



Legal Research and Rendering a Decision

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UNC School of Government
Contested Hearings for Clerks
October 2025

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Session Goals

Understand	Identify	Examine
Understand the intersection of statutes and case law and how they work together to inform the clerk's decision in a case.	Identify the various sources of legal authority and what weight the court must afford to them in rendering a decision.	Examine the various components of a court opinion and how they govern the clerk's decision in a case.

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Remember

Lawyers have a job— to advocate for their client and persuade the court.

NC Rules of Professional Conduct:

“A lawyer acting as an advocate in an adjudicative proceeding has an obligation to present the client's case with persuasive force.”

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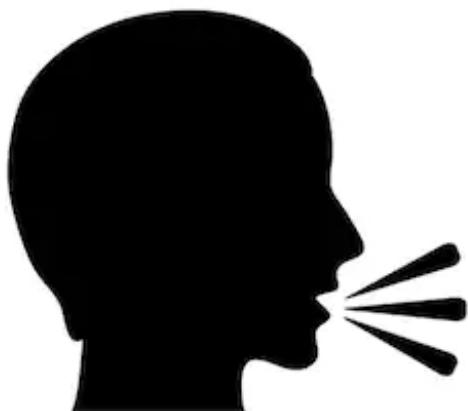
Lawyer's Duty of Candor to the Court

Rule 3.3(a). A lawyer **shall not knowingly**:

1. **make a false statement** (material fact or law) or fail to correct a false statement;
2. **fail to disclose to the tribunal legal authority** in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
3. **offer evidence that the lawyer knows to be false.**

*The lawyer's duty to present the client's case with persuasive force is qualified by the lawyer's duty of candor to the tribunal.

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“This case is on point.”



“This case is distinguishable.”

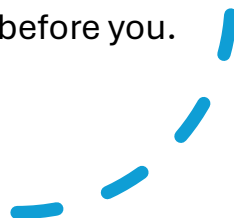
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Proceeding Before the Clerk

Sarah’s husband, Frank, dies.

Sarah goes to the clerk, qualifies as PR of Frank’s estate, clerk issues letters to Sarah.

Later that week, Frank’s brother files a petition for revocation of letters before you.



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The Petition for Revocation of Letters

The petition cites

- G.S. 28A-9-1(a)(1)
- G.S. 28A-4-2(7)
- G.S. 31A-1(a)(2)

as the basis for the
disqualification.



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(TYPE OR PRINT IN BLACK INK)		File No.
STATE OF NORTH CAROLINA		In The General Court Of Justice Superior Court Division Before the Clerk
_____ County		
IN THE MATTER OF:		MOTION IN THE CAUSE TO MODIFY GUARDIANSHIP
Name And Current Address Of Ward		
County Of Residence Of Ward	Date Of Birth	
Name, Street Address, PO Box, City, State And Zip Code Of Moving Party		
Name, Street Address, PO Box, City, State And Zip Code Of Moving Party's Attorney		G.S. 35A-1201, -1207, -1212

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Find the Statute that Applies.



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G.S. 28A-9-1(a)

§ 28A-9-1. Revocation after hearing.

(a) Grounds. - Letters testamentary, letters of administration, or letters of collection may be revoked after hearing on any of the following grounds:

- (1) The person to whom they were issued was originally disqualified under the provisions of G.S. 28A-4-2 or has become disqualified since the issuance of letters.

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G.S. 28A-4-2(7)

§ 28A-4-2. Persons disqualified to serve as personal representative.

No person is qualified to serve as a personal representative who:

- (1) Is under 18 years of age;
- (2) Has been adjudged incompetent in a formal proceeding and remains under such disability;
- (3) Is a convicted felon, under the laws either of the United States or of any state or territory of the United States, or of the District of Columbia and whose citizenship has not been restored;
- (4) Is a nonresident of this State who has not appointed a resident agent to accept service of process in all actions or proceedings with respect to the estate, and caused such appointment to be filed with the court; or who is a resident of this State who has, subsequent to appointment as a personal representative, moved from this State without appointing such process agent;
- (5) Is a corporation not authorized to act as a personal representative in this State;
- (6) Repealed by Session Laws 1999-133, s. 1.
- (7) Has lost that person's rights as provided by Chapter 31A;

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G.S. 31A-1(a)(2)

§ 31A-1. Acts barring rights of spouse.

