

**2011 LEGISLATION OF INTEREST TO COURT OFFICIALS:
CIVIL PROCEDURE, ESTATES & SPECIAL PROCEEDINGS; JUDICIAL AUTHORITY AND ADMINISTRATION**

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Civil Procedure, Estates, and Special Proceedings

1. [S.L. 2011-199 \(H 380\)](#): Discovery of electronic information.

Amends G.S. 1A-1, Rules 26, 33, and 34 of the Rules of Civil Procedure to include “electronically-stored information” among the items parties may obtain in the course of discovery. Further amends Rule 34 to govern the manner of production of electronically-stored information, and to provide that a party may object to a request for such information on the basis that it is not reasonably accessible because of undue burden or cost, or for reasons related to the requested manner of production. Adds provisions placing the burden in Rules 26 and 37 on the objecting party to show the basis for the objection, and providing that a court may nevertheless (with certain limitations) order the discovery for good cause shown. Amends Rule 37 to provide that a court generally may not sanction a party for failing to produce electronically-stored information lost as the result of routine, good-faith operation of an electronic information system.

Also amends Rules 16 to provide that a judge must (was, “may”) make an order that includes the matters dealt with in a pre-trial conference held at the judge’s discretion. Further adds new provisions to Rule 26 requiring a party withholding information on grounds of privilege or protection to claim the basis expressly and reasonably describe the items withheld. Also provides a procedure for resolving inadvertent disclosure of privileged or protected information.

Revamps the procedure for a discovery conference pursuant to Rule 26(f). Most notably, the procedure is now structured to provide that, upon any party’s request, the parties shall hold a meeting among themselves to resolve discovery issues and formulate a plan (with specific requirements set forth in the statute) to present to the court. If they are unable to agree on a plan, upon motion of a party the parties must report to and have a discovery conference before the court, at which the court shall enter a discovery plan. The court may initiate a discovery meeting or conference at any time if the parties do not do so.

Finally, amends Rule 45 to include electronically-stored information among the items subject to subpoena, and provides general requirements for the method and manner of requesting and producing such information and for objecting to its production. Effective October 1, 2011.

2. **S.L. 2011-247 (H 379): Uniform Interstate Depositions and Discovery Act.**

Enacts new G.S. Chapter 1F. Provides a procedure by which discovery in North Carolina relevant to an action in a foreign jurisdiction (another state) can be ordered by a North Carolina court. Requires a person requesting issuance of a subpoena in a North Carolina court to submit a subpoena of a foreign jurisdiction to a clerk of superior court in the North Carolina county where discovery is sought. The clerk must promptly issue a subpoena (with specific content requirements) for service upon the person to which the foreign subpoena is directed, open an appropriate court file, assign a file number, and collect the applicable filing fee pursuant to G.S. 7A-305(a)(2). A request for issuance of a subpoena under this act does not constitute an appearance in the North Carolina court. Sets forth provisions concerning service of the subpoena, applicable Rules of Civil Procedure, and applications for protective orders. Amends Rule 28(d) of the Rules of Civil Procedure to specify that the rule now applies only to depositions to be used in foreign countries (was, "outside this state").

Also creates new subsection (f) to Rule 45 of the Rules of Civil Procedure to allow a party to a North Carolina action to request discovery from persons outside North Carolina in the form of oral deposition, deposition on written questions, or request for production of documents and tangible things. The party must follow any procedures under the laws applicable to the area where discovery is sought, including obtaining a commission from the North Carolina court if required. If a commission is required, the party must make a motion in the court where the action is pending following the procedures sets forth in the rule, and the court shall hear and grant or deny the commission as set forth in the rule. Also directs the revisor of statutes to print all relevant portions of the official comments to the Uniform Interstate Depositions and Discovery Act. Effective December 1, 2011 and applies to all cases then pending or filed on or after that date.

3. **S.L. 2011-299 (H 687): Attorney fees in actions against cities and counties.**

Creates G.S. 6-21.6 to provide an award of attorney fees and costs to successful challengers to city or county actions. If the court finds the city or county acted outside the scope of its authority, the court has discretion to award fees and costs. If the court further finds that the city or county's action was an abuse of discretion, the court "shall" award fees and costs. Effective October 1, 2011 and applies to claims for relief brought or defended on or after that date.

4. **S.L. 2011-303 (H 805): Additional requirements on name change applications.**

Amends G.S. 101-5 to require that applicants to the clerk for name changes submit with their applications the certified results of an official state and national criminal history record check and a sworn statement regarding county of domicile and outstanding tax and child support obligations. Clerk must provide certain instructions regarding obtaining the criminal history record check. Clerk is also required, in an order of name change, to summarize the information reviewed. Clerk must forward the order to the SBI Division of Criminal Information which shall update its records accordingly. Clerks are required to deny an order of name change where the clerk finds good and sufficient reason for doing so, and the clerk must state in the order the reasons for denial. Appeal of a denial is to the chief [senior] resident superior court judge within 30 days of the date of the denial order, and the judge's decision is final. There is a twelve-month waiting period for re-applications after denial. A clerk may set aside an order of name change in the event of fraud or material misrepresentation to the court. Effective June 24, 2011.

