

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

H

D

HOUSE BILL 470
Second Edition Engrossed 4/11/19
PROPOSED SENATE COMMITTEE SUBSTITUTE H470-PCS10715-TT-49

Short Title: Administration of Justice Changes.

(Public)

Sponsors:

Referred to:

March 28, 2019

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE VARIOUS CHANGES AND TECHNICAL CORRECTIONS TO THE
3 LAW GOVERNING THE ADMINISTRATION OF JUSTICE.

4 The General Assembly of North Carolina enacts:

5
6 **PART I. PROPOSED STATUTORY CHANGES, AS RECOMMENDED BY THE**
7 **ADMINISTRATIVE OFFICE OF THE COURTS**

8 **SECTION 1.** G.S. 7A-52(a) reads as rewritten:

9 "(a) Judges of the district court and judges of the superior court who have not reached the
10 mandatory retirement age specified in G.S. 7A-4.20, but who have retired under the provisions
11 of G.S. 7A-51, or under the Uniform Judicial Retirement Act after having completed five years
12 of creditable service, may apply as provided in G.S. 7A-53 to become emergency judges of the
13 court from which they retired. From the commissioned emergency district, superior, and special
14 superior court judges, the Chief Justice of the Supreme Court shall create two lists of active
15 emergency judges and two lists of inactive emergency judges. For emergency superior and
16 special superior court judges, the active list shall be limited to a combined total of 10 emergency
17 judges; all other emergency superior and special superior court judges shall be on an inactive list.
18 For emergency district court judges, the active list shall be limited to 25 emergency judges; all
19 other emergency district court judges shall be on an inactive list. There is no limit to the number
20 of emergency judges on either inactive list. In the Chief Justice's discretion, emergency judges
21 may be added or removed from their respective active and inactive lists, as long as the respective
22 numerical limits on the active lists are observed. The Chief Justice is requested to consider
23 geographical distribution in assigning emergency judges to an active list but may utilize any
24 factor in determining which emergency judges are assigned to an active list. The Chief Justice of
25 the Supreme Court may order any emergency district, superior, or special superior court judge
26 on an active list who, in his opinion, is competent to perform the duties of a judge, to hold regular
27 or special sessions of the court from which the judge retired, as needed. Order of assignment
28 shall be in writing and entered upon the minutes of the court to which such emergency judge is
29 assigned. An emergency judge shall only be assigned in the event of a:

- 30 (1) Death of a sitting judge.
31 (2) Disability or medical leave of absence of a sitting judge.
32 (3) Recall to active military duty of a sitting judge.
33 (4) Retirement or removal of a sitting judge.
34 (5) Court case-management ~~emergency~~-emergency or disaster declaration made
35 pursuant to G.S. 166A-19.3(3).



* H 4 7 0 - P C S 1 0 7 1 5 - T T - 4 9 *

- 1 (6) Assignment by the Chief Justice of a Rule 2.1 exceptional case to an
2 emergency judge.
3 (7) Court coverage need created by holdover sessions, administrative
4 responsibilities of the chief district court judge, or cases in which a judge has
5 a conflict or judicial educational responsibilities."

6 **SECTION 2.(a)** G.S. 7A-38.2(f) reads as rewritten:

7 "(f) In connection with any investigation or hearing conducted pursuant to an application
8 for certification or qualification of any mediator, other neutral, or training program, or conducted
9 pursuant to any disciplinary matter, the chair of the Dispute Resolution Commission or ~~his/her~~
10 the chair's designee, may do any of the following:

- 11 (1) Administer oaths and affirmations;affirmations.
12 (2) Sign and issue subpoenas in the name of the Dispute Resolution Commission
13 or direct its executive secretary to issue such subpoenas on its behalf requiring
14 attendance and the giving of testimony by witnesses and the production of
15 books, papers, and other documentary evidenee;evidence.
16 (3) Apply to the General Court of Justice, Superior Court Division, for any order
17 necessary to enforce the powers conferred in this section, including an order
18 for injunctive relief pursuant to G.S. 1A-1, Rule 65, when a certified
19 mediator's conduct necessitates prompt action.
20 (4) Assess and collect an administrative fee from any person who appeals an
21 adverse determination to the full Commission for a hearing and fails to attend
22 the hearing without good cause as determined by the chair of the Commission.
23 The fee assessed shall be the lesser of the Commission's actual expenses for
24 the hearing or two thousand five hundred dollars (\$2,500). The fees collected
25 shall be deposited in the Dispute Resolution Fund established pursuant to
26 subsection (d) of this section."

27 **SECTION 2.(b)** This section becomes effective December 1, 2019, and applies to
28 hearings held on or after that date.

29 **SECTION 3.(a)** Article 11 of Chapter 7A of the General Statutes is amended by
30 adding a new section to read:

31 "**§ 7A-98. Unsworn declarations under penalty of perjury.**

32 (a) Whenever in connection with any proceeding in the General Court of Justice under
33 any law of North Carolina or pursuant to any rule, regulation, order, or requirement promulgated
34 thereunder, any matter is required or permitted to be supported, evidenced, established, or proved
35 in writing under oath or affirmation, such matter may, with like force and effect, be supported,
36 evidenced, established, or proved by an unsworn declaration in writing, subscribed by the
37 declarant and dated, that the statement is true under penalty of perjury.

38 (b) This section does not apply to, and such unsworn declarations shall not be deemed
39 sufficient for:

- 40 (1) Oral testimony.
41 (2) Oaths of office.
42 (3) Any statement under oath or affirmation required to be taken before a
43 specified official other than a notary public.

44 (c) Declarations given pursuant to this section shall be deemed sufficient if given in
45 substantially the following form:

46 "I declare (or certify, verify, or state) under penalty of perjury under the laws of North Carolina
47 that the foregoing is true and correct. Executed on (date). (Signature)."

