Final Distribution & Settlement of the Estate

Common Issues and Challenges

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Agenda

1. Distributions to Minors
2. Beneficiary Problems
3. Other Situations
4. Reopening the Estate

Distributions to Minors

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Methods of Distribution, G.S. 28A-22-1

After payment of costs, taxes, and other valid claims against the estate, the PR shall distribute the remaining assets:

1. Pursuant to a validly probated will
2. Pursuant to G.S. Chapter 29 laws of intestate succession
3. **Otherwise lawfully authorized**

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Minor – Is Guardian of the Estate Necessary?

Clerk sees a minor will inherit property or entitled to benefit or disbursement of property of some kind, the inclination is to say….

"They need a guardian of the estate."

"The funds must be paid to Clerk for the minor."

But ….

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Alternatives to GOE: Funds Payable to Minors

Representative Payee

Single Transaction or Arrangement, G.S. 35A-1121

Money Paid to Clerk by PR or Collector Owed to Minor in an Estate
G.S. 28A-23-2
- When minor w/o guardian, PR wants to close estate
- **No limit** on amount
- Delivered to CSC
- CSC invests or manages $
- CSC may proceed to appoint a guardian for the minor and deliver property to guardian

Distributions to Minor Directed by Will
G.S. 32-27(28)

Estate <u>devise</u> less than $5,000
G.S. 28A-22-7
- Total value of <u>devise</u> of personal property under $5,000 (single or series)
- CSC approval required
- To a person under 18 residing with a parent or guardian appointed before decedent's death
- Distribution to parent or guardian
- No accounting required

Estate Child's Years Allowance
G.S. 30-17
- **Up to $10,000** personal property
- Order of Priority for who can file
- Spousal allowance has priority
- Person that files petition receives personal property allowance

Funds Administered by Clerk
G.S. 7A-111
- Any money **$50,000 or less** for minor under 18 with no guardian
- CSC administers and disburses in best interests, provided parents unable to support and child in need

UTMA Custodial Account
G.S. 33A
-CSC approval required for over $10,000

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#1: Child's Allowance – G.S. 30-17

- Who is entitled:
  - Every child of the decedent who is under 21 years at the time of the decedent's death, included adopted children and children in utero.
  - Every child under the age of 21 with whom the decedent stood in loco parentis at the time of death.
- Who can apply (order of priority):
  - the child, if the child is at least 18 years old or an emancipated minor at the time of the filing of the petition. ***(effective 1/1/2026)***
  - general guardian or guardian of the estate, if any.
  - surviving parent of the child if the child resides with the surviving parent.
  - person with whom the child resides.
  - If the clerk determines that no person entitled to file a claim is a fit or suitable individual, the clerk may on the clerk's own motion appoint another individual if the clerk determines the other individual better represents the child's best interests.

#1: Child's Allowance – G.S. 30-17

- When can it be filed:
  - Must be filed while child is alive
  - Must be filed within 6 months of issuance of Letters when PR appointed
- Amount of Allowance
  - $10,000 per child
  - Allowance in addition to inheritance (testate or intestate)
- Only awarded after spousal allowance fulfilled
- Allowance distributed to person that filed.
- Additional Allowance is an estate proceeding – G.S. 30-27

#2: Funds Administered by the Clerk G.S. 7A-111(a)

- $50,000 or less can be paid to the CSC in the county of the minor's domicile
- Clerk can receive, administer and disburse funds
  - Clerk uses their judgment for the best interest of the child
  - Clerk must determine that the parents (or responsible persons) are financially unable to provide the necessities for the child and the child is in need of maintenance, support, other necessities including education
- Clerk must require receipts or paid vouchers reflecting that any funds disbursed were used for the exclusive use and benefit of the child.

#3: Single Transaction or Arrangement G.S. 35A-1121

- Application for minor guardianship must be filed with the court.
- Applicant establishes a basis exists to appoint a guardian but requests instead of appointing a guardian, the clerk authorize a single transaction or single protective arrangement.
- Two options – Temporary Guardian or Special Fiduciary
- The Clerk must consider:
  - The interests of creditors and dependents of the minor.
  - In view of the disability, whether the minor the continuing protection of a guardian.
  - Whether the arrangement or transaction is in the minor's best interest.