(a) The following persons shall lose the rights specified in subsection (b) of this section:

- (1) A spouse from whom or by whom an absolute divorce or marriage annulment has been obtained or from whom a divorce from bed and board has been obtained; or
- (2) A spouse who voluntarily separates from the other spouse and lives in adultery and such has not been condoned; or

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G.S. 31A-1(a)(2)

Acts Barring Right to Administer a Spouse's Estate

- i. A spouse who
- ii. voluntarily separates from the other spouse and
- iii. lives in adultery and
- iv. such has not been condoned.

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The Answer


Attorney for Sara stipulates in the answer that

- 1. they were spouses
- 2. she voluntarily separated

But denied in response to petition that she was “living in adultery.”

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The Issue

- i. A spouse who
 - ii. voluntarily separates from the other spouse and
 - iii. lives in adultery and
 - iv. such has not been condoned.
- 
- Disputed issues.

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Hearing

Evidence offered at the hearing includes:

- Witness #1 testifies at the hearing that she saw Sarah at Country Corral kissing a man, Tim, who was not her husband on multiple occasions prior to her husband's death.
- Witness #2 testifies he saw Sarah's car at Tim's home and it was there overnight on multiple occasions in the three months before Frank's death.
- Sarah testifies they were separated and she did kiss someone else, but she never lived with anyone else. She lived alone ever since they separated.

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Hearing

At the conclusion of the presentation of the evidence:


- Sarah’s counsel argues she was not “living in adultery” - she didn’t “live with” with anyone therefore she is not barred from acting as the personal representative (PR) of her husband’s estate.
- Frank’s counsel argues a single act of adultery is enough and the evidence supports a determination by the court that Sarah lived in adultery and should be barred from acting as PR.

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What is legal question?

What does “lives in adultery” in G.S. 31A-1(a)(2) mean?



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“Lives in Adultery”

Clerk asks the parties:

Is there any case law that interprets this statute?

Attorney hands up.....



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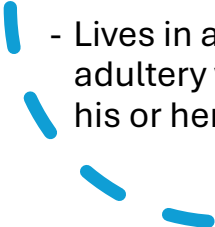


“Lives in Adultery”

In re Estate of Montgomery, 137 NC App 564 (2000)

Holding in the case:

- Revocation of letters requires more than single act of adultery but does not require proof that spouse was “residing” in adultery



- Lives in adultery means a spouse engages in repeated acts of adultery within a reasonable period of time preceding the death of his or her spouse

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So how do you rule?

Findings of Fact

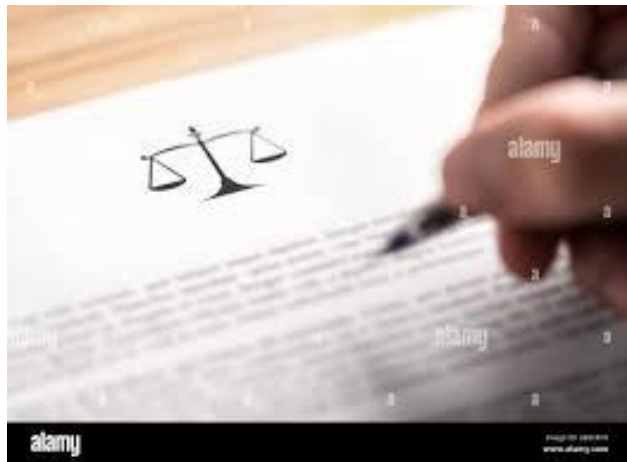
1. Sara and Frank were married.
2. Sara voluntarily separated from Frank.
3. Sara engaged in repeated acts of adultery over the three months leading up to Frank's death.
4. Frank did not condone Sara's acts.

