

Contested Hearings for Clerks of Superior Court

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1

About this course

- Range of experience levels in the room—let's learn from each other
- Interrupt me with questions any time
- Mock hearing tomorrow: think about whether you want to volunteer to play a role (see script in your materials)

Courts Division

6

6

**What is the best advice you have ever
received about holding hearings?**

7

Introductory questions

- What do you want advice about?
- What do you want to get out of this course?

Courts Division8

8

Authority of the Clerk

Courts Division



9

Key Principles

- Identify what gives the clerk the authority to act as a judicial official
- Understand the difference between the clerk's role as a judge and an administrator and why the difference matters
- Understand the scope and limits of the clerk's jurisdiction

Courts Division11

11

NC
Constitution

Executive

Legislative

Judicial

A Clerk of the Superior Court **for each county** shall be elected for a term of four years by the qualified voters thereof, at the same time and places as members of the General Assembly are elected.


N.C. Const. art. IV, Sec. 9(3)

12

General Assembly Prescribes...

The Clerks of the Superior Court shall have such **jurisdiction** and **powers** as the **General Assembly** shall **prescribe** by general law uniformly applicable in every county of the State.

N.C. Const. art. IV, Sec. 12(3)



13

Jurisdiction

Power of the **court** to decide a matter in controversy

Personal

+

Subject Matter

→

Jurisdiction

14

Subject Matter Jurisdiction

1. Can't be consented to or waived. Either there or not.
2. Without it, order is void

VOID

Courts Division

15

15

Authority of the Assistant Clerk

An assistant clerk is authorized to perform all the duties and functions of the office of clerk of superior court, and **any act of an assistant clerk is entitled to the same faith and credit as that of the clerk.**

NCGS 7A-102(b)

Courts Division

16

16

Constitutional office, but authority from statute

- No common law jurisdiction
- No equitable jurisdiction

The clerk cannot perform functions involving the exercise of judicial discretion in the absence of statutory authority.

Judicial Discretion: "May" or "In the discretion of"
- *In re Vogler Realty, Inc.*, 365 NC 389, 395 (2012).

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17

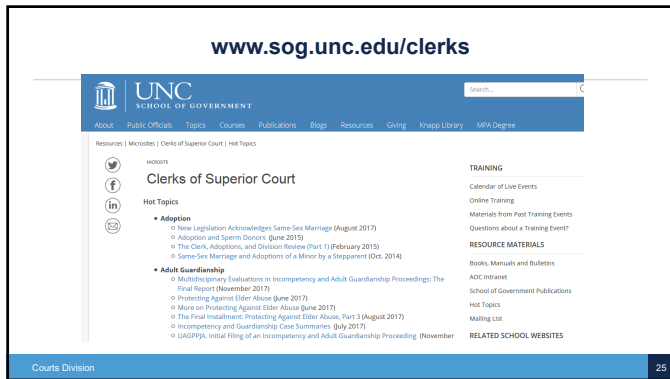
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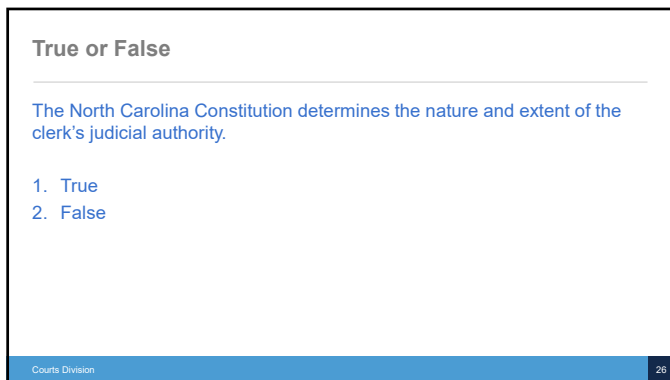
Where can you go to find authority?

