

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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HOUSE BILL 226
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Short Title: 2019 AOC Legislative Changes.-AB

(Public)

Sponsors:

Referred to:

February 28, 2019

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE VARIOUS CHANGES AND TECHNICAL CORRECTIONS TO THE
3 LAWS GOVERNING THE ADMINISTRATION OF JUSTICE.

4 The General Assembly of North Carolina enacts:

5
6 **PART I. PROPOSED STATUTORY CHANGES, AS RECOMMENDED BY THE**
7 **ADMINISTRATIVE OFFICE OF THE COURTS**

8 **SECTION 1.** G.S. 7A-52(a) reads as rewritten:

9 "(a) Judges of the district court and judges of the superior court who have not reached the
10 mandatory retirement age specified in G.S. 7A-4.20, but who have retired under the provisions
11 of G.S. 7A-51, or under the Uniform Judicial Retirement Act after having completed five years
12 of creditable service, may apply as provided in G.S. 7A-53 to become emergency judges of the
13 court from which they retired. From the commissioned emergency district, superior, and special
14 superior court judges, the Chief Justice of the Supreme Court shall create two lists of active
15 emergency judges and two lists of inactive emergency judges. For emergency superior and
16 special superior court judges, the active list shall be limited to a combined total of 10 emergency
17 judges; all other emergency superior and special superior court judges shall be on an inactive list.
18 For emergency district court judges, the active list shall be limited to 25 emergency judges; all
19 other emergency district court judges shall be on an inactive list. There is no limit to the number
20 of emergency judges on either inactive list. In the Chief Justice's discretion, emergency judges
21 may be added or removed from their respective active and inactive lists, as long as the respective
22 numerical limits on the active lists are observed. The Chief Justice is requested to consider
23 geographical distribution in assigning emergency judges to an active list but may utilize any
24 factor in determining which emergency judges are assigned to an active list. The Chief Justice of
25 the Supreme Court may order any emergency district, superior, or special superior court judge
26 on an active list who, in his opinion, is competent to perform the duties of a judge, to hold regular
27 or special sessions of the court from which the judge retired, as needed. Order of assignment
28 shall be in writing and entered upon the minutes of the court to which such emergency judge is
29 assigned. An emergency judge shall only be assigned in the event of a:

- 30 (1) Death of a sitting judge.
31 (2) Disability or medical leave of absence of a sitting judge.
32 (3) Recall to active military duty of a sitting judge.



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- 1 (4) Retirement or removal of a sitting judge.
2 (5) Court case-management ~~emergency~~ emergency or disaster declaration made
3 pursuant to G.S. 166A-19.3(3).
4 (6) Assignment by the Chief Justice of a Rule 2.1 exceptional case to an
5 emergency judge.
6 (7) Court coverage need created by holdover sessions, administrative
7 responsibilities of the chief district court judge, or cases in which a judge has
8 a conflict or judicial educational responsibilities."

9 **SECTION 2.(a)** G.S. 7A-38.2(f) reads as rewritten:

10 "(f) In connection with any investigation or hearing conducted pursuant to an application
11 for certification or qualification of any mediator, other neutral, or training program, or conducted
12 pursuant to any disciplinary matter, the chair of the Dispute Resolution Commission or ~~his/her~~
13 the chair's designee, ~~may~~ may do any of the following:

- 14 (1) Administer oaths and ~~affirmations~~ affirmations.
15 (2) Sign and issue subpoenas in the name of the Dispute Resolution Commission
16 or direct its executive secretary to issue such subpoenas on its behalf requiring
17 attendance and the giving of testimony by witnesses and the production of
18 books, papers, and other documentary ~~evidence~~ evidence.
19 (3) Apply to the General Court of Justice, Superior Court Division, for any order
20 necessary to enforce the powers conferred in this section, including an order
21 for injunctive relief pursuant to G.S. 1A-1, Rule 65, when a certified
22 mediator's conduct necessitates prompt action.
23 (4) Assess and collect an administrative fee from any person who appeals an
24 adverse determination to the full Commission for a hearing and fails to attend
25 the hearing without good cause as determined by the chair of the Commission.
26 The fee assessed shall be the lesser of the Commission's actual expenses for
27 the hearing or two thousand five hundred dollars (\$2,500). The fees collected
28 shall be deposited in the Dispute Resolution Fund established pursuant to
29 subsection (d) of this section."

30 **SECTION 2.(b)** This section becomes effective October 1, 2019, and applies to
31 hearings held on or after that date.

32 **SECTION 3.(a)** Article 11 of Chapter 7A of the General Statutes is amended by
33 adding a new section to read:

34 **"§ 7A-98. Unsworn declarations under penalty of perjury.**

35 (a) Whenever in connection with any proceeding in the General Court of Justice under
36 any law of North Carolina or pursuant to any rule, regulation, order, or requirement promulgated
37 thereunder, any matter is required or permitted to be supported, evidenced, established, or proved
38 in writing under oath or affirmation, such matter may, with like force and effect, be supported,
39 evidenced, established, or proved by an unsworn declaration in writing, subscribed by the
40 declarant and dated, that the statement is true under penalty of perjury.

41 (b) This section does not apply to, and such unsworn declarations shall not be deemed
42 sufficient for:

- 43 (1) Oral testimony.
44 (2) Oaths of office.
45 (3) Any statement under oath or affirmation required to be taken before a
46 specified official other than a notary public.