48 (d) If rules promulgated by the Supreme Court pursuant to G.S. 7A-49.5 authorize
49 electronic filing and electronic signatures in any proceeding in the General Court of Justice, any
50 written declaration made pursuant to this section in connection with the proceeding may be in
51 electronic format and electronically signed in conformity with those rules."

1 SECTION 3.(b) G.S. 14-209 reads as rewritten:

2 "§ 14-209. Punishment for perjury.

3 If any person shall willfully and corruptly commit perjury, on his or her oath or affirmation,
4 affirmation or in any unsworn declaration in substantially the form prescribed by G.S. 7A-98, in
5 any suit, controversy, matter or cause, depending in any of the courts of the State, or in any
6 deposition or affidavit taken pursuant to law, or in any oath or affirmation duly administered of
7 or concerning any matter or thing whereof such person is lawfully required to be sworn or
8 affirmed, every person so offending shall be punished as a Class F felon."

9 SECTION 3.(c) Article 17 of Chapter 1 of the General Statutes is amended by adding
10 a new section to read:

11 "§ 1-148.1. Unsworn declarations under penalty of perjury for verification of pleadings.

12 In lieu of an affidavit for verification, a pleading may, with like force and effect, be supported,
13 evidenced, established, or proved by an unsworn declaration in substantially the form prescribed
14 by G.S. 7A-98."

15 SECTION 3.(d) Article 1 of Chapter 15A of the General Statutes is amended by
16 adding a new section to read:

17 "§ 15A-101.2. Unsworn declarations under penalty of perjury.

18 Whenever in connection with any criminal action or infraction under any law of North
19 Carolina or pursuant to any rule, regulation, order, or requirement promulgated thereunder, any
20 matter is required or permitted to be supported, evidenced, established, or proved in writing under
21 oath or affirmation, such matter may, with like force and effect, be supported, evidenced,
22 established, or proved by an unsworn declaration in substantially the form prescribed by
23 G.S. 7A-98."

24 SECTION 3.(e) This section becomes effective 30 days after the Director of the
25 Administrative Office of the Courts certifies to the North Carolina Supreme Court that the
26 Administrative Office of the Courts is ready to begin implementation of an integrated case
27 management system adopted pursuant to the e-Courts initiative.

28 SECTION 4. G.S. 7A-308 reads as rewritten:

29 "§ 7A-308. Miscellaneous fees and commissions.

30 (a) The following miscellaneous fees and commissions shall be collected by the clerk of
31 superior court and remitted to the State for the support of the General Court of Justice:

- 32 ...
- 33 (11) Recording or docketing (including indexing) any document
- 34 - first page..... 6.00
- 35 - each additional page or fraction thereof 25
- 36 ...

37 (b2) The fees set forth in subdivision (11) of subsection (a) of this section are not
38 chargeable when service is performed or documents are filed pursuant to the provisions of ~~G.S.~~
39 ~~14-112.3~~G.S. 14-112.3, or when an attorney is designating a period of secure leave pursuant to
40 rules adopted by the Supreme Court of North Carolina.

41"

42 SECTION 5.(a) G.S. 7A-343 reads as rewritten:

43 "§ 7A-343. Duties of Director.

44 The Director is the Administrative Officer of the Courts, and the Director's duties include all
45 of the following:

- 46 ...
- 47 (8a) Prepare and submit ~~a semiannual~~ an annual report on the activities of each
48 North Carolina business court site to the Chief Justice, the chairs of the House
49 of Representatives Appropriations Committee on Justice and Public Safety and the Senate Appropriations Committee on Justice and Public Safety, the
50 chairs of the of the Joint Legislative Oversight Committee on Justice and
51

1 Public Safety, and all other members of the General Assembly on February 4
2 ~~and August 1, 1~~. The report shall include the following information for each
3 business court site:

- 4 a. The number of new, closed, and pending cases for the previous three
5 years.
- 6 b. The average age of pending cases.
- 7 c. The number of motions pending over six months after being filed.
- 8 d. The number of cases in which bench trials have been concluded for
9 over six months without entry of judgment, including any
10 accompanying explanation provided by the Business Court.

11 The ~~August 1~~ report shall include an accounting of all business court activities
12 for the previous fiscal year, including the itemized annual expenditures.

13"

14 **SECTION 5.(b)** G.S. 7A-346.2 reads as rewritten:

15 "**§ 7A-346.2. Various reports to General Assembly.**

16 ...

17 (b) ~~The Administrative Office of the Courts shall report by April 1 of each odd-numbered~~
18 ~~year to the Chairs of the Senate and House Appropriations Committees and the Chairs of the~~
19 ~~Senate and House Appropriations Subcommittees on Justice and Public Safety on the economic~~
20 ~~viability of the worthless check collection programs established by district attorneys pursuant to~~
21 ~~G.S. 14-107.2, including an assessment of whether any adjustments need to be made to ensure~~
22 ~~that the programs, on a statewide basis, are self-supporting.~~

23"

24 **SECTION 5.(c)** G.S. 7A-346.3 is repealed.

25 **SECTION 6.** G.S. 15A-502(f) reads as rewritten:

26 "(f) If a person is charged with an offense for which fingerprints are required pursuant to
27 this section but the person is not arrested for that offense, the court before which the charge is
28 pending shall order the defendant to submit to fingerprinting by the Sheriff or other appropriate
29 law enforcement agency at the earliest practical opportunity. If the person fails to appear for
30 fingerprinting as ordered by the court, the ~~sheriff~~ Sheriff or other designated agency shall so
31 inform the court, and the court may initiate proceedings for criminal contempt against the person
32 pursuant to G.S. 5A-15, including issue of an order for arrest pursuant to G.S. 5A-16, if
33 necessary. The defendant shall continue to be subject to the court's order to provide fingerprints
34 until submitted."