5. **S.L. 2011-317 (S 586): Motions in multicounty districts.**

Amends G.S. 1A-1, Rule 7(b)(4) of the North Carolina Rules of Civil Procedure to provide that a civil motion in a case filed in a multicounty district may be heard in another county within that district with permission of a district's senior resident superior court judge or judge's designee. The motion shall be heard in a civil session except in an emergency as determined by the senior resident superior court judge or designee. Effective October 1, 2011 and applies to actions arising on or after that date.

6. **S.L. 2011-332 (S 300): Service of process and other service amendments.**

Amends various statutes and Rules of Civil Procedure regarding service. Amends G.S. 7A-217 to allow service by signature confirmation or designated delivery service in small claims actions assigned to magistrates. Amends G.S. 150B-23(c), G.S. 150B-36(b3), G.S. 150B-38(c), and G.S. 150B-42(a) to provide for service in administrative cases in accordance with relevant provisions of Rules 4 and 5 of the Rules of Civil Procedure. Amends Rule 4(c) of the Rules of Civil Procedure to clarify that the sixty-day time frame for serving a summons applies to all summons under Rule 4(j) and (j1) (was, Rule 4(j)(1) a and b). Amends G.S. 7B-1102 to require that a copy of a motion to terminate parental rights that is served on a parent be sent to that parent's attorney of record, if any. Amends Rule 5(b) of the Rules of Civil Procedure to require that Rule 5(b) service be made upon a party's attorney of record, if any; that service upon an attorney may be made by mail; and that service upon a party (if permitted) may be made by handing a copy to the party, mailing a copy to the party, or, if the address is not known, by filing with the clerk of court. Effective October 1, 2011 and applies to actions as set forth in Section 5.

7. **S.L. 2011-341 (S 414): Reciprocal attorney fee provisions in business contracts.**

Creates G.S. 6-21.6, which provides that reciprocal attorney fee provisions in business contracts are valid and enforceable where the contract is signed by hand. "Business contracts" does not include consumer or employment contracts or contracts with the State of North Carolina or one of its agencies. The court "may" award reasonable fees in accordance with the contract's terms, considering all relevant facts and circumstances including thirteen factors listed in the statute. The amount of the fee is not governed by any stated percentage in the contract. Regarding the limit on fees in actions primarily for the recovery of monetary damages: G.S. 6-21.6(b) states that the award of reasonable attorney fees "may not exceed the monetary damages awarded," while G.S. 6-21.6(f) states that the award "may not exceed the amount in controversy." The statute is not intended to conflict with G.S. 6-21.2, and parties whose contracts fall within the coverage of both statutes may elect to recover under either. Effective October 1, 2011 and applies to business contracts entered into on or after that date.

8. **S.L. 2011-344 (S 432): Probate amendments and related changes.**

[Note: S.L. 2011-344 is an extensive act that includes amendments to many areas of estate law. This summary is an overview of the substantive provisions of the act and not a comprehensive listing of its amendments.]

- **Appeals and Costs.** Amends G.S. 1-301.3 to provide that: (1) this section applies to the administration of trusts (was, testamentary trusts) and of estates of decedents, incompetents and minors; the notice of appeal of a clerk's order or judgment must

contain a short and plain statement of the basis for the appeal (was, shall “specify” the basis); the notice of appeal must be filed within 10 days of entry of the clerk’s order; and that in an appeal to superior court, if the record is insufficient, the judge may receive additional evidence on the “factual” (was “evidentiary”) issue in question.

Amends G.S. 7A-307 to add estate proceedings under new G.S. 28A-2-4 to the list of matters in which costs are assessed under this section. States that the cost assessed for the filing of a caveat to a will is \$200, and that the only cost assessed with reopening an estate administration under G.S. 28A-23-5 is forty cents per \$100, or major fraction, of any additional gross estate, including income, coming into the hands of the fiduciary after the estate is reopened. Caps the total cost assessed, including the total cost assessed in all previous administrations of the estate, at \$6,000.

