**2019 Civil Law Update**



Tuesday, October 1, 2019

The Woman’s Club – 3300 Woman’s Club Drive

Raleigh, NC

**2019 Civil Law Update**

(2019 Wake County Bar Association Luncheon)

Tuesday, October 1, 2019 (2:00-3:00 PM)

The Woman’s Club – 3300 Woman’s Club Drive Raleigh, NC 27612

CLE Credit: 1.0 Hour General Credit

**Presenters**

**Judge Debra Sasser**, Wake County District Court Judge (Tenth Judicial District)

**Jaye Meyer**, Tharrington Smith, LLP

**SUMMARY:** This case law and session law list was created to help local practitioners identify and incorporate recent civil case rulings and legislation into his or her practice. This presentation covers state court opinions and legislation from October 3, 2018 through the present.

Much credit and appreciation are given to Ann M. Anderson, UNC School of Government, for her *Summaries of Civil North Carolina Appellate Opinions of Interest to Superior Court Judges*, which we used to help identify many of the cases in this manuscript and in today’s presentation.

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**Session Law**

**Amendments to the Rules of Appellate Procedure**

**and the General Rules of Practice**

1. **Order Amending Rule 3.1 and Rule 33.1 of the Rules of Appellate Procedure** – **Effective September 11, 2019.**

This Order amends Rule **3.1(f)** to clarify that the **word-count limitations applicable to briefs** filed in the North Carolina appellate courts must comply with the word-count limitations found in Rule 28(j). The Order also amends **Rule 33.1** to **add twelve additional secured-leave periods** following the birth or adoption of the attorney’s child. These secured-leave periods must be taken within the first twenty-four weeks following the child’s adoption or birth.

1. **Order Amending the General Rules of Practice for the Superior and District Courts** – **Effective September 11, 2019.**

This Order rewrites Rule 26 – Secure Leave Periods for Attorneys. The major change to this Rule is the inclusion of secure-leave periods following the birth or adoption of the attorney’s child, which is consistent with the change to the Rules of Appellate Procedure.

1. **Order Amending Rules 3, 3.1, 4, 9, 11, 12, 13, 18, 26, 28, 30, 37, 41, 42 (new) and Appendixes A, B, and D of the Rules of Appellate Procedure** – **Effective December 19, 2018.**

This Order amends several Rules related to the “Review in Cases Governed by Subchapter I of the Juvenile Code”, child protection matters. This Order adds a new Rule, Rule 42, “Protecting Identities—Sealed Items and Identification Numbers”, which includes some consolidation of various references throughout the Rules to identifying information. This Order also includes various miscellaneous changes: Only one copy is now required of any document that the Rules previously required three copies; The requirement for the filing of multiple copies of the memorandum of additional authorities is eliminated; Rule 41 – Appeal information Statement- has been rewritten; The time for filing and service of briefs has been amended; and Appendixes were changed for consistency with the other changes to the Rules.

**Summary of Selected Session Laws**

**Enacted through 9/12/2019**

**2018-2019 Session**

1. **S.L. 2019-207, H554: An Act to Modify Funeral Service and Crematory Licenses and Practices.**

This law amends Article 13A of Chapter 90, The Practice of Funeral Service, to allow for provisional licensing in the practice of funeral directing. This law also amends G.S. 130A-115 to define additional ***immunity*** for the persons who sign the medical certification related to the death certificate:

*“(c1) A physician, physician assistant, or nurse practitioner completing and signing a medical certification in accordance with subsection (c) of this section shall not be liable in civil damages for any acts or omissions relating to the medical certification so long as the cause of death is determined in good faith using the individual's best clinical judgment and consistent with current guidance provided by the applicable licensing board, unless the acts or omissions amount to wanton conduct or intentional wrongdoing. This immunity is in addition to any other legal immunity from liability to which these individuals may be entitled.”*

1. **S.L 2019-194, H391: An Act to Amend Various Transportation Network Company Laws and to Create New Criminal Offenses Relating to Transportation Network Company (“TNC”) Drivers.**

This law supplements existing safety requirements relating TNC and their drivers. A TNC is *“[a]ny person that uses an online-enabled application or platform to connect passengers with TNC drivers who provide prearranged transportation services.”* A TNC driver is *“[a]n individual that uses a passenger vehicle in connection with a transportation network company's online-enabled application or platform to connect with passengers in exchange for payment of a fee to the transportation network company.”*

Although this Act creates new criminal offenses, it is included in this summary because of general interest in this issue. This Act implements requirements regarding: \*maintenance of certain information regarding each TNC driver; \*visibility and legibility requirements for each TNC driver’s license plate display; \*designation of consistent and distinctive signage or emblems (that are approved by DMV).

