

1 Article 2.

2 Jurisdiction for Probate of Wills and Administration of Estates of Decedents.

3 **§ 28A-2-1. Clerk of superior court.**

4 The clerk of superior court of each county, ex officio judge of probate, shall have
5 jurisdiction of the administration, settlement, and distribution of estates of decedents including,
6 but not limited to, estate proceedings as provided in G.S. 28A-2-4. (R.C., c. 46, s. 1; C.C.P., s.
7 433; 1868-9, c. 113, s. 115; Code, s. 1374; Rev., s. 16; C.S., s. 1; 1931, c. 165; 1943, c. 543;
8 1951, c. 765; 1973, c. 1329, s. 3; 2011-344, s. 4.)
9

10 **§ 28A-2-2. Assistant clerk of superior court.**

11 An assistant clerk of superior court shall have jurisdiction as provided by G.S. 7A-102.
12 (1973, c. 1329, s. 3.)
13

14 **§ 28A-2-3. Jurisdiction where clerk interested.**

15 Whenever the clerk of superior court is a subscribing witness to a will offered for probate in
16 the clerk's county or has an interest, direct or indirect, in an estate or trust within the clerk's
17 jurisdiction, jurisdiction with respect thereto shall be vested in the senior resident superior court
18 judge of the clerk's district, and shall extend to all things which the clerk of superior court
19 might have done in the administration of such estate. (R.C., c. 46, s. 1; C.C.P., s. 433; 1868-9,
20 c. 113, s. 115; Code, s. 1374; Rev., s. 16; C.S., s. 1; 1931, c. 165; 1943, c. 543; 1951, c. 765;
21 1973, c. 1329, s. 3; 1975, c. 300, s. 1; 2011-344, s. 4.)
22

23 **§ 28A-2-4. Subject matter jurisdiction of the clerk of superior court in estate proceedings.**

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

- 28 (1) Probate of wills.
- 29 (2) Granting and revoking of letters testamentary and letters of administration,
30 or other proper letters of authority for the administration of estates.
- 31 (3) Determination of the elective share for a surviving spouse as provided in
32 G.S. 30-3.
- 33 (4) Proceedings to ascertain heirs or devisees, to approve family settlement
34 agreements pursuant to G.S. 28A-2-10, to determine questions of
35 construction of wills, to determine priority among creditors, to determine
36 whether a person is in possession of property belonging to an estate, to order
37 the recovery of property of the estate in possession of third parties, and to
38 determine the existence or nonexistence of any immunity, power, privilege,
39 duty, or right. Any party or the clerk of superior court may file a notice of
40 transfer of a proceeding pursuant to this subdivision to the Superior Court
41 Division of the General Court of Justice as provided in G.S. 28A-2-6(h). In
42 the absence of a transfer to superior court, Article 26 of Chapter 1 of the
43 General Statutes shall apply to a trust proceeding pending before the clerk of
44 superior court to the extent consistent with this Article.

45 (b) Nothing in this section shall affect the right of a person to file an action in the
46 Superior Court Division of the General Court of Justice for declaratory relief under Article 26
47 of Chapter 1 of the General Statutes. In the event that either the petitioner or the respondent in
48 an estate proceeding requests declaratory relief under Article 26 of Chapter 1 of the General
49 Statutes, either party may move for a transfer of the proceeding to the Superior Court Division
50 of the General Court of Justice as provided in Article 21 of Chapter 7A of the General Statutes.

1 In the absence of a removal to superior court, Article 26 of Chapter 1 of the General Statutes
2 shall apply to an estate proceeding to the extent consistent with this Article.

3 (c) Without otherwise limiting the jurisdiction of the Superior Court Division of the
4 General Court of Justice, the clerk of superior court shall not have jurisdiction under subsection
5 (a) or (c) of this section of the following:

- 6 (1) Actions by or against creditors or debtors of an estate, except as provided in
7 Article 19 of this Chapter.
- 8 (2) Actions involving claims for monetary damages, including claims for breach
9 of fiduciary duty, fraud, and negligence.
- 10 (3) Caveats, except as provided under G.S. 31-36.
- 11 (4) Proceeding to determine proper county of venue as provided in G.S.
12 28A-3-2.
- 13 (5) Recovery of property transferred or conveyed by a decedent with intent to
14 hinder, delay, or defraud creditors, pursuant to G.S. 28A-15-10(b).
15 (2011-344, s. 4.)
16

17 **§ 28A-2-5. Subject matter jurisdiction of the clerk of superior court in special**
18 **proceedings.**

19 The clerk of superior court also shall have jurisdiction over special proceedings, including,
20 but not limited to, the following:

- 21 (1) Special proceedings to obtain possession, custody, or control of assets as
22 provided in G.S. 28A-13-3.
- 23 (2) Special proceedings relating to the sale, lease, or mortgage of real estate as
24 provided in G.S. 28A-15-1 and in G.S. 28A-17-1.
- 25 (3) Special proceedings against unknown heirs before distribution of estate as
26 provided in G.S. 28A-22-3.