35 **SECTION 7.(a)** G.S. 15A-1452 reads as rewritten:

36 "**§ 15A-1452. Execution of sentence upon determination of appeal; compliance with**
37 **directive of appellate court.**

38 (a) If an appeal is ~~withdrawn~~, withdrawn for a judgment that imposed an active sentence
39 or imposed only monetary obligations without probation, the clerk of superior court must enter
40 an order reflecting that fact and directing compliance with the judgment.

41 (a1) If an appeal is withdrawn for a judgment that imposed a suspended sentence, the clerk
42 of superior court shall notify the district attorney, who shall calendar a review hearing as required
43 in subsection (d) of this section.

44 (b) If the appellate division affirms ~~the judgment~~ in whole or in ~~part~~, part a judgment that
45 imposed an active sentence or imposed only monetary obligations without probation, the clerk
46 of superior court must file the directive of the appellate division and order compliance with its
47 terms.

48 (b1) If the appellate division affirms a judgment that imposed a suspended sentence, the
49 clerk of superior court shall file the directive of the appellate division and bring the matter to the
50 attention of the district attorney, who shall calendar a review hearing as provided in subsection
51 (d) of this section.

1 (c) If the appellate division orders a new trial or directs other relief or proceedings, the
2 clerk must file the directive of the appellate court and bring the directive to the attention of the
3 district attorney or the court for compliance with the directive.

4 (d) When notified by the clerk as provided in this section, the district attorney shall
5 calendar a hearing in superior court for review of the judgment imposed. The defendant shall be
6 entitled to be present and represented by counsel to the same extent as in the original sentencing
7 hearing.

8 (1) At the review hearing, the court shall enter an order directing compliance with
9 the judgment either as imposed or as modified as provided in this subsection.
10 The defendant's period of probation shall commence as of the date of the
11 court's order.

12 (2) If the defendant's ability to comply with any date or period of time specified
13 in the original judgment has become impractical or impossible due to the
14 pendency of the appeal, the court may modify those dates in order to give
15 effect to the original judgment as closely as possible.

16 (3) The court shall not modify the judgment other than to adjust dates or periods
17 for compliance as provided in subdivision (2) of this subsection, unless the
18 court otherwise complies with the procedures for modification of probation in
19 G.S. 15A-1344."

20 **SECTION 7.(b)** This section becomes effective December 1, 2019, and applies to
21 any mandate of the appellate division received in the trial division on or after that date.

22 **SECTION 8.** G.S. 20-217(g2) reads as rewritten:

23 "(g2) Pursuant to G.S. 20-54, failure of a person to pay any fine or costs imposed pursuant
24 to this section shall result in the Division withholding the registration renewal of a motor vehicle
25 registered in that person's name. The clerk of superior court in the county in which the case was
26 disposed shall notify the Division of any person who fails to pay a fine or costs imposed pursuant
27 to this section within ~~20~~40 days of the date specified in the court's judgment, as required by
28 G.S. 20-24.2(a)(2). The Division shall continue to withhold the registration renewal of a motor
29 vehicle until the clerk of superior court notifies the Division that the person has satisfied the
30 conditions of G.S. 20-24.1(b) applicable to the person's case. The provisions of this subsection
31 shall be in addition to any other actions the Division may take to enforce the payment of any fine
32 imposed pursuant to this section."

33 **SECTION 9.** G.S. 84-32(a) reads as rewritten:

34 "(a) In cases heard by the disciplinary hearing commission or any committee thereof, the
35 proceedings shall be recorded by a certified court reporter and an official copy of all exhibits
36 introduced into evidence shall be made and preserved in the office of the secretary-treasurer.
37 Final judgments of censure, whether issued by the State Bar Grievance Committee or the
38 disciplinary hearing commission, and final orders of suspension or disbarment issued by the
39 disciplinary hearing commission shall be entered upon the judgment docket of the superior court
40 in the district wherein the respondent resides or practices law, and also upon the minutes of the
41 Supreme Court of North Carolina; and the judgment shall be effective throughout the State. Final
42 determinations of incapacity or disability, whether issued by the State Bar Grievance Committee
43 or the disciplinary hearing commission, shall be entered upon the judgment docket of the superior
44 court in the same manner as final judgments of censure, suspension, or disbarment, and the
45 determination shall be effective throughout the State."

46 **SECTION 10.(a)** G.S. 105A-8(b) reads as rewritten:

47 "**§ 105A-8. State agency notice, hearing, decision, and refund of setoff.**

48 "(b) Hearing. – A hearing on a contested claim of a State agency, except the Judicial
49 Branch or a constituent institution of The University of North Carolina or the Division of
50 Employment Security, must be conducted in accordance with Article 3 of Chapter 150B of the
51 General Statutes. A hearing on a contested claim of a unit of the Judicial Branch must be

1 conducted in accordance with the administrative procedures approved by the Director of the
2 North Carolina Administrative Office of the Courts and the Director of Indigent Defense
3 Services. The clerk of superior court in any county where a judgment has been docketed shall
4 have original jurisdiction to hear a contested claim and the matter may not be transferred to the
5 district or superior court. The Director of the North Carolina Administrative Office of the Courts
6 or his or her designee shall have original jurisdiction to hear a contested claim of the Judicial
7 Branch not arising out of docketed judgment. A hearing on a contested claim of a constituent
8 institution of The University of North Carolina must be conducted in accordance with
9 administrative procedures approved by the Attorney General. A hearing on a contested claim of
10 the Division of Employment Security must be conducted in accordance with rules adopted by
11 that Division. A request for a hearing on a contested claim of any State agency must be filed
12 within 30 days after the State agency mails the debtor notice of the proposed setoff. A request
13 for a hearing is considered to be filed when it is delivered for mailing with postage prepaid and
14 properly addressed. In a hearing under this section, an issue that has previously been litigated in
15 a court proceeding cannot be considered."