Conclusion of Law

Sara committed an act barring her rights as a spouse pursuant to G.S. 31A-1(a)(2) by voluntarily separating from Frank and living in adultery that was not condoned.

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Instruct the
Attorney:
Do the Research
and Provide a
Legal Brief



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What if there
wasn't a
case...

N.C. Court of Appeals had not yet decided
In re Estate of Montgomery.

→ Who decides?



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Session Goals

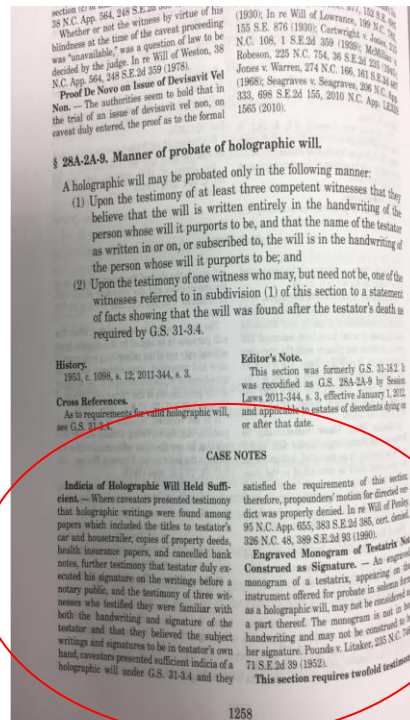
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Practical Reality and the Clerk's Role

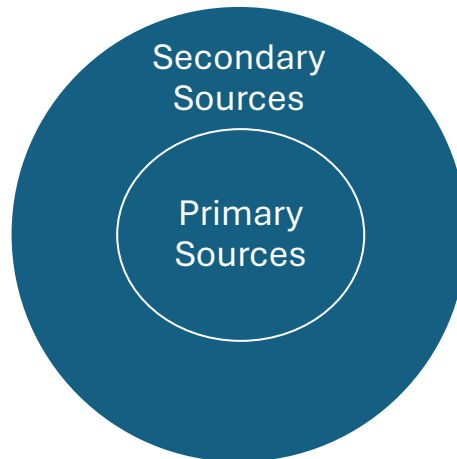


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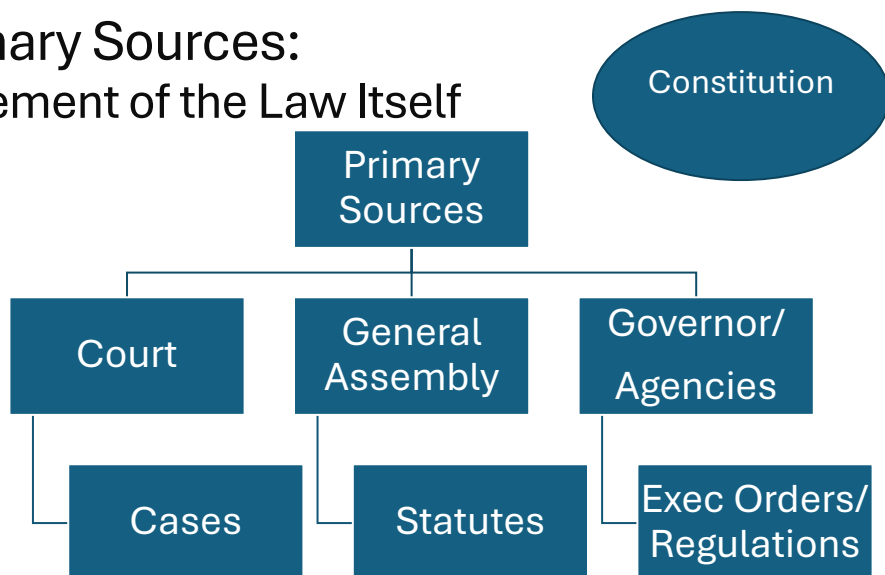
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Sources of Law



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Primary Sources: Statement of the Law Itself



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Secondary
Sources:
Materials
discuss/analyze
law


- 
- Legal treatise
 - Law review article
 - School of Government publications
 - Administrative Office of the Courts (AOC) advisory memo
 - Clerk of Superior Court Manual Series
 - AOC Forms

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What
controls your
decision....

