



Understanding the Actual Partition Process

Catherine Wilson, Assistant Professor, UNC SOG
July 2026



School of
Government

1

Goals for this Session:



Understanding how the actual partition process works



Other Situations that come up



Anticipating Costs and Fees



What should be added to the order?



School of
Government

2

How does the process work?



School of
Government

3

Overview of the Process

1. Clerk appoints Commissioners
2. Commissioners prepare Report
3. Commissioners file and serve Report
4. Parties can file Exceptions to Report
5. Clerk confirms Report
6. Parties can Impeach or Appeal Report



School of
Government

4

1. Clerk Appoints Commissioners

Actual Partition Process



5

Appointment of Commissioners: Generally

- Clerk must appoint **three (3)** commissioners.
 - If the land is located in more than one county, the clerk may appoint additional commissioners from another county.
- Must be disinterested.
- Must take oath.
 - "You and each of you swear (affirm) that, in the partition of the real estate now about to be made by you, you will do equal and impartial justice among the several claimants, according to their several rights, and agreeably to law; so help you, God. (omit the last phrase if affirming)." G.S. 11-11.

G.S. 46A-50



6

Who can serve as a Commissioner?

- Statute does not restrict types of persons.
- The only requirement is that they be disinterested (i.e., neutral).
- Flexibility in who to appoint. The clerk can:
 - Maintain an informal or formal list of names for appointments;
 - Allow the parties to make suggestions for some or all of the positions; or
 - Allow each party to recommend one commissioner, with the clerk selecting the third.
- Attorneys, real estate agents, appraisers, and surveyors often serve as commissioners.

Commissioners: Evaluating Potential Conflicts

The clerk should ensure that a proposed commissioner:

1. Has no conflict of interest, either personal or financial, or no relationship with any party, potential witness, or person who stands to benefit from the proposed transaction.
2. Would be an effective witness if called upon to testify.
3. Would understand procedures to be used or avoided, such as avoiding ex parte communications with the parties.

Appointment of Commissioners - Considerations

- • A clerk may appoint commissioners in any manner that the clerk feels is reasonable. Some clerks:
 - o Maintain an informal or formal list of names from which the clerk makes appointments;
 - o Allow the parties to make suggestions for some or all of the positions; or
 - o Allow each party to recommend one commissioner, with the clerk selecting the third.
- • The clerk should ensure that a proposed commissioner.
 - Has no conflict of interest, either personal or financial, or no relationship with any party, potential witness, or person who stands to benefit from the proposed transaction.
 - Would be an effective witness if called upon to testify.
 - Would understand procedures to be used or avoided, such as avoiding ex parte communications with the parties.
- □ Some clerks use attorneys, real estate agents, and surveyors as commissioners. The clerk should be aware of any potential conflicts of interest that these individuals may have. For example, a conflict may exist if the commissioner who is a surveyor later prepares the survey of the parcels or if the commissioner who is a real estate agent lists the property for sale.



Department/Curricula/Center/EI. Delete if none.

9

Giving Instruction to the Commissioners

- Practice Note. The clerk should advise the commissioners that they are to divide the property, determine the method of allocation of shares among the cotenants and determine their value.
- • The clerk should provide the commissioners with any documents that are attached to the petition, for example, maps, surveys or tax information.
- • The clerk should provide the commissioners with any other materials or information that might be helpful to the commissioners.
- • The clerk may want to advise the commissioners, to the extent it is possible, to delay ordering a survey until some kind of consensus as to the division of the property has been reached.
- • For example, the commissioners may conduct a preliminary investigation and analysis and report to the court a proposed division. When there is some measure of consensus to the proposed division, then a survey can be ordered.
- • This practice may avoid having to have multiple surveys.
- 4. Instructions for commissioners to confer with parties.
- Practice Note. It is the better practice for the commissioners to hear from everyone with an interest at the same time. If this is not possible, the commissioners may hear from those interested at different times.



Department/Curricula/Center/EI. Delete if none.