#4: Distribution to Parent or Guardian G.S. 28A-22-7

- ***Devise*** of personal property
- To someone under 18
- **Less than $5,000** (series or lump sum) (increase from $1,500 in 2018)
- Devisee residing in same household with a parent or guardian prior to decedent's death

PR may distribute **with PRIOR CSC approval** directly to:

1. **Parent** residing with minor/devisee
2. **Guardian** appointed prior to decedent's death residing with minor/devisee

* Restrictions on use – property used solely for education, maintenance, and support of minor

#5: Payment into Court, G.S. 28A-23-2

§ 28A-23-2. Payment into court of fund due minor.

When any personal representative or collector holds property due a minor without a guardian and desires to file the personal representative's or collector's petition for settlement, the personal representative or collector may deliver the property to the clerk of superior court who shall invest upon interest or otherwise manage said property for the use of the minor or the clerk may proceed to appoint a guardian for the minor pursuant to the provisions of Chapter 35A of the General Statutes and then may deliver the property of the minor to the guardian. (1868-9, c. 113, s. 97; Code, s. 1526; 1893, c. 317; Rev., s. 151; C.S., s. 153; 1965, c. 815, s. 3; 1973, c. 1329, s. 3; 1987, c. 550, s. 17; 2011-344, s. 4.)

#6: Distributions to Minor Directed by Will or Trust, G.S. 32-27

ARTICLE VII

Powers. The powers enumerated in North Carolina General Statutes §32-27 are hereby incorporated by reference and granted to my Executor and Trustee, subject to the restrictions of General Statutes §32-26. My Executor and my Trustee also shall have power to invest and reinvest in stocks, bonds, evidence of indebtedness or other securities, including trading on margin (including stocks, bonds, evidence of indebtedness or other securities of any corporation designated or acting as a Trustee of any trust hereunder, including any affiliate or subsidiary thereof, and any successor in interest thereto); to make direct distribution of assets to or for the benefit of a minor beneficiary, including distributions to a custodian and distributions by registration of stock in the name of a minor;

#6: Distributions to Minor Directed by Will or Trust, G.S. 32-27(28)

§ 32-27. Powers which may be incorporated by reference in trust instrument.

The following powers may be incorporated by reference as provided in G.S. 32-26:

. . .

(28) Pay to or for Minors or Incompetents. - To make payments in money, or in property in lieu of money, to or for a minor or incompetent in any one or more of the following ways:

a. Directly to such minor or incompetent;

b. To apply directly in payment for the support, maintenance, education, and medical, surgical, hospital, or other institutional care of such minor or incompetent;

c. To the legal or natural guardian of such minor or incompetent;

d. To any other person, whether or not appointed guardian of the person by any court, who shall, in fact, have the care and custody of the person of such minor or incompetent.

The fiduciary shall not be under any duty to see to the application of the payments so made, if the fiduciary exercised due care in the selection of the person, including the minor or incompetent, to whom such payments were made; and the receipt of such person shall be full acquittance to the fiduciary.

#6 Distributions to Minor Directed by Will or Trust, G.S. 32-27(28a)

§ 32-27. Powers which may be incorporated by reference in trust instrument.

The following powers may be incorporated by reference as provided in G.S. 32-26:

. . .

(28a) Pay to Custodian Under Uniform Gifts or Transfers to Minors Act. - To make any distribution of income or principal, including real property, for the benefit of any distributee to a custodian under the North Carolina Uniform Transfers to Minors Act, Chapter 33A of the General Statutes, or under the provisions of any similar statute in the state where the minor or the custodian resides. Unless a custodian is specifically named in the governing instrument, the fiduciary shall have absolute discretion to nominate any qualified individual or financial institution, including the fiduciary, to serve as custodian, and to nominate one or more substitute custodians.