16 **SECTION 10.(b)** G.S. 105A-9 reads as rewritten:

17 **"§ 105A-9. Appeals from hearings.**

18 Appeals from hearings allowed under this Chapter, other than those conducted by the Judicial
19 Branch and the Division of Employment Security, shall be in accordance with the provisions of
20 Chapter 150B of the General Statutes, the Administrative Procedure Act, except that the place of
21 initial judicial review shall be the superior court for the county in which the debtor resides. A
22 party aggrieved by an order or decision of a hearing conducted by the clerk of superior court or
23 the Director of the North Carolina Administrative Office of the Courts or his or her designee
24 under this Article may, within 10 days of entry of the order, appeal to the superior court for a
25 hearing de novo. Notice of appeal shall be in writing and shall be filed with the clerk of superior
26 court in the county where the order was entered. Appeals from hearings allowed under this
27 Chapter that are conducted by the Division of Employment Security shall be in accordance with
28 the provisions of Chapter 96 of the General Statutes."

29 **SECTION 10.(c)** G.S. 7A-498.6(b) reads as rewritten:

30 **"§ 7A-498.6. Director of Indigent Defense Services.**

31 ...

32 (b) The Director shall:

- 33 (1) Prepare and submit to the Commission a proposed budget for the Office of
34 Indigent Defense Services, an annual report containing pertinent data on the
35 operations, costs, and needs of the Office, and such other information as the
36 Commission may require;
- 37 (2) Assist the Commission in developing rules and standards for the delivery of
38 services under this Article;
- 39 (3) Administer and coordinate the operations of the Office and supervise
40 compliance with standards adopted by the Commission;
- 41 (4) Subject to policies and procedures established by the Commission, hire such
42 professional, technical, and support personnel as deemed reasonably
43 necessary for the efficient operation of the Office of Indigent Defense
44 Services;
- 45 (5) Keep and maintain proper financial records for use in calculating the costs of
46 the operations of the Office of Indigent Defense Services;
- 47 (6) Apply for and accept on behalf of the Office of Indigent Defense Services any
48 funds that may become available from government grants, private gifts,
49 donations, or devises from any source;
- 50 (6a) Collaborate with the Director of the Administrative Office of the Courts in
51 developing administrative procedures pursuant to G.S. 105A-8(b);

- (7) Coordinate the services of the Office of Indigent Defense Services with any federal, county, or private programs established to provide assistance to indigent persons in cases subject to this Article and consult with professional bodies concerning improving the administration of indigent services;
- (8) Conduct training programs for attorneys and others involved in the legal representation of persons subject to this Article;
- (8a) Administer the Sentencing Services Program established in Article 61 of this Chapter; and
- (9) Perform other duties as the Commission may assign.

...."

SECTION 10.(d) This section becomes effective July 1, 2020, and applies to notices issued on or after that date.

PART II. PROPOSED STATUTORY CHANGES, AS RECOMMENDED BY THE CONFERENCE OF SUPERIOR COURT CLERKS

SECTION 11.(a) G.S. 7A-307 reads as rewritten:

"§ 7A-307. Costs in administration of estates.

(a) In the administration of the estates of decedents, minors, incompetents, of missing persons, in the administration of trusts under wills and under powers of attorney, in trust proceedings under G.S. 36C-2-203, in estate proceedings under G.S. 28A-2-4, in power of attorney proceedings under G.S. 32C-1-116(a), and in collections of personal property by affidavit, the following costs shall be assessed:

...

(2b) Notwithstanding subdivisions (1) and (2) of this subsection, ~~no costs shall be the only cost assessed when the estate is administered or settled pursuant to G.S. 28A-25-6.~~ G.S. 28A-25-6 shall be a fee of twenty dollars (\$20.00) to be assessed upon filing of the application.

...

(b1) The clerk shall assess the following miscellaneous fees:

- (1) Filing and indexing a will with no probate
 - first page \$ 1.00
 - each additional page or fraction thereof 25
- (2) Issuing letters to fiduciaries, per letter over five letters issued 1.00
- (3) Inventory of safe deposits of a decedent, per box, per day 15.00
- (4) Taking a deposition 10.00
- (5) Docketing and indexing a will probated in another county in the State
 - first page 6.00
 - each additional page or fraction thereof 25
- (6) Hearing petition for year's allowance to surviving spouse or child, in cases not assigned to a magistrate, and allotting the same ~~8.00~~ 20.00

...."

SECTION 11.(b) G.S. 7A-309 reads as rewritten:

"§ 7A-309. Magistrate's special fees.

The following special fees shall be collected by the magistrate and remitted to the clerk of superior court for the use of the State in support of the General Court of Justice:

- (1) Performing marriage ceremony ~~\$20.00~~ \$50.00
- (2) Hearing petition for year's allowance to surviving spouse or child, issuing notices to commissioners, allotting the same, and making return ~~8.00~~ 20.00
- (3) Taking a deposition 10.00
- (4) Proof of execution or acknowledgment of any instrument 2.00

(5) Performing any other statutory function not incident to a civil or criminal action \$ 2.00."

SECTION 11.(c) This section becomes effective January 1, 2020, and applies to petitions filed on or after that date.

SECTION 12.(a) G.S. 7A-308(a) reads as rewritten:

"(a) The following miscellaneous fees and commissions shall be collected by the clerk of superior court and remitted to the State for the support of the General Court of Justice:

- (1) Foreclosure under power of sale in deed of trust or mortgage.....\$300.00
If the property is sold under the power of sale, an additional amount will be charged, determined by the following formula: forty-five cents (.45) per one hundred dollars (\$100.00), or major fraction thereof, of the final sale price. If the amount determined by the formula is less than ten dollars (\$10.00), a minimum ten dollar (\$10.00) fee will be collected. If the amount determined by the formula is more than five hundred dollars (\$500.00), a maximum five hundred-dollar (\$500.00) fee will be collected.

(1a) In rem foreclosures conducted under G.S. 105-375, if the property is sold under execution\$300.00

...."