47 (c) Declarations given pursuant to this section shall be deemed sufficient if given in
48 substantially the following form:

49 "I declare (or certify, verify, or state) under penalty of perjury under the laws of North Carolina
50 that the foregoing is true and correct. Executed on (date). (Signature)."

(d) If rules promulgated by the Supreme Court pursuant to G.S. 7A-49.5 authorize electronic filing and electronic signatures in any proceeding in the General Court of Justice, any written declaration made pursuant to this section in connection with the proceeding may be in electronic format and electronically signed in conformity with those rules."

SECTION 3.(b) G.S. 14-209 reads as rewritten:

"§ 14-209. **Punishment for perjury.**

If any person shall willfully and corruptly commit perjury, on his or her oath or ~~affirmation~~, affirmation or in any unsworn declaration in substantially the form prescribed by G.S. 7A-98, in any suit, controversy, matter or cause, depending in any of the courts of the State, or in any deposition or affidavit taken pursuant to law, or in any oath or affirmation duly administered of or concerning any matter or thing whereof such person is lawfully required to be sworn or affirmed, every person so offending shall be punished as a Class F felon."

SECTION 3.(c) Article 17 of Chapter 1 of the General Statutes is amended by adding a new section to read:

"§ 1-148.1. Unsworn declarations under penalty of perjury for verification of pleadings.

In lieu of an affidavit for verification, a pleading may, with like force and effect, be supported, evidenced, established, or proved by an unsworn declaration in substantially the form prescribed by G.S. 7A-98."

SECTION 3.(d) Article 1 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"§ 15A-101.2. Unsworn declarations under penalty of perjury.

Whenever in connection with any criminal action or infraction under any law of North Carolina or pursuant to any rule, regulation, order, or requirement promulgated thereunder, any matter is required or permitted to be supported, evidenced, established, or proved in writing under oath or affirmation, such matter may, with like force and effect, be supported, evidenced, established, or proved by an unsworn declaration in substantially the form prescribed by G.S. 7A-98."

SECTION 3.(e) This section becomes effective 30 days after the Director of the Administrative Office of the Courts certifies to the North Carolina Supreme Court that the Administrative Office of the Courts is ready to begin implementation of an integrated case management system adopted pursuant to the e-Courts initiative.

SECTION 4. G.S. 7A-308 reads as rewritten:

"§ 7A-308. **Miscellaneous fees and commissions.**

(a) The following miscellaneous fees and commissions shall be collected by the clerk of superior court and remitted to the State for the support of the General Court of Justice:

- ...
- (11) Recording or docketing (including indexing) any document
 - first page..... 6.00
 - each additional page or fraction thereof 25
- ...

(b2) The fees set forth in subdivision (11) of subsection (a) of this section are not chargeable when service is performed or documents are filed pursuant to the provisions of ~~G.S. 14-112.3~~.G.S. 14-112.3, or when an attorney is designating a period of secure leave pursuant to rules adopted by the Supreme Court of North Carolina.

...."

SECTION 5.(a) G.S. 7A-343 reads as rewritten:

"§ 7A-343. **Duties of Director.**

The Director is the Administrative Officer of the Courts, and the Director's duties include all of the following:

...

(8a) Prepare and submit ~~a semiannual~~ an annual report on the activities of each North Carolina business court site to the Chief Justice, the chairs of the House of Representatives Appropriations Committee on Justice and Public Safety and the Senate Appropriations Committee on Justice and Public Safety, the chairs of the of the Joint Legislative Oversight Committee on Justice and Public Safety, and all other members of the General Assembly on February 4 ~~and August 1, 1~~. The report shall include the following information for each business court site:

- a. The number of new, closed, and pending cases for the previous three years.
- b. The average age of pending cases.
- c. The number of motions pending over six months after being filed.
- d. The number of cases in which bench trials have been concluded for over six months without entry of judgment, including any accompanying explanation provided by the Business Court.

The ~~August 1~~ report shall include an accounting of all business court activities for the previous fiscal year, including the itemized annual expenditures.

...."

SECTION 5.(b) G.S. 7A-346.2 reads as rewritten:

"§ 7A-346.2. Various reports to General Assembly.

...

(b) ~~The Administrative Office of the Courts shall report by April 1 of each odd-numbered year to the Chairs of the Senate and House Appropriations Committees and the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety on the economic viability of the worthless check collection programs established by district attorneys pursuant to G.S. 14-107.2, including an assessment of whether any adjustments need to be made to ensure that the programs, on a statewide basis, are self-supporting.~~

...."

SECTION 5.(c) G.S. 7A-346.3 is repealed.

SECTION 6. G.S. 15A-502(f) reads as rewritten:

"(f) If a person is charged with an offense for which fingerprints are required pursuant to this section but the person is not arrested for that offense, the court before which the charge is pending shall order the defendant to submit to fingerprinting by the Sheriff or other appropriate law enforcement agency at the earliest practical opportunity. If the person fails to appear for fingerprinting as ordered by the court, the ~~sheriff~~ Sheriff or other designated agency shall so inform the court, and the court may initiate proceedings for criminal contempt against the person pursuant to G.S. 5A-15, including issue of an order for arrest pursuant to G.S. 5A-16, if necessary. The defendant shall continue to be subject to the court's order to provide fingerprints until submitted."

SECTION 7.(a) G.S. 15A-1452 reads as rewritten:

"§ 15A-1452. Execution of sentence upon determination of appeal; compliance with directive of appellate court.