- **General Provisions for Estate Proceedings.** Creates new G.S. 28A-2-4 providing that the clerks of superior court have original jurisdiction of estate proceedings, and lists certain types of matters as estate matters. (Also amends G.S. 28A-1-1 to define “estate proceeding.”) States examples of estate proceedings under the subject matter jurisdiction of the clerk. Provides criteria regarding the transfer of an estate proceeding to superior court. Declares that the clerk does not have jurisdiction of (1) actions by or against creditors or debtors of an estate except as provided in Article 19 of G.S. Chapter 28A; (2) actions involving claims for monetary damages; (3) caveats, except as provide under G.S. 31-36; (4) proceedings to determine venue; and (5) recovery of property transferred or conveyed by a decedent with the intent to hinder, delay, or defraud creditors, pursuant to G.S. 28A-15-10(b).

Creates G.S. 28-2-5 to provide that the clerk has jurisdiction over special proceedings and that nothing in the statute is to be construed as limiting the jurisdiction of the clerk in special proceedings.

Creates G.S. 28A-2-6 through G.S. 28A-2-10 to make provisions for commencement of contested and uncontested estate proceedings as well as for pleadings, extensions of time, consolidation of an estate proceeding with a civil action, joinder of claims, and notice of transfer. Provides that certain Rules of Civil Procedure apply to estate proceedings, unless the clerk directs otherwise, and that the clerk may direct that any or all of the remaining Rules apply. Makes additional provisions governing representation of parties and waiver of notice of appeal. Gives the clerk authority to consider and approve certain settlements (not including caveats).

- **Probate of Will.** Amends G.S. Chapter 28A, recodifying Article 5 of G.S. Chapter 31 (G.S. 31-12 through G.S. 31-31.2) as Article 2A of G.S. Chapter 28A. Authorizes the clerk to shorten the initial 60-day period during which the executor may apply to have the will proved, if good cause is shown. Enacts new G.S. 28A-2A-7 to allow a person entitled to apply for probate of a will under G.S. 28-2A-1 or G.S. 28A-2A-2 to file a petition for probate of the will in solemn form, and to provide that the matter will proceed as an estate proceeding governed by G.S. Chapter 28A, Article 2. Makes directives regarding probate of a will in solemn form and contesting the validity of a will by an interested party.

- **Administration of Decedents' Estates.** Amends G.S. 28A-3-2 to provide that any interested person may file a petition to determine the proper venue for administration of the estate, and that the issue is to be heard by a judge. Amends G.S. 28A-4-1 to provide that any interested person may file a petition alleging that a person is disqualified to serve as administrator of the estate pursuant to G.S. 28A-4-2.

Amends the procedures in G.S. 28A-5-1 should a person named or designated as an executor fail to timely qualify or renounce the office of executor. Amends the procedures in G.S. 28A-5-2 should a person entitled to apply for letters of administration fail to timely apply for those letters.

Creates G.S. 28A-6-1(c) to provide that the clerk may rely on the following as evidence of death: (1) a certified or authenticated copy of a death certificate purported to be issued by an official or agency of the place where the death purportedly occurred, (2) a certified or authenticated copy of any record or report of a domestic or foreign governmental agency evidencing the date of death, (3) a certificate or authenticated copy of medical records evidencing the date of death, or (4) any other evidence that clerk deems sufficient to confirm the date of death.

Amends G.S. 28A-6-2 to provide that all persons entitled to an equal or higher preference for appointment as personal representative than an applicant who is not entitled to a priority of appointment are to be given 15 days' prior written notice of the application (unless the persons with an equal or higher preference have renounced).

Amends G.S. 28A-6-4 to clarify the procedure by which any interested person may by written petition (was, objection) contest the issuance of letters of administration or letters testamentary to a person who is otherwise entitled to apply. Provides that an appeal from the clerk's order is as in an estate proceeding under G.S. 1-301.3 (was, as in a special proceeding).

Amends G.S. 28A-8-1 to provide that no bond is required for a personal representative who is a trust institution licensed under G.S. 53-159 (was, a national banking association having its principal place of business in this state or a state bank acting under G.S. 53-159).

Amends G.S. 28A-8-3 to provide that upon receipt of a verified petition by an interested party requesting modification of bond requirements, the clerk is to conduct a hearing in accordance with Article 2 (was, required the clerk to issue a citation requiring the personal representative to show cause why the bond should not be modified).

Amends G.S. 28A-8-5 to direct the clerk to conduct a hearing under Article 2 of G.S. Chapter 28A upon verified petition from any surety, on the bond of a personal representative, who is in danger of loss of the surety's suretyship. Amends subsection (b) of G.S. 28A-9-1 to allow the clerk to conduct a hearing, on the clerk's own motion or upon the verified petition of any person interested in the estate, in accordance with Article 2 of G.S. Chapter 28A to determine if any of the grounds for revocation of letters of administration, letters testamentary, or letters of collection as indicated in subsection (a) of this section exist. Provides that notice of the hearing is to be provided in

accordance with Article 2. Amends G.S. 28A-9-4 and G.S. 28A-10-6 to clarify that (1) an appeal from the order of the clerk granting or denying revocation and (2) an appeal from an order of the clerk denying or allowing the resignation of a personal representative are special proceedings pursuant to G.S. 28A-2-9(b). Authorizes the clerk to issue a stay of an order of revocation or of an order allowing resignation upon the appellant posting an appropriate bond set by the clerk until such time as the cause is heard and determined upon appeal.