10

Commissioner Instructions (cont'd.)

Based on the equitable nature of the proceeding, the clerk has authority to give commissioners directions that to the clerk concludes are proper to bring about an equitable partition.

- Allen v. Allen, 263 N.C. 496, 499 (1965) (where court ordered commissioners to hear the "proofs and allegations" of the tenants in common before making division and commissioners did not give notice of time and date of purported division and failed to give parties opportunity to offer proof and allegations, commissioners' report could not be confirmed).
- For example, the clerk may formally or informally direct the commissioners to hear from every person with an interest in the property as to how the land should be divided, even though there is no statutory requirement that the commissioners hear and consider evidence offered by the tenants in common.



School of
Government

Department/Curricula/Center/EI. Delete if none.

11

2. Commissioners Prepare Report

Actual Partition Process



School of
Government

12

What is the Commissioners' Job?

- Three parts:
 1. Inspect and Apportion the property. [G.S. 46A-51\(a\)](#).
 2. Prepare and Submit a Report. [G.S. 46A-55](#).
 3. File and Serve the Report. [G.S. 46A-55](#).



13

Job #1: Inspect & Apportion Property, G.S. 46A-51(a)

Their charge:

1. Inspect the real property together,
2. Partition it among the cotenants by
 - ✓ apportioning it into shares
 - ✓ proportionate in value
 - ✓ as nearly as possible to the cotenants' interests in the property.



14

Job #1: Inspect & Apportion – Power to Adjust

To the extent necessary, Commissioners may

- **Apportion** the property into shares **disproportionate in value** to the cotenants' interests in the property **and charge owelty** on the shares of disproportionately greater value in the amounts of money necessary to redress the disproportion, to be paid to the shares of disproportionately lesser value.
- **Adjust** the **shares or** any **owelty** charged on the shares to account for a court order for contribution under G.S. 46A-27 or any other court order.



School of
Government

15

Add some hypos here



School of
Government

Department/Curricula/Center/EI. Delete if none.

16

Job #2: Prepare and Submit a Report, G.S. 46A-55

What the Report must contain:

1. Particular description of the real property or parcels of real property apportioned,
2. Describe the share apportioned to each cotenant, and
3. Describe any owelty charged.



17

Job #2: Prepare and Submit – Option to hire surveyor

- Commissioners may employ a disinterested professional surveyor to prepare a map showing the quantity, courses and distances of each share.
- If prepared, the map must be made a part of the report.

G.S. 46A-55.



18

However...

§ 1-408.1. Clerk may order surveys in civil actions and special proceedings involving sale of land.

In civil actions and special proceedings commenced in the superior court before the clerk where real property is to be sold to make assets to pay debts, or to be sold for division, or to be partitioned, the clerk may, if all parties to the action or proceedings will benefit by a survey, order a survey of the land involved, appoint a surveyor for this purpose, and fix a reasonable fee for the services of the surveyor. The fee and other costs of the survey shall be taxed as a part of the costs in the action or proceedings. Any aggrieved party has the right to appeal as provided in Article 27A of Chapter 1 of the General Statutes. (1955, c. 373; 1999-216, s. 5.)



19

Side Note: Clerk can also hire a surveyor

- Clerk doesn't have to wait on the Commissioners to hire a surveyor.
- When should the clerk consider hiring a surveyor?



20

3. Commissioners File and Serve Report

Actual Partition Process



21

What is the Commissioners' Job?

- Three parts:
 1. Inspect and Apportion the property. [G.S. 46A-51\(a\)](#).
 2. Prepare and Submit a Report. [G.S. 46A-55](#).
 3. **File and Serve the Report.** [G.S. 46A-55](#).



22

Reporting Requirements of Commissioners

Commissioners must file a report,

- ***Within 90 days*** after last commissioner receives notice of appointment,
- Signed by at least 2 commissioners.
- Clerk can extend up to additional 60 days.
- At the time of filing commissioners must serve a copy of the report on all parties.



