Creditor Claims

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Goals for this Session

1. Creditor Claim Basics
2. What's the PR's Duty?
3. What's the Clerk's Duty?

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Creditor Claims

Creditor Claim Basics

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Form of the claim

A claim against a decedent's estate must be in writing and must state

- the amount or the item claimed or the other relief sought by the claimant,
- the basis for the claim, and
- the claimant's name and address.

G.S. 28A-19-1(a).

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Manner of presentation

A. Delivery in person or by mail to the PR, the collector, or the clerk.
- If presented in this manner, the claim is deemed presented at the time of delivery. G.S. 28A-19-1(a)(1).

B. Delivery by registered or certified mail, return receipt requested, to the PR or collector at the address set out in the general notice to creditors.
- The claim is deemed presented when the return receipt is signed or refused by the PR, the collector, or the agent of the PR or collector. G.S. 28A-19-1(a)(2).

C. Delivery to the clerk of the county in which the estate is pending.
- If presented in this manner, the claim is deemed presented at the time of delivery to the clerk. G.S. 28A-19-1(a)(3).

When the claim is delivered to the clerk, ***the clerk must***

1. file the notice of claim in the appropriate estate file and
2. mail the notice of claim by first-class mail to the PR, the collector, or the agent of the PR or collector at the claimant's expense. G.S. 28A-19-1(a)(3).

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Time Limits on Presenting a Claim (arising *BEFORE* death)

Claims against a decedent's estate are "forever barred" if they are not presented by the later of

1. The **date** that was specified in the general notice to creditors or,
2. In cases requiring personal notice, **within ninety days of the date** of delivery or mailing of notice if the expiration date of the ninety-day period is later than the date specified in the general notice to creditors. G.S. 28A-19-3(a).

Exceptions:
- Warranties in connection with real estate, claims of the United States, NC tax claims, enforcement of mortgage, deed of trust or liens, certain cases where decedent or PR are protected by insurance coverage. G.S. 28A-19-3.

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Time Limits on Presenting a Claim (arising *AFTER* death)

Any claim against the estate of a decedent that arises at or after the decedent's death is forever barred unless

1. The claim is based on a contract with the PR or collector and is presented to the PR or collector within **six months** after the date on which performance by the PR or collector is due or
2. The claim is not based on a contract with the PR or collector and is presented within **six months** after the date on which the claim arises. G.S. 28A-19-3(b).

Exceptions:

- Claims of the United States, NC tax claims, enforcement of mortgage, deed of trust or liens, certain cases where decedent or PR are protected by insurance coverage. G.S. 28A-19-3.

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Other limits on the presentation of claims

- All claims that are subject to a bar set out in G.S. 28A-19-3(a) or (b) are barred if the first publication or posting of the general notice to creditors does not occur within three years after the death of the decedent. G.S. 28A-19-3(f).

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Creditor Claims

What's the PR's Duty?

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PR's Initial Duties

1. Publish notice to creditors.
2. Determine and notify known creditors.
3. File proof of notice with the clerk.

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PR has a Duty to Publish Notice

§ 28A-14-1. Notice for claims.

(a) Every personal representative and collector after the granting of letters shall notify all persons, firms, and corporations having claims against the decedent to present their claims to the personal representative or collector, on or before a day to be named in the notice, which day must be at least three months from the day of the first publication or posting of the notice. The notice shall set out a mailing address for the personal representative or collector. The notice shall be published once a week for four consecutive weeks in a newspaper qualified to publish legal advertisements, if any such newspaper is published in the county. If there is no newspaper published in the county, but there is a newspaper having general circulation in the county, then at the option of the personal representative, or collector, the notice shall be published once a week for four consecutive weeks in the newspaper having general circulation in the county and posted at the courthouse or the notice shall be posted at the courthouse and four other public places in the county. Personal representatives are not required to publish or mail notice to creditors if the only asset of the estate consists of a claim for damages arising from death by wrongful act. When any collector or personal representative of an estate has published or mailed the notice provided for by this section, no further publication or mailing shall be required by any other collector or personal representative.