(a) If an appeal is ~~withdrawn~~, withdrawn for a judgment that imposed an active sentence or imposed only monetary obligations without probation, the clerk of superior court must enter an order reflecting that fact and directing compliance with the judgment.

(a1) If an appeal is withdrawn for a judgment that imposed a suspended sentence, the clerk of superior court shall notify the district attorney, who shall calendar a review hearing as required in subsection (d) of this section.

(b) If the appellate division affirms ~~the judgment~~ in whole or in part, ~~part a judgment that imposed an active sentence or imposed only monetary obligations without probation~~, the clerk

1 of superior court must file the directive of the appellate division and order compliance with its
2 terms.

3 (b1) If the appellate division affirms a judgment that imposed a suspended sentence, the
4 clerk of superior court shall file the directive of the appellate division and bring the matter to the
5 attention of the district attorney, who shall calendar a review hearing as provided in subsection
6 (d) of this section.

7 (c) If the appellate division orders a new trial or directs other relief or proceedings, the
8 clerk must file the directive of the appellate court and bring the directive to the attention of the
9 district attorney or the court for compliance with the directive.

10 (d) When notified by the clerk as provided in this section, the district attorney shall
11 calendar a hearing in superior court for review of the judgment imposed. The defendant shall be
12 entitled to be present and represented by counsel to the same extent as in the original sentencing
13 hearing.

14 (1) At the review hearing, the court shall enter an order directing compliance with
15 the judgment either as imposed or as modified as provided in this subsection.
16 The defendant's period of probation shall commence as of the date of the
17 court's order.

18 (2) If the defendant's ability to comply with any date or period of time specified
19 in the original judgment has become impractical or impossible due to the
20 pendency of the appeal, the court may modify those dates in order to give
21 effect to the original judgment as closely as possible.

22 (3) The court shall not modify the judgment other than to adjust dates or periods
23 for compliance as provided in subdivision (2) of this subsection, unless the
24 court otherwise complies with the procedures for modification of probation in
25 G.S. 15A-1344."

26 **SECTION 7.(b)** This section becomes effective December 1, 2019, and applies to
27 any mandate of the appellate division received in the trial division on or after that date.

28 **SECTION 8.** G.S. 20-217(g2) reads as rewritten:

29 "(g2) Pursuant to G.S. 20-54, failure of a person to pay any fine or costs imposed pursuant
30 to this section shall result in the Division withholding the registration renewal of a motor vehicle
31 registered in that person's name. The clerk of superior court in the county in which the case was
32 disposed shall notify the Division of any person who fails to pay a fine or costs imposed pursuant
33 to this section within ~~20-40~~ days of the date specified in the court's judgment, as required by
34 G.S. 20-24.2(a)(2). The Division shall continue to withhold the registration renewal of a motor
35 vehicle until the clerk of superior court notifies the Division that the person has satisfied the
36 conditions of G.S. 20-24.1(b) applicable to the person's case. The provisions of this subsection
37 shall be in addition to any other actions the Division may take to enforce the payment of any fine
38 imposed pursuant to this section."

39 **SECTION 9.** G.S. 84-32(a) reads as rewritten:

40 "(a) In cases heard by the disciplinary hearing commission or any committee thereof, the
41 proceedings shall be recorded by a certified court reporter and an official copy of all exhibits
42 introduced into evidence shall be made and preserved in the office of the secretary-treasurer.
43 Final judgments of censure, whether issued by the State Bar Grievance Committee or the
44 disciplinary hearing commission, and final orders of suspension or disbarment issued by the
45 disciplinary hearing commission shall be entered upon the judgment docket of the superior court
46 in the district wherein the respondent resides or practices law, and also upon the minutes of the
47 Supreme Court of North Carolina; and the judgment shall be effective throughout the State. Final
48 determinations of incapacity or disability, whether issued by the State Bar Grievance Committee
49 or the disciplinary hearing commission, shall be entered upon the judgment docket of the superior
50 court in the same manner as final judgments of censure, suspension, or disbarment, and the
51 determination shall be effective throughout the State."

1 **SECTION 10.(a)** G.S. 105A-8(b) reads as rewritten:

2 "**§ 105A-8. State agency notice, hearing, decision, and refund of setoff.**

3 "(b) Hearing. – A hearing on a contested claim of a State agency, except the Judicial
4 Branch or a constituent institution of The University of North Carolina or the Division of
5 Employment Security, must be conducted in accordance with Article 3 of Chapter 150B of the
6 General Statutes. A hearing on a contested claim of a unit of the Judicial Branch must be
7 conducted in accordance with the administrative procedures approved by the Director of the
8 North Carolina Administrative Office of the Courts and the Director of Indigent Defense
9 Services. The clerk of superior court in any county where a judgment has been docketed shall
10 have original jurisdiction to hear a contested claim and the matter may not be transferred to the
11 district or superior court. The Director of the North Carolina Administrative Office of the Courts
12 or his or her designee shall have original jurisdiction to hear a contested claim of the Judicial
13 Branch not arising out of docketed judgment. A hearing on a contested claim of a constituent
14 institution of The University of North Carolina must be conducted in accordance with
15 administrative procedures approved by the Attorney General. A hearing on a contested claim of
16 the Division of Employment Security must be conducted in accordance with rules adopted by
17 that Division. A request for a hearing on a contested claim of any State agency must be filed
18 within 30 days after the State agency mails the debtor notice of the proposed setoff. A request
19 for a hearing is considered to be filed when it is delivered for mailing with postage prepaid and
20 properly addressed. In a hearing under this section, an issue that has previously been litigated in
21 a court proceeding cannot be considered."