23

What about badly behaving Commissioners?

- Delay in inspecting the property
- Delay in drafting the report
- Failing to inspect
- Failing to make a report

What can the clerk do?



24

Commissioner's delay, neglect, and removal, G.S. 46A-50(d)

- After accepting the commission, any commissioners can be removed by the clerk for the unreasonable delay or neglect.
- If the commissioner is removed, the clerk can appoint a new commissioner.
 - *Consider:* extension of time as alternative to removal?

4. Parties can file Exception to the Report

Actual Partition Process

Once the Report is filed....

- Parties have 10 DAYS to file an **Exception** (objection) to the Report. G.S. 46A-56.
- If no exceptions are filed within 10 days, the clerk confirms the report.
- If there are exceptions...

Hearing on Exceptions to Commissioners' Report

- If an exception to the commissioners' report is timely filed, the clerk must set a date and time for hearing the exception and ensure that notice of the hearing is given.
- At the hearing, 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** the same commissioners to reapportion the real property.
 4. **Vacate** the report, **discharge** the commissioners, and appoint new commissioners to view the real property and partition it.

G.S. 46A-56

What if the Clerk Doesn't Agree with the Report?

- The clerk has NO authority to alter the commissioners' report.
 - Can't change the division lines
 - Can't increase or decrease the owelty charge assessed by the commissioners
- If no exceptions, clerk must enter order of confirmation.
- If exception filed, clerk can only confirm, recommit, or vacate the report.

[G.S. 46A-56](#)



School of
Government

Department/Curricula/Center/EI. Delete if none.

29

5. Clerk confirms the Report

Actual Partition Process



School of
Government

30

Clerk confirms the Report, G.S. 46A-56(a)

If no exception to the report of the commissioners is filed within 10 days of service of the report on all the parties, the clerk shall confirm the report.

How does the clerk do this?

- Enters an Order of Confirmation

Second step:

- Clerk Enrolls and Registers Report and Confirmation with Register of Deeds



31

Clerk Enrolls and Registers Report and Confirmation

- The report of the commissioners, when confirmed, and the order of confirmation shall be enrolled and certified to the register of deeds and registered in the office of each county where the real property is located.
- The confirmed report is binding among and between the parties and the parties' heirs and assigns.

[G.S. 46A-57](#)



32

6. Parties can Appeal or Impeach the Report & Confirmation

Actual Partition Process



33

Challenges after Confirmation of Report

- ☐ **Appeal** from order of confirmation.
- ☐ **Seeking Relief from Order of Confirmation** (Impeachment).



34

Appeal

- **Appeal** from order of confirmation.
 - Appeal from the clerk to superior court of an order of confirmation of the report of the commissioners is governed by G.S. § 1-301.2, except that the judge may take only the same actions available to the clerk, and may not order a partition of the land different from that made by the commissioners. [G.S. 46A-56\(c\)](#)
 - i. confirm the report,
 - ii. recommit the report for correction and further consideration,
 - iii. vacate the report and direct the same commissioners to reapportion, or
 - iv. vacate the report, discharge the commissioners, and appoint new commissioners to view the real property and apportion it.



35

Seeking Relief from the Order of Confirmation

- After confirmation, any party may seek relief from the order of confirmation for mistake, fraud or collusion by motion in the cause. However, this motion will not affect innocent purchasers for full value and without notice. [G.S. 46A-56\(d\)](#)
- Known as ***Impeachment***.



36

Let's Review!



Other Situations

Clerk to docket owelty, G.S. 46A-58

- ***If the court orders owelty***, the clerk shall enter the owelty on the judgment docket in the same manner as judgments are entered on the docket.
- The clerk shall mark as plaintiffs on the judgment docket persons whose shares are to be paid owelty, and the clerk shall mark as defendants on the judgment docket persons whose shares are charged with owelty.
- The entry on the docket shall contain the title of the special proceeding in which the property was partitioned.



39

Hypo time!



