county in which the judgment is rendered. In all cases where the judgment is
11 rendered in facilities provided by a municipality, the facilities fee shall be
12 paid to the municipality. Funds derived from the facilities fees shall be used
13 exclusively by the county or municipality for providing, maintaining, and
14 constructing adequate courtroom and related judicial facilities, including:
15 adequate space and furniture for judges, solicitors, prosecutors, magistrates,
16 juries, and other court-related personnel; office space, furniture and vaults
17 for the clerk; jail and juvenile detention facilities; and a law library
18 (including books) if one has heretofore been established or if the governing
19 body hereafter decides to establish one. In the event the funds derived from
20 the facilities fees exceed what is needed for these purposes, the county or
21 municipality may, with the approval of the Administrative Officer of the
22 Courts as to the amount, use any or all of the excess to retire outstanding
23 indebtedness incurred in the construction of the facilities, or to supplement
24 the operations of the General Court of Justice in the county.
- 25 (3) For the Law Enforcement Officers' Benefit and Retirement Fund, the sum of
26 three dollars (\$3.00), to be remitted to the State Treasurer and administered
27 as provided in Chapter 143, Article 12, of the General Statutes.
- 28 (4) For support of the General Court of Justice, the sum of eight dollars(\$8.00)
29 in the district court, including cases before a magistrate, and the sum of
30 twenty dollars (\$20.00) in the Superior Court, to be remitted to the State
31 Treasurer.

32 (b) On appeal, costs are cumulative, and costs assessed before a magistrate shall be
33 added to costs assessed in the district court, and costs assessed in the district court shall be
34 added to costs assessed in the Superior Court, except that the fee for the Law Enforcement
35 Officers' Benefit and Retirement Fund shall be assessed only once in each case.

36 (c) The costs set forth in this Section are complete and exclusive, and in lieu of any and
37 all other costs and fees, except that witness fees and jail fees shall be assessed as provided by
38 law in addition thereto. Nothing in this Section shall limit the power or discretion of the Judge
39 in imposing fines or forfeitures or ordering restitution.

40 **Sec. 7A-305. Costs in Civil Actions.** (a) In every civil action in the Superior or District Court
41 the following costs shall be assessed:

- 42 (1) For the use of courtroom and related judicial facilities, the sum of two
43 dollars (\$2.00) in cases heard before a magistrate, and the sum of five dollars
44 (\$5.00) in district and Superior Court, to be remitted to the county in which
45 the judgment is rendered, except that in all cases in which the judgment is
46 rendered in facilities provided by a municipality, the facilities fee shall be
47 paid to the municipality. Funds derived from the facilities fees shall be used
48 in the same manner, for the same purposes, and subject to the same
49 restrictions, as facilities fees assessed in criminal actions.
- 50 (2) For support of the General Court of Justice, the sum of twenty dollars
51 (\$20.00) in the Superior Court, and the sum of ten dollars (\$10.00) in the

1 district court, except that in the district court if the amount sued for is more
2 than one hundred dollars (\$100.00) but less than three hundred dollars
3 (\$300.00), excluding interest, the sum shall be six dollars (\$6.00), and if the
4 amount sued for is one hundred dollars (\$100.00) or less, excluding interest,
5 the sum shall be three dollars (\$3.00). Sums collected under this subsection
6 shall be remitted to the State Treasurer.

7 (b) On appeal, costs are cumulative, and when cases heard before a magistrate are
8 appealed to the district court, the General Court of Justice fee and the facilities fee applicable in
9 the district court shall be added to the fees assessed before the magistrate; and when cases in
10 the district court are appealed to the Superior Court, the General Court of Justice fee and the
11 facilities fee applicable in the Superior Court shall be added to the fees assessed in the district
12 court. When an order of the Clerk of the Superior Court is appealed to either the district court
13 or the Superior Court, no additional General Court of Justice fee or facilities fee shall be
14 assessed.

15 (c) The Clerk of Superior Court, at the time of the filing of the papers initiating the
16 action or the appeal, shall collect as advance court costs, the facilities fee and General Court of
17 Justice fee, except in suits in forma pauperis.

