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HOUSE BILL 236  
Committee Substitute Favorable 4/19/17  
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PROPOSED SENATE COMMITTEE SUBSTITUTE H236-PCS40607-TG-25

Short Title: NCAOC Omnibus Bill.

(Public)

Sponsors:

Referred to:

March 6, 2017

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE CLERK TO APPOINT AN INTERIM GUARDIAN AD LITEM ON THE CLERK'S OWN MOTION; TO PROVIDE FOR THE CLERK TO EXTEND THE TIME FOR FILING INVENTORY IN THE PROPERTY OF THE DECEASED; TO PROVIDE FOR ISSUANCE OF AN ORDER FOR AN ARREST WHEN A PERSON FAILS TO APPEAR AFTER BEING SERVED WITH A SHOW CAUSE IN A CIVIL PROCEEDING; TO AMEND HOW COSTS IN ADMINISTRATION OF ESTATES ARE ASSESSED; TO ALLOW FOR TEMPORARY ASSISTANCE FOR DISTRICT ATTORNEYS WHEN THERE IS A CONFLICT OF INTEREST; TO AMEND OTHER STATUTES GOVERNING THE GENERAL COURT OF JUSTICE, AS RECOMMENDED BY THE NORTH CAROLINA ADMINISTRATIVE OFFICE OF THE COURTS; TO PROVIDE FOR THE ESTABLISHMENT OF AN ARBITRATION AND MEDIATION PROGRAM FOR THE NORTH CAROLINA BUSINESS COURT; TO AMEND STATUTES GOVERNING MEDIATION IN THE GENERAL COURT OF JUSTICE; AND TO AMEND THE LAW GOVERNING THE REGULATION OF MEDIATORS.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 1A-1, Rule 5(e), reads as rewritten:

**"Rule 5. Service and filing of pleadings and other papers.**

...

- (e) (1) Filing with the court defined. – The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, pursuant to the rules promulgated under G.S. 7A-109 or subdivision (2) of this section, except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk.
- (2) Filing by electronic means. – If, pursuant to ~~G.S. 7A-34~~G.S. 7A-34, G.S. 7A-49.5, and G.S. 7A-343, the Supreme Court and the Administrative Officer of the Courts establish uniform rules, regulations, costs, procedures and specifications for the filing of pleadings or other court papers by electronic means, filing may be made by the electronic means when, in the manner, and to the extent provided therein.
- (3) The failure to affix a date stamp or file stamp on any order or judgment filed in a civil action, estate proceeding, or special proceeding shall not affect the



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1                    sufficiency, validity, or enforceability of the order or judgment if the clerk or  
2                    the court, after giving the parties adequate notice and opportunity to be  
3                    heard, enters the order or judgment nunc pro tunc to the date of filing."

4                    **SECTION 2.** G.S. 1A-1, Rule 58, reads as rewritten:

5                    **"Rule 58. Entry of judgment.**

6                    Subject to the provisions of Rule 54(b), a judgment is entered when it is reduced to writing,  
7                    signed by the judge, and filed with the clerk of ~~court~~ court pursuant to Rule 5. The party  
8                    designated by the judge or, if the judge does not otherwise designate, the party who prepares  
9                    the judgment, shall serve a copy of the judgment upon all other parties within three days after  
10                   the judgment is entered. Service and proof of service shall be in accordance with Rule 5. If  
11                   service is by mail, three days shall be added to the time periods prescribed by Rule 50(b), Rule  
12                   52(b), and Rule 59. All time periods within which a party may further act pursuant to Rule  
13                   50(b), Rule 52(b), or Rule 59 shall be tolled for the duration of any period of noncompliance  
14                   with this service requirement, provided however that no time period under Rule 50(b), Rule  
15                   52(b), or Rule 59 shall be tolled longer than 90 days from the date the judgment is entered.  
16                   Subject to the provisions of Rule 7(b)(4), consent for the signing and entry of a judgment out of  
17                   term, session, county, and district shall be deemed to have been given unless an express  
18                   objection to such action was made on the record prior to the end of the term or session at which  
19                   the matter was heard.

