

City of Alexandria, Virginia

MEMORANDUM

DATE: FEBRUARY 23, 2006
TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL
FROM: JAMES K. HARTMANN, CITY MANAGER 
SUBJECT: MAGISTRATE SALARY SUPPLEMENT

ISSUE: Magistrate Salary Supplement

RECOMMENDATION: That City Council approve a 50% salary supplement for the Magistrates and authorize the Office of the Magistrate to over-expend its budget in FY 2006 pending the June transfer resolution.

BACKGROUND: Alexandria Chief Magistrate George Ball has requested that the City consider providing a local supplement to the pay of Alexandria Magistrates. The City has seven magistrates (five are full-time and two are part-time). The Magistrates' Office is located at the Public Safety Center, and the Magistrates work in shifts, seven days a week, 24 hours a day. The Magistrates are appointed by and supervised by the Chief Judge of the Alexandria Circuit Court. Their main duties are to make legal determinations on the issuance of arrest warrants, civil warrants and subpoenas and the admission to bail or commitment to jail. The practice in Alexandria has been to appoint attorneys to Magistrate position to ensure that the incumbents have legal training and can become fully qualified to make the determinations that are part of their job.

DISCUSSION: In his request to the City Alexandria Chief Magistrate George Ball asked for the City to provide salary supplements to the Magistrates. Currently they are paid only the State salary of \$41,547 (for full time positions). Alexandria is the only major Northern Virginia jurisdiction that does not supplement Magistrate salaries. The State salary is a relatively low one as compared to the responsibilities of the positions, the qualifications required, and competition with surrounding jurisdictions in the Northern Virginia area. Currently, both Loudoun and Fauquier Counties provide the maximum 50% supplement as allowed by state law. In addition, Fairfax County provides a 25% supplement, Arlington County provides a 24% supplement and Prince William County provides a 3% supplement in conjunction with a \$150,000 grant distributed among the Magistrate staff. It is extremely important that we retain experienced and well-qualified Magistrates, since their legal decisions are so key to the criminal and civil justice process.

A 50% salary supplement would allow the average full-time Magistrate salary in Alexandria to be increased from \$41,547 currently to \$62,321. Part-time Magistrate salaries also would be increased proportionately.

Loudoun County is one of the fastest growing areas in Virginia and will need to hire more Magistrates in the future. State mandates require that Northern Virginia Magistrates live in contiguous jurisdictions to the jurisdiction in which they serve. Thus far, five Alexandria Magistrates live in Fairfax County and three of these Magistrates have been approached by Loudoun County (a contiguous jurisdiction). Others have been approached by Prince William County. This is significant because 6 of the 7 Alexandria Magistrates come up for renewal of their terms of office (4 years) on 6/30/06. This supplement is necessary to keep the City of Alexandria competitive, continue to attract attorneys to these positions and provide high quality service, and to prevent turnover.

FISCAL IMPACT: Approximately \$43,000 in FY 2006 and \$130,000 in FY 2007 (assumed in Proposed FY 2007 Budget).

STAFF:

George Ball, Chief Magistrate

Michele Evans, Deputy City Manager

The Office Of Magistrate

History and Purpose

The office of magistrate traces its development through centuries of English and American history. Many of the duties now performed by magistrates were once carried out by justices of the peace. However, the office of justice of the peace was phased out in 1974, and the Virginia magistrate system was established as part of a statewide court reorganization plan. While magistrates are not judges possessing trial jurisdiction they are an integral part of the judicial system and are judicial officers of the Commonwealth of Virginia. The principal function of the magistrate is to provide an independent, unbiased review of complaints brought to the office by police officers, sheriffs, deputies, and citizens. Magistrates are not police officers nor are they in any way connected with law enforcement. Instead, magistrates are issuing officers who serve as a buffer between law enforcement and society. Most magistrates are not lawyers; however, they are specially trained to perform such duties as issuing search warrants, subpoenas, arrest warrants, summonses, and setting bail. In addition, magistrates may assist the public by providing information on the judicial system processes and procedures.