#7: Uniform Transfers to Minors Act

- 1987 Uniform Law – G.S. Chapter 33A

  North Carolina Uniform Transfers to Minors Act

- All 50 States

- Allows **any type of property** up to **any amount** to be made subject of a transfer to a custodian for the benefit of a minor (some cases up to age 21 if transfer under will or trust)

Types of Transfers under the UTMA

1. By gift or exercise of power of appointment, G.S. 33A-4
2. Authorized by will or trust, G.S. 33A-5
3. Transfer by an obligor, G.S. 33A-7
4. **Other transfer by a fiduciary, G.S. 33A-6**

Other transfer by fiduciary

Allows transfers to custodial accounts in cases of:

1. **Absence of a will**: intestate succession where distribution would result to a minor under 18
2. **Under a will or trust that does not contain an authorization**: where will is silent or does not restrict transfer to a custodial account

G.S. 33A-6(a)

Three Part Test for “Other Fiduciary Transfer”

#1: PR considers transfer to be in the best interests of the minor

#2: The transfer is not prohibited by or inconsistent with the provisions of any will, trust, or other governing instrument

#3: If :

(i) property value **more than $10,000** in one or more transfers or

(ii) transfer is **to the transferor as custodian**,

Then transfer **must be authorized by the court**

G.S. 33A-6(c)

Custodian’s Duties

1. Observe prudent person standard of care
2. Keep custodial property separate and distinct
3. Keep records of all transactions
4. Make records available for inspection at reasonable intervals by a parent or legal rep of the minor or the minor if the minor is at least 14

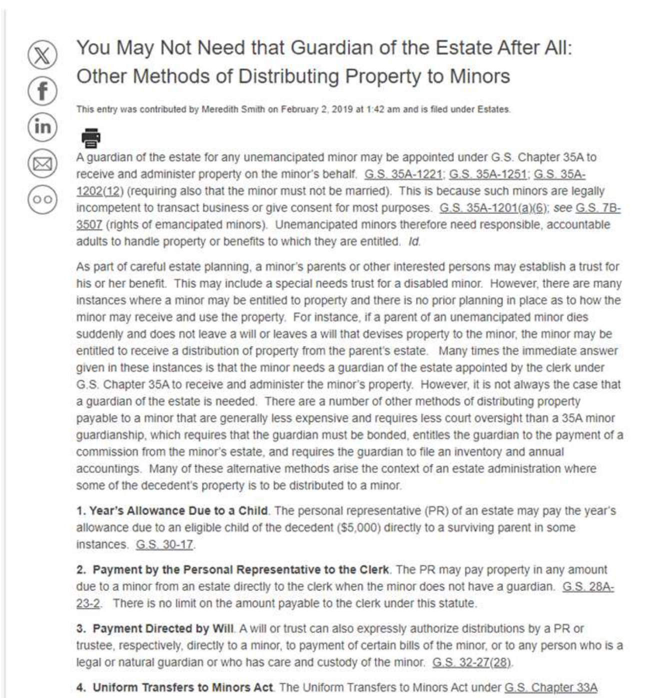
G.S. 33A-12

Custodian - Bond + Accountings

- No bond required but court may order appropriate bond upon petition filed with the court, G.S. 33A-15(c) and G.S. 33A-18(f)

- No accountings required but party may petition court for accounting by custodian, G.S. 33A-19(a)
  - Court may require custodian to account in a proceeding under G.S. Chapter 33A, G.S. 33A-19(c)

Blogpost: Meredith Smith



You May Not Need that Guardian of the Estate After All: Other Methods of Distributing Property to Minors

This entry was contributed by Meredith Smith on February 2, 2019 at 1:42 am and is filed under Estates.

A guardian of the estate for any unemancipated minor may be appointed under G.S. Chapter 35A to receive and administer property on the minor's behalf. G.S. 35A-1221; G.S. 35A-1251; G.S. 35A-1202(12) (requiring also that the minor must not be married). This is because such minors are legally incompetent to transact business or give consent for most purposes. G.S. 35A-1201(a)(6); *see* G.S. 7B-3507 (rights of emancipated minors). Unemancipated minors therefore need responsible, accountable adults to handle property or benefits to which they are entitled. *Id.*