The law makes it unlawful for someone to impersonate a TNC driver. Violation of the license place requirement is an infraction. Impersonating a TNC driver is a Class H felony if the defendant impersonated a TNC driver during the commission of a separate felony offense; and it is a Class 2 misdemeanor for any other violation of Section 14-201.27. Finally, the law creates a new subdivision in the 14-33(c) list of assaults and classifications, making it a Class A1 misdemeanor to assault a TNC driver providing TNC service.

1. **S.L. 2019-191, H228: An Act to Modernize Laws Pertaining to the North Carolina Medical Board and the Practice of Medicine.**

This Act, in part, imposes a ***duty to report*** on each person licensed by the Medical Board concerning the following conduct: \*Sexual misconduct with a patient of any other Licensee; and \*Fraudulent prescribing, drug diversion, or theft of any controlled substance by any other Licensee. This Act provides ***immunity*** from civil liability to “[a]ny person who reports under this section in good faith and without fraud or malice…”

1. **S.L. 2019-188, H724: An Act to Prohibit the Use of Misleading Telephone Identification Methods for Telephone Solicitations by Voice or Text.**

This Act amends Article 4 (Telephone Solicitations) of **Chapter 75** to specifically include “text” communications as part of the definition of “telephone” communication. The Act also prohibits the use of fake, spoofed, or otherwise misleading transmission of the origin of the telephone solicitation.

1. **S.L. 2019-178, S532: An Act (i) To Require that, in a Living Probate Proceeding, the Original Will be Introduced as Evidence Rather than being Attached to the Initial Petition, (ii) To Permit the Use of “Minor” or “18+” or “Adult” in Place of the Actual Age of an Heir or Devisee in an Application for Letters of Administration or Letters Testamentary, (iii) To Adjust this State’s Statutes Dealing with Out-of-State Wills Recognized in this State on the Basis of Compliance with the Law of the State of Execution in Order to Continue the Requirement that the Testator have been Physically Present in that State at the Time of the Will’s Execution, (iv) To Provide for Notice that Tenancy by the Entireties Property Transferred to a Tenancy by the Entireties Trust Remains Immune to the Claims of One Spouse’s Individual Creditors and to Specify that a Person Entering into a Transaction Involving the Property May Obtain Confirmation from the Trustee that the Property Continues to Qualify for this Immunity, and (v) To Make Technical Corrections to the Affected Statutes, as Recommended by the General Statutes Commission.**

The title of this Act pretty well summarizes the changes.

1. **S.L. 2019-164, S332: An Act to Clarify Statutes of Limitation and Repose Applicable to Actions Brought Against Professional Land Surveyors.**

This Act rewrites 1-52(18) to clearly establish a 3-year statute of limitations and a 7-year statute of repose for **actions brought against a registered land surveyor** as defined in G.S. 89C‑3(9) or a person acting under the surveyor's supervision and control, for physical damage or for economic or monetary loss due to negligence or a deficiency in the performance of surveying or platting.

1. **S.L. 2019-161, S420: An Act to Enact the North Carolina Servicemembers Civil Relief Act and to Clarify that No Member of the North Carolina National Guard Shall be Forced to Use Any Vacation or Other Leave from His or Her Civilian Employment for a Period of Active Service.**

This Act creates the “North Carolina Servicemembers Civil Relief Act.” The NC SCRA extends all rights, benefits and protections of the federal SCRA to any member of the NC National Guard serving on State active duty as well as to any member of the National Guard of another state serving on state active duty who resides in North Carolina. To receive the protections under this Act, the Guard Member must be serving active duty pursuant to order signed by a Governor, for a period of more than 30 consecutive days.

By contrast, the federal SCRA definition of “servicemember” includes a member of the National Guard who is on active duty pursuant to order signed by the President or Secretary of Defense; and the federal SCRA defines “active duty” as “full-time duty in the active military service of the United States.”

**PREPAID ENTERTAINMENT CONTRACTS**

The NC SCRA specifically incorporates the federal SCRA rights and protections concerning the servicemember’s regarding consumer transactions, contracts, and service providers. In addition, a servicemember under the NC SCRA may terminate **prepaid entertainment contracts** (\*telecommunication service; \*internet service; \*television service; \*satellite radio service) if the servicemember receives a military order to relocate for a period of military service of at least 90 days to a location that does not support the contract.