27 Nothing in this section shall be deemed to limit the jurisdiction of the clerk of superior
28 court in special proceedings. (2011-344, s. 4.)
29

30 **§ 28A-2-6. Commencement of estate proceedings, pleadings, consolidation, and joinder.**

31 (a) Contested Estate Proceedings. – Contested estate proceedings brought against
32 adverse parties shall be commenced by petition in the existing estate administration file. All
33 parties not joined as petitioners shall be joined as respondents. The clerk of superior court shall
34 issue the estate proceeding summons to the respondents. The clerk of superior court may order
35 that additional persons be joined as respondents and shall issue the estate proceeding summons
36 to the additional persons. The estate proceeding summons shall notify a respondent to appear
37 and answer the petition within 20 days after its service upon the respondents. The estate
38 proceeding summons shall comply with the requirements set forth in G.S. 1-394 for a special
39 proceeding summons except that the summons shall be titled "ESTATE PROCEEDING
40 SUMMONS" and shall be served upon a respondent in accordance with G.S. 1A-1, Rule 4.
41 After the time for responding to the petition or complaint has expired, any party or the clerk of
42 superior court may give notice to all parties of a hearing.

43 (b) Uncontested Estate Proceedings. – Estate proceedings before the clerk of superior
44 court that are uncontested may be decided without hearing according to practice and procedure
45 provided by law and shall be commenced by the filing of a petition, setting forth the facts
46 entitling the petitioners to relief and the nature of the relief demanded. In these proceedings, the
47 clerk of superior court may hear and decide the petition summarily.

48 (c) Pleadings. – Any petition, response, or request for hearing in a contested estate
49 proceeding before the clerk of superior court shall contain a short and plain statement of the
50 claim that is sufficiently particular to give the court and the parties notice of the transactions,
51 occurrences, or series of transactions intended to be proved showing that the pleaders are

1 entitled to relief, and a demand for judgment for the relief to which the pleader is entitled. Each
2 averment should be simple, concise, and direct. No technical forms of motions or responses are
3 required. A party may set forth two or more statements of a claim or defense alternatively or
4 hypothetically. The signature of an attorney or party constitutes a certificate by that attorney or
5 party that (i) the attorney or party has read the pleading, motion, or other paper; (ii) to the best
6 of the attorney's or party's knowledge, information, and belief formed after reasonable inquiry,
7 it is well grounded in fact and is warranted by existing law or a good faith argument for the
8 extension, modification, or reversal of existing law; and (iii) it is not interposed for any
9 improper purpose, such as to harass or to cause unnecessary delay or needless increase in the
10 cost of litigation. All motions, responses, and requests for hearing shall be so construed as to do
11 substantial justice.

12 (d) Extensions of Time. – The clerk of superior court, for cause shown at any time in
13 the clerk's discretion, with or without motion or notice, may enter an order enlarging the period
14 of time within which an act is required or permitted in an estate proceeding, by any applicable
15 rule of G.S. 1A-1, the Rules of Civil Procedure, or by order of the court, if the request is made
16 before the expiration of the period originally prescribed, but not to exceed 10 days, provided
17 that the court can enlarge the time for a period of more than 10 days for good cause shown, but
18 only to the extent that the court in its discretion determines that justice requires. Upon motion
19 made after the expiration of the specified period, the clerk of superior court may permit the act
20 where the failure to act was the result of excusable neglect. Notwithstanding any other
21 provision of this subsection, the parties to a proceeding may enter into binding stipulations,
22 without approval of the clerk of superior court, enlarging the time within which an act is
23 required or permitted by this Article, by any applicable Rules of Civil Procedure or by order of
24 the court, not to exceed 30 days.

25 (e) Rules of Civil Procedure. – Unless the clerk of superior court otherwise directs,
26 Rules 4.5, 6(a), 6(d), 6(e), 18, 19, 20, 21, 24, 45, 56, and 65 of G.S. 1A-1, the Rules of Civil
27 Procedure, shall apply to estate proceedings. Upon motion of a party or the clerk of superior
28 court, the clerk may further direct that any or all of the remaining Rules of Civil Procedure
29 shall apply, including, without limitation, discovery rules; however, nothing in Rule 17 requires
30 the appointment of a guardian ad litem for a party represented except as provided in G.S.
31 28A-2-7. In applying these Rules to an estate proceeding pending before the clerk of superior
32 court, the term "judge" shall mean "clerk of superior court."

33 (f) Consolidation. – When an estate proceeding pending before the clerk of superior
34 court and a civil action pending before the Superior Court Division of the General Court of
35 Justice involve a common question of law or fact, upon the court's motion or motion of a party
36 to either the estate proceeding or the civil action, a superior court judge may order a
37 consolidation of the estate proceeding and civil action, and the judge may make orders
38 concerning proceedings therein as may tend to avoid unnecessary cost or delay. Upon the entry
39 of an order consolidating an estate proceeding and civil action, the jurisdiction for all matters
40 pending in both the estate proceeding and the civil action shall be vested in the superior court.