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Does the PR *always* have to publish notice?

- What about after 2 years?
  - YES - G.S. 28A-17-12 does not negate the need to publish the notice to creditors.
    - G.S. 28A-17-12(b) allows the heirs or devisees to sell real property without the PR joining on the deed if no notice to creditors was run within 2 years of the decedent's death.

- What about wrongful death?
- Only exception to publication: wrongful death claim = **only asset**.
  - "Personal representatives are not required to publish or mail notice to creditors if the only asset of the estate consists of a claim for damages arising from death by wrongful act." 28A-14-1(a).

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PR has a duty to determine Known Creditors

G.S. 28A-14-1(b)

Prior to filing the proof of notice required by G.S. 28A-14-2, every personal representative and collector shall personally deliver or send by first class mail to the last known address a copy of the notice required by subsection (a) of this section to all persons, firms, and corporations having unsatisfied claims against the decedent that are actually known or can be reasonably ascertained by the personal representative or collector within 75 days after the granting of letters and, if at the time of the decedent's death the decedent was receiving medical assistance as defined by G.S. 108A-70.5(b), to the Division of Health Benefits of the Department of Health and Human Services. No notice, however, is required to be delivered or mailed with respect to any claim that is recognized as a valid claim by the personal representative or collector.

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Who is a Known Creditor?

"all persons, firms, and corporations having unsatisfied claims against the decedent that are actually known or can be reasonably ascertained by the personal representative or collector within 75 days after the granting of letters"

G.S. 28A-14-1(b)

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Known Creditors are entitled to Personal Notice

- Personal Notice = sending copy of published NTC....
  1. personally deliver or send by first class mail
  2. a copy of the notice required by subsection (a) of this section.
     - *Filing deadline for KC*: Within ninety days of the date of delivery or mailing of notice if the expiration date of the ninety-day period is later than the date specified in the general notice to creditors. G.S. 28A-19-3(a).
- Exception: “Any claim that is recognized as a valid claim by the personal representative or collector.”
  - What does this PR do instead?
    - Pay them!
  - How will the clerk know?
    - You will see it in the annual/final account.

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PR’s reporting obligation – File Proof of Notice

The PR must file with the clerk at the time the statutorily required three-month inventory is filed

1. a copy of the published or posted notice required under G.S. 28A-14-1(a);
2. an affidavit of publication or posting (note that this is typically an affidavit from the publishing newspaper); and
3. an affidavit of the PR or the PR’s attorney stating that the notice to creditors was personally delivered or mailed to each creditor entitled to notice under G.S. 28A-14-1(b) (discussed in Section VI.B, above). G.S. 28A-14-2.

- Form. AOC-E-307, Affidavit Of Notice To Creditors.

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STATE OF NORTH CAROLINA

File No.

County

In The General Court Of Justice
Superior Court Division
Before The Clerk

IN THE MATTER OF THE ESTATE OF:

Name Of Decedent

AFFIDAVIT OF NOTICE TO CREDITORS

G.S. 28A-14-1, 28A-14-2

NOTE: *The second option should be checked only in cases where the decedent had no outstanding debts, or the personal representative has paid in full all known debts. The first option should be checked in all other cases.*

The undersigned affiant, being first duly sworn, says that:

☐ 1. Pursuant to G.S. 28A-14-1, I made a reasonable effort to ascertain all persons, firms and corporations *(including the Department of Health and Human Services, Division of Medical Assistance, if at the time of the decedent's death the decedent was receiving Medicaid)* having unsatisfied claims against the decedent and personally delivered or mailed a copy of the Notice to Creditors to all such persons, firms and corporations then known to me, except for those claims that I recognize as valid.