As part of careful estate planning, a minor's parents or other interested persons may establish a trust for his or her benefit. This may include a special needs trust for a disabled minor. However, there are many instances where a minor may be entitled to property and there is no prior planning in place as to how the minor may receive and use the property. For instance, if a parent of an unemancipated minor dies suddenly and does not leave a will or leaves a will that devises property to the minor, the minor may be entitled to receive a distribution of property from the parent's estate. Many times the immediate answer given in these instances is that the minor needs a guardian of the estate appointed by the clerk under G.S. Chapter 35A to receive and administer the minor's property. However, it is not always the case that a guardian of the estate is needed. There are a number of other methods of distributing property payable to a minor that are generally less expensive and requires less court oversight than a 35A minor guardianship, which requires that the guardian must be bonded, entitles the guardian to the payment of a commission from the minor's estate, and requires the guardian to file an inventory and annual accountings. Many of these alternative methods arise the context of an estate administration where some of the decedent's property is to be distributed to a minor.

1. Year's Allowance Due to a Child. The personal representative (PR) of an estate may pay the year's allowance due to an eligible child of the decedent ($5,000) directly to a surviving parent in some instances. G.S. 30-17.

2. Payment by the Personal Representative to the Clerk. The PR may pay property in any amount due to a minor from an estate directly to the clerk when the minor does not have a guardian. G.S. 28A-23-2. There is no limit on the amount payable to the clerk under this statute.

3. Payment Directed by Will. A will or trust can also expressly authorize distributions by a PR or trustee, respectively, directly to a minor, to payment of certain bills of the minor, or to any person who is a legal or natural guardian or who has care and custody of the minor. G.S. 32-27(28).

4. Uniform Transfers to Minors Act. The Uniform Transfers to Minors Act under G.S. Chapter 33A

Moral of the Story

As an estate clerk:

1. Be cautious about giving legal advice
2. Don't always jump to the conclusion that GOE is necessary where minor is a beneficiary or heir – wait and see approach

Not the Clerk's role to determine the best path.

Beneficiary Problems

Scenario #1 – Can't locate the beneficiary

- When there are known but unlocated ("missing") devisees or heirs of property held by the personal representative, ***the personal representative may deliver*** that person's share to the clerk immediately before filing the final account.
- If the missing heir or devisee is located after the final account has been filed, he or she may present a claim to the clerk.
  - If the clerk determines that the claimant is entitled to the share, he or she delivers the share.
  - If the clerk denies the claim, the claimant may appeal as in a special proceeding.

G.S. 28A-22-9(a).

Scenario #2 – Beneficiary won't sign receipt

- The PR or collector must produce vouchers for all payments or verified proof for all payments in lieu of vouchers. G.S. 28A-21-1; 21-2(a2).
  - No specific form of a voucher is required. Vouchers may include cancelled checks, itemized receipts, bills marked paid, etc.
  - Verified proof in lieu of vouchers – If PR or other person has personal knowledge or delivery to beneficiary, that person can provide an affidavit.

Scenario #3 – Beneficiary won't accept distribution

- Beneficiary could renounce under G.S. Ch. 31B.
- PR could deliver and provide proof of delivery.
  - Drop off property and document?
- If refusal is due to disability or mental illness, guardianship or single transaction may be an option.
- Can PR treat property as abandoned under NC unclaimed Property Act (G.S. CH. 116B, Art. 4)?
- What about G.S. 28A-22-9(a)?
  - Beneficiary is known.
  - Is beneficiary located? What does located mean?

Scenario #4 – "Beneficiary" is not ALLOWED to take.

- G.S. Ch. 31A – Acts Barring Property Rights
  - Restrictions on spouses, parents, slayers.
  - Look for estate proceeding to challenge right to inherit.
  - Proceeding must be resolved before distributions can be approved in account.
  - Not the clerk's job to raise this issue.
  - Ch. 18 "Acts Barring Property Rights"
- Out of wedlock children
  - May not take unless child timely submits written notice to PR. G.S. 29-19(b).
    - *"No person shall be entitled to take hereunder unless the person has given written notice of the basis of the person's claim to the personal representative of the putative father within six months after the date of the first publication or posting of the general notice to creditors."*

Other Distribution Scenarios

WHAT TO KNOW & WHAT TO LOOK FOR

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Distributions to Disabled Beneficiaries - What to Know

- If receiving certain government benefits (Medicaid, SSI) cannot own more than $2,000 of countable resources.
  - Means-tested benefits: must be disabled and have low resources to qualify (>$2,000)
- Inheritance from will or intestate estate can eliminate benefits.
- Money in a guardianship is a countable resource.