Current law requires a personal representative to petition the clerk to obtain an order authorizing the personal representative's custody, control, or possession over real property of the estate. Amendments to G.S. 28A-13-3 make an exception for real property that is given to the personal representative in the deceased person's will, or real property to which the personal representative acquires title during the administration of the estate, providing that the personal representative is immediately entitled to custody, possession, and control of real property meeting this exception and may institute an estate proceeding under subsection (d) to enforce those rights. Also provides that if the real property is occupied by a tenant or lessee, the personal representative may seek ejectment only through the summary ejectment provisions of G.S. Chapter 42.

Amends G.S. 28A-15-12, deleting subsection (a) and replacing it with subsection (a1), providing that a personal representative or collector has the right to sue in superior court to recover any property of any kind that belongs to the estate of the decedent and is entitled to certain provisional remedies under G.S. Chapter 1. Also deletes subsection (b) and replaces it with subsection (b1) providing a personal representative, collector, or any interested person has the right to file a verified petition to institute an estate proceeding for examination of any persons reasonably believed to be in possession of property of any kind belonging to the decedent's estate and to make a demand for the recovery of that property.

Amends G.S. 28A-19-1 to provide that in a pending legal action against the decedent at the time of the decedent's death, which survives the decedent's death, the court may order, on motion, the substitution of the personal representative or collector for the decedent and that motion will constitute the presentation of a claim providing that the substitution occurs within the time specified for the presentation of claims under G.S. 28A-19-3.

Amends G.S. 28A-19-3 to clarify that, except as otherwise specifically provided in this section, the limitations on presentation of claims set out in this section apply to claims by the State of North Carolina, its subdivisions, and its agencies.

Amends G.S. 28A-19-5 to clarify that a claimant to a contingent or unliquidated claim may, within the prescribed three-month period, file a petition for an order of the clerk, provided that nothing in the statute requires the clerk to hear and determine the validity, priority, or amount of a contingent or unliquidated claim that has yet to become absolute.

Amends G.S. 28A-19-8 to provide that funeral expenses of a decedent advanced by a health care agent exercising authority described in G.S. 32A-19(b) are to be considered as an obligation of the estate regardless of whether or not a personal representative of the estate has been appointed at the time the expenses are incurred. Amends G.S. 28A-19-9 to authorize a decedent's health care agent duly appointed under G.S. Chapter 32A to purchase a gravestone and provide a suitable burial place and receive reimbursement for the expenses incurred subject to monetary limitations and procedures. Amends G.S. 28A-19-16 to provide that a claimant must begin an action for recovery with regards to a claim that is presented and rejected within three months of receiving written notice of the rejection (was, after due notice in writing or after some part of claim becomes due). In the case of a contingent or unliquidated claim, provides that the claimant must file a petition for an order from the clerk pursuant to G.S. 23A-19-5(b).

Amends G.S. 28A-21-2 to provide that absent an extension by the clerk of the time for filing the final account the personal representative or collector must file the final account for settlement within one year after qualifying or within six months after receiving a state estate or inheritance tax release, or in the time period for filing an annual account under G.S. 28A-21-1, whichever is later.

Creates new G.S. 28A-21-6 to provide that the personal representative or collector may give written notice (but is not required to do so) of a proposed final account under Rule 4 of the Rules of Civil Procedure to all devisees of the estate in the case of a will, and to all heirs of the estate when the decedent was without a will, indicating the date and place of the filing of the final account. Makes guidelines regarding permissive notice of final accounts. Amends G.S. 28A-23-1 to direct the clerk, upon reviewing and approving the personal representative's or collector's final account, to enter an order discharging the personal representative or collector from further duties and liabilities (was, liabilities). Prohibits the discharge order from including a release or discharge of liability for any breach of duty as set forth in G.S. 28A-13-10(c).

Amends G.S. 28A-25-1 to provide that when the person collecting property by affidavit is the surviving spouse and only heir of the decedent, and is not disqualified under G.S. 28A-4-2, the property that may be collected under this section may be more than \$20,000 in value but may not exceed \$30,000 in value after reduction for any spousal allowance paid to the surviving spouse under G.S. 30-15.