SECTION 12.(b) G.S. 105-375 reads as rewritten:

"§ 105-375. In rem method of foreclosure.

(b) Docketing Certificate of Taxes as Judgment. – In lieu of following the procedure set forth in G.S. 105-374, the governing body of any taxing unit may direct the tax collector to file with the clerk of superior court, no earlier than 30 days after the tax liens were advertised, a certificate showing the following: the name of the taxpayer as defined in G.S. 105-273(17), for each parcel on which the taxing unit has a lien for unpaid taxes, together with the amount of taxes, penalties, interest, and costs that are a lien thereon; the year or years for which the taxes are due; and a description of the property sufficient to permit its identification by parol testimony. The fees for docketing and indexing the certificate assessed pursuant to G.S. 7A-308(a)(11) shall be payable to the clerk of superior court at the time the taxes are collected or the property is sold.

(i1) Fee. – The fee assessed in G.S. 7A-308(a)(1a) shall be payable to the clerk of superior court out of the sale proceeds at the time the property is sold.

SECTION 12.(c) This section becomes effective December 1, 2019, and applies to execution sales conducted on or after that date.

SECTION 13. G.S. 7A-809 is repealed.

SECTION 14. G.S. 11-7.1(a) reads as rewritten:

"(a) Except as otherwise specifically required by statute, an oath of office may be administered by any of the following:

- (1) A justice, judge, magistrate, clerk, assistant clerk, or deputy clerk of the General Court of Justice, a retired justice or judge-justice, judge, or clerk of the General Court of Justice, or any member of the federal judiciary;judiciary.
(2) The Secretary of State;State.
(3) A notary public;public.
(4) A register of deeds;deeds.
(5) A mayor of any city, town, or incorporated village;village.
(5a) A chairman of the board of commissioners of any county;county.
(6) A member of the House of Representatives or Senate of the General Assembly;Assembly.

(7) The clerk of any county, city, town or incorporated village."

SECTION 15. G.S. 28A-25-6(f) reads as rewritten:

"(f) If no administrator has been appointed, the clerk of superior court shall ~~shall~~, upon motion of the clerk or upon the application of an interested party, disburse the money received under this section for the following purposes and in the following order:

(1) To pay the surviving spouse's year's allowance and children's year's allowance assigned in accordance with ~~law~~;law.

(2), (3) Repealed by Session Laws 1981, c. 383, s. 3.

(4) All other claims shall be disbursed according to the order set out in G.S. 28A-19-6.

Notwithstanding the foregoing provisions of this subsection, the clerk shall pay, out of funds provided the deceased pursuant to G.S. 111-18 and Part 3 of Article 2 of Chapter 108A of the General Statutes of North Carolina, any lawful claims for care provided by an adult care home to the deceased, incurred not more than 90 days prior to the deceased's death. After the death of a spouse who died intestate and after the disbursements have been made in accordance with this subsection, the balance in the clerk's hands belonging to the estate of the decedent shall be paid to the surviving spouse, and if there is no surviving spouse, the clerk shall pay it to the heirs in proportion to their respective interests."

SECTION 16. G.S. 42-34 reads as rewritten:

"§ 42-34. Undertaking on appeal and order staying execution.

...

(c) In an ejectment action based upon alleged nonpayment of rent where the judgment is entered more than five ~~working-business~~ days before the day when the next rent will be due under the lease, the appellant shall make an additional undertaking to stay execution pending appeal. Such additional undertaking shall be the payment of the prorated rent for the days between the day that the judgment was entered and the next day when the rent will be due under the lease.

...

(d) The undertaking by the appellant and the order staying execution may be substantially in the following form:

"State of North Carolina,

"County of _____

"_____, Plaintiff

vs.

"_____, Defendant

Bond to

Stay Execution

On Appeal to

District Court

"Now comes the defendant in the above entitled action and respectfully shows the court that judgment for summary ejectment was entered against the defendant and for the plaintiff on the ___ day of ___, ___, by the Magistrate. Defendant has appealed the judgment to the District Court.

"Pursuant to the terms of the lease between plaintiff and defendant, defendant is obligated to pay rent in the amount of \$___ per ___, due on the ___ day of each ___.

"Where the payment of rent in arrears or an additional undertaking is required by G.S. 42-34, the defendant hereby tenders \$___ to the Court as required.

"Defendant hereby undertakes to pay the periodic rent hereinafter due according to the aforesaid terms of the lease and moves the Court to stay execution on the judgment for summary ejectment until this matter is heard on appeal by the District Court.

"This the _____ day of _____, ____.

Defendant

1 "Upon execution of the above bond, execution on said judgment for summary ejection is
 2 hereby stayed until the action is heard on appeal in the District Court. If defendant fails to make
 3 any rental payment to the clerk's office within five business days of the due date, upon application
 4 of the plaintiff, the stay of execution shall dissolve and the sheriff may dispossess the defendant.

5 "This the _____ day of _____, ____.

6 _____
 7 Assistant Clerk of Superior Court."

8 ...
 9 (f) If the defendant fails to make a payment within five business days of the due date
 10 according to the undertaking and order staying execution, the clerk, upon application of the
 11 plaintiff, shall issue execution on the judgment for possession.

12"

13 **SECTION 17.(a)** G.S. 44A-4(b)(1) reads as rewritten:

14 **"§ 44A-4. Enforcement of lien by sale.**

15 ...