20                   Notwithstanding any other law to the contrary, any judgment entered by a magistrate in a  
21                   small claims action pursuant to Article 19 of Chapter 7A shall be entered in accordance with  
22                   this Rule except judgments announced and signed in open court at the conclusion of a trial are  
23                   considered to be served on the parties, and copies of any judgment not announced and signed in  
24                   open court at the conclusion of a trial shall be served by the magistrate on all parties in  
25                   accordance with this Rule, within three days after the judgment is entered. If service is by mail,  
26                   three days shall be added to the time periods prescribed by G.S. 7A-228. All time periods  
27                   within which a party may further act pursuant to G.S. 7A-228 shall be tolled for the duration of  
28                   any period of noncompliance of this service requirement, provided that no time period shall be  
29                   tolled longer than 90 days from the date judgment is entered."

30                   **SECTION 3.** G.S. 28A-9-2(a) reads as rewritten:

31                   **"§ 28A-9-2. Summary revocation.**

32                   (a)            Grounds. – Letters testamentary, letters of administration, or letters of collection,  
33                   shall be revoked by the clerk of superior court without hearing when:

- 34                   (1)            After letters of administration or collection have been issued, a will is  
35                   subsequently admitted to probate.
- 36                   (2)            After letters testamentary have been issued:
- 37                   a.            The will is set aside, or
- 38                   b.            A subsequent testamentary paper revoking the appointment of the  
39                   executor is admitted to probate.
- 40                   (3)            Any personal representative or collector required to give a new bond or  
41                   furnish additional security pursuant to G.S. 28A-8-3 fails to do so within the  
42                   time ordered.
- 43                   (4)            A nonresident personal representative refuses or fails to obey any citation,  
44                   notice, or process served on that nonresident personal representative or the  
45                   process agent of the nonresident personal representative.
- 46                   (5)            A trustee in bankruptcy, liquidating agent, or receiver has been appointed for  
47                   any personal representative or collector, or any personal representative or  
48                   collector has executed an assignment for the benefit of creditors.
- 49                   (6)            A personal representative has failed to file an inventory or an annual account  
50                   with the clerk of superior court, as required by Article 20 and Article 21 of  
51                   this Chapter, and proceedings to compel such filing pursuant to

1 G.S. 28A-20-2 or 28A-21-4 cannot be had because service cannot be  
2 completed because the personal representative cannot be found.

3 (7) A personal representative or collector is a licensed attorney, and the clerk is  
4 in receipt of an order entered pursuant to G.S. 84-28 enjoining, suspending,  
5 or disbaring the attorney."

6 **SECTION 4.** G.S. 35A-1290 reads as rewritten:

7 **"§ 35A-1290. Removal by Clerk.**

8 ...

9 (b) It is the clerk's duty to remove a guardian or to take other action sufficient to protect  
10 the ward's interests in the following cases:

- 11 (1) The guardian wastes the ward's money or estate or converts it to his own use.  
12 (2) The guardian in any manner mismanages the ward's estate.  
13 (3) The guardian neglects to care for or maintain the ward or his dependents in a  
14 suitable manner.  
15 (4) The guardian or his sureties are likely to become insolvent or to become  
16 nonresidents of the State.  
17 (5) The original appointment was made on the basis of a false representation or  
18 a mistake.  
19 (6) The guardian has violated a fiduciary duty through default or misconduct.  
20 (7) The guardian has a private interest, whether direct or indirect, that might  
21 tend to hinder or be adverse to carrying out his duties as guardian.

22 (c) ~~It is the clerk's duty to remove a guardian or to take other action sufficient to protect~~  
23 ~~the ward's interests in the following cases:~~