- **Intestate Succession.** Enacts new G.S. 29-12.1 to provide that controversies arising under G.S. Chapter 29 are to be determined as estate proceedings under Article 2 of G.S. Chapter 28A, except for controversies arising under Article 8 of G.S. Chapter 29 (election to take life interest in lieu of intestate share), which are to be determined as set out in G.S. Chapter 29. Amends G.S. 29-30 to provide that when a surviving spouse of an intestate decedent elects to take a life estate in the dwelling house, and the value of that life estate is less than one-third in value of all the real estate, the surviving spouse may elect to take a life estate in other real estate of the intestate decedent so as to make the aggregate life estate of the surviving spouse equal to a life estate that is one-third in value of all the real estate. The election of the surviving spouse to take a life estate in one-third value of all the real estate of the decedent is to be made by a petition (was, a notice) in accordance with Article 2 of G.S. Chapter 28A. Also lists time

periods for making the election and requires that the election be made before the shorter of the time periods. Directs that no provisions in subsection (c) of G.S. 29-30 extend the time period for a surviving spouse to petition for an elective share under Article 1A of G.S. Chapter 30. Provides for service of the petition in accordance with G.S. 1A-1, Rule 4. Provides that the rules of procedure relating to partition proceedings under G.S. Chapter 46 apply to the election and procedure to allot and set apart the life estate, except to the extent they would be inconsistent with this section. Provides that a determination of the life estate under this section may be appealed in accordance with G.S. 1-301.3 (appeals of estate proceedings). Amends G.S. 30-3.4 to provide that an elective share proceeding is an estate proceeding to be conducted under the procedures of Article 2 of G.S. Chapter 28A.

- **Year's Allowance.** Amends G.S. 30-17 regarding surviving children who are entitled to an allowance to delete reference to the term "next friend." Amends G.S. 30-23 to provide for right of appeal from an assignment of a year's allowance by filing a copy of the assignment and notice of appeal, and directs that the appeal is to be heard as provided in G.S. 1-301.2 (as in a special proceeding). Repeals the provisions of G.S. 30-24 and 30-26. Amends G.S. 30-27 to provide that a surviving spouse or child may apply to superior court after the date specified in the general notice to creditors for assignment of an amount other than prescribed in G.S. 30-15 (when spouse entitled to allowance) and G.S. 30-17 (when children entitled to an allowance). Amends G.S. 30-28 to require the application be by petition in a special proceeding before the clerk and specifies persons to be made parties to the special proceeding, including all known creditors, heirs, and devisees. Amends G.S. 30-30 to provide that the clerk is to hear the matter and determine if the petitioner is entitled to the relief sought, and that any judgment rendered in favor of the petitioner is subject to the same priority over other debts and claims against the estate as an allowance assigned under G.S. 30-15 or G.S. 30-17. Creates G.S. 30-31.1 requiring petitioner to serve the clerk's judgment on all other parties and requiring the judgment be filed in the estate file. Provides that any aggrieved party may appeal the judgment under G.S. 1-301.2 (as in a special proceeding). Creates G.S. 30-31.2 to provide that if the judgment is not appealed, it is to be executed as under G.S. Chapter 1.
- **Will Caveats.** Recodifies G.S. 31-12 through G.S. 31-31.2 as Article 2A of G.S. Chapter 28A. Amends G.S. 31-32 to declares that if any person who is entitled to file a caveat is less than 18 years, or incompetent as defined in G.S. 35A-1101(7) or (8) (was, insane or imprisoned), that person may file a caveat within three years after removal of the disability. Requires the caveat to be placed in the decedent's estate file and directs the clerk to give notice of the filing by making an entry on the page of the will book where the will is recorded that includes the date of the filing. Provides that if a will has been probated in solemn form under G.S. 28A-2A-7, any party that was properly served in that proceeding is prohibited from filing a caveat.

Amends G.S. 31-33 as follows: Directs the clerk to transfer the cause to superior court upon the filing of a caveat. Requires service of the caveat on all interested parties in accordance with Rule 4 of the Rules of Civil Procedure, after which the caveator is responsible for causing notice of hearing to be served on all parties in accordance with Rule 5 of the Rules. Provides that at the alignment hearing, all of the interested parties

who wish to be aligned are to appear in court and be aligned by the court as parties with the caveator or parties with the propounders of the will. Directs the judge to dismiss from the proceeding an interested party who does not appear to be aligned or chooses not to be aligned. Deletes provisions requiring that the caveator and all interested parties who wish to be aligned by the court as parties in the action to file bond as directed by the court. Provides that the court, upon motion of an aligned party, may require a caveator to provide security in an amount determined by the court. Provides that the court is to consider relevant facts related to the need for a bond and the amount of any bond. Permits any interested party who was aligned to file a responsive pleading to caveat within 30 days following the entry of an order aligning the parties, and specifies that failure to respond to any claim or averment of the caveat is not deemed to be an admission. States that an extension of time to file a responsive pleading may be granted as provided by Rule 6 of the Rules.