The screenshot shows the official website of the North Carolina General Assembly, www.ncleg.gov. The top navigation bar contains links for HOUSE, SENATE, ALCOA, CALENDARS, COMMITTEES, BILLS & LAWS (highlighted with a red circle), RECORDS, DISTRICT REPRESENTATION, and ABOUT. Below the navigation bar, the 'NEWS & INFORMATION' section is visible, featuring a list of recent legislative actions, including Governor's vetoes and House resolutions. A red circle highlights the 'BILLS & LAWS' link in the navigation bar.

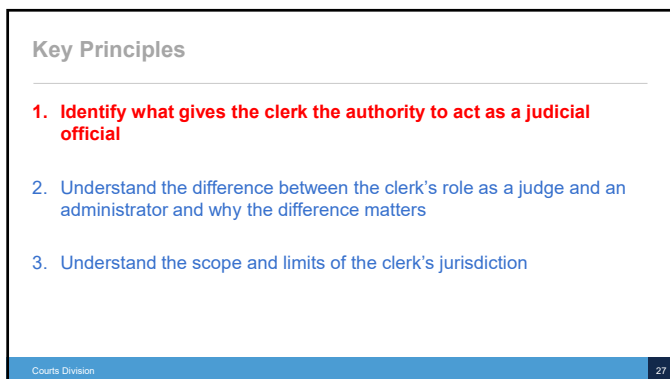
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25



26



27

Key Principles

1. Identify what gives the clerk the authority to act as a judicial official
2. Understand the difference between the clerk's role as a judge and an administrator and why the difference matters
3. Understand the scope and limits of the clerk's jurisdiction

Courts Division

28

28



Courts Division

29

29



Courts Division

30

30

Court Shorts

#1:
<https://www.youtube.com/channel/UCIcgGfaeUGYJS07bLeUr1hw>

#2: <https://www.uscourts.gov/news/2019/08/08/judges-explain-rule-law-why-it-matters>

Source: United States Courts

Courts Division

31

31

What does it mean to sit behind the bench?


An independent and honorable judiciary is indispensable to justice in our society...

- Preamble, NC Code of Judicial Conduct

Duties of Judge:

- 1 – To hear courteously
- 2 – To act wisely
- 3 – To consider somberly
- 4 – To decide **impartially**

- CSC Procedures Manual



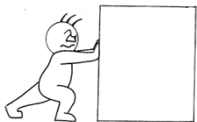

Courts Division

32

32

STOP AND THINK.....

Am I a judge or an administrator?

Courts Division

33

33

Is it the clerk's job?

34

The clerk is a judicial officer – remain aware of what obligations that carries with it because others may not.

Courts Division

35

35

Key Principles

1. Identify what gives the clerk the authority to act as a judicial official
2. Understand the difference between the clerk's role as a judge and an administrator and why the difference matters
3. Understand the scope and limits of the clerk's judicial authority

Courts Division

36

36

Areas of Clerk's Judicial Authority

Estates, POAs,
and Trusts

Special
Proceedings

Civil

Courts Division 37

37

Estates, POAs, and Trusts

The clerk is the **ex officio judge of probate** and has original, exclusive jurisdiction over the probate of wills, the administration of decedents' estates, and certain trust and estate proceedings.

G.S. 7A-241.

Courts Division 38

38

Estates, POAs, and Trusts

For most matters, the clerk has the authority to determine all issues of fact and law.

G.S. 1-301.3(b)

Courts Division 39

39

Estates, POAs, and Trusts

1. Adult Guardianship
2. Minor Guardianship
3. Estate Proceedings, GS 28A-2-4(a)
 1. Granting and revoking letters
 2. Probate of Wills
 3. Determination of elective share of surviving spouse
4. Trust Proceedings, GS 36C
5. POA Proceedings, GS 32C

Courts Division

40

40

Estates, POAs, and Trusts: Appeal

Appealed **on the record** to superior court

Within 10 days of service of the order on a party

CSC or superior court may enter stay of the order if post an appropriate bond

G.S. 1-301.3(c)

Courts Division

41

41

Estates, POAs, and Trusts: Appeal

1. Whether the **findings of fact** are supported by the evidence
2. Whether the **conclusions of law** are supported by the findings of facts
3. Whether the **order or judgment** is consistent with the conclusions of law and applicable law

G.S. 1-301.3(d)

Courts Division

42

42

Estates, POAs, and Trusts: Objections

Not necessary for a party to object to the admission or exclusion of evidence before the clerk in order to preserve the right to assign error on appeal to its admission or exclusion.

