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## **MEMORANDUM**

To: NCPA Members  
From : C. Amanda Martin  
Date: April 3, 2017  
Re: Legal Notice Advertising

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In recent weeks, I have gotten a number of calls on the NCPA Hotline about the requirements for a newspaper to be eligible to publish legal notice advertising under North Carolina law. I've attached the statute here. Because the statute is decades old and awkward, I have translated its language to laymen's terms. To accept legal notice advertising, a newspaper must be:

1. of **general circulation**;<sup>1</sup>
2. circulating to **actual paid subscribers**;<sup>2</sup>
3. admitted to the **U.S. mails, Periodicals class in the county or political subdivision where such publication, advertisement or notice is required to be published**;<sup>3</sup>
4. and published at least **once a week for 25 of the most recent 26 weeks**.

Any newspaper that accepts legal notice advertising must be prepared to sign an affidavit swearing that the newspaper meets all of the requirements and qualifications set out in the statute. A newspaper accepting legal advertising may not charge for the ad at a rate above "the local commercial rate of the newspapers." That must file your rate with the clerk of court and should update that every year.

If you have any questions about this issue, please call the NCPA Hotline at 919-833-3833 or email me at amartin@smvt.com.

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<sup>1</sup> This means that it is a "general interest" newspaper, not a specialty paper like The Auto Trader.

<sup>2</sup> Neither the statute nor the case law spells out number or particular percentage of circulation that must be paid, but you can assume that it must be something more than a nominal base of paying subscribers.

<sup>3</sup> A newspaper only admitted to the Periodicals class in Wake County could not publish a legal that had to run in Mecklenburg County. To get a Periodicals Class permit, you must have a physical office in a location. The instruction for the Periodicals class permit application says: "You must maintain a known office of publication at the location where the original entry Post Office™ for Periodicals mailing privileges is authorized. The known office of publication is a public office where normal business of the publication is conducted during normal posted business hours. You must keep circulation records of the publication at the office or make them available upon request at that office for review by Postal Service personnel." In a glossary of postal terms, the USPS defines "entry" as "The point or facility where a mailer presents items or, in some cases, verified mail to USPS for acceptance and subsequent processing as mail."

## Article 50.

### General Provisions as to Legal Advertising.

#### **§ 1-595. Advertisement of public sales.**

When a statute or written instrument stipulates that an advertisement of a sale shall be made for any certain number of weeks, a publication once a week for the number of weeks so indicated is a sufficient compliance with the requirement, unless contrary provision is expressly made by the terms of the instrument. (1909, cc. 794, 875; C.S., s. 924.)

#### **§ 1-596. Charges for legal advertising.**

The publication of all advertising required by law to be made in newspapers in this State shall be paid for at not to exceed the local commercial rate of the newspapers selected. Any public or municipal officer or board created by or existing under the laws of this State that is now or may hereafter be authorized by law to enter into contracts for the publication of legal advertisements is hereby authorized to pay therefor prices not exceeding said rates.

No newspaper in this State shall accept or print any legal advertising until said newspaper shall have first filed with the clerk of the superior court of the county in which it is published a sworn statement of its current commercial rate for the several classes of advertising regularly carried by said publication, and any owner or manager of a newspaper violating the provisions of this section shall be guilty of a Class 1 misdemeanor. (1919, c. 45, ss. 1, 2; C.S., s. 2586; 1945, c. 635; 1949, c. 205, s. 1 1/2; 1993, c. 539, s. 3; 1994, Ex. Sess., c. 24, s. 14(c).)

#### **§ 1-597. Regulations for newspaper publication of legal notices, advertisements, etc.**

Whenever a notice or any other paper, document or legal advertisement of any kind or description shall be authorized or required by any of the laws of the State of North Carolina, heretofore or hereafter enacted, or by any order or judgment of any court of this State to be published or advertised in a newspaper, such publication, advertisement or notice shall be of no force and effect unless it shall be published in a newspaper with a general circulation to actual paid subscribers which newspaper at the time of such publication, advertisement or notice, shall have been admitted to the United States mails in the Periodicals class in the county or political subdivision where such publication, advertisement or notice is required to be published, and which shall have been regularly and continuously issued in the county in which the publication, advertisement or notice is authorized or required to be published, at least one day in each calendar week for at least 25 of the 26 consecutive weeks immediately preceding the date of the first publication of such advertisement, publication or notice; provided that in the event that a newspaper otherwise meeting the qualifications and having the characteristics prescribed by G.S. 1-597 to 1-599, should fail for a period not exceeding four weeks in any calendar year to publish one or more of its issues such newspaper shall nevertheless be deemed to have complied with the requirements of regularity and continuity of publication prescribed herein. Provided further, that where any city or town is located in two or more adjoining counties, any newspaper published in such city or town shall, for the purposes of G.S. 1-597 to 1-599, be deemed to be admitted to the mails, issued and published in all such counties in which such town or city of publication is located, and every publication, advertisement or notice required to be published in any such city or town or in any of the counties where such city or town is located shall be valid if published in a newspaper published, issued and admitted to the mails anywhere within any such city or town, regardless of whether the newspaper's plant or the post office where the newspaper is admitted to the mails is in such county or not, if the newspaper otherwise meets the qualifications and

requirements of G.S. 1-597 to 1-599. This provision shall be retroactive to May 1, 1940, and all publications, advertisements and notices published in accordance with this provision since May 1, 1940, are hereby validated.