41 (g) Joinder. – In any civil action pending before the Superior Court Division of the
42 General Court of Justice, the party asserting a claim for relief as an original claim,
43 counterclaim, crossclaim, or third-party claim may join, either as independent or alternative
44 claims, as many claims, legal or equitable, as the party may have against the opposing party,
45 notwithstanding the fact that such claims may otherwise be within the exclusive jurisdiction of
46 the clerk of superior court.

47 (h) Notice of Transfer. – A notice to transfer an estate proceeding brought pursuant to
48 G.S. 28A-2-4(a)(4) must be served within 30 days after the moving party is served with a copy
49 of the pleading requesting relief pursuant to G.S. 28A-2-4(a)(4), or in the case of the clerk of
50 superior court, prior to or at the first hearing duly noticed in such estate proceeding and prior to
51 the presentation of evidence by the parties, including a hearing at which an order of

1 continuance is entered. Failure to timely serve a notice of transfer of a trust proceeding is a
2 waiver of any objection to the clerk of superior court's exercise of jurisdiction over the trust
3 proceeding then pending before the clerk. When a notice of transfer is duly served and filed, the
4 clerk shall transfer the proceeding to the appropriate court. The proceeding after the transfer is
5 subject to the provisions of the General Statutes and to the rules that apply to actions initially
6 filed in the court to which the proceeding was transferred.

7 (i) Orders Upon Consolidation/Joinder/Transfer. – Upon the consolidation of an estate
8 proceeding in a civil action, joinder of claims under subsection (f) or (g) of this section, or
9 transfer to the Superior Court Division of the General Court of Justice pursuant to subsection
10 (h) of this section, the clerk of superior court or judge may make appropriate orders to protect
11 the interest of the parties and avoid unnecessary cost or delay. Notwithstanding the
12 consolidation or joinder of claims under subsection (f) or (g) of this section, where the estate
13 proceeding is transferred to the Superior Court Division of the General Court of Justice under
14 subsection (h) of this section, the clerk of superior court's exclusive jurisdiction as set forth in
15 G.S. 28A-2-4(a)(1) through (3) shall not be stayed unless so ordered by the court. (2011-344,
16 s. 4.)
17

18 **§ 28A-2-7. Representation of parties.**

19 (a) Notwithstanding any other applicable rule of the Rules of Civil Procedure or
20 provision of Chapter 1 of the General Statutes, in any contested or uncontested estate
21 proceeding or special proceeding, whether brought before the clerk of superior court or in the
22 Superior Court Division of the General Court of Justice, the parties shall be represented as
23 provided in Article 3 of Chapter 36C of the General Statutes.

24 (b) In the case of any party represented by another as provided in subsection (a) of this
25 section, service of process shall be made by serving such representative. (2011-344, s. 4.)
26

27 **§ 28A-2-8. Waiver of notice.**

28 A party, or a representative of a party as provided in G.S. 28A-2-7, may waive notice by a
29 writing signed by the party, the representative, or the attorney of the party or the representative
30 and filed in the proceeding. (2011-344, s. 4.)
31

32 **§ 28A-2-9. Appeals of estate proceedings and special proceedings.**

33 (a) With the exception of appeals of special proceedings heard by the clerk of superior
34 court, appeals in estate matters shall be as provided in G.S. 1-301.3.

35 (b) Appeals in special proceedings shall be as provided in G.S. 1-301.2.

36 (c) Any party may appeal from a decision of the clerk of superior court in an estate
37 proceeding or special proceeding to a superior court judge as provided for in G.S. 1-301.3;
38 provided that the appeals from orders of the clerk of superior court in special proceedings shall
39 be as provided in G.S. 1-301.2. (2011-344, s. 4.)
40

41 **§ 28A-2-10. Approval of settlement agreements by the clerk.**

42 The clerk shall have the authority, in the clerk's discretion, to consider and approve
43 settlement agreements where the following apply:

44 (1) The controversy arises with respect to a matter over which the clerk has
45 jurisdiction.

46 (2) The controversy arose in good faith.

47 Nothing herein shall be construed as giving a clerk the authority to approve a settlement
48 agreement modifying the terms of a last will and testament or resolving a caveat of a last will
49 and testament. (2011-344, s. 4.)
50

51 **§ 28A-2A-15. Certified copy of will proved in another state or country.**

1 When a will, made by a citizen of this State, is proved and allowed in some other state or
2 country, and the original will cannot be removed from its place of legal deposit in such other
3 state or country, for probate in this State, the clerk of the superior court of the county where the
4 testator had his last usual residence or has any property, upon a duly certified copy or
5 exemplification of such will being exhibited to him for probate, shall take every order and
6 proceeding for proving, allowing and recording such copy as by law might be taken upon the
7 production of the original. (1802, c. 623; R.C., c. 44, s. 9; C.C.P., s. 445; Code, s. 2157; Rev.,
8 s. 3130; C.S., s. 4147; 2011-344, s. 3.)