Mandatory Authority: What the court must follow – PRIMARY sources of law in NC

- Clerks on issues of state law:
 - NC Constitution
 - NC Supreme Court + NC Court of Appeals
 - NC Statutes
 - NC Regulations and Executive Orders
- 

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What may
help inform
your
decision...

Persuasive Authority: What the court may follow – primary and secondary sources

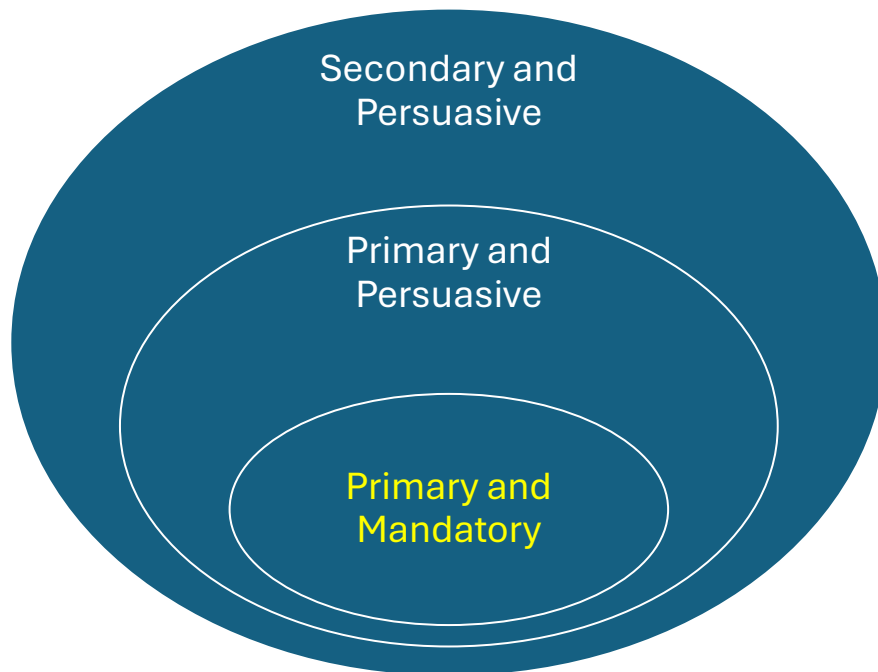
- Clerks on issues of state law:
 - Decisions of other state courts
 - Federal decisions
 - Scholarly publications, SOG publications

Ex – Virginia case on adult guardianship.

Ex – Law review article; SOG publication



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Clerk's World of Authority (Mostly)

1. **Statutes** – General Assembly

- www.ncleg.net
- Green Books (**annotations**)

2. **Cases** – NC Court of Appeals + NC Supreme Court

- www.nccourts.org
- LexisNexis – contact AOC



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Cases Interpreting Statute

Petition for revocation of letters

GS 31A-1(a)(2) - “living in adultery”

In re Estate of Montgomery, 137 NC App 564 (2000)

- Revocation of letters requires more than single act of adultery but does not require proof that spouse was “residing” in adultery



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Published vs. Unpublished Cases

Both COA and Supreme Court

- **Published:** precedential value; control future cases – *stare decisis*
- **Unpublished:** not binding as precedent; just decide that case

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How to Read a Case

1. Caption/Citation
 2. Procedural History
 3. Facts
 4. Issue
 5. Holding
 6. Analysis
 7. Judgment
 8. Dissent/Concurrence
- 

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Caption + Citation



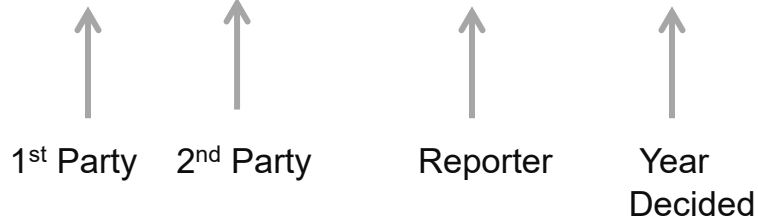
The **Caption** provides the title of the case.