40

Order for Possession, G.S. 46A-59

After *apportionment* (via report and confirmation), order for possession may be issued by the clerk against party improperly in possession of the property if the following apply:

1. No appeal from the order of confirmation of the report of commissioners has been made within the time prescribed under G.S. 1-301.2, or if an appeal has been made, the judge confirmed the report pursuant to G.S. 46A-56(c).
2. The report and confirmation have been duly recorded in the office of the register of deeds pursuant to G.S. 46A-57.
3. Ten days' notice has been given by the party applying for the order for possession to each party remaining in possession at the time application is made. The notice shall not be given until the clerk has confirmed the report of the commissioners pursuant to G.S. 46A-56.

Order is directed to the sheriff and sheriff removes occupants and their personal property.



41

What if Parties Reach a Settlement Agreement on Actual Partition?

- Does clerk have jurisdiction to approve?
 - If clerk could not approve under Chapter 46A, private settlement agreement is still an option.
 - Must deal with status of the order on partition petition.



42

Settlement Agreements in Actual Partition (cont'd.)

- Does settlement agreement occur before or after hearing as been held?
 - If before, parties can voluntarily dismiss or hold matter open with court's consent.
 - If after, order may need to be amended or rescinded (parties would file a motion). See [G.S. 7A-103\(9\)](#) (**The clerk has authority to “Open, vacate, modify, set aside, or enter as of a former time, decrees or orders of his court.”**)
 - Depending on how the order is amended, Commissioners may still need to submit a report in conformity with duties under [G.S. 46A-55](#).
 - Regardless, Commissioners and surveyors still need to be paid (if not addressed in the agreement).



43

Anticipating Costs and Fees



44

Compensation of commissioners

- The clerk determines the amount of compensation in accordance with G.S. 1-408. G.S. 46A-50(b).
- Fee must be reasonable. G.S. 1-408.
 - The clerk is to fix the compensation of the commissioners according to the provisions of G.S. 1-408. G.S. 46A-50(b).
 - The fee fixed by the clerk must be reasonable and are to be taxed as part of the costs in the proceeding. G.S. 1-408.

What's a reasonable fee?



45

What's a reasonable fee?



46

Food for Thought: Commissioner Fees

- What is reasonable will vary from case to case and depend on the complexity of the case.
 - Some clerks set a flat fee with the option to adjust based on the particular case. Some clerks set an hourly rate.
 - Many clerks request the commissioners submit an invoice for the court file.
- Best practice is to set the commissioners' fees at or soon after the commissioners' appointment.
- The clerk should also consider ***collecting the commissioners' compensation in advance.***



School of
Government

47

Consider: Collecting Fees Upfront

1. It is good practice to collect costs from the petitioner or other parties, including compensation for the commissioners, when the commissioners are appointed.
2. The clerk may require a cash deposit in advance from petitioner or other parties to guarantee payment of the commissioners' fees when it appears that there may be no net proceeds from the sale or as protection in the event the case is dismissed before the sale.
3. The commissioners are paid when the clerk confirms the report and enters the final judgment or order.
4. If the commissioners' fees are not collected in advance and the commissioners are not paid, the clerk is authorized to enter a monetary judgment for the costs. The clerk can issue execution. 



School of
Government

48

About the Order...



School of
Government

49

Let's revisit the hypo...

- Lisa and Catherine have inherited Meredith's 50-acre farm. Catherine petitioned for a partition sale, but she has not proved substantial injury by a preponderance of the evidence.
- You are going to order an actual partition.
- The farm has numerous barns and outbuildings (in various states of repair/disrepair), a lake, a mountainous area, some open pastures, some timber, and a creek that sits in a flood plain.



School of
Government

50

Let's Revisit the Order...



Take out your proposed order...

Think about 3 things:

- What should you add to the Findings of Fact?
- What should you add to the Conclusions of Law?
- What should you add to your decree?

What's Next?....

- Common issues in actual partitions.
- A group discussion with a very special panel...



53



**School of
Government**

54