

The Little Engine that Could: Article 27A, G.S. Chapter 1

In my [last post](#), I wrote about the office of the clerk of superior court and the clerk's judicial authority. I provided a basic framework for this authority and noted that the clerk's non-criminal authority falls into three main categories:

1. estates and trusts,
2. civil, and
3. special proceedings.

Some Background on Article 27A of G.S. Chapter 1

I did not come up with these categories on my own. In fact, there are three statutes located in Article 27A of G.S. Chapter 1 that clearly define these as the primary categories of the clerk's judicial authority. They are [G.S. 1-301.1](#) (civil actions), [G.S. 1-301.2](#) (special proceedings), and [G.S. 1-301.3](#) (estates and trusts).

It is easy to forget these statutes, as they sit separate and apart from the substantive chapters throughout the General Statutes that govern proceedings before the clerk, but for three small statutes, they pack a lot of punch. I would suggest that knowing these statutes is critical for any clerk or assistant clerk who presides over hearings and for any party or practitioner appearing in a judicial proceeding before the clerk. They give context and guidance to proceedings before the clerk and establish the scope of the clerk's jurisdiction and the procedure related to transfer and appeal of the clerk's orders.

Article 27A of G.S. Chapter 1 was adopted by the General Assembly in 1999 as [S.L. 1999-216](#) to replace the existing Article 27. The now repealed and replaced Article 27 was originally enacted after the Civil War and did not contemplate the unified court system adopted in the 1950s and 1960s in NC. See [North Carolina Legislation 1999, Chapter 6, UNC Institute of Government](#). The old Article 27 established some procedure and guidance for appeals and transfers of special proceedings, but also had conflicting and oftentimes confusing language. *Id.* With regard to estate matters, there was a complete lack of guidance in statute and case law was not followed consistently across the state. *Id.*

The purpose of the new Article 27A was "to bring some order to the handling of these cases and to provide easily accessible, clear guidance to clerks, judges, attorneys, and litigants who appear before a clerk of court in a civil action, special proceeding, or estate matter." *Id.* Thus, the General Assembly established in statute the three categories of actions before the clerk.

So what exactly do the three statutes under Article 27A of G.S. Chapter 1 say?

Transfer and Appeal of Estate and Trust Matters before the Clerk (G.S. 1-301.3)

The statute under Article 27A applicable to estates and trusts is G.S. 1-301.3. It applies to matters arising in the administration of trusts and of estates of decedents, incompetents, and minors. It does not apply to a special proceedings arising in a matter relating to the administration of an estate. G.S. 1-301.2, discussed below, applies to those special proceedings before the clerk.

Fortunately, my colleague, Ann Anderson, has written quite a bit about this statute. Her 2012 bulletin, [Estate Proceedings in North Carolina](#), provides guidance on the application of G.S. 1-301.3 on pages 15 through 18. I would recommend reading through this section and paying particular attention to the special evidentiary exception discussed on page 18 that applies to estate matters before the clerk and on appeal to superior court. G.S. 1-301.3(d).

Appeal of the Clerk's Order in Civil Actions (G.S. 1-301.1)

G.S. 1-301.1 applies to orders or judgments entered by the clerk of superior court in civil actions in which the clerk exercises the judicial powers of that office. G.S. 1-301.1(a). If another provision of the General Statutes conflicts with the procedure set forth in G.S. 1-301.1, that specific provision controls. *Id.* See also Mosler v. Druid Hills Land Co., Inc., 199 NC App. 293. (2009).

I discussed the clerk's civil judicial powers and the clerk's concurrent authority with the judge in certain civil actions in my [earlier post](#). As I noted, 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. G.S. 1-301.1(d).

If a party elects to proceed before the clerk and the clerk enters an order in a civil action, an aggrieved party may file an appeal within 10 days from entry of the clerk's order. G.S. 1-301.1(b). The appeal is to the "appropriate court" for a trial de novo. *Id.* See also Progressive Lighting, Inc. v. Historic Designs, Inc., 156 NC App. 695 (2003). For example, if in a claim and delivery action the clerk enters an order and the underlying civil action is in district court, the appeal of the clerk's order in the claim and delivery proceeding is to district court. See [NC Clerk of Superior Court Procedures Manual](#), pg. 35.7-35.8.