The **Citation** provides the court that decided the case, the law book in which the opinion was published, and the year when the court decided the case.

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Caption + Citation

Jones v. Smith, 345 N.C. App. 45 (2009)



Also, In re Galloway's Estate or In re Foreclosure of Jones – meaning “in the matter of” – not a traditional dispute between two parties; ruling on the matter

Vogler: Caption + Citation

Caption + Citation

In the Matter of the Foreclosure of the Deed of Trust of VOGLER REALTY, INC., Mortgagor- Grantor, to Charles N. Stedman, Trustee, and J.B. Lee & Company, a NC General Partnership, Noteholder, as recorded in Deed of Trust Book 1090, Page 338



In re Foreclosure of Vogler Realty, Inc.,
365 N.C. 389 (2012).

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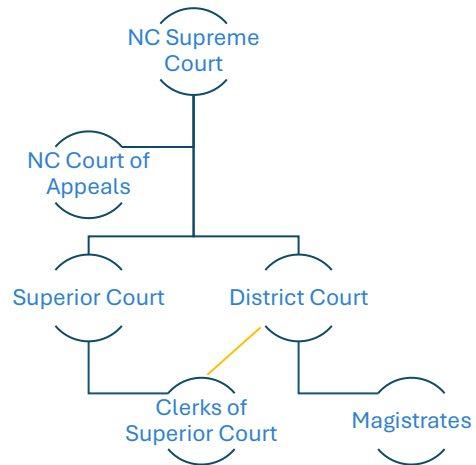


How a case made the way through the court system to the court that is issuing the opinion.