18 (d) The uniform costs set forth in this Section are complete and exclusive, and in lieu of
19 any and all other costs and fees, except that the following expenses, when incurred, are also
20 assessable or recoverable, as the case may be:

- 21 (1) Witness fees, as provided by law.
- 22 (2) Jail fees, as provided by law.
- 23 (3) Counsel fees, as provided by law.
- 24 (4) Expense of service of process by certified mail.
- 25 (5) Costs on appeal to the Superior Court, of the original transcript of testimony,
26 if any, insofar as essential to the appeal.
- 27 (6) Fees for personal service of civil process and other sheriff's fees, as provided
28 by law.
- 29 (7) Fees of guardians ad litem, next friends, referees, receivers, commissioners,
30 surveyors, arbitrators, appraisers, and other similar court appointees, as
31 provided by law. The fee of such appointees shall include reasonable
32 reimbursement for stenographic assistance, when necessary.

33 (e) Nothing in this Section shall affect the liability of the respective parties for costs, as
34 provided by law.

35 **Sec. 7A-306. Costs in Special Proceedings.** (a) In every special proceeding in the Superior
36 Court, the following costs shall be assessed:

- 37 (1) For the use of courtroom and related judicial facilities, the sum of two
38 dollars (\$2.00), to be remitted to the county. Funds derived from the
39 facilities fees shall be used in the same manner, for the same purposes, and
40 subject to the same restrictions, as facilities fees assessed in criminal actions.
- 41 (2) For support of the General Court of Justice the sum of thirteen dollars
42 (\$13.00). In addition, in proceedings involving land, except boundary
43 disputes, if the fair market value of the land involved is over one hundred
44 dollars (\$100.00), there shall be an additional sum of twenty cents (20¢) per
45 one hundred dollars (\$100.00) of value, or major fraction thereof, not to
46 exceed a maximum additional sum of one hundred dollars (\$100.00). Fair
47 market value is determined by the sale price if there is a sale, the appraiser's
48 valuation if there is no sale, or the appraised value from the property tax
49 records if there is neither a sale nor an appraiser's valuation. Sums collected
50 under this subsection shall be remitted to the State Treasurer.

1 (b) The facilities fee and thirteen (\$13.00) of the General Court of Justice fee are
2 payable at the time the proceeding is initiated.

3 (c) The uniform costs set forth in this Section are complete and exclusive, and in lieu of
4 any and all other costs, fees, and commissions, except that the following additional expenses,
5 when incurred, are assessable or recoverable, as the case may be:

6 (1) Witness fees, as provided by law.

7 (2) Counsel fees, as provided by law.

8 (3) Costs on appeal, of the original transcript of testimony, if any, insofar as
9 essential to the appeal.

10 (4) Fees for personal service of civil process, and other sheriff's fees, as
11 provided by law.

12 (5) Fees of guardians ad litem, next friends, referees, receivers, commissioners,
13 surveyors, arbitrators, appraisers, and other similar court appointees, as
14 provided by law. The fees of such appointees shall include reasonable
15 reimbursement for stenographic assistance, when necessary.

16 (6) Fees for a special jury, if any, at two dollars (\$2.00) per special juror for
17 each proceeding.

18 (d) Costs assessed before the clerk shall be added to costs assessable on appeal to the
19 Judge or upon transfer to the civil issue docket.

20 (e) Nothing in this Section shall affect the liability of the respective parties for costs, as
21 provided by law.

22 **Sec. 7A-307. Costs in Administration of Estates.** (a) In the administration of the estates of
23 decedents, minors, incompetents, of missing persons, and of trusts under wills and under
24 powers of attorney, the following costs shall be assessed:

25 (1) For the use of courtroom and related judicial facilities, the sum of two
26 dollars (\$2.00), to be remitted to the county. Funds derived from the
27 facilities fees shall be used in the same manner, for the same purposes, and
28 subject to the same restrictions, as facilities fees assessed in criminal actions.