On the de novo appeal, the judge may hear and determine all matters in controversy in the civil action, including the issue that served as the basis for the appeal, unless:

1. The matter is one that involves an action that can be taken only by a clerk. Under these circumstances, the judge must dispose of only the matter appealed and remand the action to the clerk. The judge may also order the clerk to take the action that can only be taken by the clerk. G.S. 1-301.1(c).
2. Justice would be more efficiently administered by the judge's disposing of only the matter appealed. Under these circumstances, the judge must dispose of the matter appealed and

remand the action to the clerk. *Id.*

Transfer and Appeal of Special Proceedings before the Clerk (G.S. 1-301.2)

The third statute under Article 27A of G.S. Chapter 1 is G.S. 1-301.2 and pertains to transfer and appeal of “special proceedings” heard by the clerk in the exercise of the judicial powers of that office. G.S. 1-301.2(a). A special proceeding is defined in G.S. Chapter 1 and is defined in the negative – essentially, by what it is not. Under [G.S. 1-1](#), remedies in the courts are divided into two categories: (1) actions, and (2) special proceedings.

An “action” under G.S. 1-2 is what we typically think of when we think of a proceeding in a court. It is a proceeding by which one party prosecutes another party to enforce or protect a right, redress or prevent a wrong, or punish or prevent a public offense. [G.S. 1-2](#). There are two types of actions: civil and criminal. [G.S. 1-4](#). “Every other remedy is a special proceeding.” [G.S. 1-3](#).

This definition of special proceeding leaves open a broad array of proceedings that could and do fall into this category. As evidenced by decisions of the NC Supreme Court as early as the 1870s, courts over time have struggled with a bright-line definition of “special proceeding.” See, e.g., *Tate v. Powe*, 64 N.C. 644 (1870). One practical way to think of a special proceeding is a proceeding that is initiated by petition for the purpose of obtaining “court approval to confer new status or to authorize the taking of some kind of action.” North Carolina Legislation 1999, Chapter 6, UNC Institute of Government. They are often uncontested. *Id.* Frequently, the legislature short circuits the discussion of “is it or isn’t it an SP” and expressly designates a proceeding as a special proceeding or references to G.S. 1-301.2 in the underlying statute creating the proceeding.

Special proceedings create an interesting challenge in application. The *specific* procedures for each special proceeding are prescribed in the relevant governing statute creating the proceeding, such as Chapter 48 for adoptions, Chapter 46 for partitions, Chapter 101 for name changes, and Chapter 40A for private condemnations. The *general* procedure governing special proceedings is set forth in [Article 33 of G.S. Chapter 1](#) and fills in the gaps where the specific statute is silent. This includes a provision which states that the Rules of Civil Procedure set forth in G.S. Chapter 1A are applicable to special proceedings except as otherwise provided. [G.S. 1-393](#). Furthermore, G.S. 1-301.2 attempts to corral special proceedings into one statute when it comes to transfer and appeal of these actions. However, the statute expressly provides that to the extent it conflicts with a specific provision of the General Statutes, that specific provision of the General Statutes controls. G.S. 1-301.2(a).

I generally described the provisions related to transfer of special proceedings under G.S. 1-301.2 in my [previous post](#). With regard to appeal of orders of the clerk entered in special proceedings, an aggrieved party may appeal a final order of the clerk to the appropriate court for a hearing de novo. G.S. 1-301.2(e). Note, although not a final order of the court, the clerk’s order determining the issue of actual partition or sale in lieu of partition is appealable under G.S. 1-301.2(h). The notice

of appeal must be in writing and filed within 10 days of entry of the clerk's order. *Id.* The statute notes one specific exception for this 10-day rule related to a clerk's order confirming a partition under [G.S. 46.28.1\(f\)](#). The clerk's order remains in effect pending appeal until replaced by the judge on appeal. *Id.* The order may be stayed by the judge or the clerk if the appellant posts a bond as set by the judge or the clerk issuing the stay. *Id.*