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Procedural History

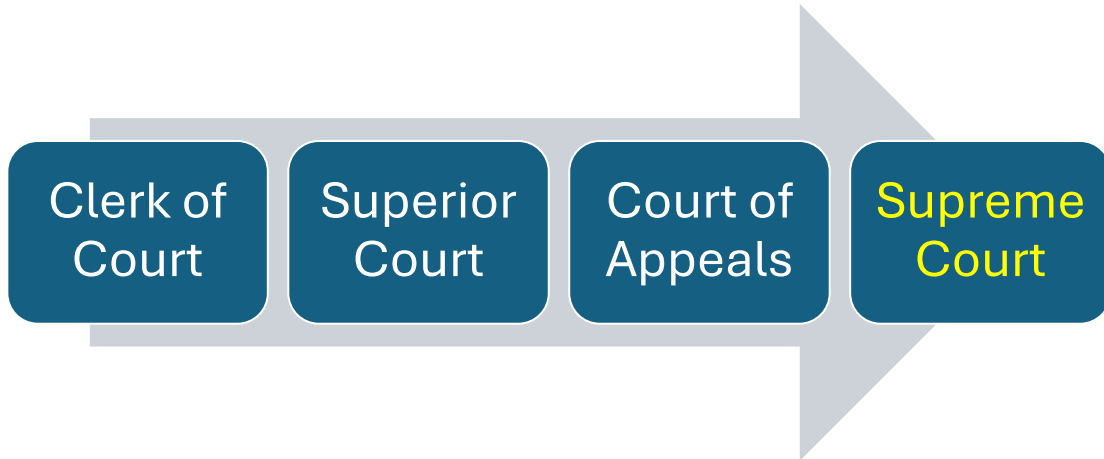


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Vogler: Procedural History

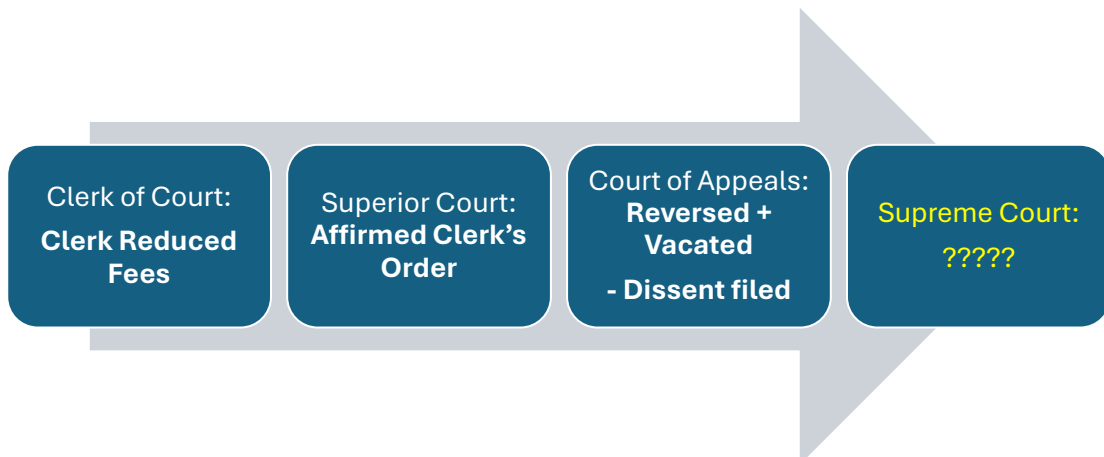
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Vogler: Procedural History




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Vogler: Procedural History



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The diagram shows a large orange circle on the left containing the text 'Statement of the Facts'. To its right, a dashed blue arc connects the text 'What happened...' to 'Written Opinion'. Below 'Written Opinion' is the text 'Your Research'. A small purple circle is at the bottom left of the orange circle.

Statement of the Facts

What happened...

Written Opinion – court may or may not include everything – what was relevant to the decision.

Your Research - may distinguish one case from the next – application of the law.

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A large white circle with a subtle drop shadow, containing the text 'Vogler: Statement of the Facts'. A horizontal orange line is positioned below the text.

Vogler: Statement of the Facts

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The question before the court.



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Vogler:
Issue

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Issue

Whether the clerk of superior court has the authority to determine the reasonableness of attorneys' fees paid by the trustee to himself in addition to a commission in a foreclosure proceeding?

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Holding

- The court's decision in the case
- The binding legal rule created by the case
- Answers the legal question

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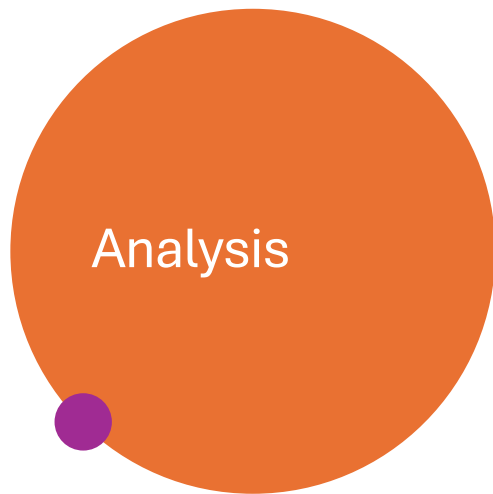
Vogler: Holding

53

Vogler: Holding

No – the clerk does not have the authority to determine the reasonableness of attorneys' fees paid to trustee in a foreclosure proceeding.

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Analysis

The court's reasoning behind a holding.

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Vogler: Analysis

Appellant argued G.S. 32-61 applies to answer the issue.

- Both COA majority (limited) and dissent applied it to foreclosure sale.