Caution: It's not the clerk's job to give advice. This info is to educate in case this issue comes before you.

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Distributions to Disabled Beneficiaries – What to Look For

Possible distribution scenarios:

1. Will disinherits disabled beneficiary (they get $0 on purpose).
2. To special needs trust (SNT) created in will or separate trust document.
   *SNT is designed not to be a countable resource.
3. May need guardianship to receive inheritance.
   Caution: $ in guardianship is a countable resource.
4. File single transaction guardianship to authorize payment to SNT or spend down.
   *Can spend down fund to below $2,000 by next calendar month.

- Does disabled beneficiary need a GAL? Who has authority to sign receipt, consent, object?
  - G.S. 28A-2-7 + G.S. 36C-3-305 – clerk has authority to appoint a GAL.

Distribution of Wrongful Death Proceeds – What to Know (1 of 3)

- Wrongful death proceeds are NOT estate assets.
- **The clerk has jurisdiction to order an accounting of wrongful death proceeds and can compel the PR to do so.**
  - *In re Estate of Parrish*, 143 N.C. App. 244, 250 (2001).
- Clerk has authority to remove PR for mismanagement of WD proceeds.
- WD proceeds are distributed in accordance with NC Intestate Succession Act. – G.S. Ch. 29
  - Doesn't matter if there is a will.

Distribution of Wrongful Death Proceeds – What to Know (2 of 3)

- Which version of Intestacy law applies?
  - Law in place at the time of decedent's DOD.
- Bond not required if PR is
  1. appointed solely for the purpose of bringing an action for the wrongful death of the decedent, and
  2. until such time as the PR receives property into the estate of the decedent. G.S. 28A-8-1(b)(4).

  "These letters are issued for the sole purpose of bringing an action for wrongful death and are not to be used to collect assets. The fiduciary shall post a bond prior to receiving any property into the estate of the decedent unless a bond is otherwise not required."

  See "Appointment of the Personal Representative," Decedents' Estates, Trusts, and Powers of Attorney, Chapter 7, Section XII.B.2.

Distribution of Wrongful Death Proceeds – What to Know (3 of 3)

- Distributions related to any recovery from a wrongful death action are governed by G.S. 28A-18-2.
- Any wrongful death proceeds recovered must be applied in the following order:

  1. First, to the reimbursement of the estate for expenses incurred in pursuing the wrongful death action. G.S. 28A-18-2(a).
  2. Next, to pay attorney fees. G.S. 28A-18-2(a).
     - Can include estate admin attorney fees if no other estate assets. *In re Lessard*, 78 N.C. App. 196, 198 (1985).
  3. Finally, the balance is distributed pursuant to the Intestate Succession Act, regardless of the existence or terms of any probated will. G.S. 28A-18-2(a).

Distribution of Wrongful Death Proceeds – What to Look For (1 of 2)

- Accounting for wrongful death proceeds.
  - The PR or collector must file a separate account for wrongful death proceeds.
  - Review WD account
    - In the same manner as other accounts, and
    - To determine whether the wrongful death proceeds have been paid in accordance with G.S. 28A-18-2 and other applicable law.
- Wrongful death proceeds should not be commingled with the assets of the decedent's estate.
- Check if PR took possession of WD assets.
  - If so, PR should post bond.

Distribution of Wrongful Death Proceeds – What to Look For (2 of 2)

- Ask:
  - *Was the correct law applied?*
  - *Are distributions made correctly?*

- What if the settlement agreement or final order is confidential?
- It doesn't matter – the clerk still has the authority to require PR to account.
  - May need to file account and order approving account under seal.
  - See "Personal Property of Estates," *Decedents' Estates, Trusts, and Powers of Attorney*, Chapter 12, Section VII.J.

What would you do?