☐ 2. No copy of the Notice to Creditors required by G.S. 28A-14-1 was mailed or personally delivered because, after making a reasonable effort within the time provided by law, I am satisfied that there are no persons, firms or corporations *(including the Department of Health and Human Services, Division of Medical Assistance, if at the time of the decedent's death the decedent was receiving Medicaid)* having unsatisfied claims against the decedent. *(See note above.)*

NOTE: *Signature of only one affiant is necessary.*

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PR's options* upon receiving a claim:

1. Pay the claim.
2. Refer the claim.
3. Reject the claim.

****Exception to these rules-*** If the claim is the PR's own claim.

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PR's option #1 – Pay the Claim

- The PR can always accept the claim as valid and pay the claim.
- How will the clerk know?
  - You'll see it on the accounting.
- PR must pay the claim in the order of priority.
- What if there is not enough money to pay all the creditors?
  - The PR pays in accordance with the Order of Priority – G.S. 28A-19-6.
  - 9 classes of creditors

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Classes of Creditors – G.S. 28A-19-6

1. First class. Claims which by law have a specific lien on property to an amount not exceeding the value of such property.
2. Second class. Funeral expenses to the extent of three thousand five hundred dollars ($3,500).
3. Third class. Costs associated with gravestones and reasonable costs for the purchase of a suitable burial place as provided in G.S. 28A-19-9 to the extent of one thousand five hundred dollars ($1,500).
4. Fourth class. All dues, taxes, and other claims with preference under the laws of the United States.
5. Fifth class. All dues, taxes, and other claims with preference under the laws of the State of North Carolina and its subdivisions.
6. Sixth class. Judgments of any court of competent jurisdiction within the State, docketed and in force, to the extent to which they are a lien on the property of the decedent at the decedent's death. (Includes DHHS/Medicaid)
7. Seventh class. Wages due to any employee employed by the decedent.
8. Eighth class. A claim for equitable distribution.
9. Ninth class. All other claims. (Credit cards, utilities, *most bills*)

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PR's option #2 – Refer the Claim

- If the PR doubts the justness of any claim presented, the PR may enter into a written agreement with the claimant to refer the matter to one or more, not exceeding three, disinterested persons. G.S. 28A-19-15.
  - This process outlined in the statute is "intended to [be] an expeditious and inexpensive mode" to resolve controversies among a PR and a creditor; it is a substitute for a court proceeding. *In re Reynold's Estate*, 221 N.C. 449, 452 (1942).
- An agreement to refer, and any award resulting from the referral, must be filed in the office of the clerk where the letters were granted. The agreement and the resulting award from the referral amount to a lawful voucher for the PR. G.S. 28A-19-15.
  - The report of the referee's/referees' decision in the matter is filed in the clerk's office for the purpose of establishing an item in the PR's accounting. *In re Reynold's Estate*, 221 N.C. 449, 452 (1942).
  - The report is binding upon the parties and conclusive as to the validity of the claim. *In re Reynold's Estate*, 221 N.C. 449, 453 (1942).
- In the absence of fraud, the determination by the disinterested persons determines the controversy. G.S. 28A-19-15.
  - The referee's/referees' report is not filed with the clerk "for the purpose of permitting exception and appeal[.]" In the absence of collusion or fraud, there is no appeal from the report. *In re Reynold's Estate*, 221 N.C. 449, 452 (1942).

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PR's option #3 – Reject the Claim