- 24 ~~(1)~~(8) The guardian has been adjudged incompetent by a court of competent  
25 jurisdiction and has not been restored to competence.  
26 ~~(2)~~(9) The guardian has been convicted of a felony under the laws of the United  
27 States or of any state or territory of the United States or of the District of  
28 Columbia and his citizenship has not been restored.  
29 ~~(3)~~(10) The guardian was originally unqualified for appointment and continues to be  
30 unqualified, or the guardian would no longer qualify for appointment as  
31 guardian due to a change in residence, a change in the charter of a corporate  
32 guardian, or any other reason.  
33 ~~(4)~~(11) The guardian is the ward's spouse and has lost his rights as provided by  
34 Chapter 31A of the General Statutes.  
35 ~~(5)~~(12) The guardian fails to post, renew, or increase a bond as required by law or  
36 by order of the court.  
37 ~~(6)~~(13) The guardian refuses or fails without justification to obey any citation,  
38 notice, or process served on him in regard to the guardianship.  
39 ~~(7)~~(14) The guardian fails to file required accountings with the clerk.  
40 ~~(8)~~(15) The clerk finds the guardian unsuitable to continue serving as guardian for  
41 any reason.  
42 ~~(9)~~(16) The guardian is a nonresident of the State and refuses or fails to obey any  
43 citation, notice, or process served on the guardian or the guardian's process  
44 agent.  
45 (17) The guardian is a licensed attorney, and the clerk is in receipt of an order  
46 entered pursuant to G.S. 84-28 enjoining, suspending, or disbaring the  
47 attorney."

48 **SECTION 5.** G.S. 30-17 reads as rewritten:

49 **"§ 30-17. When children entitled to an allowance.**

50 Whenever any parent dies survived by any child under the age of 18 years, including an  
51 adopted child or a child with whom the widow may be pregnant at the death of her husband, or

1 a child who is less than 22 years of age and is a full-time student in any educational institution,  
2 or a child under 21 years of age who has been declared mentally incompetent, or a child under  
3 21 years of age who is totally disabled, or any other person under the age of 18 years residing  
4 with the deceased parent at the time of death to whom the deceased parent or the surviving  
5 parent stood in loco parentis, every such child shall be entitled to receive an allowance of five  
6 thousand dollars (\$5,000) for the child's support for the year next ensuing the death of the  
7 parent. The allowance shall be in addition to the child's share of the deceased parent's estate and  
8 shall be exempt from any lien by judgment or execution against the property of the deceased  
9 parent. The personal representative of the deceased parent shall, within one year after the  
10 parent's death, assign to every such child the allowance herein provided for; but if there is no  
11 personal representative or if the personal representative fails or refuses to act within 10 days  
12 after written application by a guardian or next friend on behalf of the child, the allowance may  
13 be assigned by a magistrate or clerk of court upon application.

14 If the child resides with the surviving spouse of the deceased parent at the time the  
15 allowance is paid, the allowance shall be paid to the surviving spouse for the benefit of the  
16 child. If the child resides with its surviving parent who is other than the surviving spouse of the  
17 deceased parent, the allowance shall be paid to the surviving parent for the use and benefit of  
18 the child. The payment shall be made regardless of whether the deceased died testate or  
19 intestate or whether the surviving spouse petitioned for an elective share under Article 1A of  
20 Chapter 30 of the General Statutes. Provided, however, the allowance shall not be available to a  
21 deceased father's child born out of wedlock, unless the deceased father has recognized the  
22 paternity of the child by deed, will, or other paper-writing, or unless the deceased father died  
23 prior to or within one year after the birth of the child and is established to have been the father  
24 of the child by DNA testing. If the child does not reside with a surviving spouse or a surviving  
25 parent when the allowance is paid, the allowance shall be paid to the child's general  
26 ~~guardian, guardian or guardian of the estate,~~ if any, and if none, to the clerk of the superior court  
27 who shall receive and disburse the allowance for the benefit of the child."

28 **SECTION 6.** G.S. 35A-1114 reads as rewritten:

29 **"§ 35A-1114. Appointment of interim guardian.**

30 (a) At the time of or subsequent to the filing of a petition under this Article, the  
31 petitioner or guardian ad litem may also file a verified motion with the clerk seeking the  
32 appointment of an interim guardian.

33 (b) The motion filed by the petitioner or guardian ad litem shall set forth facts tending  
34 to show:

35 (1) That there is reasonable cause to believe that the respondent is incompetent,  
36 and

37 (2) One or both of the following:

38 a. That the respondent is in a condition that constitutes or reasonably  
39 appears to constitute an imminent or foreseeable risk of harm to his  
40 physical well-being and that requires immediate intervention;

41 b. That there is or reasonably appears to be an imminent or foreseeable  
42 risk of harm to the respondent's estate that requires immediate  
43 intervention in order to protect the respondent's interest, and

44 (3) That the respondent needs an interim guardian to be appointed immediately  
45 to intervene on his behalf prior to the adjudication hearing.