PR is handling a wrongful death estate. There are no other assets in the estate. PR was not bonded when he qualified. Decedent died married to second wife and had two children form the first marriage. WD case settles for $460,000. PR presents final account showing that he directed WD proceeds into his attorney's trust account in the name of the estate. PR then shows distributions to each child of $100,000 and to *first* wife of $260,000.

- What is wrong with this scenario?
- What would you do?

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Family Settlement Agreements (FSAs) – What to Know

- FSA = Agreement between devisees/heirs as to some aspect of the estate administration.
  - Many different kinds of FSAs :
    - Caveat, Common law, G.S. 28A-2-10
- ***Clerk has limited authority to approve an FSA***
  - See FSA Settlement chart

Type	I. CLERK ONLY* Original, exclusive jurisdiction G.S. 28A-2-204(a)1,2, 3 G.S. 28A-2-10	II. CLERK + SUPERIOR CT Clerk has non-exclusive jurisdiction G.S. 28A-2-204(a)(4) G.S. 28A-2-10	III. SUPERIOR CT ONLY G.S. 28A-2-204(c)	IV. SUPERIOR CT "MIXED BAG" G.S. 28A-2-206(f), (g), (h), (j)	V. COMMON LAW FAMILY SETTLEMENT AGREEMENT
Can Clerk approve?	YES	YES	NO	NO	NO
Applies To	1. Probate of wills. 2. Granting and revoking of letters testamentary and letters of administration, or other proper letters of authority. 3. Determination of the elective share for a surviving spouse as provided in G.S. 30-3.1. ***PLUS*** *All estate proceedings (matters "*initiated by petition related to the administration, distribution, or settlement of an estate*") except those listed in (a)(4). Includes: • Contested proceedings for	1. Ascertain heirs or devisees. 2. Approve settlement agreements per G.S. 28A-2-10. 3. Determine questions of construction of wills. 4. Determine priority among creditors. 5. Determine whether a person is in possession of estate property. 6. Order recovery of estate property. 7. Determine the existence or nonexistence of *any immunity, power, privilege,*	1. Actions by/against creditors or debtors of an estate, except as provided in Article 19 of Ch. 28A. 2. Claims for monetary damages, including claims for breach of fiduciary duty, fraud, and negligence. 3. Caveats, except as provided under G.S. 31-36. 4. Proceeding to determine proper county of venue as provided in G.S. 28A-3-2. 5. Recovery of property transferred or conveyed by a decedent with intent to hinder, delay, or defraud	Combination of: • **Lane I** if claims are joined or consolidated with other claims. • **Lane II** if filed in/transferred to Superior Court. • **Lane III**	Settlement agreements that • Are between beneficiaries that alter testator's disposition. • Do not result from a caveat. • May or may not be approved by superior court. • Meet the common-law requirements: 1. All beneficiaries are parties. 2. Rights of

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Procedure to get an FSA entered:

- Filing a draft/proposed order is **not enough**.
- Filing consents in a final account is **not enough**.
- There must be an estate proceeding (petition) before the clerk can act.
- *Key: The court's jurisdiction must be **invoked**.*
- *How?*
  1. Existing proceeding is pending* before the clerk.
  2. File a new proceeding for the purpose of approving the settlement agreement.
     G.S. 28A-2-4(a)(4), Lane II.

     "Petition to Approve Settlement Agreement"

  - *Caution: If a proceeding has been filed in, transferred to, consolidated, or on appeal in superior court, the clerk cannot sign a resulting FSA.*

Clerk's Standard to Approve FSA – G.S. 28A-2-10

- G.S. 28A-2-10: Clerks may *consider and approve* settlement agreements where the following apply:

  1. The controversy arises with respect to **a matter over which the clerk has jurisdiction**.
  2. The controversy arose in **good faith**.

- However, the clerk has **NO** authority to approve a settlement agreement modifying the terms of a last will and testament or resolving a caveat of a last will and testament.

Can an FSA Alter Estate Accountings?

- What we know: Clerks are limited by statute and cannot approve an FSA that alters the terms of a will or intestate distributions.
  - Possible exception – agreement to ascertain heirs or devisees.
- However—Superior court has authority approve an FSA that modifies a will or changes intestacy distributions. Examples:
  - Settlements in a caveat.
  - Common-Law FSAs.