- Once a claim is presented to the PR or collector, the PR or collector determines whether to reject the claim. G.S. 28A-19-16.
- Under G.S. 28A-19-16, if the PR or collector has been presented with and has rejected a claim, and if the claim has not been referred, ***within three months of receiving written notice of the rejection*** of the claim, the claimant must
  - in the case of a contingent or unliquidated claim, file a petition with the clerk to obtain an order pursuant to G.S. 28A-19-5(b)) or
  - commence a civil action to recover the claim.
- The time constraint imposed by G.S. 28A-19-16 applies only when the rejection of the claim by the PR or collector is "absolute and unequivocal"; it does not apply if the rejection leaves the payment up to negotiation or adjustment. *Rutherford v. Harbison*, 254 N.C. 236, 239 (1961).
- **The clerk does not have jurisdiction to hear a dispute related to a claim that has been rejected by the PR or the collector and has not been referred**. G.S. 28A-2-4(c)(1); 28A-19-16 (requiring the commencement of an "action for recovery" of the claim).
  - These are actions of a civil nature; jurisdiction over them is vested in the trial division. *In re Estate of Taylor*, 242 N.C. App. 30, 36 (2015) (holding that the clerk lacked jurisdiction to hear a dispute related to a claim for reimbursement from the decedent's estate of money spent on funeral expenses that was denied by the PR).
- The claimant is ***forever barred*** from maintaining an action on a disputed claim if the claimant fails to commence an action, or, in cases involving contingent or unliquidated claims, to file a petition with the clerk, within three months after receiving written notice of the rejection of the claim. G.S. 28A-19-16.

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Creditor Claims

What's the Clerk's Duty?

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Does the Clerk have authority to determine if a creditor claim is valid?

If the creditor claim belongs to anyone other than the PR…

No!

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What if the PR is making the claim?

- This is the only time the clerk is allowed to determine the claim.

§ 28A-19-12. Claims due representative not preferred.

No property or assets of the decedent shall be retained by the personal representative or collector in satisfaction of the personal representative's or collector's own claim, in preference to others of the same class. Prior to payment of the personal representative's or collector's own claim the personal representative or collector shall receive written approval of the clerk of superior court. If the clerk does not approve the claim the personal representative or collector may refer the claim as a disputed claim under the provisions of G.S. 28A-19-15. The provisions of G.S. 28A-19-1 and G.S. 28A-19-3 shall not apply to such claims and the personal representative or collector may present the personal representative's or collector's own claim at any time prior to the filing of the personal representative's or collector's final account.

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Payment of the PR's own claims

- The PR or collector must obtain the clerk's written approval before paying the PR's or collector's own claims. G.S. 28A-19-12.
  - If the clerk does not approve the claim, the PR or collector may refer the claim as a disputed claim under G.S. 28A-19-15. G.S. 28A-19-12.
- The PR or collector may present the claim at any time prior to the filing of the PR's or collector's final account. G.S. 28A-19-12.
- The PR and the collector are not required to present the claim and are not subject to the time limitations on the presentation of claims. G.S. 28A-19-12.

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So what is the Clerk's role?

1. Make sure claims are paid in the right order.
2. Approve/deny PR's claims.
3. Make sure every claim known to the clerk is disposed of before approving the final account.

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Making sure claims are paid in the right order– G.S. 28A-19-6

1. First class. Claims which by law have a specific lien on property to an amount not exceeding the value of such property.
2. Second class. Funeral expenses to the extent of three thousand five hundred dollars ($3,500).
3. Third class. Costs associated with gravestones and reasonable costs for the purchase of a suitable burial place as provided in G.S. 28A-19-9 to the extent of one thousand five hundred dollars ($1,500).
4. Fourth class. All dues, taxes, and other claims with preference under the laws of the United States.
5. Fifth class. All dues, taxes, and other claims with preference under the laws of the State of North Carolina and its subdivisions.
6. Sixth class. Judgments of any court of competent jurisdiction within the State, docketed and in force, to the extent to which they are a lien on the property of the decedent at the decedent's death. (Includes DHHS/Medicaid)
7. Seventh class. Wages due to any employee employed by the decedent.
8. Eighth class. A claim for equitable distribution.
9. Ninth class. All other claims. (Credit cards, utilities, *most bills*)

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What if…

Estate has $65,000.

- Funeral bill of $3,500
- Headstone cost $1,500
- Decedent owed IRS taxes of $50,000
- Decedent owed NCDOR $5,000
- Medicaid has a claim for $5,000
- Credit card bills of $20,000

How much does each creditor get?

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Determine each creditor class

Estate has $65,000.

