



Ways to Avoid Liability (or at least embarrassment)

Training for New Clerks of Superior Court
January 2015



Ripped from the headlines (you cannot make this up!)



Defendant comes into your office to pay off
\$15,000 judgment.

Defendant hands you a personal check for \$17,380 (says he
miscalculated the amount of interest due).

- What did clerk do?
- What should clerk have done?



Ripped from the headlines (you cannot make this up!)

Man comes to your office to claim money you have been holding
for him since he was 13 years old.



Man says he is 18 years old and presents
his driver's license.

Man is actually the minor's parent with the same name.

- What did clerk do?
- What should clerk have done?



Ripped from the headlines

(you cannot make this up!)



- Claim of Lien filed by Homebuilders, Inc. against John Phillips, General Contractor, for \$25,000. 2001 M 72
- The next day, Greensboro Roofing files a claim of lien against John Philips, General Contractor, for \$5,000. 2001 M 78
- Two weeks later Greensboro Roofing notifies you in writing that the lien against John Phillips has been satisfied and you mark the lien cancelled.
 - Read carefully. Which lien did the clerk cancel?
 - Which lien should have been cancelled?

Ripped from the headlines

(you cannot make this up!)

Guardianship Bonds: Minor's parents die in murder/suicide

- \$240,000 in insurance due to minor
- Clerk told guardian, in front of guardian's attorney, to get bond
- Clerk's next contact with guardian was more than two years later
 - ✓ What happened with money?
 - ✓ What could Clerk have done to prevent loss?

Ripped from the headlines

(you cannot make this up!)

Guardianship Bonds

- Bond is required for a General Guardian or Guardian of the Estate [G.S. § 35A-1230]
 - ✓ Always set bond in these estates, regardless of income
 - ✓ If there is also Social Security Income, bond on that amount as well
 - ✓ Clerk is liable if no bond is set [GS § 35A-1238]

Dealing with Other People's Money

(when in doubt, don't pay out)

- Receiving Money for Minors

- G.S. § 7A-111(a)- a child under 18
- Insurance proceeds of \$25,000 or less **per** policy, person or account

Ex. \$25,000 in insurance, \$10,000 from mother's estate, \$35,000 from a 401K. Clerk can receipt and invest only \$35,000. Better option here is a guardian of the estate.

or

- Otherwise by court (judge) order

Clerk cannot enter own order to receipt funds in excess of statutory provisions.

See 3/28/13 memo: [Clerk Has No Authority to Issue an Order...](#)

Dealing with Other People's Money

(when in doubt, don't pay out)

- Disbursing Money for Minors (G.S. § 7A-111(a))

- Once money is deposited with clerk pursuant to statutory authority, only the clerk can order disbursement. Do not pay out money under any order but your own. *Koob v. Koob, & Joseph P. Shore, CSC Guilford*, 283 N.C. 129, 15 S.E.2d 552 (1973).

Exception: if judge amends original order before you receipt funds.

- Minors. The clerk is authorized under this section to receive, to administer and to disburse the monies held in such sum or sums and at such time or times as in his judgment is in the best interest of the child.

Dealing with Other People's Money

(when in doubt, don't pay out)



- **NOTE WELL:** The clerk must first determine that the parents or other persons responsible for the child's support and maintenance are financially **unable to provide the necessities** (AKA necessities) for such child, and also that the child is in need of maintenance and support or other necessities, including, when appropriate, education.

- Necessities/necessaries are those things that are "...indispensable to living...include[s] food, medicine, clothing, shelter," Black's Law Dictionary, 8th Ed.
- What about cars, school clothes, birthday presents?

Dealing with Other People's Money

(when in doubt, don't pay out)

- Any monies paid to the clerk of the superior court under [G.S. § 7A-111] of this section shall also include the name, last known address, social security number or taxpayer identification number of the beneficiary or payee, and the name and address of the nearest relative of the beneficiary.
 - Reasons for these requirements

Dealing with Other People's Money

(when in doubt, don't pay out)

- Receipting Money for Incapacitated Adults
 - G.S. § 7A-111(b)- a person who is "mentally incapable due to sickness, old age, disease or other infirmity to manage his own affairs."
- Insurance proceeds of \$5,000 or less **per** policy, person or account
- Otherwise, by court order

Dealing with Other People's Money

(when in doubt, don't pay out)

- Disbursing Money for Incapacitated Adults (G.S. § 7A-111(b))
 - The clerk is authorized to receive, to administer and, upon a finding of fact that it is in the best interest of the incapacitated adult, to disburse funds directly to a
 - Creditor
 - Relative
 - Or some discreet and solvent neighbor or friend
 - ✓ for the purpose of handling the property and affairs of the incapacitated adult.
 - The clerk **shall require** receipts or paid vouchers showing that the monies disbursed under this section were used for the exclusive use and benefit of the incapacitated adult.
 - ✓ Obtain SSN/TIN or do backup withholding before paying out

Dealing with Other People's Money
(when in doubt, don't pay out)



▪ **Surplus Funds**

- Money paid into your office after mortgage or tax foreclosure
- Do not disburse unless a separate special proceeding is filed

Evidence required to prove entitlement
Title opinion is recommended

Exception: Don't mess with the IRS. *U.S. v. Mauney*, 642 F. Supp. 1097 (WDNC 1986). IRS can obtain funds via administrative levy without need for SP. This only applies to IRS, not DOR, or local government.