29 (2) For support of the General Court of Justice the sum of eight dollars (\$8.00),
30 plus an additional ten cents (10¢) per one hundred dollars (\$100.00), or major
31 fraction thereof, of the gross estate. Gross estate shall include the fair market
32 value of all personalty when received, and all proceeds from the sale of
33 realty coming into the hands of the fiduciary, but shall not include the value
34 of realty. This fee shall be computed from the information reported in the
35 inventory and shall be paid when the inventory is filed with the clerk. If
36 additional gross estate, including income, comes into the hands of the
37 fiduciary after the filing of the inventory, the fee for such additional value
38 shall be assessed and paid upon the filing of any account or report disclosing
39 such additional value. For each filing the minimum fee shall be one dollar
40 (\$1.00). In no case shall the cumulative fee exceed one thousand dollars
41 (\$1,000.00). Sums collected under this subsection shall be remitted to the
42 State Treasurer.

43 (b) The facilities fee and eight dollars (\$8.00) of the General Court of Justice fee shall
44 be paid at the time of qualification of the fiduciary.

45 (c) The uniform costs set forth in this Article are complete and exclusive, and in lieu of
46 any and all other costs, fees, and commissions, except that the following additional expenses,
47 when incurred, are also assessable or recoverable, as the case may be:

48 (1) Witness fees, as provided by law.

49 (2) Counsel fees, as provided by law.

50 (3) Costs on appeal, of the original transcript of testimony, if any, insofar as
51 essential to the appeal.

- 1 (4) Fees for personal service of civil process, and other sheriff's fees, as
- 2 provided by law.
- 3 (5) Fees of guardians ad litem, next friends, referees, receivers, commissioners,
- 4 surveyors, arbitrators, appraisers, and other similar court appointees, as
- 5 provided by law.

6 (d) Costs assessed before the clerk shall be added to costs assessable on appeal to the
7 Judge or upon transfer to the civil issue docket.

8 (e) Nothing in this Section shall affect the liability of the respective parties for costs, as
9 provided by law.

10 **Sec. 7A-308. Miscellaneous Fees and Commissions.** (a) The following miscellaneous fees
11 and commissions shall be collected by the Clerk of the Superior Court and remitted to the State
12 for the support of the General Court of Justice:

- 13 (1) Commitment of the mentally ill, mentally retarded
- 14 and inebriates \$10.00
- 15 (2) Foreclosure under power of sale deed of trust
- 16 or mortgage 10.00
- 17 (3) Inventory of safe deposits of a decedent 5.00
- 18 (4) Proceeding supplemental to execution 5.00
- 19 (5) Confession of judgment 4.00
- 20 (6) Taking a deposition 3.00
- 21 (7) Registration of professional and technical persons 2.00
- 22 (8) Execution 2.00
- 23 (9) Notice of resumption of maiden name 2.00
- 24 (10) Taking an acknowledgment or administering an oath,
- 25 or both, with or without seal, each certificate 1.00
- 26 (11) Bond, taking justification or approving 1.00
- 27 (12) Certificate, under seal 1.00
- 28 (13) Recording or docketing (including indexing) any
- 29 document, per page or fraction thereof 1.00
- 30 (14) Preparation of copies, including transcripts,
- 31 per page or fraction thereof 1.00
- 32 (15) Substitution of trustee in deed of trust 1.00
- 33 (16) Issuing pistol permit 1.00
- 34 (17) Probate of any instrument..... .50
- 35 (18) On all funds placed with the clerk by virtue of his office, to be administered
- 36 by him according to the provisions of G.S. 2-53 or G.S. 28-68, a three per cent (3%)
- 37 commission.

38 (b) The fees and commissions set forth in this Article are not chargeable when the
39 service is performed as a part of the regular disposition of any action or special proceeding or
40 the administration of an estate. When a transaction involves more than one of the services set
41 forth in this Article, only the greater service fee shall be charged.

42 (c) The miscellaneous fees and commissions enumerated in this Section are complete
43 and exclusive, and in lieu of any and all other miscellaneous fees and commissions.

44 **Sec. 7A-309. Magistrate's Special Fees.** The following special fees shall be collected by the
45 magistrate and remitted to the Clerk of the Superior Court for the use of the State in support of
46 the General Court of Justice:

- 47 (a) Performing marriage ceremony..... \$4.00
- 48 (b) Hearing petition for year's allowance to surviving spouse
- 49 or child, issuing notices to commissioners, allotting
- 50 the same, and making return 4.00
- 51 (c) Taking a deposition 3.00

- 1 (d) Proof of execution or acknowledgment of any instrument50
- 2 (e) Performing any other statutory function not incident
- 3 to a civil or criminal action 1.00

4 **Sec. 7A-310. Fees of Commissioners and Assessors Appointed by Magistrate.** Any person
 5 appointed by a magistrate as a commissioner or assessor, and who shall serve, shall be paid the
 6 sum of two dollars (\$2.00), to be taxed as a part of the bill of costs of the proceeding.