22 **SECTION 10.(b)** G.S. 105A-9 reads as rewritten:

23 "**§ 105A-9. Appeals from hearings.**

24 Appeals from hearings allowed under this Chapter, other than those conducted by the Judicial
25 Branch and the Division of Employment Security, shall be in accordance with the provisions of
26 Chapter 150B of the General Statutes, the Administrative Procedure Act, except that the place of
27 initial judicial review shall be the superior court for the county in which the debtor resides. A
28 party aggrieved by an order or decision of a hearing conducted by the clerk of superior court or
29 the Director of the North Carolina Administrative Office of the Courts or his or her designee
30 under this Article may, within 10 days of entry of the order, appeal to the superior court for a
31 hearing de novo. Notice of appeal shall be in writing and shall be filed with the clerk of superior
32 court in the county where the order was entered. Appeals from hearings allowed under this
33 Chapter that are conducted by the Division of Employment Security shall be in accordance with
34 the provisions of Chapter 96 of the General Statutes."

35 **SECTION 10.(c)** G.S. 7A-498.6(b) reads as rewritten:

36 "**§ 7A-498.6. Director of Indigent Defense Services.**

37 ...

38 (b) The Director shall:

- 39 (1) Prepare and submit to the Commission a proposed budget for the Office of
40 Indigent Defense Services, an annual report containing pertinent data on the
41 operations, costs, and needs of the Office, and such other information as the
42 Commission may require;
- 43 (2) Assist the Commission in developing rules and standards for the delivery of
44 services under this Article;
- 45 (3) Administer and coordinate the operations of the Office and supervise
46 compliance with standards adopted by the Commission;
- 47 (4) Subject to policies and procedures established by the Commission, hire such
48 professional, technical, and support personnel as deemed reasonably
49 necessary for the efficient operation of the Office of Indigent Defense
50 Services;

- 1 (5) Keep and maintain proper financial records for use in calculating the costs of
- 2 the operations of the Office of Indigent Defense Services;
- 3 (6) Apply for and accept on behalf of the Office of Indigent Defense Services any
- 4 funds that may become available from government grants, private gifts,
- 5 donations, or devises from any source;
- 6 (6a) Collaborate with the Director of the Administrative Office of the Courts in
- 7 developing administrative procedures pursuant to G.S. 105A-8(b);
- 8 (7) Coordinate the services of the Office of Indigent Defense Services with any
- 9 federal, county, or private programs established to provide assistance to
- 10 indigent persons in cases subject to this Article and consult with professional
- 11 bodies concerning improving the administration of indigent services;
- 12 (8) Conduct training programs for attorneys and others involved in the legal
- 13 representation of persons subject to this Article;
- 14 (8a) Administer the Sentencing Services Program established in Article 61 of this
- 15 Chapter; and
- 16 (9) Perform other duties as the Commission may assign.

17"

18 **SECTION 10.(d)** This section becomes effective January 1, 2020, and applies to
19 notices issued on or after that date.

20
21 **PART II. PROPOSED STATUTORY CHANGES, AS RECOMMENDED BY THE**
22 **CONFERENCE OF SUPERIOR COURT CLERKS**

23 **SECTION 11.(a)** G.S. 7A-307 reads as rewritten:

24 **"§ 7A-307. Costs in administration of estates.**

25 (a) In the administration of the estates of decedents, minors, incompetents, of missing
26 persons, in the administration of trusts under wills and under powers of attorney, in trust
27 proceedings under G.S. 36C-2-203, in estate proceedings under G.S. 28A-2-4, in power of
28 attorney proceedings under G.S. 32C-1-116(a), and in collections of personal property by
29 affidavit, the following costs shall be assessed:

- 30 ...
- 31 (2b) Notwithstanding subdivisions (1) and (2) of this subsection, ~~no costs shall be~~
- 32 ~~the only cost~~ assessed when the estate is administered or settled pursuant to
- 33 ~~G.S. 28A-25-6.~~ G.S. 28A-25-6 shall be a fee of twenty dollars (\$20.00) to be
- 34 assessed upon filing of the application.

35 ...

- 36 (b1) The clerk shall assess the following miscellaneous fees:
- 37 (1) Filing and indexing a will with no probate
- 38 - first page \$ 1.00
- 39 - each additional page or fraction thereof 25
- 40 (2) Issuing letters to fiduciaries, per letter over five letters issued 1.00
- 41 (3) Inventory of safe deposits of a decedent, per box, per day 15.00
- 42 (4) Taking a deposition 10.00
- 43 (5) Docketing and indexing a will probated in another county in the State
- 44 - first page 6.00
- 45 - each additional page or fraction thereof 25
- 46 (6) Hearing petition for year's allowance to surviving spouse or child, in cases not
- 47 assigned to a magistrate, and allotting the same ~~8.00~~ 20.00

48"

49 **SECTION 11.(b)** G.S. 7A-309 reads as rewritten:

50 **"§ 7A-309. Magistrate's special fees.**

The following special fees shall be collected by the magistrate and remitted to the clerk of superior court for the use of the State in support of the General Court of Justice:

- (1) Performing marriage ceremony \$20.00
- (2) Hearing petition for year's allowance to surviving spouse or child, issuing notices to commissioners, allotting the same, and making return ~~8.00~~20.00
- (3) Taking a deposition 10.00
- (4) Proof of execution or acknowledgment of any instrument 2.00
- (5) Performing any other statutory function not incident to a civil or criminal action \$ 2.00."