Amends G.S. 31-36 to provide that decisions of the clerk regarding the use, location, and disposition of assets that cannot be resolved by the parties may be appealed to superior court pursuant to G.S. 1-301.3 (appeal of an estate proceeding).

Amends G.S. 31-37.1 to clarify that a settlement agreement entered into by the parties must be approved by the superior court and the judgment entered by the court. Provides that the consent of parties that are not aligned as prescribed in G.S. 31-33 is not necessary for a settlement agreement under this section. Requires the clerk to file a copy of the judgment entered by the superior court in a caveat proceeding in the estate file and to make an entry on the page of the will book where the will is recorded declaring that the final judgment has been entered either sustaining or setting aside the will. (This provision was previously codified in G.S. 31-37.)

- **Wills.** Amends G.S. 31B-1.2 to provide that if the fiduciary is a trustee, a proceeding for review of renunciation is governed by G.S. Chapter 36C; and, if the fiduciary is a personal representative, the proceeding is governed by G.S. Chapter 28A. Amends G.S. 32A-20(a) to provide that a health care power of attorney is effective following the death of the person granting the authority (principal) without regard to the principal's understanding or capacity when the principal was living for the purpose of exercising the authority described in G.S. 32A-19(b) (which provides that a health care power of attorney may authorize the health care agent to exercise any and all rights the principal may have with respect to anatomical gifts, the authorization of any autopsies, and the disposition of remains). Further states that the statute does not prevent a principal from revoking a health care power of attorney.
- **Trusts.** Amends G.S. 36C-2-205(d) to delete restriction that extensions of time not be granted more than once under Article 2 (Judicial Proceedings) of G.S. Chapter 36C and to provide that the court may enlarge an extension of time beyond 10 days if the court finds that justice requires that the time be extended beyond that time. Amends G.S. 36C-2-205(e) to add Rules 4, 56, and 65 to the list of Rules of Civil Procedure that apply to trust proceedings, unless the clerk directs otherwise. Provides that the clerk may direct that any or all of the remaining Rules of Civil Procedure apply, including discovery rules. Amends G.S. 36C-6-604 to provide that the notice informing a person of the

existence of a trust must be written notice pursuant to Rule 14 of the Rules of Civil Procedure.

Effective January 1, 2012, and applies to estates of decedents dying on or after that date.

9. [S.L. 2011-350](#) (S 487): Attorneys authorized to deposit disputed funds.

Amends G.S. 93A-12 to provide that attorneys licensed to practice law in North Carolina are permitted to deposit with the clerk of court disputed monies they receive while acting in a fiduciary capacity. The statute formerly applied only to real estate brokers. Effective October 1, 2011.

10. [S.L. 2011-400](#) (S 33): Medical malpractice and other tort changes.

Amends the specific pleading requirement of Rule 9(j) of the Rules of Civil Procedure to require that complaints alleging medical malpractice (as defined by statute) shall be dismissed unless the pleading specifically asserts that the medical care and all medical records pertaining to the alleged negligence that are available to the plaintiff after reasonable inquiry have been reviewed as set forth in that rule.

Also amends Rule 42 of the Rules of Civil Procedure to require the court, upon motion of any party, to order separate trials of the issue of liability and the issue of damages in tort actions in which the plaintiff seeks damages exceeding \$150,000. Court may, for good cause shown, order a single trial. Evidence related solely to compensatory damages shall not be admissible until the trier of fact has determined liability. The same trier of fact must determine liability and damages.

Amends G.S. 90-21.11 to alter the definitions of "health care provider" and "medical malpractice action."

Amends G.S. 90-21.12, regarding the standard of health care. States that in medical malpractice actions the defendant health care provider shall not be liable for damages unless the trier of fact finds (was, "is satisfied") by the greater weight of the evidence that the provider did not meet the standard of practice among members of the same health care profession with similar training and experience situated in the same or similar communities under the same or similar circumstances at the time of the alleged act; or in the case of a medical malpractice action under the new definition in G.S. 90-21.11(2)(b), that the action or inaction of such provider was not in accordance with the standards of practice among similar health care providers situated in the same or similar communities under the same or similar circumstances at the time of the alleged act. Further provides that in any medical malpractice action arising out the furnishing or failure to furnish professional services in the treatment of an "emergency medical condition" (as defined), the claimant must prove a violation of the standards of practice by clear and convincing evidence.