Dealing with Other People's Money
(when in doubt, don't pay out)

▪ **Money ordered paid into your office for you to disburse**

- Overall this is a bad practice. The attorney handling the estate, special proceeding, or litigation should pay all attorney's fees, bills, costs and then only the amount due a minor, unknown heir or incapacitated adult is paid to the clerk in accordance with applicable statutes.

See, Receipt and Disbursement of Funds (in packet)
<http://uno.nccourts.org/sites/default/files/files/clerksinvestments.pdf>

- Read order carefully
 - Do not disburse to anyone not listed in order
 - If amount received and amount you are ordered to disburse do not match, seek clarification from attorneys or judge.
 - Obtain SSN/TIN or do backup withholding before paying out

Judgments, Miscellaneous Filings, and Recordkeeping Issues



▪ **Claims of Lien**

- Lien filed and debtor pays money (posts bond) to release lien and no civil action is ever filed. One of the parties has asked you to release fund on deposit. How do you determine who is entitled to the funds?
- G.S. 44A-16. Discharge of record claim of lien on real property.

...

(b) The clerk may release funds held or a corporate surety bond upon receipt of one of the following:

- (1) Written agreement of the parties.
- (2) A final judgment of a court of competent jurisdiction.
- (3) A consent order.

Judgments, Miscellaneous Filings, and Recordkeeping Issues

JUDGMENT DOCKETING AND CANCELING

- Maintain basket/bucket with orders delivered to your office, but not yet entered into VCAP.
 - Rule 58 of the Rules of Civil Procedure. Judgment not a judgment until:
 1. Reduced to writing;
 2. Signed by the Judicial Official; and
 3. Filed with the Clerk.

In the Matter of Thompson, COA13-564 (NC Ct. App., Feb. 4, 2014)
"filed with clerk" means clock/time stamp is on document.



Judgments, Miscellaneous Filings, and Recordkeeping Issues

JUDGMENT DOCKETING AND CANCELING

- Always double check judgments entered against minutes of court to ensure the courtroom clerk has all judgments in his/her possession.
- Confirm, confirm, and confirm information on the judgment!
 - Proper spelling of names, file numbers, proper defendants

Judgments, Miscellaneous Filings, and Recordkeeping Issues

Documents Without Funds, Funds Without Documents

- Complaint sent to your office without filing fee or one check is sent in for filing and sheriff's service fee. What should you do?
 - Return documents?

What about Statute of Limitations?
 - What if sheriff's service fee is included?
 - RRK Rule 3.4 B. The clerk should not refuse to accept any filing not accompanied by all appropriate fees. The clerk should notify the filer or the filer's attorney and the court of any costs that are due. The clerk should note that costs are due in the court's file.

Judgments, Miscellaneous Filings, and Recordkeeping Issues

Documents Without Funds, Funds Without Documents

- Defendant comes into office with his wildlife violation citation and wants to pay it off, but the citation is not yet in the ACIS.
 - How can cashier handle this?
 - What are potential problems?
 - What are potential solutions?

RECORD KEEPING / REMINDER SYSTEMS

- ✓ Personal calendar
- ✓ Things to do list

Know the Law, Follow the Law, Blame the Law

- Sterilizations—SP before clerk
 - In very limited circumstances
 1. Declared incompetent
 2. Not done used for birth control
 3. Done only for medical necessity
(See memorandum in packet)
- Expunged record—clerk responsible for destruction
 - Information is confidential
 - May not disclose to anyone other than those authorized by law (e.g., LEO)
- Involuntary commitments—clerk responsible for files
 - Confidential



Personnel

- Embezzlement opportunities

Actual headline: "Court clerk charged with embezzlement is terminated"

 - Void receipt form (copy in packet)
 - Criminal record checks
 - Copies without HECON key
 - Misuse of state property



Personnel

- Know what information (public information) you can share about employees G.S. 126-23 is summarized on next slide.
- Information you can provide relates to employment in your office, not employment with other agencies or companies. Those questions get referred to other agency/company.
- Contact HR and they can provide you with the public information on your employees. This is a great way to prevent improper release of non-public information.
 - Improper release of non-public personnel information is Class 3 Misdemeanor and subject to \$500 fine. G.S. 126-27

Personnel Information and Public Records [G.S. 126-23]

YES	NO
(1) Name	Prior names
(2) Age	Date of Birth
(3) Date of original employment with State	Prior non-state employment
(4) Any contract of employment	NA in your offices
(5) Current position	Reason why transferred to this position
(6) Title	
(7) Current salary	Reason for current salary
(8) Date and amount of each increase or decrease in salary	Reason for increase or decrease
(9) Date of each promotion, demotion, transfer, suspension, separation, or other change in position classification ...	Reason for each promotion, demotion, transfer, suspension, separation, or other change in position classification. Cannot reveal medical, retirement, personal plans.
(10) Date and reason for each promotion	Date and reason for demotions, if not covered by paragraph (11)
(11) Date and reason for dismissal, suspension, or demotion for disciplinary reasons .	Reason for dismissal, suspension or demotion if not for disciplinary reasons.
If the disciplinary action was a dismissal , a copy of the written notice of the final decision	No written notice if suspension or demotion
(12) Office where employee is currently assigned	

A Few Words about Sovereign Citizens

- What is a sovereign citizen? 
- How do you know you are dealing with a sovereign citizen? 
- What should you do with sovereign citizen filings?
- What should you do about sovereign citizen threats:
 - Physical harm
 - Financial harm (liens and UCC filings)
 - Bogus filings



Resources

- Clerks Manual ([Intranet](#), [Web Application Logon](#))
- Legal Memos ([Intranet](#), [by topic](#))



- General Statutes (Internet, www.ncleg.net/)



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