SECTION 11.(c) This section becomes effective January 1, 2020, and applies to petitions filed on or after that date.

SECTION 12.(a) G.S. 7A-308(a) reads as rewritten:

"(a) The following miscellaneous fees and commissions shall be collected by the clerk of superior court and remitted to the State for the support of the General Court of Justice:

- (1) Foreclosure under power of sale in deed of trust or mortgage.....\$300.00
If the property is sold under the power of sale, an additional amount will be charged, determined by the following formula: forty-five cents (.45) per one hundred dollars (\$100.00), or major fraction thereof, of the final sale price. If the amount determined by the formula is less than ten dollars (\$10.00), a minimum ten dollar (\$10.00) fee will be collected. If the amount determined by the formula is more than five hundred dollars (\$500.00), a maximum five hundred-dollar (\$500.00) fee will be collected.

- (1a) In rem foreclosures conducted under G.S. 105-375, if the property is sold under execution.....\$300.00

...."

SECTION 12.(b) G.S. 105-375 reads as rewritten:

"§ 105-375. In rem method of foreclosure.

...

(b) Docketing Certificate of Taxes as Judgment. – In lieu of following the procedure set forth in G.S. 105-374, the governing body of any taxing unit may direct the tax collector to file with the clerk of superior court, no earlier than 30 days after the tax liens were advertised, a certificate showing the following: the name of the taxpayer as defined in G.S. 105-273(17), for each parcel on which the taxing unit has a lien for unpaid taxes, together with the amount of taxes, penalties, interest, and costs that are a lien thereon; the year or years for which the taxes are due; and a description of the property sufficient to permit its identification by parol testimony. The fees for docketing and indexing the certificate assessed pursuant to G.S. 7A-308(a)(11) shall be payable to the clerk of superior court at the time the taxes are collected or the property is sold.

...

(i) Issuance of Execution. – At any time after three months and before two years from the indexing of the judgment as provided in subsection (b), above, execution shall be issued at the request of the tax collector in the same manner as executions are issued upon other judgments of the superior court, and the real property shall be sold by the sheriff in the same manner as other real property is sold under execution with the following exceptions:

- (1) No debtor's exemption shall be allowed.
- (2) In lieu of personal service of notice on the taxpayer, the sheriff shall send notice by registered or certified mail, return receipt requested, to the taxpayer at the taxpayer's last known address at least 30 days prior to the day fixed for the sale. If within 10 days following the mailing of the notice, a return receipt has not been received by the sheriff indicating receipt of the notice, then the

1 sheriff shall make additional efforts to locate and notify the taxpayer and all
 2 lienholders of record of the sale under execution in accordance with
 3 subdivision (4) of subsection (c) of this section.

4 (3) The sheriff shall add to the amount of the judgment as costs of the sale any
 5 postage expenses incurred by the tax collector and the sheriff in foreclosing
 6 under this section.

7 (4) In any advertisement or posted notice of sale under execution, the sheriff may
 8 (and at the request of the governing body shall) combine the advertisements
 9 or notices for properties to be sold under executions against the properties of
 10 different taxpayers in favor of the same taxing unit or group of units; however,
 11 the property included in each judgment shall be separately described and the
 12 name of the taxpayer specified in connection with each.

13 The purchaser at the execution sale shall acquire title to the property in fee simple free and
 14 clear of all claims, rights, interests, and liens except the liens of other taxes or special assessments
 15 not paid from the purchase price and not included in the judgment.

16 (i1) Fee. – The fee assessed in G.S. 7A-308(a)(1a) shall be payable to the clerk of superior
 17 court out of the sale proceeds at the time the property is sold.

18"

19 **SECTION 12.(c)** This section becomes effective October 1, 2019, and applies to
 20 execution sales conducted on or after that date.

21 **SECTION 13.** G.S. 7A-809 is repealed.

22 **SECTION 14.** G.S. 11-7.1(a) reads as rewritten:

23 "(a) Except as otherwise specifically required by statute, an oath of office may be
 24 administered ~~by~~ by any of the following:

25 (1) A justice, judge, magistrate, clerk, assistant clerk, or deputy clerk of the
 26 General Court of Justice, a retired ~~justice or judge~~ justice, judge, or clerk of
 27 the General Court of Justice, or any member of the federal judiciary;

28 (2) The Secretary of ~~State~~ State.

29 (3) A notary ~~public~~ public.

30 (4) A register of ~~deeds~~ deeds.

31 (5) A mayor of any city, town, or incorporated ~~village~~ village.

32 (5a) A chairman of the board of commissioners of any ~~county~~ county.

33 (6) A member of the House of Representatives or Senate of the General
 34 ~~Assembly~~ Assembly.

35 (7) The clerk of any county, city, town or incorporated village."

36 **SECTION 15.** G.S. 28A-25-6(f) reads as rewritten:

37 "(f) If no administrator has been appointed, the clerk of superior court ~~shall~~ shall, upon
 38 motion of the clerk or upon the application of an interested party, disburse the money received
 39 under this section for the following purposes and in the following order:

40 (1) To pay the surviving spouse's year's allowance and children's year's allowance
 41 assigned in accordance with ~~law~~ law.

42 (2), (3) Repealed by Session Laws 1981, c. 383, s. 3.

43 (4) All other claims shall be disbursed according to the order set out in
 44 G.S. 28A-19-6.