16 (b) Notice and Hearings. –

17 (1) If the property upon which the lien is claimed is a motor vehicle that is
 18 required to be registered, the lienor following the expiration of the relevant
 19 time period provided by subsection (a) shall give notice to the Division of
 20 Motor Vehicles that a lien is asserted and sale is proposed and shall remit to
 21 the Division a fee of thirteen dollars (\$13.00). The Division of Motor Vehicles
 22 shall issue notice by certified mail, return receipt requested, to the person
 23 having legal title to the property, if reasonably ascertainable, to the person
 24 with whom the lienor dealt if different, and to each secured party and other
 25 person claiming an interest in the property who is actually known to the
 26 Division or who can be reasonably ascertained. The notice shall state that a
 27 lien has been asserted against specific property and shall identify the lienor,
 28 the date that the lien arose, the general nature of the services performed and
 29 materials used or sold for which the lien is asserted, the amount of the lien,
 30 and that the lienor intends to sell the property in satisfaction of the lien. The
 31 notice shall inform the recipient that the recipient has the right to a judicial
 32 hearing at which time a determination will be made as to the validity of the
 33 lien prior to a sale taking place. The notice shall further state that the recipient
 34 has a period of 10 days from the date of receipt in which to notify the Division
 35 by certified mail, return receipt requested, that a hearing is desired and that if
 36 the recipient wishes to contest the sale of his property pursuant to such lien,
 37 the recipient should notify the Division that a hearing is desired. The notice
 38 shall state the required information in simplified terms and shall contain a
 39 form whereby the recipient may notify the Division that a hearing is desired
 40 by the return of such form to the Division. The Division shall notify the lienor
 41 whether such notice is timely received by the Division. In lieu of the notice
 42 by the lienor to the Division and the notices issued by the Division described
 43 above, the lienor may issue notice on a form approved by the Division
 44 pursuant to the notice requirements above. If notice is issued by the lienor, the
 45 recipient shall return the form requesting a hearing to the lienor, and not the
 46 Division, within 10 days from the date the recipient receives the notice if a
 47 judicial hearing is requested. If the certified mail notice has been returned as
 48 undeliverable and the notice of a right to a judicial hearing has been given to
 49 the owner of the motor vehicle in accordance with G.S. 20-28.4, no further
 50 notice is required. Failure of the recipient to notify the Division or lienor, as
 51 specified in the notice, within 10 days of the receipt of such notice that a

1 hearing is desired shall be deemed a waiver of the right to a hearing prior to
 2 the sale of the property against which the lien is asserted, and the lienor may
 3 proceed to enforce the lien by public or private sale as provided in this section
 4 and the Division shall transfer title to the property pursuant to such sale. If the
 5 Division or lienor, as specified in the notice, is notified within the 10-day
 6 period provided above that a hearing is desired prior to sale, the lien may be
 7 enforced by sale as provided in this section and the Division will transfer title
 8 only pursuant to the order of a court of competent jurisdiction.

9 If the certified mail notice has been returned as undeliverable, or if the name
 10 of the person having legal title to the vehicle cannot reasonably be ascertained
 11 and the fair market value of the vehicle is less than eight hundred dollars
 12 (\$800.00), the lienor may institute a special proceeding in the county where
 13 the vehicle is being held, for authorization to sell that vehicle. Market value
 14 shall be determined by the schedule of values adopted by the Commissioner
 15 under G.S. 105-187.3.

16 In such a proceeding a lienor may not include more than one vehicle, ~~but the~~
 17 ~~proceeds of the sale of each shall be subject only to valid claims against that~~
 18 ~~vehicle, and any vehicle. Any~~ excess proceeds of the sale shall be paid
 19 immediately to the Treasurer for disposition pursuant to Chapter 116B of the
 20 General Statutes.

21 The application to the clerk in such a special proceeding shall contain the
 22 notice of sale information set out in subsection (f) hereof. If the application is
 23 in proper form the clerk shall enter an order authorizing the sale on a date not
 24 less than 14 days therefrom, and the lienor shall cause the application and
 25 order to be sent immediately by first-class mail pursuant to G.S. 1A-1, Rule
 26 5, to each person to whom notice was mailed pursuant to this subsection.
 27 Following the authorized sale the lienor shall file with the clerk a report in the
 28 form of an affidavit, stating that the lienor has complied with the public or
 29 private sale provisions of G.S. 44A-4, the name, address, and bid of the high
 30 bidder or person buying at a private sale, and a statement of the disposition of
 31 the sale proceeds. The clerk then shall enter an order directing the Division to
 32 transfer title accordingly.

33 If prior to the sale the owner or legal possessor contests the sale or lien in a
 34 writing filed with the clerk, the proceeding shall be handled in accordance
 35 with G.S. 1-301.2.

36"

37 **SECTION 17.(b)** This section becomes effective December 1, 2019, and applies to
 38 applications filed on or after that date.

39 **SECTION 18.** G.S. 48-2-403 reads as rewritten:

40 "**§ 48-2-403. ~~Notice~~ Additional notice of proceedings by clerk-petitioner.**

41 No later than five days after a petition is filed, the ~~clerk of the court~~ petitioner shall mail or
 42 otherwise deliver notice of the adoption proceeding to any agency that has undertaken but not
 43 yet completed a preplacement assessment and any agency ordered to make a report to the court
 44 pursuant to Part 5 of this Article. The petitioner shall provide proof of service of the notice to the
 45 court."

47 **PART III. TECHNICAL CORRECTIONS**

48 **SECTION 19.(a)** G.S. 7A-11 reads as rewritten:

49 "**§ 7A-11. Clerk of the Supreme Court; salary; bond; fees; oath.**

50 The clerk of the Supreme Court shall be appointed by the Supreme Court to serve at its
 51 pleasure. The annual salary of the clerk shall be fixed by the Administrative Officer of the Courts,

1 subject to the approval of the Supreme Court. The clerk may appoint assistants in the number
2 and at the salaries fixed by the Administrative Officer of the Courts. The clerk shall perform such
3 duties as the Supreme Court may assign, and shall be bonded to the State, for faithful performance
4 of duty, in the same manner as the clerk of the superior court, and in such amount as the
5 Administrative Officer of the Courts shall determine. ~~He~~The clerk shall adopt a seal of office,
6 to be approved by the Supreme Court. A fee bill for services rendered by the clerk shall be fixed
7 by rules of the Supreme Court, and all such fees shall be remitted to the State treasury. Charges
8 to litigants for the reproduction of appellate records and briefs shall be fixed by rule of the
9 Supreme Court and remitted to the Appellate Courts Printing and Computer Operations Fund
10 established in G.S. 7A-343.3. The operations of the Clerk of the Supreme Court shall be subject
11 to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General
12 Statutes. Before entering upon the duties of his office, the clerk shall take the oath of office
13 prescribed by law."

