

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 897  
House Committee Substitute Favorable 6/23/89

Short Title: Clerks' Self-disqualification.

(Public)

Sponsors:

Referred to:

April 17, 1989

A BILL TO BE ENTITLED

AN ACT TO ALLOW CLERKS OF COURT TO DISQUALIFY THEMSELVES AND TO ALLOW CLERKS OF COURT TO TRANSFER SCHOOL BUDGET DISPUTES TO SUPERIOR COURT UNDER CERTAIN CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-104 reads as rewritten:

**"§ 7A-104. Disqualification; waiver; removal; when judge acts.**

(a) The clerk shall not exercise any judicial powers in relation to any estate, proceeding, or civil action:

- (1) If he has, or claims to have, an interest by distribution, by will, or as creditor or otherwise;
- (2) If he is so related to any person having or claiming such an interest that he would, by reason of such relationship, be disqualified as a juror, but the disqualification on this ground ceases unless the objection is made at the first hearing of the matter before him;
- (3) If clerk or the clerk's spouse is a party or a subscribing witness to any deed of conveyance, testamentary paper or nuncupative will, but this disqualification ceases when such deed, testamentary paper, or will has been finally admitted to probate by another clerk, or before the judge of the superior court;
- (4) If clerk or the clerk's spouse is named as executor or trustee in any testamentary or other paper, but this disqualification ceases when the will or other paper is finally admitted to probate by another clerk, or

1 before the judge of the superior court. The clerk may renounce the  
2 executorship and endorse the renunciation on the will or on some  
3 paper attached thereto, before it is propounded for probate, in which  
4 case the renunciation must be recorded with the will if it is admitted to  
5 probate.

6 (a1) The clerk may disqualify himself in a proceeding in circumstances justifying  
7 disqualification or recusement by a judge.

8 (a2) The parties may waive the disqualification specified in subdivisions (1), (2),  
9 and (3) of this subsection, this section, and upon the filing of such written waiver, the  
10 clerk shall act as in other cases.

11 (b) When any of the disqualifications specified in this section exist, and there is  
12 no waiver thereof, or when there is no renunciation under subdivision (a)(4), of this  
13 section, any party in interest may apply to a superior court judge who has jurisdiction  
14 pursuant to G.S. 7A-47.1 or G.S. 7A-48 in that county, for an order to remove the  
15 proceedings to the clerk of superior court of an adjoining county in the district or set of  
16 districts; or he may apply to the judge to make either in vacation or during a session of  
17 court all necessary orders and judgments in any proceeding in which the clerk is  
18 disqualified, and the judge in such cases is hereby authorized to make any and all  
19 necessary orders and judgments as if he had the same original jurisdiction as the clerk  
20 over such proceedings.

21 (c) In any case in which the clerk of the superior court is executor, administrator,  
22 collector, or guardian of an estate at the time of his election or appointment to office, in  
23 order to enable him to settle such estate, a superior court judge who has jurisdiction  
24 pursuant to G.S. 7A-47.1 or G.S. 7A-48 in that county may make such orders as may be  
25 necessary in the settlement of the estate; and he may audit the accounts or appoint a  
26 commissioner to audit the accounts of such executor or administrator, and report to him  
27 for his approval, and when the accounts are so approved, the judge shall order the  
28 proper records to be made by the clerk."

29 Sec. 2. G.S. 115C-431(b) reads as rewritten:

30 "(b) If no agreement is reached at the joint meeting of the two boards, either board  
31 may refer the dispute to the clerk of superior court for arbitration within three days after  
32 the day of the joint meeting. The clerk shall render his decision on the matters in  
33 disagreement within 10 days after the day of the referral. The clerk of the superior court  
34 shall have the authority to subpoena or issue any orders necessary to have appear before  
35 him any member of a board of education and any member of a board of commissioners  
36 involved in the dispute and to require that the records of either board be presented to  
37 him for the purpose of arbitration of the issues. Within 10 days of the referral, if the  
38 clerk in good faith determines that the dispute cannot be arbitrated, he shall transfer the  
39 matter to the superior court pursuant to this section and shall so notify the senior  
40 resident superior court judge or the presiding superior court judge in the district."

41 Sec. 3. This act is effective upon ratification.