45 Notwithstanding the foregoing provisions of this subsection, the clerk shall pay, out of funds
 46 provided the deceased pursuant to G.S. 111-18 and Part 3 of Article 2 of Chapter 108A of the
 47 General Statutes of North Carolina, any lawful claims for care provided by an adult care home
 48 to the deceased, incurred not more than 90 days prior to the deceased's death. After the death of
 49 a spouse who died intestate and after the disbursements have been made in accordance with this
 50 subsection, the balance in the clerk's hands belonging to the estate of the decedent shall be paid

1 to the surviving spouse, and if there is no surviving spouse, the clerk shall pay it to the heirs in
2 proportion to their respective interests."

3 **SECTION 16.** G.S. 42-34 reads as rewritten:

4 **"§ 42-34. Undertaking on appeal and order staying execution.**

5 ...

6 (c) In an ejectment action based upon alleged nonpayment of rent where the judgment is
7 entered more than five ~~working-business~~ business days before the day when the next rent will be due under
8 the lease, the appellant shall make an additional undertaking to stay execution pending appeal.
9 Such additional undertaking shall be the payment of the prorated rent for the days between the
10 day that the judgment was entered and the next day when the rent will be due under the lease.

11 ...

12 (d) The undertaking by the appellant and the order staying execution may be substantially
13 in the following form:

14 "State of North Carolina,

15 "County of _____

16 "_____, Plaintiff

17 vs.

18 "_____, Defendant

Bond to
Stay Execution
On Appeal to
District Court

19
20
21 "Now comes the defendant in the above entitled action and respectfully shows the court that
22 judgment for summary ejectment was entered against the defendant and for the plaintiff on the
23 ____ day of ____, ____, by the Magistrate. Defendant has appealed the judgment to the District
24 Court.

25 "Pursuant to the terms of the lease between plaintiff and defendant, defendant is obligated to
26 pay rent in the amount of \$____ per ____, due on the ____ day of each ____.

27 "Where the payment of rent in arrears or an additional undertaking is required by G.S. 42-34,
28 the defendant hereby tenders \$____ to the Court as required.

29 "Defendant hereby undertakes to pay the periodic rent hereinafter due according to the
30 aforesaid terms of the lease and moves the Court to stay execution on the judgment for summary
31 ejectment until this matter is heard on appeal by the District Court.

32 "This the _____ day of _____, ____.

33 _____
34 Defendant

35 "Upon execution of the above bond, execution on said judgment for summary ejectment is
36 hereby stayed until the action is heard on appeal in the District Court. If defendant fails to make
37 any rental payment to the clerk's office within five business days of the due date, upon application
38 of the plaintiff, the stay of execution shall dissolve and the sheriff may dispossess the defendant.

39 "This the _____ day of _____, ____.

40 _____
41 Assistant Clerk of Superior Court."

42 ...

43 (f) If the defendant fails to make a payment within five business days of the due date
44 according to the undertaking and order staying execution, the clerk, upon application of the
45 plaintiff, shall issue execution on the judgment for possession.

46"

47 **SECTION 17.(a)** G.S. 44A-4(b)(1) reads as rewritten:

48 **"§ 44A-4. Enforcement of lien by sale.**

49 ...

50 (b) Notice and Hearings. –

- 1 (1) If the property upon which the lien is claimed is a motor vehicle that is
2 required to be registered, the lienor following the expiration of the relevant
3 time period provided by subsection (a) shall give notice to the Division of
4 Motor Vehicles that a lien is asserted and sale is proposed and shall remit to
5 the Division a fee of thirteen dollars (\$13.00). The Division of Motor Vehicles
6 shall issue notice by certified mail, return receipt requested, to the person
7 having legal title to the property, if reasonably ascertainable, to the person
8 with whom the lienor dealt if different, and to each secured party and other
9 person claiming an interest in the property who is actually known to the
10 Division or who can be reasonably ascertained. The notice shall state that a
11 lien has been asserted against specific property and shall identify the lienor,
12 the date that the lien arose, the general nature of the services performed and
13 materials used or sold for which the lien is asserted, the amount of the lien,
14 and that the lienor intends to sell the property in satisfaction of the lien. The
15 notice shall inform the recipient that the recipient has the right to a judicial
16 hearing at which time a determination will be made as to the validity of the
17 lien prior to a sale taking place. The notice shall further state that the recipient
18 has a period of 10 days from the date of receipt in which to notify the Division
19 by certified mail, return receipt requested, that a hearing is desired and that if
20 the recipient wishes to contest the sale of his property pursuant to such lien,
21 the recipient should notify the Division that a hearing is desired. The notice
22 shall state the required information in simplified terms and shall contain a
23 form whereby the recipient may notify the Division that a hearing is desired
24 by the return of such form to the Division. The Division shall notify the lienor
25 whether such notice is timely received by the Division. In lieu of the notice
26 by the lienor to the Division and the notices issued by the Division described
27 above, the lienor may issue notice on a form approved by the Division
28 pursuant to the notice requirements above. If notice is issued by the lienor, the
29 recipient shall return the form requesting a hearing to the lienor, and not the
30 Division, within 10 days from the date the recipient receives the notice if a
31 judicial hearing is requested. If the certified mail notice has been returned as
32 undeliverable and the notice of a right to a judicial hearing has been given to
33 the owner of the motor vehicle in accordance with G.S. 20-28.4, no further
34 notice is required. Failure of the recipient to notify the Division or lienor, as
35 specified in the notice, within 10 days of the receipt of such notice that a
36 hearing is desired shall be deemed a waiver of the right to a hearing prior to
37 the sale of the property against which the lien is asserted, and the lienor may
38 proceed to enforce the lien by public or private sale as provided in this section
39 and the Division shall transfer title to the property pursuant to such sale. If the
40 Division or lienor, as specified in the notice, is notified within the 10-day
41 period provided above that a hearing is desired prior to sale, the lien may be
42 enforced by sale as provided in this section and the Division will transfer title
43 only pursuant to the order of a court of competent jurisdiction.
44 If the certified mail notice has been returned as undeliverable, or if the name
45 of the person having legal title to the vehicle cannot reasonably be ascertained
46 and the fair market value of the vehicle is less than eight hundred dollars
47 (\$800.00), the lienor may institute a special proceeding in the county where
48 the vehicle is being held, for authorization to sell that vehicle. Market value
49 shall be determined by the schedule of values adopted by the Commissioner
50 under G.S. 105-187.3.