**EVICTION AND LEASE AGREEMENTS**

The NC SCRA includes special provisions regarding evictions when the National Guard member’s **lease agreement** expires while the National Guard member is engaged, for any period of time, in State active duty or service: Upon written or electronic notice to the landlord, the National Guard member is entitled to extend the lease agreement (on the same lease terms) to terminate 10 days after their State active duty or service terminates; provided, however, that the National Guard member is current on all rents and security deposits and in *“good standing regarding the lease agreement.”*

**VIOLATION/ ATTORNEY GENERAL CAUSE OF ACTION/ PRIVATE CAUSE OF ACTION**

A knowing violation of the NC SCRA is an **unfair or deceptive trade practice under Chapter 75**. Furthermore, the NC SCRA provides that a violation of the federal Servicemembers Civil Relief Act is a violation of the NC SCRA, so it appears that a violation of the federal SCRA is also an unfair or deceptive trade practice.

The **Attorney General** may commence a civil action against any person who violates any provision of the NC SCRA. Remedies include injunctive relief, payment of restitution, and any other remedy provided under Chapter 75, and the Court may impose a civil penalty.

The NC SCRA creates a **private right of action** as well. Remedies include injunctive relief, payment of restitution, damages, and any other remedy provided under Chapter 75. In addition, a prevailing servicemember can seek attorneys’ fees and court costs.

**STAY OF PROCEEDINGS**

The NC SCRA amends existing law regarding a stay of legal proceedings involving a servicemember. As amended, a civil action or proceeding in which a servicemember engaged in military service is a party, may be stayed by the Court on its own motion and shall be stayed by the Court upon an application by the servicemember (or a person acting on the servicemember’s behalf) “*unless the Court finds that the ability of the servicemember to litigate is not materially affected by his or her military service.”* This stay extends to 60 days after the military service terminates.

**S.L. 2019-158, H198: An Act to Implement Recommendations Made by the North Carolina Human Trafficking Commission.**

**NEW CRIME: PROMOTING TRAVEL FOR SEXUAL CONTACT**

This Act creates a new Class G felony: “Promoting Travel for Sexual Contact”. A person commits this offense if the person *“sells or offers to sell travel services that the person knows to include travel for the purpose of committing [certain delineated sex based crimes] in [North Carolina] or for the purpose of engaging in conduct that would constitute [any of the delineated sex based crimes] if the conduct [occurred] within [North Carolina].”*

**CIVIL CAUSE OF ACTION FOR HUMAN TRAFFICKING VICTIMS**

This Act creates a **new civil cause of action**, that includes a right to attorneys’ fees. Under this new cause of action, the plaintiff is an individual who is a victim of human trafficking. The defendant is *“a person who violates [Article 10A of Chapter 14 of the General Statutes] or a person who knowingly benefits financially or by receiving anything of value from participation in a venture which that person knew or should have known violates this Article.”*

A plaintiff can seek injunctive relief, compensatory damages, and/or general damages for noneconomic losses. Reasonable costs and expenses, including attorneys’ fees, are available under this statute, but are discretionary. An award of such costs and expenses to Defendant is allowed only if the Court determines that Plaintiff’s action was frivolous.

The civil action is stayed during the pendency of any criminal action arising out of the same occurrence in which the plaintiff is the victim. “Criminal action” includes investigation and prosecution through final adjudication in the trial court.

Statute of limitations on this cause of action is no later than either: ten years after the cause of action arose; or ten years after the victim reaches 18 years of age if the victim was a minor at the time of the alleged offense.

**EXPUNCTIONS OF CERTAIN OFFENSES COMMITTED BY HUMAN TRAFFICKING VICTIMS**

The Act expands expunction eligibility for victims of human trafficking.

1. **S.L. 2019-155, H546: An Act to Prohibit the Import, Manufacture, Sale, Offer of Sale, Installation, or Reinstallation of Counterfeit and Nonfunctional Airbags.**

This act provides that *“[i]t shall be unlawful for any person, firm, or corporation to knowingly import, manufacture, sell, offer for sale, distribute, install or reinstall a counterfeit supplemental restraint system or nonfunctional airbag in any motor vehicle, or other component device that causes a motor vehicle to fail to meet federal motor vehicle safety standards…*” A violation of this law constitutes both a Class 1 misdemeanor (or a Class H felony if the violation contributes to a person’s physical injury or death) and constitutes an **unfair and deceptive trade practice under Chapter 75**.

