

## **Removal of the Personal Representative: Case Summary**

### **[In re Estate of Harper \(COA19-326, 19-327; Jan. 7, 2020\)](#)**

After the personal representative of a decedent's estate failed to file an account, the clerk issued an order to appear and show cause for failure to file an account pursuant to G.S. 28A-21-4. The order noted that the PR could be held in contempt or removed as fiduciary. At the hearing, the PR admitted to spending money belonging to the estate on her own personal expenses. The PR produce an account, but the account did not balance and did not include any supporting documentation. The clerk entered an order removing the PR and appointed the public administrator. The public administrator then filed a petition to sell real property to pay debts of the estate. The clerk entered an order granting the public administrator possession, custody, and control of the property, the authority to remove the former PR from the property, and the authority to sell the property. The former PR then appealed the orders to superior court. The superior court conducted an on the record review of both orders and affirmed the orders of the clerk. The former PR appealed the orders of the superior court to the NC Court of Appeals arguing that the superior court applied the wrong standard of review to both orders. The NC Court of Appeals held

1. The proceeding initiated by the clerk pursuant to G.S. 28A-21-4 was an estate proceeding and thus the superior court was correct in applying an on the record review on appeal from the clerk pursuant to G.S. 1-301.3. This is unlike other proceedings to remove a PR filed under G.S. 28A-9-1 which are appealed as special proceedings and require a hearing *de novo* before the superior court on appeal from the clerk. The NC Court of Appeals affirmed the superior court's order.
2. The proceeding to sell the real property of the decedent was a special proceeding and the superior court should have held a hearing *de novo* on appeal from the clerk. The superior court erred in applying an on the record review of the clerk's order. The NC Court of Appeals vacated the superior court's order and remanded the matter for a *de novo* hearing.