7 **Sec. 7A-311. Uniform Civil Process Fees.** (a) In a civil action or special proceeding, the
 8 following fees and commissions shall be assessed, collected, and remitted to the county:

- 9 (1) For each item of civil process, including summons, subpoenas, notices,
 10 motions, orders, writs and pleadings, served, or attempted to be served, two
 11 dollars (\$2.00). When a complaint is served with the summons, only one two
 12 dollar (\$2.00) fee shall be charged. When an item of civil process is served
 13 on two or more persons or organizations, a separate service charge shall be
 14 made for each person or organization. This subsection shall not apply to
 15 service of summons to jurors.
- 16 (2) For the seizure of personal property and its care after seizure, all necessary
 17 expenses, in addition to any fees for service of process.
- 18 (3) For all sales of property, either real or personal, or for funds collected by the
 19 sheriff under any judgment, five per cent (5%) on the first five hundred
 20 dollars (\$500.00), and two and one-half per cent (2 1/2 %) on all sums over
 21 five hundred dollars (\$500.00), plus necessary expenses of sale.
- 22 (4) For execution of a judgment of ejectment, all necessary expenses, in addition
 23 to any fees for service of process.
- 24 (5) For each appraiser or commissioner, a fee of seven dollars (\$7.00) per day,
 25 or fraction thereof, in addition to any fee for service of process, except that
 26 in unusual circumstances an appraiser's fee or surveyor's fee may be set by
 27 the Clerk of Superior Court in his discretion.
- 28 (6) For necessary transportation of individuals to or from State institutions or
 29 another state, the same mileage and subsistence allowances as are provided
 30 for State employees.

31 (b) All fees shall be collected in advance (except in suits in forma pauperis) except
 32 those contingent on expenses or sales prices. When the fee is not collected in advance or at the
 33 time of assessment, a lien shall exist in favor of the county on all property of the party owing
 34 the fee. If the fee remains unpaid it shall be entered as a judgment against the debtor and shall
 35 be docketed in the judgment docket in the office of the Clerk of Superior Court.

36 (c) The process fees and commissions set forth in this Section are complete and
 37 exclusive and in lieu of any and all other process fees and commissions in civil actions and
 38 special proceedings.

39 **Sec. 7A-312. Uniform Fees for Jurors.** A juror in the General Court of Justice, except a juror
 40 in a special proceeding, shall receive seven dollars (\$7.00) per day, and reimbursement for
 41 travel expense at the rate currently authorized for State employees, for each mile necessarily
 42 traveled from his place of residence to the court and return, each day. A juror required to
 43 remain overnight at the site of the trial shall be furnished adequate accommodations and
 44 subsistence in lieu of daily mileage. A juror in a special proceeding shall receive two dollars
 45 (\$2.00) for each proceeding.

46 **Sec. 7A-313. Uniform Jail Fees.** Any person lawfully confined in jail awaiting trial shall be
 47 liable to the county or municipality maintaining the jail in the sum of two dollars (\$2.00) for
 48 each day's confinement, or fraction thereof, except that a person so confined shall not be liable
 49 for this fee if a nolle prosequi is entered, or if acquitted, or if judgment is arrested, or if
 50 probable cause is not found, or if the grand jury fails to return a true bill.

1 **Sec. 7A-314. Uniform Fees for Witnesses; Experts; Limit on Number.** A witness under
2 subpoena, or bound over, or recognized, other than a salaried State, county, or municipal law
3 enforcement officer, whether to testify before the court, grand jury, magistrate, clerk, referee,
4 commissioner or arbitrator, shall receive three dollars (\$3.00) per day, or fraction thereof,
5 during his attendance. A witness entitled to this fee shall also receive reimbursement for travel
6 expenses, at the rate currently authorized for State employees, for each mile necessarily
7 traveled from his place of residence to the place of appearance and return, each day. An expert
8 witness shall receive such compensation and allowances as the court, in its discretion, may
9 authorize. If more than two witnesses shall be subpoenaed, bound over, or recognized, to prove
10 a single material fact, the expense of the additional witnesses shall be borne by the party
11 issuing or requesting the subpoena.