46 (c) Upon filing of the motion for appointment of an interim ~~guardian, guardian by the~~  
47 petitioner or the guardian ad litem, the clerk shall immediately set a date, time, and place for a  
48 hearing on the motion. The motion and a notice setting the date, time, and place for the hearing  
49 shall be served promptly on the respondent and on his counsel or guardian ad litem and other  
50 persons the clerk may designate. The hearing shall be held as soon as possible but no later than  
51 15 days after the motion has been served on the respondent.

1       (c1) The motion and notice setting the date, time, and place for the hearing shall be  
2 served promptly on the petitioner, the respondent and on his counsel or guardian ad litem, and  
3 other persons the clerk may designate. The hearing shall be held as soon as possible but not  
4 later than 15 days after the motion has been served on the respondent.

5       ...."

6               **SECTION 7.** G.S. 35A-1112 reads as rewritten:

7       "**§ 35A-1112. Hearing on petition; adjudication order.**

8       ...

9       (b1) At the hearing on the petition, on the clerk's own motion, the clerk may appoint an  
10 interim guardian pursuant to G.S. 35A-1114(d) and (e) if the clerk determines such an  
11 appointment to be in the best interests of the respondent.

12       ...."

13               **SECTION 8.** G.S. 28A-20-1 reads as rewritten:

14       "**§ 28A-20-1. Inventory within three months.**

15       EveryUnless the time for filing the inventory has been extended by the clerk of superior  
16 court, every personal representative and collector, within three months after the qualification of  
17 that personal representative or collector, shall return to the clerk, on oath, a just, true and  
18 perfect inventory of all the real and personal property of the deceased, which have come to the  
19 hands of the personal representative or collector, or to the hands of any person for the personal  
20 representative or collector, which inventory shall be signed by the personal representative or  
21 collector and be recorded by the clerk."

22               **SECTION 9.** G.S. 28A-21-1 reads as rewritten:

23       "**§ 28A-21-1. Annual accounts.**

24       Until the final account has been filed pursuant to G.S. 28A-21-2, the personal representative  
25 or collector shall, for so long as any of the property of the estate remains in the control, custody  
26 or possession of the personal representative or collector, file annually in the office of the clerk  
27 of superior court an inventory and account, under oath, of the amount of property received by  
28 the personal representative or collector, or invested by the personal representative or collector,  
29 and the manner and nature of such investment, and the receipts and disbursements of the  
30 personal representative or collector for the past year. Such accounts shall be due 30 days after  
31 the expiration of one year from the date of qualification of the personal representative or  
32 collector, or if a fiscal year is selected by the fifteenth day of the fourth month after the close of  
33 the fiscal year selected by the personal representative or collector, and annually on the same  
34 date thereafter. The election of a fiscal year shall be made by the personal representative or  
35 collector upon filing of the first annual account. In no event may a personal representative or  
36 collector select a fiscal year-end which is more than twelve months from the date of death of  
37 the decedent or, in the case of trust administration, the date of the opening of the trust. Any  
38 fiscal year selected may not be changed without the permission of the clerk of superior court.

39       The personal representative or collector shall produce vouchers for all payments or verified  
40 proof for payments in lieu of vouchers. The clerk of superior court may examine, under oath,  
41 such accounting party, or any other person, concerning the receipts, disbursements or any other  
42 matter relating to the estate. The clerk of superior court must carefully review and audit such  
43 account and, if the clerk approves the account, the clerk must endorse the approval of the clerk  
44 thereon, which shall be prima facie evidence of correctness, and cause the same to be  
45 recorded."

46               **SECTION 10.** G.S. 28A-21-2 reads as rewritten:

47       "**§ 28A-21-2. Final accounts.**

48       (a) Unless the time for filing the final account has been extended by the clerk of  
49 superior court, the personal representative or collector must file the final account for settlement  
50 within one year after qualifying or within six months after receiving a State estate or  
51 inheritance tax release, or in the time period for filing an annual account pursuant to