Appointment, Operation, and Jurisdiction

While justices of the peace were generally elected officials, the only method of selection of a magistrate is by appointment. Chief circuit court judges are responsible for appointing magistrates who serve for four year terms and may be reappointed. Any persons who are United States citizens and residents of the judicial district (or a contiguous district) for which they are seeking appointment are eligible to become magistrates unless precluded from appointment because of a statutory conflict of interest such as having a spouse who is a law enforcement officer. The number of magistrates in each district is authorized by the Committee on District Courts and must be sufficient for the effective administration of justice.

The chief circuit court judge has full supervisory authority over magistrates but may delegate this authority to the chief general district court judge. Each district has a chief magistrate who exercises direct daily supervision over the magistrates within the district.

The large urban areas generally utilize fulltime magistrates who work on a shift basis to maintain an open office twenty-four hours a day. In contrast, the majority of rural magistrates work on an availability basis and are contacted as needed by citizens or law enforcement officers. In some areas, magistrates work a fixed schedule during the day and are "on call" during night hours.

Magistrates have no power to take any action unless authority has been expressly conferred by statute. Magistrates have the following powers:

- To issue arrest warrants.
- To issue search warrants.
- To admit to bail or commit to jail.
- To issue warrants and subpoenas.
- To issue civil warrants.
- To administer oaths and take acknowledgements.

- To act as a conservator of the peace.
 - To accept prepayment for traffic and certain minor misdemeanor offenses.
 - To issue emergency custody orders.
 - To issue temporary mental detention orders.
 - To issue medical emergency temporary detention orders.
 - To issue emergency protective orders.
 - To issue out of service orders.
- As a general rule, magistrates may exercise their authority only within the borders of their judicial district.

Responsibilities of the Magistrate

To appreciate the role of a magistrate in the judicial process, it is necessary to understand how magistrates perform their basic duties.

To issue arrest warrants. Before magistrates can issue an arrest warrant in a criminal case, they must use their discretion to decide if there is "probable cause" to issue a process. Probable cause is a reasonable belief, based on facts, that would cause a prudent person to feel that the accused committed the offense. To determine probable cause, magistrates must decide that there are facts logically indicating that the accused committed an offense and there must be some basis for determining that the facts are reliable. The facts are obtained from the complaint which consists of sworn statements of a citizen or a law enforcement officer relating to the commission of an alleged offense. These statements are made under oath before a magistrate, and the magistrate may require the sworn statements to be reduced to writing and signed. If the magistrate decides that probable cause exists, an arrest warrant will be issued so that the accused may be brought to trial.

To issue search warrants. When magistrates issue a search warrant, they are giving a law enforcement officer authority to conduct a search to aid an official investigation. The officer seeking the search warrant must make a complaint, under oath, stating the purpose of the search to the magistrate. The complaint must be supported by a written affidavit from the officer. In issuing the search warrant, the magistrate must describe the place to be searched, the property or person to be searched for, and state that the magistrate has found probable cause to believe that the property or person constitutes evidence of a crime or tends to show that a person has committed a crime.

To admit to bail or commit to jail. Bail procedures exist to enable an accused to stay out of jail and to insure that the accused will appear for trial. Magistrates decide the terms of bail by examining certain facts about the accused such as the nature and circumstances of the offense charged, whether a firearm is alleged to have been used in the offense, weight of the evidence, character of the accused, the accused's family ties, employment, financial resources, length of residence in the community, involvement in education, and past record. If possible, the magistrate will release the accused on a written promise to appear in court with or without an unsecured bail bond. If, after examination of these facts, magistrates are not reasonably sure that accused will appear for trial, the magistrates, in their discretion, will require the execution of a bail bond with surety in a reasonable amount and may impose such other conditions deemed reasonably necessary to insure appearance at trial. The monetary sum of the bail bond can be forfeited as penalty if the accused fails to appear in court or violates any condition of bail. Under certain circumstances the magistrate may commit the accused to jail without bail pending arraignment.

To issue warrants and subpoenas. In addition to a magistrates also have authority to issue summonses in misdemeanor cases. The magistrate will issue a summons in lieu of an arrest warrant if the magistrate believes the accused will appear in court as a result of the summons. In executing the summons, the law enforcement officer must arrest the accused. The accused, however, must appear in court at the time and place specified in the summons. A magistrate is authorized to notify witnesses that they must appear in court at the time specified in the subpoena. The court may issue a capias subpoena to appear in court pursuant either to a summons or a subpoena. A capias subpoena requires the arrest of the accused and a subsequent hearing before the magistrate. At the hearing triggered by the subpoena, the court may fine or jail the person for failing to appear in court may fine or jail the person for failing to appear in court.