12 **Sec. 7A-315. Liability for Witness Fees When Defendant not Liable.** In a criminal action, if
13 no prosecuting witness is designated by the court as liable for the costs, and the defendant is
14 acquitted, or convicted and unable to pay, or a nolle prosequi is entered, or judgment is
15 arrested, or probable cause is not found, or the grand jury fails to return a true bill, the State
16 shall be liable for the witness fees.

17 **Sec. 7A-316. Payment of Witness Fees in Criminal Actions.** A witness in a criminal action
18 who is entitled to a witness fee and who proves his attendance shall be paid by the clerk from
19 State funds and the amount disbursed shall be assessed in the bill of costs, unless the State is
20 liable for the fee, except that if more than two witnesses shall be subpoenaed, bound over, or
21 recognized, to prove a single material fact, disbursements to such additional witnesses shall be
22 charged against the party issuing or requesting the subpoena.

23 **Sec. 7A-317. Determination and Disbursement of Costs on and After Date District Court**
24 **Established.** (a) On and after the date that the district court is established in a judicial district,
25 costs in every action, proceeding or other matter pending in the General Court of Justice in that
26 district, shall be assessed as provided in this Article, unless costs have been finally assessed
27 according to prior law. In computing costs as provided in this Section, the parties shall be given
28 credit for any fees, costs, and commissions paid in the pending action, proceeding or other
29 matter, before the district court was established in the district, except that no refunds are
30 authorized.

31 (b) In the administration of estates, costs shall be considered finally assessed according
32 to prior law when they have been assessed at the time of the filing of any inventory, account, or
33 other report. Costs at any filing on or after the date the district court is established in a judicial
34 district shall be assessed as provided in this Article.

35 (c) When the General Court of Justice fee and the facilities fee are assessed as provided
36 in this Article and credit is given for fees, costs, and commissions paid before the district court
37 was established in the district, the actual amount thereafter received by the clerk shall be
38 remitted to the State for the support of the General Court of Justice.

39 (d) When costs have been finally assessed according to prior law, but come into the
40 hands of the clerk after the district court is established in the district, funds so received shall be
41 disbursed according to prior law.

42 (e) Cost funds in the hands of the clerk at the time the district court is established shall
43 be disbursed according to prior law.

44 **Sec. 7A-318. Application of Article.** The provisions of this Article apply in each county of
45 the State on and after the date that a district court is established therein.

46 **SUBCHAPTER VII ADMINISTRATIVE OFFICE OF THE COURTS**

47 **Article 29. Administrative Office of the Courts.**

48 **Sec. 7A-340. Administrative Office of the Courts; Establishment; Officers.** There is hereby
49 established a State office to be known as the Administrative Office of the Courts. It shall be
50 supervised by a Director, assisted by an Assistant Director.

1 **Sec. 7A-341. Director; Appointment; Compensation.** The Director shall be appointed by the
2 Chief Justice of the Supreme Court, to serve at his pleasure. He shall receive nineteen thousand,
3 five hundred dollars (\$19,500.00) per year, payable monthly, and reimbursement for travel and
4 subsistence expenses on the same basis as State employees generally. Service as Director shall
5 be equivalent to service as a Superior Court Judge for the purposes of entitlement to retirement
6 pay or to retirement for disability.

7 **Sec. 7A-342. Assistant Director; Other Employees.** The Assistant Director shall also be
8 appointed by the Chief Justice, to serve at his pleasure. The Assistant Director shall receive
9 thirteen thousand dollars (\$13,000.00) per year, payable monthly.

10 The Director may appoint such other assistants and employees, subject to the provisions of
11 the State Personnel Act, as are necessary to enable him to perform the duties of his office.