Creates G.S. 90-21.19 to set out a limit on noneconomic damages in medical malpractice actions (damages for pain, suffering, emotional distress, loss of consortium, inconvenience, and any other nonpecuniary compensatory damage). In any such action in which the plaintiff is entitled to a noneconomic damages award, the total judgment amount for noneconomic damages against all defendants shall not exceed \$500,000. Judgment shall not be entered against any defendant for noneconomic damages in excess of \$500,000 for

all claims brought by all parties arising out of the same professional services. If a verdict exceeds these limits, the court shall modify the judgment accordingly. The jury shall not be instructed as to these limits. These limits do not apply if the trier of fact finds both that the plaintiff suffered disfigurement, loss of use of part of the body, permanent injury or death; and that defendant's acts or failures, which are the proximate cause of plaintiff's injuries, were committed in reckless disregard of the rights of others, grossly negligent, fraudulent, intentional, or with malice. Further creates G.S. 90-21.19B to provide that a verdict or award of damages in a malpractice action shall indicate specifically what amount, if any, is awarded for noneconomic damages and provides for a jury instruction as to noneconomic damages.

Creates subsection (c) of G.S. 1-17 to make exceptions to the statute of limitations period of G.S. 1-15(c) for certain minors. Amends G.S. 1-289 to require the court to specify, after notice and hearing, the amount of an undertaking in a judgment execution. Sets forth factors for the court to consider in setting an amount that is reasonable for the security of the rights of the adverse party.

Sections 5, 6, and 9 of the act become effective October 1, 2011 and apply to causes of action arising on or after that date. The remainder of the act becomes effective October 1, 2011 and applies to actions commenced on or after that date.

Judicial Authority & Administration

1. [S.L. 2011-28](#) (High Point bar councilor; court vacancies in District 18)

G.S. 84-19 is amended to provide that superior court district 18B, consisting primarily of High Point precincts, is a separate judicial district for selection of State Bar councilors. Also amended is G.S. 7A-142, the statute concerning district court vacancies, to specify that all bar members in district court district 18 (Guilford County) are to participate in nominating a replacement. Effective April 7, 2011.

2. [S.L. 2011-42](#) (Juror qualifications, exemption for disability)

G.S. 9-3 is amended to (a) eliminate the requirement that a person must hear English language to qualify for jury service, leaving the requirement that the person must understand English; (b) specify that request for jury exemption by someone 72 or older must be filed five business days in advance of the jury summons date; and (c) add new provisions for a person with a disability to request exemption from jury service, by submitting a written request five business days before jury summons date. The court may require medical documentation of the disability. Effective July 1, 2011.

3. [S.L. 2011-145](#) (State budget) and [S.L. 2011-391](#) (State budget corrections)

In addition to the reduction in court funding the 2011 state budget bill included various other provisions affecting the operation of the courts. Among the provisions are:

- A new Study Committee on Consolidation of Judicial and Prosecutorial Districts is to study the number and structure of judicial and prosecutorial districts and recommend reductions in the number of districts to increase efficiency and improve the quality of justice. The recommendations to the 2012 session are to provide for identical judicial and prosecutorial districts where feasible. The committee is to consist of four senators appointed by the President Pro Tem, four representative appointed by the Speaker, and

- two others who are knowledgeable about operation of district attorneys' office, one each appointed by the President Pro Tem and Speaker.
- The School of Government is to study the feasibility and cost of creating an Office of Prosecutorial Services as an independent agency within the judicial branch. The report is to be made to the appropriations subcommittees on Justice and Public Safety by April 1, 2012.
 - The AOC is to contract with the National Center for State Courts to develop a workload formula for superior court judges. The results of the formula are to be submitted to the appropriations subcommittees on Justice and Public Safety by December 1, 2011. Meanwhile, G.S. 7A-109 is amended to require the clerk's minutes to record the opening and closing time of each session of court, plus the times of recesses. Those time records are to be provided monthly by the AOC to the National Center for State Courts, the legislature's Fiscal Research Division, and the new Study Committee on Consolidation of Judicial and Prosecutorial Districts.
 - The Revenue Laws Study Committee is to study whether the current penalties for infractions and waivable offenses are at an appropriate level, with a report to the 2012 session.
 - The AOC is to develop protocols to offer regular administrative court sessions in each district court district to hear motor vehicle infractions, and each district is to offer such sessions by October 1, 2011.
 - G.S. 7A-304(a) is amended to prohibit waiver of costs in criminal cases unless the judge finds in writing just cause for the waiver. The AOC is to report on waivers to the Joint Legislative Commission on Governmental Operations each October 1st.
 - G.S. 7A-102(a) is amended to provide that each clerk's office shall have a minimum of five staff positions in addition to the elected clerk.
 - The AOC is allowed to set a lower per-mile travel reimbursement rate during the fiscal 2011-13 biennium than the standard mileage rate set by the Internal Revenue Service.
 - Judicial department salaries remain frozen for the biennium. The elected clerk of court's salary is not to increase even if the county moves up from one population category to another.
 - Numerous court fees were increased significantly, including the General Court of Justice fee. That fee goes from \$100.50 to \$129.50 in district court and from \$102.50 to \$154.50 in superior court for criminal actions. For civil cases the fee goes from \$55 to \$80 in small claim actions, from \$80 to \$130 in district court, and \$125 to \$180 in superior court. Filing fees are made applicable to counter-claims and cross-claims in civil actions, and a \$20 fee is added for filing a motion, with various exceptions. General Court of Justice fees increase also for special proceedings and estates matters, with other increases applying to a variety of miscellaneous fees such as, for example, a doubling of the previous \$150 foreclosure fee.
 - Community mediation centers will no longer receive funding through the AOC but now may charge for their services. Generally those charges will be paid directly to the mediation center and not go through the clerk's office. Under G.S. 7A-38.7, though, when a criminal case is resolved through a community mediation center there has been a \$60 fee assessed and collected by the court; instead of going to court support that fee now will be paid to the center that mediated the case via the Mediation Network which itself will get to keep up to three dollars for its administrative expenses.