To issue civil warrants. Civil cases involve disputes between individuals, corporations, or groups of individuals. The role of the magistrate is to recover money damages or to require a party to perform an act. The role of the magistrate is to recover money damages or to require a party to perform an act. The role of the magistrate is to recover money damages or to require a party to perform an act. The role of the magistrate is to recover money damages or to require a party to perform an act.

To accept prepayment for certain offenses. Magistrates have authority to accept prepayments for certain traffic and minor offenses such as speeding and unlawful swearing and to accept prepayment in lieu of an arrest warrant. Prepayment is allowed, the accused may plead guilty, go to a court hearing, and pay an established fine and court costs. Prepayments made to magistrates must be made before the magistrate, however, the individual may call the magistrate to determine the exact amount of the prepayment.

To issue emergency custody orders. Magistrates have authority to issue emergency custody orders upon probable cause that a person is mentally ill and in need of hospitalization. This order authorizes law enforcement to take the person to a hospital. The order authorizes law enforcement to take the person to a hospital. The order authorizes law enforcement to take the person to a hospital. The order authorizes law enforcement to take the person to a hospital.

To issue temporary mental detention orders. Magistrates have authority to issue temporary mental detention orders upon probable cause that a person is mentally ill and in need of hospitalization. This order authorizes law enforcement to take the person to a hospital. The order authorizes law enforcement to take the person to a hospital. The order authorizes law enforcement to take the person to a hospital.

To issue medical emergency temporary detention orders. Magistrates have authority to issue medical emergency temporary detention orders upon probable cause that a person is mentally ill and in need of hospitalization. This order authorizes law enforcement to take the person to a hospital. The order authorizes law enforcement to take the person to a hospital. The order authorizes law enforcement to take the person to a hospital.

A magistrate may issue this order upon a probable cause if the person needing medical assistance is an adult and is making an informed decision regarding treatment of a physical disorder. The magistrate also must find that the medical standard of care for testing, observation, or treatment of the injury or illness is such that the person needs medical attention within twenty-four hours to prevent death, disability, or a serious condition. This order allows detention of, and medical attention for, the person for a period of twenty-four hours after service of the order.

Emergency protective orders. A law enforcement officer may issue this type of order in family abuse cases. Magistrates or judges may issue this order if they find reasonable grounds to believe that a person has committed an assault and battery or an act of family abuse against a family or household member and there is probable danger of further family abuse. In this order, the magistrate may: prohibit the abuser from committing further acts of assault and battery; grant a protective order to the victim to the exclusion of the abuser; require the abuser to leave the residence of the abuser and the victim. The order must be issued within twenty-four hours after issuance. If the expiration of the 72-hour order is not in session, the order is extended to the next business day that the juvenile court is in session. **Out-of-service orders.** Magistrates must issue out-of-service orders if they find that a person has operated a commercial motor vehicle having any measurable amount of alcohol in his or her system. Using this order, the magistrate prohibits the operator from operating a commercial motor vehicle for a period of twenty-four hours.

Advice

Magistrates will try to assist you by providing general information, but they are generally not attorneys and cannot give legal advice. If you wish to retain your own attorney or obtain legal advice but do not have an attorney, you may obtain the name and telephone number of an attorney by calling the Virginia State Bar Referral Service by calling toll-free number: 800-552-7977 or 804-775-0808.

Information for Individuals with Disabilities

The System has adopted a policy of non-discrimination in both its facilities, services, programs, and in access to its facilities, services, programs, and individuals with disabilities who need accommodation in order to participate in court system functions. Individuals with disabilities who need accommodation in order to participate in court system functions may request assistance from court system staff. Individuals who are employed by the court system or who believe they have been discriminated against in either employment or in access may file a complaint with the Virginia State Bar through local court system officials. Those who need printed materials may request them in another format or who have questions about the court system's non-discrimination policies may contact the Office of the Executive Secretary, Supreme Court, 100 North Ninth Street, Third Floor, Richmond, Virginia. Telephone number is (804) 786-6455; communication through a telephone device (TDD) is also available at this number.

For more information, see the following World Wide Web home page address:
<http://www.courts.state.va.us>

