



Authority, Appeal, and Decorum




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 Conducting Hearings: Essentials for Clerks
 March 3-4, 2010



Clerk's Authority


The Clerk is a **judicial officer** of the Superior Court.

G.S. 7A-40



Adversarial Hearings

- Estates
- Trusts
- Incompetency
- Certain Special Proceedings
 - Partition (actual or sale in lieu)



Clerk's Authority

- Many powers associated with role of judicial officer:
 - Issue subpoenas to compel testimony or documents
 - Administer oaths
 - Issue citations and orders to show cause
 - Enforce orders and decrees
 - Certify documents received in evidence
 - Preserve order in court; hold persons in contempt

G.S. 7A-103



Appellate Review

Orders of the clerk after hearing are **final acts** of a superior court judicial officer.

If the party wants the order to be reviewed, the party must **appeal**.



Appellate Review

In Estates and Trusts matters:

Review is by the Superior Court, and it is “on the record”.

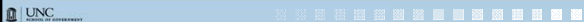


Appellate Review

In Estates and Trusts matters:

§ 1-301.3(d)
 Upon appeal, the judge of the superior court shall review the order or judgment of the clerk for the purpose of determining **only the following**:

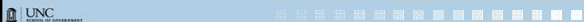
- (1) Whether the findings of fact are supported by the evidence.
- (2) Whether the conclusions of law are supported by the findings of facts.
- (3) Whether the order or judgment is consistent with the conclusions of law and applicable law.



Appellate Review

Special Proceedings:


**Appeal is to Superior Court,
and it is heard “de novo”.**



Appellate Review

Special Proceedings:

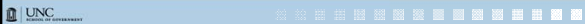
§ 1-301.2.
 [A] party aggrieved by an order or judgment of a clerk that finally disposed of a special proceeding, may, within 10 days of entry of the order or judgment, appeal to the appropriate court for a hearing **de novo**.



Appellate Review

Incompetency determinations:


**Appeal is to the Superior Court,
and it is heard “*de novo*.”**



Appellate Review


Incompetency determinations:

§ 35A-1115.
Appeal from an order adjudicating incompetence shall be to the superior court for hearing **de novo** and thence to the Court of Appeals.



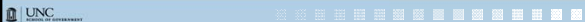
Responsibilities of Clerk

**No *ex parte* contacts
with parties or their attorneys
about the hearing.**



Responsibilities of Clerk

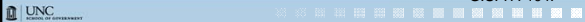
Must disqualify himself or herself if there is a conflict of interest.



Responsibilities of Clerk

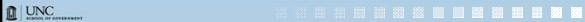
- Disqualification required if he or she:
 - Has an interest by distribution, will, as creditor, or otherwise.
 - Is related to a person claiming an interest in the matter such that he would not be qualified as a juror, and a party objects
 - Has a spouse who's party or subscribing witness, and the document not yet admitted to probate
 - Clerk or clerk's spouse is executor or trustee and the will not yet admitted to probate
 - Other grounds justifying disqualification of a judge.

G.S. 7A-104.



Responsibilities of Clerk

- Hear the matter fairly and deliberately.
- Accord the parties the right to be heard according to the law.
- Maintain order and decorum in the proceedings.

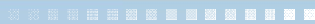


Courtroom Decorum of Counsel

In court, North Carolina lawyers are “at all times to conduct themselves with dignity and propriety.”



Gen. R. Prac. 12



Courtroom Decorum of Counsel

Demeanor toward the clerk:

- Should address the clerk from a standing position behind counsel table (except objections).
- Should not approach the clerk’s table or bench except with the court’s permission or request.
- Should not address matters directly to opposing counsel during the proceedings.
- Should “yield gracefully” to the clerk’s rulings.



Gen. R. Prac. 12



Courtroom Decorum of Counsel

Demeanor toward witnesses:

- Should examine witnesses from a seated position behind counsel table.
- Should not approach witnesses except to present, inquire about, or examine a document.
- Should treat adverse witnesses with fairness and due consideration.



Gen. R. Prac. 12



General Order of Evidence

- Petitioner's Evidence
 - Petitioner has burden of proof!
- Respondent's Evidence



General Order of Examination

Parties represented by Counsel

- Witness Takes Stand
- Direct examination
- Cross-examination by Opposing Counsel
- Redirect examination
- Re-cross examination by opposing counsel

Parties Unrepresented

- Witness takes stand
- Witness testifies
- Opposing party/ies may cross-examine
- Witness may give clarifying testimony
- Opposing party/ies may re-cross

