

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 517
Committee Substitute Favorable 5/25/11

Short Title: Magistrates/Calendarng.

(Public)

Sponsors:

Referred to:

March 30, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR THE APPOINTMENT OF CHIEF MAGISTRATES, TO
3 PROVIDE FOR ADDITIONAL DISCIPLINE OF MAGISTRATES, TO PROVIDE FOR
4 A STUDY ON THE METHOD OF APPOINTING MAGISTRATES, AND TO PROVIDE
5 FOR CERTAIN CONTROL OF CALENDARING IN SUPERIOR COURT BY THE
6 SENIOR RESIDENT SUPERIOR COURT JUDGE.

7 The General Assembly of North Carolina enacts:

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

9 "**§ 7A-146. Administrative authority and duties of chief district judge.**

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

14 ...

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

26 ...

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

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

35 "**§ 7A-173. ~~Suspension; Suspension pending a hearing; removal; removal or suspension~~**
36 **from duties; reinstatement.**



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

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

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

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

37 **SECTION 3.** The Administrative Office of the Courts, in consultation with the
38 Conference of Superior Court Judges, the Conference of District Court Judges, the Conference
39 of Clerks of Superior Court, and the North Carolina Magistrates Association, shall study the
40 issue of whether the State constitutional provision that the senior resident superior court judge
41 shall appoint magistrates from nominations by the Clerk of Superior Court should continue as
42 the method for appointment of magistrates, or whether an amendment to the State Constitution
43 to provide for a different method would be both practical in light of the current responsibilities
44 of officers of the court and lead to better efficiencies in the administration of justice. The
45 Administrative Office of the Courts shall submit a report of its findings and recommendations,
46 including any legislative recommendations, to the 2012 Regular Session of the General
47 Assembly upon its convening.

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

49 "(c) Definite Trial Date. – When a case has not otherwise been scheduled for trial within
50 120 days of indictment or of service of notice of indictment if required by law, then upon
51 motion by the defendant at any time thereafter, the senior resident superior court judge, or a

1 superior court judge designated by the senior resident superior court judge, may hold a hearing
2 for the purpose of establishing a trial date for the defendant. Notwithstanding the establishment
3 of a trial date under this subsection, if a case has not been tried within nine months after the
4 defendant has been indicted or bound over to superior court, the senior resident superior court
5 judge may give notice to the district attorney and the defendant's attorney and schedule a trial
6 conference for trial of the case, unless the district attorney provides good cause that the case is
7 not yet ready for trial."

8 **SECTION 5.** Sections 1, 3 and this section of the act are effective when this act
9 becomes law. The remainder of this act becomes effective January 1, 2012.