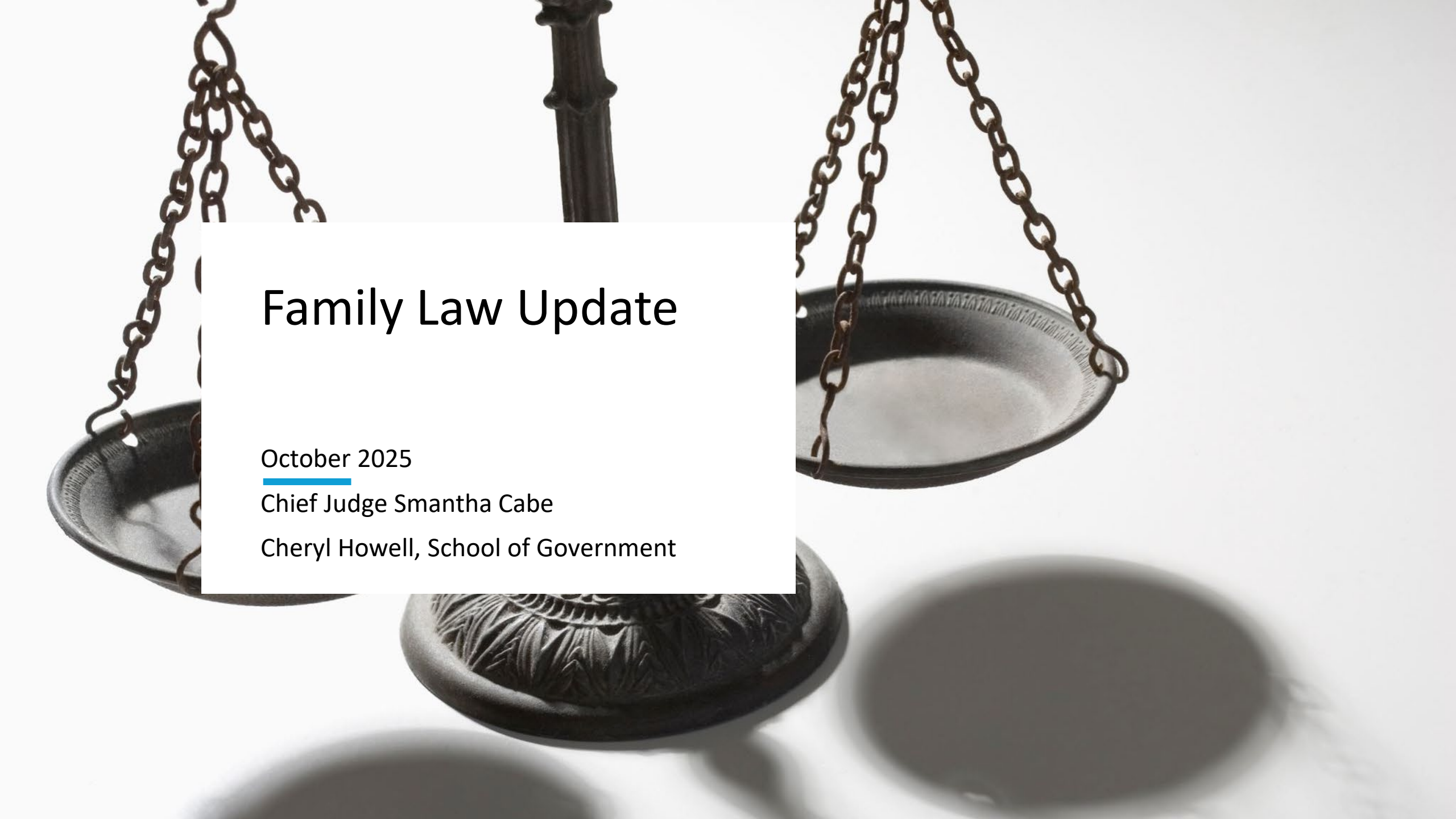




Family Law Update

October 2025

Chief Judge Smantha Cabe

Cheryl Howell, School of Government

Child Custody



Non-parent Custody: Procedure

Motions to dismiss pursuant to Rule 12(b)(1)[standing] and Rule 12(b)(6)[failure to state a claim] are determined by a review of the pleadings alone; a factual hearing is not appropriate.

