

March 4, 1999

S 246. APPEAL OR TRANSFER FROM CLERK (=H 300). *TO CLARIFY AND REVISE THE PROCEDURES GOVERNING APPEALS OR TRANSFERS FROM CLERKS OF SUPERIOR COURT TO TRIAL COURTS AND TO MAKE CONFORMING AND CLARIFYING AMENDMENTS TO OTHER RELATED SECTIONS OF THE GENERAL STATUTES, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.*

Repeals current antiquated statutes on appeal and transfer from the clerk and replaces them with a new Art. 27A of GS Chapter 1, which for the most part codifies current statutory and case law regarding appeals and transfers from the clerk. (1) With regard to civil actions, provides that aggrieved party may appeal from the clerk's order or judgment, in writing, within 10 days for a trial de novo in the appropriate trial court. Clerk's order remains in effect until modified by an order of the judge. Provides that the judge determines all matters in controversy but may remand to clerk or order clerk to take an action if judge determines that matter involves an action that can be taken only by the clerk or justice would be more efficiently administered by the judge's disposing of only matter appealed. (2) With regard to special proceedings, provides that if an issue of fact, an equitable defense, or request for equitable relief is raised in a pleading (or in an adoption proceeding in a pleading or written motion), clerk transfers the proceeding to the appropriate court except clerk does not transfer proceedings for incompetency or restoring competency or foreclosure proceedings. Once transferred, the judge may decide all matters in controversy unless the judge determines that justice would be more efficiently administering by disposing of only the matter leading to the transfer and then remanding the special proceeding to the clerk. If no such issue is raised in a pleading, the clerk decides all matters in controversy. If the special proceeding is heard by the clerk, provides that aggrieved party may appeal the clerk's judgment or order, within 10 days, to the appropriate court for a de novo hearing. Provides that order of clerk remains in effect when proceeding is appealed, but clerk or judge may stay the order upon the posting of a bond. Provides that the issue in a partition proceeding of whether to order partition in kind or sale of the property is determined by the clerk but may be appealed immediately even though not a final order. (3) With respect to administration of estates of decedents, incompetents, and minors and administration of testamentary trusts, requires the clerk to determine all issues of fact and law and specifies that clerk's order must contain findings of fact and conclusions of law. Allows aggrieved party to appeal, in writing, to superior court within 10 days of entry of the order with appeal specifying the basis for appeal. Allows judge or clerk to issue a stay of the order upon posting of a bond, but allows clerk to issue orders affecting estate administration while case is on appeal unless judge limits that authority. Superior court review of the clerk's order is limited to determining if the clerk's findings of fact are supported by the evidence, if the conclusions of law are supported by the findings, and if the order is consistent with the conclusions of law and applicable law. If the judge finds prejudicial error in admission of evidence, judge may remand to clerk for a subsequent hearing or if the record is sufficient, resolve the matter on the basis of the record. If the record is insufficient, allows the judge to hear additional evidence on the issue. Requires judge to remand case to clerk after matter on appeal is determined for clerk to continue to administer estate. Provides for recordation of estate hearings on request of a party or in discretion of clerk. Makes conforming and clarifying amendments to various other provisions in the General Statutes that refer to appeals from the clerk. Effective Jan. 1, 2000; applies to orders entered on or after that date.

Intro. by Hartsell.

Ref. to Judiciary I

GS 1, 32A, 36A, 44A, 48, 65, 101, 105, 156

April 19, 1999

S 246. APPEAL OR TRANSFER FROM CLERK. Intro. 3/4/99. Senate committee substitute makes the following changes to 1st edition. Provides that recording of estate matters before the clerk to be by electronic recording device instead of by any appropriate means authorized by the Administrative Office of the Courts and makes technical changes.

April 20, 1999

S 246. APPEAL OR TRANSFER FROM CLERK. Intro. 3/4/99. Senate amendment makes the following changes to 2nd edition. Makes technical changes only.

May 13, 1999

S 246. APPEAL OR TRANSFER FROM CLERK. Intro. 3/4/1999. House committee substitute makes the following changes to 3rd edition. Makes clarifying amendment to GS 1-301.2(h). Adds GS 46-19(b) to provide if an exception to the report of commissioners is filed, the clerk shall do one of the following: (1) confirm the report; (2) recommit the report for correction or further consideration; (3) vacate the report and direct a reappraisal by the same commissioners; or (4) vacate the report, discharge the commissioners, and appoint new commissioners to view the premises and make a partition of them. Adds GS 46-19(c) to provide that appeal from clerk to superior court of an order of confirmation of the report of commissioners is governed by GS 1-301.2 except that the judge may take only the four actions listed above under GS 46-19(b).