- Funeral bill of $3,500 – Second Class
- Headstone cost $1,500 – Third Class
- Decedent owed IRS taxes of $50,000 – Fourth Class
- Decedent owed NCDOR $5,000 – Fifth Class
- Medicaid has a claim for $5,000 – Sixth Class
- Credit card bills of $20,000 – Ninth Class

How much does each creditor get?

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Pay in the order of the Class

Estate has $65,000.

- Funeral bill of $3,500 – Second Class ***paid in full, $61,500 remaining***
- Headstone cost $1,500 – Third Class ***paid in full, $60,000 remaining***
- Decedent owed IRS taxes of $50,000 – Fourth Class ***paid in full, $10,000 remaining***
- Decedent owed NCDOR $5,000 – Fifth Class ***paid in full, $5,000 remaining***
- Medicaid has a claim for $5,000 – Sixth Class ***paid in full, $0 remaining***
- Credit card bills of $20,000 – Ninth Class ***NOT PAID***

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What if not enough money to pay all creditors in the same class?

- PR pays each creditor in that class ***pro rata***. G.S. 28A-19-13.

Consider: $10,000 left after paying Classes 1 through 8. Class 9 creditors are the following:

- Visa card - $5,000
- Verizon - $1,000
- Mastercard - $4,000
- Macy's card - $3,000

How much does everyone get?

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What if not enough money to pay all creditors in the same class?

Consider: $10,000 left after paying Classes 1 through 8. Class 9 creditors are the following:

• Visa card - $5,000:	38.5% x $10,000 = $3,850
• Verizon - $1,000:	7.7% x $10,000 = $770
• Mastercard - $4,000 =	30.8% x $10,000 = $3,080
• Macy's card - $3,000 =	23% x $10,000 = $2,300
	$10,000

How much does everyone get?

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Clerk's duty #3 – Ensuring Claim is disposed of

- Check the file for claims.
- Check the account for
  - Payment by PR
  - Referral by PR & Referee's report/decision
  - Rejection by PR

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About Rejections

- What kind of service is required?
  - Statute doesn't say.
  - Clerk does not have statutory authority to require Rule 4 service.
- When is it OK to approve the final?
    - **Practice Note.** The clerk should not discharge the PR or collector until the time to commence an action or file a petition with the clerk after rejection of a claim has passed (within 3 months after due notice in writing of rejection).

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What do you do if…

- The claim is filed after the publication date?
- The claim fails to state the amount claimed of the basis of the claim?
- The claim looks suspicious?

The answer to all of these is ***nothing***. It is the PR's responsibility to pay, refer, or reject the claim. *(Clerk only decides if it's the PR's claim.)*

You are going to be looking for the payment, referral/resolution, or denial+3 months.

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Contingent or Unliquidated Claims

- If a claim is contingent or unliquidated and becomes absolute before the decedent's estate is distributed, the claim is paid in the same manner as absolute claims of the same class. G.S. 28A-19-5(a).
- If a contingent or unliquidated claim does not become absolute, the clerk may provide for the claim's payment by any of the following methods:

1. The creditor and the PR or collector determine, by agreement, arbitration, or compromise, the value of the contingent or unliquidated claim, according to its probable present worth, and with the approval of the clerk, it is allowed and paid in the same manner as an absolute claim. G.S. 28A-19-5(a)(1).
2. The clerk orders the PR or collector to retain sufficient funds to pay the claim if and when the claim becomes absolute, and order distribution of the balance of the estate. G.S. 28A-19-5(a)(2).
3. The clerk orders distribution of the estate as though the contingent or unliquidated claim did not exist, but the heirs and devisees of the decedent's estate remain liable to the creditor up to the amount they receive from the estate if the contingent or unliquidated claim later becomes absolute. G.S. 28A-19-5(a)(3).
   - The court may require the decedent's heirs and devisees to give bond for the performance of their liability to the contingent or unliquidated creditor. G.S. 28A-19-5(a)(3).
4. The claim may be paid by such other method as the clerk may order. G.S. 28A-19-5(a)(4).

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