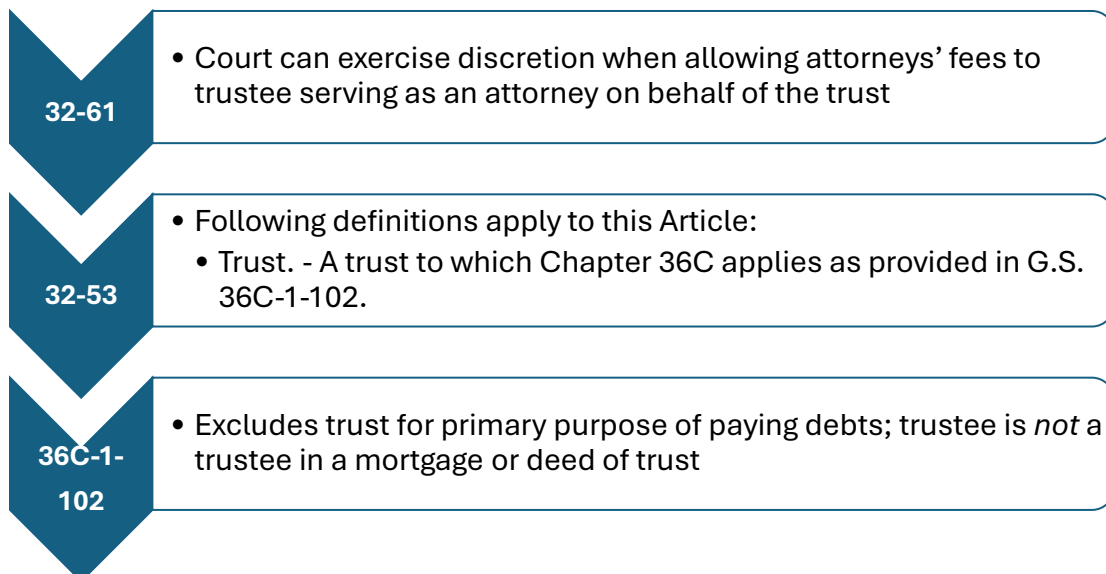
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Vogler: Analysis

§ 32-61. Counsel fees allowable to attorneys serving as fiduciaries.

The clerk of superior court may exercise discretion to allow counsel fees to an attorney serving as a fiduciary or trustee (in addition to the compensation allowed to the attorney as a fiduciary or trustee) where the attorney, on behalf of the trust or fiduciary relationship, renders professional services as an attorney that are different from the services normally performed by a fiduciary or trustee and of a type which would reasonably justify the retention of legal counsel by a fiduciary or trustee who is not licensed to practice law. (2004-139, s. 2.)

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Article 6 - Compensation of Trustees and Other Fiduciaries. [HTML] [RTF]

G.S. 32-53	§ 32-53. Definitions.	[HTML] [RTF]
G.S. 32-54	§ 32-54. Compensation of trustees.	[HTML] [RTF]
G.S. 32-55	§ 32-55. Notice.	[HTML] [RTF]
G.S. 32-56	§ 32-56. Payment of compensation without court order.	[HTML] [RTF]
G.S. 32-57	§ 32-57. Judicial review; payment of compensation and other payments with court order.	[HTML] [RTF]
G.S. 32-58	§ 32-58. Reimbursement for expenses incurred.	[HTML] [RTF]
G.S. 32-59	§ 32-59. Compensation of other fiduciaries.	[HTML] [RTF]
G.S. 32-60	§ 32-60. Effect of provisions in instrument.	[HTML] [RTF]
G.S. 32-61	§ 32-61. Counsel fees allowable to attorneys serving as fiduciaries.	[HTML] [RTF]
G.S. 32-62	§ 32-62. Applicability.	[HTML] [RTF]
G.S. 32-63	§ 32-63. Reserved for future codification purposes.	[HTML] [RTF]
G.S. 32-64	§ 32-64. Reserved for future codification purposes.	[HTML] [RTF]
G.S. 32-65	§ 32-65. Reserved for future codification purposes.	[HTML] [RTF]
G.S. 32-66	§ 32-66. Reserved for future codification purposes.	[HTML] [RTF]
G.S. 32-67	§ 32-67. Reserved for future codification purposes.	[HTML] [RTF]
G.S. 32-68	§ 32-68. Reserved for future codification purposes.	[HTML] [RTF]
G.S. 32-69	§ 32-69. Reserved for future codification purposes.	[HTML] [RTF]

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32-61

- Court can exercise discretion when allowing attorneys' fees to trustee serving as an attorney on behalf of the trust


32-53

- Following definitions apply to this Article:
 - Trust. - A trust to which Chapter 36C applies as provided in G.S. 36C-1-102.