G.S. 1-301.3(d)

Courts Division

43

43

Estate, POAs, and Trusts

In the **discretion of the clerk** or upon request by a party, all hearings and other matters covered by this section **shall be recorded** by an electronic recording device.

A transcript of the proceedings may be ordered by a party, by the clerk, or by the presiding judge. **If a recordation is not made, the clerk shall submit to the superior court a summary of the evidence presented to the clerk.**

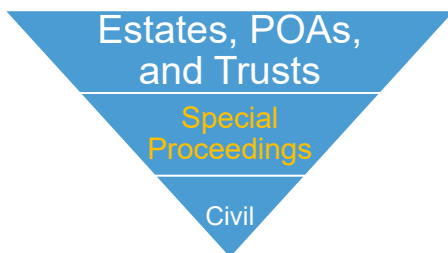
G.S. 1-301.3(f)

Courts Division

44

44

Areas of Clerk's Judicial Authority



Courts Division

45

45

Special Proceedings

If an issue of fact, equitable defense, or request for equitable relief is raised in a **pleading in a special proceeding or in a pleading or written motion** in an adoption proceeding, the **Clerk shall transfer** the proceeding to the appropriate court.

G.S. 1-301.2(b)

Courts Division

46

46

Grounds for Transfer

1. Issue of fact
2. Equitable defense
3. Request for equitable relief

Courts Division

47

47

Special Proceedings

1. Adoptions
2. Name change
3. Legitimation
4. Cartway
5. Partition
6. Private condemnation
7. Proceeding to establish facts of birth
8. Surplus funds in foreclosure

Courts Division

48

48

Special Proceedings

Estate SPs

1. Assignment of YEAL > \$60,000
2. Resignation of PR (heard as EP, appealed as an SP)
3. Special proceedings to obtain possession, custody, or control of assets as provided in G.S. 28A-13-3.
4. Special proceedings relating to the sale, lease, or mortgage of real estate as provided in G.S. 28A-15-1 and in G.S. 28A-17-1.
5. Special proceedings against unknown heirs before distribution of estate as provided in G.S. 28A-22-3.

Courts Division

49

49

Exceptions to the transfer rule?

1. Power of Sale Foreclosure
2. Incompetency + Restoration + Sterilization
3. Partition re: issue of actual or sale in lieu only

G.S. 1-301.2(g) and (h)

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50

50

Special Proceedings Appeals

Appeal to the appropriate court **de novo**

Appeal must be filed within 10 days of entry of the order or judgment

G.S. 1-301.2

Courts Division

51

51

Special Proceedings Appeals

A judge of the court to which the appeal lies or the clerk **may issue a stay** of the order or judgment upon the appellant's posting of an **appropriate bond** set by the judge or clerk issuing the stay

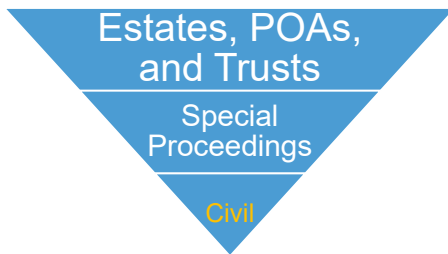
G.S. 1-301.2

Courts Division

52

52

Areas of Clerk's Judicial Authority



Courts Division

53

53

Civil

If both the judge and the clerk are authorized by law to enter an order or judgment in a matter in controversy, a party may seek to have the judge determine the matter in controversy initially.

GS 1-301.1(d)

Concurrent subject matter jurisdiction

Courts Division

54

54

Civil

Attachment
Exemptions
Claim and delivery
Supplemental proceeding

Courts Division55

55

Civil: Appeals

Within 10 days of entry of the order or judgment, a party aggrieved may appeal the clerk's order to the appropriate court for a trial or hearing **de novo**.