1 G.S. 28A-21-1, whichever is later. If no estate or inheritance tax return was required to be filed  
2 for the estate, the personal representative or collector shall so certify in the final account filed  
3 with the clerk of superior court. Such certification shall list the amount and value of all of the  
4 decedent's property, and with respect to real estate, its particular location within or outside the  
5 State, including any property transferred by the decedent over which the decedent had retained  
6 any interest, or any property transferred within three years prior to the date of the decedent's  
7 death, and after being filed and accepted by the clerk of superior court shall be prima facie  
8 evidence that such property is free of any State inheritance or State estate tax liability. The  
9 personal representative or collector shall produce vouchers for all payments or verified proof  
10 for all payments in lieu of vouchers. With the approval of the clerk of superior court, such  
11 account may be filed voluntarily at any time. In all cases, the accounting shall be reviewed,  
12 audited and recorded by the clerk of superior court in the manner prescribed in G.S. 28A-21-1.

13 (a1) If no estate or inheritance tax return was required to be filed for the estate, the  
14 personal representative or collector shall so certify in the final account filed with the clerk of  
15 superior court. Such certification shall list the amount and value of all of the decedent's  
16 property and, with respect to real estate, its particular location within or outside the State,  
17 including any property transferred by the decedent over which the decedent had retained any  
18 interest, or any property transferred within three years prior to the date of the decedent's death,  
19 and, after being filed and accepted by the clerk of superior court, shall be prima facie evidence  
20 that such property is free from any State inheritance or State estate tax liability. This subsection  
21 only applies to estates of decedents who died before January 1, 2013.

22 (a2) The personal representative or collector shall produce vouchers for all payments or  
23 verified proof for all payments in lieu of vouchers. With the approval of the clerk of superior  
24 court, such account may be filed voluntarily at any time. In all cases, the accounting shall be  
25 reviewed, audited, and recorded by the clerk of superior court in the manner prescribed by  
26 G.S. 28A-21-1.

27 (b) Except as provided in subsection (a), after the date specified in the general notice to  
28 creditors as provided for in G.S. 28A-14-1, if all of the debts and other claims against the estate  
29 of the decedent duly presented and legally owing have been paid in the case of a solvent estate  
30 or satisfied pro rata according to applicable statutes in the case of an insolvent estate, the  
31 personal representative or collector may file the personal representative's or collector's final  
32 account to be reviewed, audited and recorded by the clerk of superior court. Nothing in this  
33 subsection shall be construed as limiting the right of the surviving spouse or minor children to  
34 file for allowances under G.S. 30-15 through 30-18 and the right of a surviving spouse to file  
35 for property rights under G.S. 29-30."

36 **SECTION 11.** G.S. 5A-23(b) reads as rewritten:

37 "(b) Except when the clerk of superior court has original subject matter jurisdiction and  
38 issued the order or when the General Statutes specifically provide for the exercise of contempt  
39 power by the clerk of superior court, proceedings under this section are before a district court  
40 judge, unless a court superior to the district court issued the order in which case the  
41 proceedings are before that court. When the proceedings are before a superior court, venue is in  
42 the superior court district or set of districts as defined in G.S. 7A-41.1 of the court which issued  
43 the order. Otherwise, venue is in the county where the order was issued."

44 **SECTION 13.** G.S. 7A-307 reads as rewritten:

45 "**§ 7A-307. Costs in administration of estates.**

46 (a) In the administration of the estates of decedents, minors, incompetents, of missing  
47 persons, and of trusts under wills and under powers of attorney, in trust proceedings under  
48 G.S. 36C-2-203, in estate proceedings under G.S. 28A-2-4, and in collections of personal  
49 property by affidavit, the following costs shall be assessed:

50 (1) For the use of the courtroom and related judicial facilities, the sum of ten  
51 dollars (\$10.00), to be remitted to the county. Funds derived from the