12 **Sec. 7A-343. Duties of Director.** The Director is the Administrative Officer of the Courts, and
13 his duties include the following:

14 (a) Collect and compile statistical data and other information on the judicial and
15 financial operation of the courts and on the operation of other offices directly related to and
16 serving the courts;

17 (b) Determine the state of the dockets and evaluate the practices and procedures of the
18 courts, and make recommendations concerning the number of judges, solicitors, prosecutors
19 and magistrates required for the efficient administration of justice;

20 (c) Prescribe uniform administrative and business methods, systems, forms and records
21 to be used in the offices of the Clerks of Superior Court;

22 (d) Prepare and submit budget estimates of State appropriations necessary for the
23 maintenance and operation of the Judicial Department, and authorize expenditures from funds
24 appropriated for these purposes;

25 (e) Investigate, make recommendations concerning, and assist in the securing of
26 adequate physical accommodations for the General Court of Justice;

27 (f) Procure, distribute, exchange, transfer, and assign such equipment, books, forms and
28 supplies as are to be acquired with State funds for the General Court of Justice;

29 (g) Make recommendations for the improvement of the operations of the Judicial
30 Department;

31 (h) Prepare and submit an annual report on the work of the Judicial Department to the
32 Chief Justice, and transmit a copy to each member of the General Assembly;

33 (i) Assist the Chief Justice in performing his duties relating to the transfer of district
34 court judges for temporary or specialized duty; and

35 (j) Perform such additional duties and exercise such additional powers as may be
36 prescribed by statute or assigned by the Chief Justice.

37 **Sec. 7A-344. Duties of Assistant Director.** The Assistant Director is the administrative
38 assistant to the Chief Justice, and his duties include the following:

39 (a) Assist the Chief Justice in performing his duties relating to the assignment of
40 Superior Court Judges;

41 (b) Assist the Supreme Court in preparing calendars of Superior Court trial sessions;
42 and

43 (c) Performing such additional functions as may be assigned by the Chief Justice or the
44 Director of the Administrative Office.

45 **Sec. 7A-345. Information to be Furnished to Administrative Officer of the Courts.** All
46 Judges, solicitors, prosecutors, magistrates, Clerks of Superior Court and other officers or
47 employees of the courts and of offices directly related to and serving the courts shall on request
48 furnish to the Administrative Officer information and statistical data relative to the work of the
49 courts and of such offices and relative to the receipt and expenditure of public monies for the
50 operation thereof.

Article 30. Transitional Matters.

1
2 **Sec. 7A-400. Venue Transfers into Counties Having no District Court.** When a civil or
3 criminal action is for any reason of venue transferred from a county wherein a district court has
4 been established to a county wherein a district court has not been established, the action shall
5 be placed on the criminal docket or the civil issue docket of the Superior Court of the county to
6 which transfer is made. The Superior Court of the county to which transfer is made is hereby
7 given jurisdiction to determine the action without regard to any other provisions of law
8 pertaining to jurisdiction.

9 **Sec. 7A-401. Venue Transfers into Counties Having District Court.** When a civil or
10 criminal action is for any reason of venue transferred from a county wherein a district court has
11 not been established to a county wherein a district court has been established, the action shall
12 be docketed in the Superior Court Division of the county to which transfer is made. The
13 Superior Court Division of the county to which transfer is made is hereby constituted the
14 proper division for, and is hereby given jurisdiction to, determine the action without regard to
15 any other provision of law pertaining to jurisdiction or proper forum.

16 **Sec. 2.** Paragraph 2 of G.S. 50-13, as set forth in the 1963 Cumulative Supplement
17 to Volume 2A of the General Statutes, is amended by deleting the words "special proceeding"
18 in line four thereof, and substituting therefor the words "civil action."

19 **Sec. 3.** Partial Invalidity. If any provision of this Act or the application thereof to
20 any person or circumstances is held invalid, such invalidity shall not affect other provisions or
21 applications of the Act which can be given effect without the invalid provision or application,
22 and to this end the provisions of this Act are declared to be severable.

23 **Sec. 4.** G.S. 7-43.1, 7-43.2, and 7-43.3 are repealed effective the first Monday in
24 December, 1966. G.S. 7-29.1, 114-11.1, the second paragraph of G.S. 143-6, and all other laws
25 and clauses of laws in conflict with this Act are hereby repealed.

26 **Sec. 5.** Effective Date. Except as otherwise provided in this Act, this Act shall
27 become effective on July 1, 1965.

28 In the General Assembly read three times and ratified, this the 27th day of April,
29 1965.