G.S. 1-301.1(b)

Courts Division56

56

Civil: Appeals

A judge of the court to which the appeal lies or the clerk **may issue a stay** of the order or judgment upon the appellant's posting of an **appropriate bond** set by the judge or clerk issuing the stay

G.S. 1-301.1

Courts Division57

57

Criminal – VERY limited role

- **Initial Appearances** – typically before a magistrate – notice of charges and conditions of release
- **First Appearances** – w/n 96 hours of custody (only when judge not available; only adults)

Courts Division

58

58

No Jurisdiction

Clerk shall not have jurisdiction of certain proceedings related to

1. Estates – GS 28A-2-4(c)
2. Trusts – GS 36C-2-203(f)
3. POAs – GS 32C-1-116(b)

Courts Division

58

59

§ 28A-2-4. Subject matter jurisdiction of the clerk of superior court in estate proceedings.
(a) The clerk of superior court of this State, as an officer of the public, shall have original jurisdiction of estate proceedings. Except as provided in subsection (c) of this subsection, the jurisdiction of the clerk of superior court is exclusive. Estate proceedings include, but are not limited to, the following:

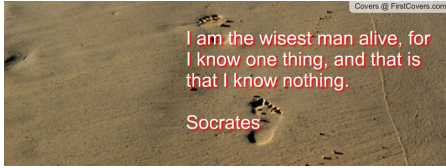
- (1) Probate of wills;
- (2) Granting and revoking of letters testamentary and letters of administration, or other proper letters of authority for the administration of estates;
- (3) Determination of the elective share for a surviving spouse as provided in G.S. 26A-3;
- (4) Proceedings to ascertain heirs or devisees, to approve settlement agreements pursuant to G.S. 26A-2-26, to determine questions of ownership of wills, to determine priority among creditors, to determine whether a person is in possession of property belonging to an estate, to enforce the return of property of the estate in possession of third parties, and to determine the existence or nonexistence of any immunity, power, privilege, duty, or right. Any party to the clerk of superior court may file a notice of transfer of a proceeding pursuant to this subsection in the Superior Court Division of the General Court of Justice as provided in G.S. 28A-2-4(b). In the absence of a transfer to superior court, Article 28 of Chapter 1 of the General Statutes shall apply to an estate proceeding pending before the clerk of superior court to the extent consistent with this Article.
- (5) Nothing in this section shall affect the right of a person to file an action in the Superior Court Division of the General Court of Justice for declaratory relief under Article 29 of Chapter 1 of the General Statutes. In the event that either the petitioner or the respondent to an estate proceeding requests declaratory relief under Article 29 of Chapter 1 of the General Statutes, either party may move for a transfer of the proceeding to the Superior Court Division of the General Court of Justice as provided in Article 29 of Chapter 1 of the General Statutes. In the absence of a removal to superior court, Article 24 of Chapter 1 of the General Statutes shall apply to an estate proceeding to the extent consistent with this Article.
- (6) Without otherwise limiting the jurisdiction of the Superior Court Division of the General Court of Justice, the clerk of superior court shall not have jurisdiction under subsection (a) or (b) of this section of **ANY** **REAL** **ESTATE** **PROCEEDINGS** including:
 - (1) Actions by or against creditors or debtors of an estate, except as provided in Article 19 of this Chapter;
 - (2) Actions involving claims for monetary damages, including claims for breach of fiduciary duty, fraud, and negligence;
 - (3) Claims, except as provided under G.S. 31-36;
 - (4) Proceedings to determine proper venue of venue as provided in G.S. 28A-3-2;
 - (5) Recovery of property, reallocated or converted to a decedent with intent to defraud, solely, or in fraud or collusion, pursuant to G.S. 26A-15-10(b);
 - (6) Actions for reformation or modification of wills under Article 19 of Chapter 1 of the General Statutes. (2017-194, s. 4; 2012-199, s. 12; 2017-192, s. 9; 2017-152, in 2016, S. 2019-241, s. 23.)

Courts Division

60

60

Ask Questions



Courts Division

61

61

UNC | SCHOOL OF
GOVERNMENT

62