1. **S.L. 2019-147, S508: An Act Amending Rule 30 of the North Carolina Rules of Civil Procedure Relating to the Taking of Depositions.**

This Act amends Rule 30 of the NC RCP to allow for the deposition to be given under penalty of perjury even when the deponent does not have a “government-issued photographic identification” that is required to put a deponent on oath. Under these circumstances, the deponent signs a “declaration” that includes, among other things, the following statement:  *"Under penalty of perjury, I declare that my testimony is truthful and I acknowledge that a material misstatement of fact made by me while giving my testimony may be grounds for a conviction of perjury under the laws of this State."*

1. **S.L. 2019-128, H755: An Act to Create a Comprehensive Framework for the Sale of Travel Insurance in North Carolina.**

This Act applies to “*travel insurance which covers any resident of this State and is sold, solicited, negotiated, or offered in this State and where policies and certificates are delivered or issued for delivery in this State. It shall not apply to cancellation fee waivers and travel assistance services, except as expressly provided herein.”*

1. **S.L. 2019-126, H761: An Act to Clarify that the Department of Health and Human Services, its Authorized Agents, and Local Health Departments shall have No Liability for Wastewater Systems Failures that are a Direct Result of Certain Evaluations Conducted by Licensed Soil Scientists and Licensed Geologists.**

This Act clarifies whether certain entities/agents have any liability/duty/responsibility regarding evaluations conducted by a licensed soil scientist or a licensed geologist with regard to the design and construction features for a new wastewater system or a proposed repair project for an existing wastewater system. Pursuant to this Act, DHHS, DHHS’s authorized agents, and the local health department “*have* ***no liability, duty or responsibility imposed by statute or in common law*** *from any claim arising out of or attributed to the conditions, features, and conditions for which the signed evaluation was submitted*”.

1. **S.L. 2019-119, S220: An Act to Allow Any Citizen to Remove a Political Sign that Remains in a Public Right-of-Way Thirty Days after the Time within which Political Signs are to be Removed, to Provide a Window of Time Before the Opening and After the Close of Polls for Political Advertising to be Placed and Collected at the Voting Place, and to Allow the Executive Director of the State Board of Elections to Modify the Required Certification Dates for the 2019 Election Cycle if Needed.**

The Act: (1) Eliminates liability for the removal and disposal of political (including campaign) signs that remain in public right-of-ways thirty days after the time in which such signs are supposed to be removed; (2) Allows candidates to place campaign signs outside voting place within 36 hours of an election, and requires candidates to remove such signs within 36 hours after the close of the voting place following the election; and (3) Authorizes the Executive Director of the State Board of Elections to shorten the canvass period following 2019 elections to assure “orderly elections on the election schedule”.

1. **S.L. 2019-111, S355: An Act to Clarify, Consolidate, and Reorganize the Land-Use Regulatory Laws of the State.**

The title of this Act is the best summary for all of the changes contained therein.

1. **S.L. 2019-92, H871: An Act to Protect the Interests of Designers, Particularly Small and WMBE Entities, from Unfair Contracting and Duty to Defend Requirements that Violate the Existing Public Policy of North Carolina.**

The title of this Act is the best summary for all of the changes contained therein.

1. **S.L. 2019-73, S483: An Act to Clarify that Properties Subject to the Vacation Rental Act are also Subject to the General Statutes Governing City and County Enforcement of Hazardous and Unlawful Conditions.**

The title of this Act is the best summary for all of the changes contained therein.

1. **S.L. 2019-52, H389: An Act to Authorize Public Colleges and Universities to Allow Alcohol Sales at Stadiums, Athletic Facilities, and Arenas Located on School Property.**

The title of this Act is the best summary for all of the changes contained therein.

1. **S.L. 2019-42. H578: An Act to Remove the Statutory Language in Regards to Legitimation that is in Conflict with the North Carolina Court of Appeals Decision in Jones v. McDowell (1981).**

Prior to this Act, pursuant to NCGS 49-12.1, when a child was legitimated, the father’s name would be added to the birth certificate and the minor child’s last name would be changed to that of the father. In *Jones v. McDowell*, 53 N.C. App. 434 (1981), the COA found this provision in the statute unconstitutional. This Act (finally) amends G.S. 49-12 to provide that, upon legitimation, the child’s last name will not be changed to the father’s last name unless mother and father both agree to, and request, the name change. The Act also amends G.S. 49-10 to provide that, upon legitimation, the child’s last name will not be changed unless mother and father both agree to, and request, the name change; or the Court determines that the name change is in the best interests of the minor child.

1. **S.L. 2019-2, S75: An Act to Restore the Number of Judges on the North Carolina Court of Appeals to Fifteen.**

This Act removed the following language that was added in 2016, thereby restoring the number of COA judges to 15: “*On or after January 1, 2017, whenever the seat of an incumbent judge becomes vacant prior to the expiration of the judge's term due to the death, resignation, retirement, impeachment, or removal pursuant to G.S. 7A‑374.2(8) of the incumbent judge, that seat is abolished until the total number of Court of Appeals seats is decreased to 12.”*

**NOTES**

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