



# Contested Hearings: The Basics



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Contested Hearings: Essentials for Clerks  
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## “BASICS”

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## Appellate Review

Orders of the clerk after hearing are  
final acts of a judicial officer.

If the party wants the order to be reviewed,  
the party must appeal.

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## Appellate Review

**In Estates, trusts, and guardianship matters:**

Review is by the Superior Court,  
and it is “on the record”.



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## Appellate Review

**§ 1-301.3(d)**  
Upon appeal, the judge of the superior court shall review the order or judgment of the clerk for the purpose of determining only the following:

- (1) Whether the findings of fact are supported by the evidence.
- (2) Whether the conclusions of law are supported by the findings of facts.
- (3) Whether the order or judgment is consistent with the conclusions of law and applicable law.



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## Making a Record


**Preserving the “Record”**      **DO THIS, SO YOU DON'T HAVE TO DO THIS.**

**Option 1: Hit the record button.**

**§ 1-301.3(f)** In the discretion of the clerk or upon request by a party, all hearings and other matters covered by this section shall be recorded by an electronic recording device. . . .

**Option 2: Clerk makes summary.**

**§ 1-301.3(f)** If a recordation is not made, the clerk shall submit to the superior court a summary of the evidence presented to the clerk.



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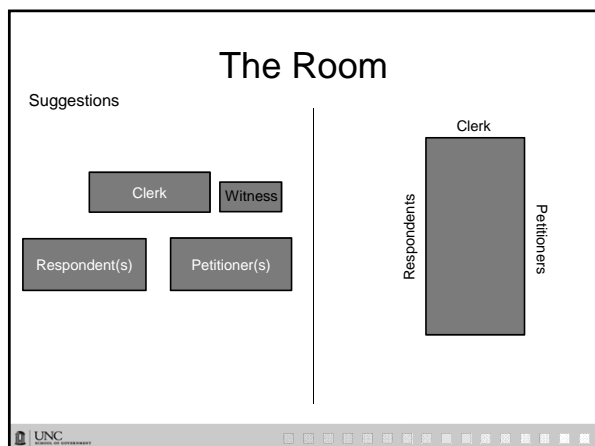
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## Courtroom Decorum of Counsel

In court, North Carolina lawyers are “at all times to conduct themselves with dignity and propriety.”

Gen. R. Prac. 12

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## Courtroom Decorum of Counsel

Demeanor toward the court:

- Should address the court from a standing position behind counsel table (except objections).
- Should not approach the bench except with the court's permission or request.
- Should not address matters directly to opposing counsel during the proceedings.
- Should “yield gracefully” to the court's rulings.

Gen. R. Prac. 12

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## Courtroom Decorum of Counsel

### Demeanor toward witnesses:

- Should examine witnesses from a seated position behind counsel table.
- Should not approach witnesses except to present, inquire about, or examine a document.
- Should treat adverse witnesses with fairness and due consideration.



Gen. R. Prac. 12



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## General Order of Evidence

### N.C. Rule of Evidence 611

#### Mode and order of interrogation and presentation

(a) Control by court. The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.



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## “Burden of proof”

- The obligation to establish (“prove”)—with competent evidence—the issues brought before the court.
- Petitioner bears the burden of proof regarding the matters raised in the petition.



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## General Order of Evidence

1. Petitioner's Evidence
2. Respondent's Evidence

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## General Order of Examination

Parties represented by Counsel	Parties Unrepresented
<ul style="list-style-type: none"> <li>• Witness takes "stand"</li> <li>• Direct examination</li> <li>• Cross-examination by opposing counsel</li> <li>• Redirect examination</li> <li>• Re-cross examination by opposing counsel (rare)</li> </ul>	<ul style="list-style-type: none"> <li>• Witness takes "stand"</li> <li>• Witness testifies</li> <li>– Clerk often asks questions</li> </ul>

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## General Order of Examination

N.C. Rule of Evidence 614

Calling and interrogation of witnesses by the court

(a) Calling by the court. The court may, on its own motion or at the suggestion of a party, call witnesses, and all parties are entitled to cross-examine witnesses thus called.

(b) Interrogation by the court. The court may interrogate witnesses, whether called by itself or by a party.

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## General Order of Examination

### Parties represented by Counsel

- Witness takes “stand”
- Direct examination
- Cross-examination by opposing counsel
- Redirect examination
- Re-cross examination by opposing counsel (rare)

### Parties Unrepresented

- Witness takes “stand”
- Witness testifies
  - Clerk often asks questions
- Opposing party/ies may cross-examine
- Witness may give clarifying testimony
- Opposing party/ies may re-cross (rare)

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## “Direct examination”

The initial questioning (examination) of a witness, by the party on whose behalf the witness is called.

### Usually:

- Petitioner questioned by own counsel.
- Petitioner's witness questioned by petitioner's counsel.

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## “Cross examination”

Questioning (examination) of a witness who has already testified in order to check or challenge the witness's testimony, knowledge, or credibility.

### Usually:

- Petitioner (or petitioner's witness) questioned by Respondent's counsel.
- Respondent (or respondent's witness) questioned by petitioner's counsel.

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## "Cross examination"

### N.C. Rule of Evidence 611

Mode and order of interrogation and presentation

(b) A witness may be cross-examined on any matter relevant to any issue in the case, including credibility.



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## Objections

### "Objection"

When a party/attorney calls to the court's (clerk's) attention that the other side's evidence is improper or in violation of the Rules of Evidence.



- "Objection, Madam Clerk, hearsay."
- "Your honor, objection. That's not relevant."
- "We object. Attorney Smith is asking the same thing over and over."



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## Responding to Objections

3 General Options for the Clerk:

1. **Sustain the objection:** The Clerk agrees with the objection, and stops the evidence from continuing (or notes that the Clerk will not consider the evidence).
2. **Overrule the objection:** The Clerk disagrees with the objection (thinks the evidence is proper), and allows the evidence to continue.
3. **Take the matter under consideration:** The Clerk allows the evidence to continue for now. The Clerk notes the objection, and will decide later whether to consider that evidence when making a decision. (This can be a good option for the clerk because there's no jury to shield from hearing the information.)



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## Openings and Closings

### **Opening statement:**

*Before* the evidence. A party's introduction to their case or defense. A forecast of the party's evidence. Not an argument of facts or law. The statement is not evidence. The parties may opt not to do openings (may "waive" opening).

### **Closing statement (or closing "argument"):**

*After* the evidence. A party's argument of the facts and the law. The argument is not evidence. Optional in non-jury trials. It's up to the clerk to allow these statements or not. Many clerks find it helpful.

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