Notwithstanding the provisions of G.S. 1-599, whenever a notice or any other paper, document or legal advertisement of any kind or description shall be authorized or required by any of the laws of the State of North Carolina, heretofore or hereafter enacted, or by any order or judgment of any court of this State to be published or advertised in a newspaper qualified for legal advertising in a county and there is no newspaper qualified for legal advertising as defined in this section in such county, then it shall be deemed sufficient compliance with such laws, order or judgment by publication of such notice or any other such paper, document or legal advertisement of any kind or description in a newspaper published in an adjoining county or in a county within the same district court district as defined in G.S. 7A-133 or superior court district or set of districts as defined in G.S. 7A-41.1, as the case may be; provided, if the clerk of the superior court finds as a fact that such newspaper otherwise meets the requirements of this section and has a general circulation in such county where no newspaper is published meeting the requirements of this section. (1939, c. 170, s. 1; 1941, c. 96; 1959, c. 350; 1985, c. 689, s. 1; 1987 (Reg. Sess., 1988), c. 1037, s. 41; 1997-9, s. 1.)

**§ 1-598. Sworn statement prima facie evidence of qualifications; affidavit of publication.**

Whenever any owner, partner, publisher, or other authorized officer or employee of any newspaper which has published a notice or any other paper, document or legal advertisement within the meaning of G.S. 1-597 has made a written statement under oath taken before any notary public or other officer or person authorized by law to administer oaths, stating that the newspaper in which such notice, paper, document, or legal advertisement was published, was, at the time of such publication, a newspaper meeting all of the requirements and qualifications prescribed by G.S. 1-597, such sworn written statement shall be received in all courts in this State as prima facie evidence that such newspaper was at the time stated therein a newspaper meeting the requirements and qualifications of G.S. 1-597. When filed in the office of the clerk of the superior court of any county in which the publication of such notice, paper, document or legal advertisement was required or authorized, any such sworn statement shall be deemed to be a record of the court, and such record or a copy thereof duly certified by the clerk shall be prima facie evidence that the newspaper named was at the time stated therein a qualified newspaper within the meaning of G.S. 1-597. Nothing in this section shall preclude proof that a newspaper was or is a qualified newspaper within the meaning of G.S. 1-597 by any other competent evidence. Any such sworn written statement shall be prima facie evidence of the qualifications on any newspaper at the time of any publication of any notice, paper, document, or legal advertisement published in such newspaper at any time from and after the first day of May, 1940.

The owner, a partner, publisher or other authorized officer or employee of any newspaper in which such notice, paper, document or legal advertisement is published, when such newspaper is a qualified newspaper within the meaning of G.S. 1-597, shall include in the affidavit of publication of such notice, paper, document or legal advertisement a statement that at the time of such publication such newspaper was a qualified newspaper within the meaning of G.S. 1-597. (1939, c. 170, s. 1 1/2; 1947, c. 213, ss. 1, 2.)

**§ 1-599. Application of two preceding sections.**

The provisions of G.S. 1-597 and G.S. 1-598 shall not apply in counties wherein only one newspaper is published, although it may not be a newspaper having the qualifications prescribed by G.S. 1-597; nor shall the provisions of G.S. 1-597 and G.S. 1-598 apply in any county wherein none of the newspapers published in such county has the qualifications and characteristics prescribed in G.S. 1-597. (1939, c. 170, ss. 2, 4 1/2; 1941, c. 49; 1985, c. 609, s. 1.)

**§ 1-600. Proof of publication of notice in newspaper; prima facie evidence.**

(a) Publication of any notice permitted or required by law to be published in a newspaper may be proved by a printed copy of the notice together with an affidavit made before some person authorized to administer oaths, of the publisher, proprietor, editor, managing editor, business or circulation manager, advertising, classified advertising or any other advertising manager or foreman of the newspaper, showing that the notice has been printed therein and the date or dates of publication. If the newspaper is published by a corporation, the affidavit may be made by one of the persons hereinbefore designated or by the president, vice president, secretary, assistant secretary, treasurer, or assistant treasurer of the corporation.

(b) Such affidavit and copy of the notice shall constitute prima facie evidence of the facts stated therein concerning publication of such notice.

(c) The method of proof of publication of a notice provided for in this section is not exclusive, and the facts concerning such publication may be proved by any competent evidence. (1951, c. 1005, s. 2; 1957, c. 204.)

**§ 1-601. Certain legal advertisements validated.**

Legal advertisements published prior to June 1, 1983, by a newspaper that met every requirement for publication of legal notices and advertisements under G.S. 1-597 when the advertisement was published except that the newspaper had a second class United States mail permit in a county adjacent to the county in which the advertisement was published instead of the county in which it was published may not be held to be invalid because of the lack of a second class United States mail permit in the proper county. (1983, c. 582, s. 2.)

**§ 1-602. Reserved for future codification purposes.**

**§ 1-603. Reserved for future codification purposes.**

**§ 1-604. Reserved for future codification purposes.**