1 In such a proceeding a lienor may not include more than one ~~vehicle, but the~~
 2 ~~proceeds of the sale of each shall be subject only to valid claims against that~~
 3 ~~vehicle, and any vehicle. Any~~ excess proceeds of the sale shall be paid
 4 immediately to the Treasurer for disposition pursuant to Chapter 116B of the
 5 General Statutes.

6 The application to the clerk in such a special proceeding shall contain the
 7 notice of sale information set out in subsection (f) hereof. If the application is
 8 in proper form the clerk shall enter an order authorizing the sale on a date not
 9 less than 14 days therefrom, and the lienor shall cause the application and
 10 order to be sent immediately by first-class mail pursuant to G.S. 1A-1, Rule
 11 5, to each person to whom notice was mailed pursuant to this subsection.
 12 Following the authorized sale the lienor shall file with the clerk a report in the
 13 form of an affidavit, stating that the lienor has complied with the public or
 14 private sale provisions of G.S. 44A-4, the name, address, and bid of the high
 15 bidder or person buying at a private sale, and a statement of the disposition of
 16 the sale proceeds. The clerk then shall enter an order directing the Division to
 17 transfer title accordingly.

18 If prior to the sale the owner or legal possessor contests the sale or lien in a
 19 writing filed with the clerk, the proceeding shall be handled in accordance
 20 with G.S. 1-301.2.

21"

22 **SECTION 17.(b)** This section becomes effective December 1, 2019, and applies to
 23 applications filed on or after that date.

24 **SECTION 18.** G.S. 48-2-403 reads as rewritten:

25 "**§ 48-2-403. ~~Notice~~ Additional notice of proceedings by clerk-petitioner.**

26 No later than five days after a petition is filed, the ~~clerk of the court-petitioner~~ shall mail or
 27 otherwise deliver notice of the adoption proceeding to any agency that has undertaken but not
 28 yet completed a preplacement assessment and any agency ordered to make a report to the court
 29 pursuant to Part 5 of this Article. The petitioner shall provide proof of service of the notice to the
 30 court."

31 **PART III. TECHNICAL CORRECTIONS**

32 **SECTION 19.(a)** G.S. 7A-11 reads as rewritten:

33 "**§ 7A-11. Clerk of the Supreme Court; salary; bond; fees; oath.**

34 The clerk of the Supreme Court shall be appointed by the Supreme Court to serve at its
 35 pleasure. The annual salary of the clerk shall be fixed by the Administrative Officer of the Courts,
 36 subject to the approval of the Supreme Court. The clerk may appoint assistants in the number
 37 and at the salaries fixed by the Administrative Officer of the Courts. The clerk shall perform such
 38 duties as the Supreme Court may assign, and shall be bonded to the State, for faithful performance
 39 of duty, in the same manner as the clerk of the superior court, and in such amount as the
 40 Administrative Officer of the Courts shall determine. ~~He~~ The clerk shall adopt a seal of office,
 41 to be approved by the Supreme Court. A fee bill for services rendered by the clerk shall be fixed
 42 by rules of the Supreme Court, and all such fees shall be remitted to the State treasury. Charges
 43 to litigants for the reproduction of appellate records and briefs shall be fixed by rule of the
 44 Supreme Court and remitted to the Appellate Courts Printing and Computer Operations Fund
 45 established in G.S. 7A-343.3. The operations of the Clerk of the Supreme Court shall be subject
 46 to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General
 47 Statutes. Before entering upon the duties of his office, the clerk shall take the oath of office
 48 prescribed by law."

49 **SECTION 19.(b)** G.S. 7A-20(a) reads as rewritten:
 50

1 "(a) The Court of Appeals shall appoint a clerk to serve at its pleasure. Before entering
2 upon ~~his~~the clerk's duties, the clerk shall take the oath of office prescribed for the clerk of the
3 Supreme Court, conformed to the office of clerk of the Court of Appeals, and shall be bonded,
4 in the same manner as the clerk of superior court, in an amount prescribed by the Administrative
5 Officer of the Courts, payable to the State, for the faithful performance of ~~his~~the clerk's duties.
6 The salary of the clerk shall be fixed by the Administrative Officer of the Courts, subject to the
7 approval of the Court of Appeals. The number and salaries of ~~his~~the clerk's assistants, and their
8 bonds, if required, shall be fixed by the Administrative Officer of the Courts. The clerk shall
9 adopt a seal of office, to be approved by the Court of Appeals."

10 **SECTION 20.** G.S. 7A-354(b) reads as rewritten:

11 "(b) Membership. – The Commission shall consist of no more than 15 members as
12 follows:

13 ...