36C-1-102

- Excludes trust for primary purpose of paying debts; excludes DOT and mortgage trustees

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Plain Meaning Rule

Give words their ordinary,
everyday meaning unless
defined otherwise.

Start with the plain text, not
hidden meaning, not digging
behind what might have meant.

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Whole Act Rule

The text should be construed as a
whole, harmonizing parts.

Words or phrases are read in the
context of the larger statutory scheme.

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Analysis

Justice Jackson for the majority:

Must look to Chapter 45

- GS 45-21.31 and GS 45-21.33

- Proceeds of sale shall be applied in following order:

- 1. Costs and expenses of sale
- 2. Taxes
- 3. Special Assessments
- 4. Secured obligation

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§ 45-21.31. Disposition of proceeds of sale; payment of surplus to clerk.

(a) The proceeds of any sale shall be applied by the person making the sale, in the following order, to the payment of -

- (1) Costs and expenses of the sale, including the trustee's commission, if any, and a reasonable auctioneer's fee if such expense has been incurred, and reasonable counsel fees for an attorney serving as a trustee if allowed pursuant to subsection (a1) of this section;
- (2) Taxes due and unpaid on the property sold, as provided by G.S. 105-385, unless the notice of sale provided that the property be sold subject to taxes thereon and the property was so sold;
- (3) Special assessments, or any installments thereof, against the property sold, which are due and unpaid, as provided by G.S. 105-385, unless the notice of sale provided that the property be sold subject to special assessments thereon and the property was so sold;
- (4) The obligation secured by the mortgage, deed of trust or conditional sale contract.

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Analysis

Clerk has limited jurisdictional authority

- Only that given by statute
- No common law or equitable jurisdiction
- No judicial discretion unless statute provides for it
 - Other contexts: “may” or “in the discretion of”
 - See GS 35A-1116 – guardianship
 - See GS 28A-23-3 and -23-4 - estates

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Analysis

Grant of discretion to the clerk is completely absent in GS 45-21.31 and GS 45-21.33.

- Courts must read plain language
- Court does not have power to superimpose provisions not in the statute
- No grant of reasonableness; discretion – clerk’s role is ministerial in this context – whether receipts match disbursements

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Judgment



Affirm – Justice Jackson for the majority (4).



Dissent – Justice Newby writing for the dissent (3).

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Concurrence / Dissent

Most opinions are **majority** opinions.

Also have:

- **Concurring** – agree with majority but would make decision on different legal rationale
- **Dissenting** – disagree with majority; vote for losing party

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Dissent

Foreclosure is proceeding where clerk has judicial authority.

To hold clerk can't determine whether proceeds distributed lawfully and reasonably ignores the statutory framework and clerk's juridical role in the special proceeding.

Organization.

§ 7A-40. Composition; judicial powers of clerk.

The Superior Court Division of the General Court of Justice consists of the several superior courts of the State. The clerk of superior court in the exercise of the judicial power conferred upon him as ex officio judge of probate, and in the exercise of other judicial powers conferred upon him by law in respect of special proceedings and the administration of guardianships and trusts, is a judicial officer of the Superior Court Division, and not a separate court. (1965, c. 310, s. 1; 1967, c. 691, s. 1; 1969, c. 1190, s. 4; 1971, c. 377, s. 4.)



Dissent

- Whether judicial role in correcting the error
- Created a “Wrong with no remedy”
 - Clerk can’t review
 - 3rd party lienholder can’t challenge b/c no fiduciary relationship b/t the 3rd party and the trustee – only foreclosing creditor

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Majority vs. Dissent Clerk’s Judicial Authority



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Act of the General Assembly in Response

2013: Amended GS 45-21.31(a1) to provide that clerk does have the authority to review the trustee's fees for reasonableness.

“The clerk of the superior court of the county where the sale was had **may exercise discretion** to allow **reasonable** counsel fees to an attorney serving as a trustee.....”



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Questions?

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