Recognition of FSAs Approved by Superior Court

- When can the clerk rely on that order to complete the estate administration?
  - When superior court has subject matter jurisdiction.
  - How do you know?
    - Need to make sure the court's jurisdiction was **invoked**
    - Look for existing proceeding, petition to approve settlement.
- If no subject matter jurisdiction, order is void.
- ***Caution!*** Not your job to second guess the ***contents*** of the order.

FSAs **without** Court Approval

- What we know: The terms of an FSA can alter the distributions in an estate, especially common-law FSAs.
- Parties are free to contract with each other, and NC has a long history of favoring FSAs.
- Common-law FSAs don't have to be approved by superior court.

However—Clerks are still limited by statute.

- Therefore: For purposes of the ***estate administration***, the FSA cannot alter a will's terms or intestacy distributions.
- Accountings that show distributions made in accordance with an FSA that vary from intestacy or the terms of a will should ***not*** be approved.

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What would you do?

Devisees Meredith, Matt, and Nickie think PR (and devisee) Catherine is doing a terrible job and should be removed and pay back money they think she took from the estate. Catherine thinks she is doing great job. They eventually work out their differences, agreeing that Catherine can remain the PR if she agrees to "pay back" the other devisees by taking a smaller portion of assets than with the will gives her. PR Catherine submits of a final account showing that she gets less than what the will says and attaches a copy of a signed settlement agreement.

- Can you approve the final account?
- What if the parties filed a petition to approve FSA under G.S. 28A-2-10?
- What if the parties attached an order from superior court approving the FSA?
- What else could the devisees do?

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Reopening the Estate

JUST WHEN YOU THOUGHT IT WAS OVER…

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Procedure to reopen an estate

- Who can file? Any person interested in the estate may file a petition with the clerk to reopen an estate. G.S. 28A-23-5.
  - **Form**. AOC-E-908, Petition And Order To Reopen Estate.
- The petition may be filed without notice or upon such notice as the clerk may direct. G.S. 28A-23-5.
- The clerk may hold a hearing on the petition before entering an order.

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Grounds for reopening an estate

If an estate has been settled and the personal representative (PR) discharged, the clerk ***may order*** the estate reopened

- If other property of the estate is discovered,
- If it appears that any necessary act remains unperformed by the PR, or
- For any other proper cause.

G.S. 28A-23-5.

Reopening to file claim or lawsuit

- The existence of a valid claim against an estate ***that is not time-barred*** may constitute proper cause to reopen a closed estate.
- However—An estate may not ordinarily be reopened for litigation of claims not brought within the limitation period set out in G.S. 28A-19-3, even in the absence of a bar by some other statute of limitations.
  - Clerk's denial of petition to reopen upheld on appeal. *In re Estate of Mullins*, 182 N.C. App. 667, 672 (2007).
  - Petitioner has a "heavy burden" to justify reopening estate when claim not brought within timeframe required by G.S. 28A-19-3. *In re Estate of English*, 83 N.C. App. 359, 366 (1986)
  - A statute of limitations may be tolled due to the disability of a person entitled to commence an action. *In re Estate of Owens*, 117 N.C. App. 118, 122 (1994).

Reopening the estate - Fees

- The clerk does not collect the facilities fee or the general court of justice fee to reopen the estate.
- The clerk collects a fee on new assets, including income, not previously reported in the prior administration at a rate of 40 cents per $100. There is no minimum fee. When added to costs assessed in all prior administrations of the estate, the total fee collected is not to exceed $6,000. G.S. 7A-307(a)(6).
  - **However--** If an estate is reopened in which a decedent died on or before December 31, 2011, the clerk should consult the earlier fee requirements of G.S. 7A-307(a)(2) (minimum $15 fee applies).

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What would you do?

Attorney files petition to reopen the estate (AOC-E-908) for the purpose of filing a personal injury action against the decedent's estate. Attorney names the former PR to be reappointed (the decedent's sister), but he does not represent the sister and his petition states that he intends to sue the sister in the same lawsuit as well as the estate. The decedent died 2 years ago and notice to creditors ran over a year ago and claims period has long expired.

- What would you do?

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