White v. Boatwright, p. 3

White v. Boatwright, p. 3

G.S. 50-13.1(a) gives grandparents “the broad privilege to institute an action for custody”

To survive a motion to dismiss for lack of standing, a grandparent must allege both that they are a grandparent and facts sufficient to demonstrate that the parent is unfit or has engaged in conduct inconsistent with their protected status.

Modification

- *Durbin v. Durbin*, NC Supreme Court, p. 5
 - Escalating conflict – even if conflict has always been present – constitutes a substantial change in circumstances affecting the welfare of the child when – in the view of the trial court – it risks injury to the child

Legislation

- **Uniform Child Abduction Prevention Act**
 - New G.S. 50A-411 through 422
 - Effective Oct. 1, 2025
 - Petitioner can request an ex parte warrant
- **Post-adoption Contact Agreements**
 - Creating new G.S. 7B-909.2 and 7B-909.3
 - Civil file is created when agreements are entered; agreements are court orders
 - Modification requests are filed in district court as a custody modification
 - Effective Oct. 1, 2025

***Both result in child custody determinations – meaning you must think about custody jurisdiction pursuant to the UCCJEA

Child Support

Domestic Violence



Attorney fees

- *Cauley v. Cauley*, p. 21
 - Chapter 50B authorizes fees only as a form of relief when a DVPO is entered
 - If the request for a DVPO is denied, there can be no attorney fee award for either party
- Consider GS 6-21.5
 - Authorizes fees when “court finds there was a complete absence of a justiciable issue of either law or fact raised by the losing party in any pleading.”

Legislation



30 June 2025

Effective June 30, 2025

- Clerks are no longer required to effect service of process for self-represented litigant when service is not in North Carolina
- S.L. 2025-54, amending GS 50B-2 and 50B-4



1 Dec. 2025

Effective December 1, 2025

- **Any person**, whether residing in North Carolina or in another state, can file for a DVPO if act of DV occurred in North Carolina
- No change to provision that any person residing in North Carolina can file for a DVPO, whether or not the act occurred in North Carolina
- S.L. 2025-70, sec. 6.(a)

Legislation

Effective December 1, 2025

- Procedure for return of weapons
 - Sheriff authorized to return without a court order when court does not enter a DVPO after an ex parte order expires or when the request for a DVPO is denied
 - Amends procedures for sheriff's request to dispose of weapons surrendered
 - S.L. 2025-70



Equitable Distribution



Pension Division Order

- ***Holland v. Holland***, p. 14
 - Consent judgment in 2005
 - “the nonvested military retirement account is reserved for further consideration”
- Wife filed motion for pension division 15 years later, after husband begins to receive his pension.

***Holland v. Holland*, p. 14**

- No laches
 - Husband knew pension remained at issue
 - She filed her motion shortly after he started to receive payments
 - Remember *Welch v. Welch*, 288 N.C. App. 627 (2023) [no statute of limitations on entry of DROs]
- Trial court properly used the coverture fraction found in GS 50-20.1 when parties did not specify how pension would be divided
 - Total time married while earning the pension over total time earning the pension is the marital portion; wife awarded half of that marital portion

Legislation

- Amendment to GS 50-20(b)(2) and 50-20(d)
- Agreements/statements regarding equitable distribution cannot be made in a conveyance; separate writing is required
- Effective Oct. 1, 2025
 - Probably conveyances made on or after that date.
 - *Warren v. Warren*, 75 NC App 509 (2006); *Lund v. Lund*, 244 NC App 279 (2015)

Legislation

- Effect on gift presumption when separate property used to create tenancy by the entirety????
- Remember:
- *McLean v. McLean*, 323 NC 543 (1988) anytime separate property is the consideration for property held by tenancy by the entirety, there is presumption that **a gift** has been made
- *Walter v. Walter*, 149 NC App 723 (2002)(the tenancy by entirety rule involves **the gift provision** rather than the exchange provision).