- Fees related to local jail confinement under the Justice Reinvestment Act are discussed in the summary of S.L. 2011-192 under the Criminal Law and Procedure section of this summary.
4. **[S.L. 2011-203](#) (Wake superior court districts)**
 In response to the decision in *Blankenship v. Bartlett*, 363 NC 518 (2009), that the populations of the superior court election districts in Wake County were so far out of balance as to violate equal protection, the General Assembly redrew the districts effective January 1, 2013, with the new lines applicable to the 2012 election. The legislation specifies six single-judge districts and assigns the incumbent judges to those districts.
 5. **[S.L. 2011-283](#) (Medical expenses, expert testimony, attorneys fees, trespasser responsibility)**
 Labeled “An Act to Provide Tort Reform for North Carolina Citizens and Businesses,” the bill makes several changes in the handling of civil cases, applicable to actions arising on or after October 1, 2011 (see [S.L. 2011-317](#) for the final version of the effective date):
 - The bill rewrites Rule 414 of the Rules of Evidence to specify that evidence of medical expenses is to be the actual amount paid or actual amount needed to satisfy the bill. It also amends G.S. 8-58.1 to allow use of a provider’s testimony to rebut the presumption that the amount billed is that actual amount to be paid.
 - G.S. 8C-702 is rewritten to specify that an expert’s testimony must be based on sufficient facts or data and must be the product of reliable principles and methods applied reliably by the expert.
 - G.S. 6-21.1 is amended to say that attorney’s fees may be awarded when the defendant unreasonably refuses to negotiate or pay the claim; the damages recovered are \$20,000 or less (was \$10,000 or less); and the damages exceed the highest offer made by defendant in the last 90 days before trial. The attorney’s fees are limited to \$10,000 and the judge is require to make written findings of fact to support the award.
 - The bill adds a new Chapter 38B entitled “Trespasser Responsibility.” The new chapter states the general rule that an landowner or occupant owes no duty to and is not liable for injury to a trespasser. A variety of exceptions are then described, allowing liability, for example, when the occupant intentionally harms the trespasser or when the trespasser is a child under 14 who is harmed by an artificial condition, the occupant should have known children were likely to trespass, the occupant should have known of the likely harm to a child, and so forth.
 6. **[S.L. 2011-285](#) (No sealing fee for indigent)**
 Effective July 1, 2011, G.S. 7A-308(b1) is amended to add certificates under seal to the fees from which lawyers representing indigents are exempted.
 7. **[S.L. 2011-323](#) (AOC collection fees)**
 Effective July 1, 2011, and applicable to cases adjudicated on or after that date, G.S. 7A-321 is amended to include city and county governments in the agencies with which the AOC may contract to collect unpaid fines and fees, and to provide that such contracts may allow the collecting agency to keep the add-on collection assistance fee. The bill also allows such collection contracts to be used for collecting restitution.
 8. **[S.L. 2011-398](#) (Administrative appeals, rulemaking)**

For judicial officials, the most significant of the numerous changes to Chapter 150B (Administrative Procedure Act) and related statutes is to give administrative law judges (ALJ) authority to make final decisions in contested cases rather than sending a recommended decision back to the agency. Judicial review of final decisions will become simpler, therefore, in that the court will be reviewing only the ALJ's decision and will not have to go through the more complicated analysis that was required when the agency rejected the ALJ's recommended decision. The provisions on ALJs making final decisions apply to contested cases begun January 1, 2012, or later.

Most of the other changes concern the rulemaking process to be followed by agencies, starting October 1, 2011. Among the changes are new admonitions about avoiding unnecessary and duplicative rules; a requirement that each agency review its rules annually; more stringent requirements on estimating the costs and benefits of proposed rules, including a requirement that the agency consider at least two alternatives if a proposed rule would have an economic impact of \$500,000 a year or more; and directions to put proposed rules, fiscal notes, etc. on the agency website. The act also amends various statutes to generally prohibit environmental rules that are stricter than federal requirements.