14 **SECTION 19.(b)** G.S. 7A-20(a) reads as rewritten:

15 "(a) The Court of Appeals shall appoint a clerk to serve at its pleasure. Before entering
16 upon ~~his~~the clerk's duties, the clerk shall take the oath of office prescribed for the clerk of the
17 Supreme Court, conformed to the office of clerk of the Court of Appeals, and shall be bonded,
18 in the same manner as the clerk of superior court, in an amount prescribed by the Administrative
19 Officer of the Courts, payable to the State, for the faithful performance of ~~his~~the clerk's duties.
20 The salary of the clerk shall be fixed by the Administrative Officer of the Courts, subject to the
21 approval of the Court of Appeals. The number and salaries of ~~his~~the clerk's assistants, and their
22 bonds, if required, shall be fixed by the Administrative Officer of the Courts. The clerk shall
23 adopt a seal of office, to be approved by the Court of Appeals."

24 **SECTION 20.** G.S. 7A-354(b) reads as rewritten:

25 "(b) Membership. – The Commission shall consist of no more than 15 members as
26 follows:

27 ...

28 (4) The following persons, or their designees, may serve as nonvoting, ex officio
29 members of the Commission:

- 30 a. The Director of the Administrative Office of the Courts.
- 31 b. The President of the North Carolina Conference of Superior Court
32 Judges.
- 33 c. The President of the North Carolina Association of District Court
34 Judges."

35 **SECTION 21.(a)** G.S. 15A-145.8(b), as enacted by S.L. 2019-186, s. 11, reads as
36 rewritten:

37 "(b) The court shall also order the expunction of DNA records when the person's charges
38 have been remanded to district court for juvenile adjudication and the person's DNA record or
39 profile has been included in the State DNA Database and the person's DNA sample is stored in
40 the State DNA Databank as a result of the charges that were remanded. The order of expungement
41 shall include the name and address of the person and the person's attorney and shall direct the
42 North Carolina State Crime Laboratory to send a letter documenting the expunction as required
43 by subsection (c) of this section."

44 **SECTION 21.(b)** This section becomes effective December 1, 2019, and applies to
45 offenses committed on or after that date.

46 **SECTION 22.(a)** G.S. 15A-1469 reads as rewritten:

47 "**§ 15A-1469. Postcommission three-judge panel.**

48 ...

49 (b1) The Commission's entire file, including files obtained from other agencies, shall be
50 unencumbered by protective orders when transferred to the district attorney and defense counsel
51 pursuant to ~~subsection (g) of this section,~~ G.S. 15A-1468(g), unless either of the following apply:

- 1 (1) The district attorney and defense counsel have consented to a protective order
2 over a portion of the file.
3 (2) The district attorney and defense counsel have been given an opportunity to
4 be heard by the senior judge of the three-judge panel before a protective order
5 is issued.

6"

7 **SECTION 22.(b)** This section becomes effective December 1, 2019.

8 **SECTION 23.** G.S. 28A-2-4(a) reads as rewritten:

9 "(a) The clerks of superior court of this State, as ex officio judges of probate, shall have
10 original jurisdiction of estate proceedings. Except as provided in subdivision (4) of this
11 subsection, the jurisdiction of the clerk of superior court is exclusive. Estate proceedings include,
12 but are not limited to, the following:

13 ...

- 14 (3) Determination of the elective share for a surviving spouse as provided in
15 ~~G.S. 30-3~~G.S. 30-3.1.

16"

17 **SECTION 24.** G.S. 30-29 reads as rewritten:

18 **"§ 30-29. What petition must show.**

19 In the petition the petitioner shall set forth, besides the facts entitling petitioner to a year's
20 support and the value of the support claimed, the further facts that the personal estate of which
21 the decedent died possessed exceeded ~~thirty thousand dollars (\$30,000),~~ sixty thousand dollars
22 (\$60,000) and also whether or not an allowance has been made to petitioner and the nature and
23 value thereof."

24 **SECTION 25.** G.S. 32C-1-116(a) reads as rewritten:

25 "(a) The clerks of superior court of this State shall have original jurisdiction of
26 proceedings under this Chapter. Except as provided in subdivision (4) of this subsection, the clerk
27 of superior court's jurisdiction is exclusive. The following proceedings are included:

28 ...

- 29 (3) To determine compensation and expenses for an agent under
30 ~~G.S. 32C-1-112(b)~~G.S. 32C-1-112(b) and G.S. 32C-1-112(c).

31"

32 **SECTION 26.(a)** G.S. 45-21.21(f) is repealed.

33 **SECTION 26.(b)** G.S. 45-21.23 reads as rewritten:

34 **"§ 45-21.23. Time of sale.**

35 A sale shall begin at the time designated in the notice of sale or as soon thereafter as
36 practicable, but not later than one hour after the time fixed therefor unless it is delayed by other
37 sales held at the same place. The sale shall be held between the hours of 10:00 A.M. and 4:00
38 P.M. on any day ~~other than Sunday or a legal holiday when the courthouse is closed for~~
39 ~~transactions~~when the clerk's office is normally open for transactions."

40 **SECTION 26.(c)** G.S. 45-21.29(k)(5a) is repealed.

41 **SECTION 27.** G.S. 101-2(a) reads as rewritten:

42 "(a) A person who wishes, for good cause shown, to change his or her name must file an
43 application before the clerk of the superior court of the county in which the person ~~lives,~~ resides,
44 after giving 10 days' notice of the application by publication at the courthouse door."