14 (4) The following persons, or their designees, may serve as nonvoting, ex officio
15 members of the Commission:

16 a. The Director of the Administrative Office of the Courts.

17 b. The President of the North Carolina Conference of Superior Court
18 Judges.

19 c. The President of the North Carolina Association of District Court
20 Judges."

21 **SECTION 21.** G.S. 14-43.15 reads as rewritten:

22 "**§ 14-43.15. Minor victims.**

23 Any minor victim of a violation of G.S. 14-43.11, 14-43.12, or 14-43.13 shall be alleged to
24 be abused and neglected and the provisions of Subchapter I of Chapter 7B of the General ~~Statues~~
25 Statutes shall apply."

26 **SECTION 22.** G.S. 15A-1469(b1) reads as rewritten:

27 "(b1) The Commission's entire file, including files obtained from other agencies, shall be
28 unencumbered by protective orders when transferred to the district attorney and defense counsel
29 pursuant to ~~subsection (g) of this section, G.S. 15A-1468(g)~~, unless either of the following apply:

30 (1) The district attorney and defense counsel have consented to a protective order
31 over a portion of the file.

32 (2) The district attorney and defense counsel have been given an opportunity to
33 be heard by the senior judge of the three-judge panel before a protective order
34 is issued."

35 **SECTION 23.** G.S. 28A-2-4(a) reads as rewritten:

36 "(a) The clerks of superior court of this State, as ex officio judges of probate, shall have
37 original jurisdiction of estate proceedings. Except as provided in subdivision (4) of this
38 subsection, the jurisdiction of the clerk of superior court is exclusive. Estate proceedings include,
39 but are not limited to, the following:

40 ...

41 (3) Determination of the elective share for a surviving spouse as provided in
42 ~~G.S. 30-3~~G.S. 30-3.1.

43 "

44 **SECTION 24.** G.S. 30-29 reads as rewritten:

45 "**§ 30-29. What petition must show.**

46 In the petition the petitioner shall set forth, besides the facts entitling petitioner to a year's
47 support and the value of the support claimed, the further facts that the personal estate of which
48 the decedent died possessed exceeded ~~thirty thousand dollars (\$30,000)~~sixty thousand dollars
49 (\$60,000) and also whether or not an allowance has been made to petitioner and the nature and
50 value thereof."

51 **SECTION 25.** G.S. 32C-1-116(a) reads as rewritten:

1 "(a) The clerks of superior court of this State shall have original jurisdiction of
2 proceedings under this Chapter. Except as provided in subdivision (4) of this subsection, the clerk
3 of superior court's jurisdiction is exclusive. The following proceedings are included:

4 ...

5 (3) To determine compensation and expenses for an agent under
6 G.S. 32C-1-112(b), G.S. 32C-1-112(b) and G.S. 32C-1-112(c).

7 "

8 **SECTION 26.(a)** G.S. 45-21.21(f) is repealed.

9 **SECTION 26.(b)** G.S. 45-21.23 reads as rewritten:

10 "**§ 45-21.23. Time of sale.**

11 A sale shall begin at the time designated in the notice of sale or as soon thereafter as
12 practicable, but not later than one hour after the time fixed therefor unless it is delayed by other
13 sales held at the same place. The sale shall be held between the hours of 10:00 A.M. and 4:00
14 P.M. on any day ~~other than Sunday or a legal holiday when the courthouse is closed for~~
15 ~~transactions, when the clerk's office is normally open for transactions.~~"

16 **SECTION 27.** G.S. 101-2(a) reads as rewritten:

17 "(a) A person who wishes, for good cause shown, to change his or her name must file an
18 application before the clerk of the superior court of the county in which the person ~~lives, resides,~~
19 after giving 10 days' notice of the application by publication at the courthouse door."

20 **SECTION 28.(a)** Section 8.2 of S.L. 2018-40 reads as rewritten:

21 "**SECTION 8.2.** This ~~section~~Part becomes effective January 1, ~~2019~~2019, and applies to
22 distributions made on or after that date."

23 **SECTION 28.(b)** This section is retroactively effective January 1, 2019.

24 25 **PART IV. CLARIFY COMMISSION INVESTIGATIONS AGAINST JUDGES**

26 **SECTION 29.(a)** G.S. 7A-377(a) reads as rewritten:

27 "(a) Any citizen of the State may file a written complaint with the Commission concerning
28 the qualifications or conduct of any justice or judge of the General Court of Justice, and thereupon
29 the Commission shall make such investigation as it deems necessary. The Commission may also
30 make an investigation on its own motion. The Commission shall not make an investigation,
31 whether initiated upon its own motion or by written complaint of a citizen of this State, when the
32 motion or complaint is based substantially upon a legal ruling by a district or superior court judge
33 and the legal ruling has not yet been reviewed and ruled upon by either the North Carolina Court
34 of Appeals or the North Carolina Supreme Court. The Commission is limited to reviewing
35 judicial conduct, not matters of law. The Commission may issue process to compel the attendance
36 of witnesses and the production of evidence, to administer oaths, and to punish for contempt. No
37 justice or judge shall be recommended for public reprimand, censure, suspension, or removal
38 unless he has been given a hearing affording due process of law."

39 **SECTION 29.(b)** This section is effective when it becomes law and applies to
40 complaints or investigations pending on or after that date.

41 **SECTION 30.** Except where otherwise provided, this act is effective when it
42 becomes law.