45 **SECTION 28.(a)** Section 8.2 of S.L. 2018-40 reads as rewritten:

46 **"SECTION 8.2.** This ~~section~~Part becomes effective January 1, ~~2019~~2019, and applies to
47 distributions made on or after that date."

48 **SECTION 28.(b)** This section is retroactively effective January 1, 2019.

49 **SECTION 29.(a)** G.S. 14-118.6(b1), as amended by S.L. 2019-117, s. 3, reads as
50 rewritten:

1 "(b1) When a purported lien or encumbrance is presented to a clerk of superior court for
2 filing and the clerk of court has a reasonable suspicion that the purported lien or encumbrance is
3 ~~false as described in subsection (a) of this section, materially false, fictitious, or fraudulent,~~ the
4 clerk of court may refuse to file the purported lien or encumbrance. Neither the clerk of court nor
5 the clerk's staff shall be liable for filing or the refusal to file a purported lien or encumbrance
6 under this subsection. The clerk of superior court shall not file, index, or docket the document
7 against the property of ~~a public officer or public employee~~ until that document is approved by
8 any judge of the judicial district having subject matter jurisdiction for filing by the clerk of
9 superior court. If the judge determines that the filing is not false, the clerk shall index the claim
10 of lien. A lien or encumbrance filed upon order of the court under this subsection shall have a
11 priority interest as of the date and time of indexing by the clerk of superior court. If the court
12 finds that there is no statutory or contractual basis for the proposed filing, the court shall enter an
13 order that the proposed filing is null and void as a matter of law, and that it shall not be filed or
14 indexed. The clerk of superior court shall serve the order and return the original denied filing to
15 the person or entity that presented it. The person or entity shall have 30 days from the entry of
16 the order to appeal the order. If the order is not appealed within the applicable time period, the
17 clerk may destroy the filing."

18 **SECTION 29.(b)** This section becomes effective December 1, 2019.

19
20 **PART IV. AMEND THE RULES OF CIVIL AND CRIMINAL PROCEDURE**
21 **REGARDING GOOD CAUSE CONTINUANCES**

22 **SECTION 30.(a)** G.S. 1A-1, Rule 40 of the Rules of Civil Procedure, reads as
23 rewritten:

24 **"Rule 40. Assignment of cases for trial; continuances.**

25 (a) The senior resident superior court judge of any superior court district or set of districts
26 as defined in G.S. 7A-41.1 may provide by rule for the calendaring of actions for trial in the
27 superior court division of the various counties within ~~his~~ that senior resident's district or set of
28 districts. Calendaring of actions for trial in the district court shall be in accordance with
29 G.S. 7A-146. Precedence shall be given to actions entitled thereto by any statute of this State.

30 (b) No continuance shall be granted except upon application to the court. A continuance
31 may be granted only for good cause shown and upon such terms and conditions as justice may
32 require. Good cause for granting a continuance shall include those instances when a party to the
33 proceeding, a witness, or counsel of record has an obligation of service to the State of North
34 Carolina, including ~~service~~ any service in carrying out any duties as a member of the General
35 Assembly or Assembly, or service on the Rules Review Commission, Commission or any other
36 board, commission, or authority as an appointee of the Governor, the Lieutenant Governor, or
37 the General Assembly."

38 **SECTION 30.(b)** G.S. 15A-952 reads as rewritten:

39 **"§ 15A-952. Pretrial motions; time for filing; sanction for failure to file; motion hearing**
40 **date.**

41 ...

42 (g) In superior or district court, the judge shall consider at least the following factors in
43 determining whether to grant a continuance:

- 44 (1) Whether the failure to grant a continuance would be likely to result in a
45 miscarriage of justice;
- 46 (2) Whether the case taken as a whole is so unusual and so complex, due to the
47 number of defendants or the nature of the prosecution or otherwise, that more
48 time is needed for adequate preparation; and
- 49 (3) Whether the case involves physical or sexual child abuse when a victim or
50 witness is under 16 years of age, and whether further delay would have an
51 adverse impact on the well-being of the child.

1 (4) Good cause for granting a continuance shall include those instances when the
2 defendant, a witness, or counsel of record has an obligation of service to the
3 State of North Carolina, including ~~service~~any service in carrying out any
4 duties as a member of the General Assembly or Assembly, or service on the
5 Rules Review Commission.~~Commission~~ or any other board, commission, or
6 authority as an appointee of the Governor, the Lieutenant Governor, or the
7 General Assembly."

8 **SECTION 30.(c)** This section becomes effective December 1, 2019.
9

10 **PART V. CLARIFY THE SCOPE OF JUDICIAL STANDARDS COMMISSION**
11 **INVESTIGATIONS**

12 **SECTION 31.(a)** G.S. 7A-377(a) reads as rewritten:

13 "(a) Any citizen of the State may file a written complaint with the Commission concerning
14 the qualifications or conduct of any justice or judge of the General Court of Justice, and thereupon
15 the Commission shall make such investigation as it deems necessary. The Commission may also
16 make an investigation on its own motion. The Commission shall not make an investigation,
17 whether initiated upon its own motion or by written complaint of a citizen of this State, when the
18 motion or complaint is based substantially upon a legal ruling by a district or superior court judge
19 and the legal ruling has not yet been reviewed and ruled upon by either the North Carolina Court
20 of Appeals or the North Carolina Supreme Court. The Commission is limited to reviewing
21 judicial conduct, not matters of law. The Commission may issue process to compel the attendance
22 of witnesses and the production of evidence, to administer oaths, and to punish for contempt. No
23 justice or judge shall be recommended for public reprimand, censure, suspension, or removal
24 unless he has been given a hearing affording due process of law."

25 **SECTION 31.(b)** This section is effective when it becomes law and applies to
26 complaints or investigations pending on or after that date.

27 **SECTION 32.** Except where otherwise provided, this act is effective when it
28 becomes law.