- 1 facilities fees shall be used in the same manner, for the same purposes, and  
2 subject to the same restrictions, as facilities fees assessed in criminal actions.
- 3 (1a) For the upgrade, maintenance, and operation of the judicial and county  
4 courthouse telecommunications and data connectivity, the sum of four  
5 dollars (\$4.00), to be credited to the Court Information Technology Fund.
- 6 (2) For support of the General Court of Justice, the sum of one hundred six  
7 dollars (\$106.00), plus an additional forty cents (40¢) per one hundred  
8 dollars (\$100.00), or major fraction thereof, of the gross estate, not to exceed  
9 six thousand dollars (\$6,000). Gross estate shall include the fair market  
10 value of all personalty when received, and all proceeds from the sale of  
11 realty coming into the hands of the fiduciary, but shall not include the value  
12 of realty. In collections of personal property by affidavit, the fee based on  
13 the gross estate shall be computed from the information in the final affidavit  
14 of collection made pursuant to G.S. 28A-25-3 and shall be paid when that  
15 affidavit is filed. In all other cases, this fee shall be computed from the  
16 information reported in the ~~inventory and shall be paid when the inventory is~~  
17 ~~filed with the clerk inventory.~~ If additional gross estate, including income,  
18 comes into the hands of the fiduciary after the filing of the inventory, the fee  
19 for such additional value shall be ~~assessed and paid upon~~ computed from the  
20 information reported in the filing of any account or report disclosing such  
21 additional value. For each filing the minimum fee shall be fifteen dollars  
22 (\$15.00). Sums collected under this subdivision shall be remitted to the State  
23 Treasurer. The State Treasurer shall remit the sum of one dollar and fifty  
24 cents (\$1.50) of each one hundred six-dollar (\$106.00) General Court of  
25 Justice fee collected under this subdivision to the North Carolina State Bar  
26 for the provision of services described in G.S. 7A-474.4.
- 27 (2a) Notwithstanding subdivision (2) of this subsection, the fee of forty cents  
28 (40¢) per one hundred dollars (\$100.00), or major fraction, of the gross  
29 estate, not to exceed six thousand dollars (\$6,000), shall not be assessed on  
30 personalty received by a trust under a will when the estate of the decedent  
31 was administered under Chapters 28 or 28A of the General Statutes. Instead,  
32 a fee of twenty dollars (\$20.00) shall be assessed on the filing of each annual  
33 and final account. However, the fee shall be assessed only on newly  
34 contributed or acquired assets, all interest or other income that accrues or is  
35 earned on or with respect to any existing or newly contributed or acquired  
36 assets, and realized gains on the sale of any and all trust assets. Newly  
37 contributed or acquired assets do not include assets acquired by the sale,  
38 transfer, exchange, or otherwise of the amount of trust property on which  
39 fees were previously assessed.
- 40 (2b) Notwithstanding subdivisions (1) and (2) of this subsection, no costs shall be  
41 assessed when the estate is administered or settled pursuant to  
42 G.S. 28A-25-6.
- 43 (2c) Notwithstanding subdivision (2) of this subsection, the fee of forty cents  
44 (40¢) per one hundred dollars (\$100.00), or major fraction, of the gross  
45 estate shall not be assessed on the gross estate of a trust that is the subject of  
46 a proceeding under G.S. 36C-2-203 if there is no requirement in the trust  
47 that accountings be filed with the clerk.
- 48 (2d) Notwithstanding subdivisions (1) and (2) of this subsection, the only cost  
49 assessed in connection with the qualification of a limited personal  
50 representative under G.S. 28A-29-1 shall be a fee of twenty dollars (\$20.00)  
51 to be assessed upon the filing of the petition.

- 1 (3) For probate of a will without qualification of a personal representative, the
- 2 clerk shall assess a facilities fee as provided in subdivision (1) of this
- 3 subsection and shall assess for support of the General Court of Justice, the
- 4 sum of twenty dollars (\$20.00).
- 5 (4) For the support of the General Court of Justice, the sum of twenty dollars
- 6 (\$20.00) shall accompany any filing of a notice of hearing on a motion not
- 7 listed in G.S. 7A-308 that is filed with the clerk. No costs shall be assessed
- 8 to a notice of hearing on a motion containing as a sole claim for relief the
- 9 taxing of costs, including attorneys' fees, or to a motion filed pursuant to
- 10 G.S. 1C-1602 or G.S. 1C-1603. No more than one fee shall be assessed for
- 11 any motion for which a notice of hearing is filed, regardless of whether the
- 12 hearing is continued, rescheduled, or otherwise delayed.
- 13 (5) For the filing of a caveat to a will, the clerk shall assess for support of the
- 14 General Court of Justice, the sum of two hundred dollars (\$200.00).
- 15 (6) Notwithstanding subdivisions (1) and (2) of this subsection, the only cost
- 16 assessed in connection with the reopening of an estate administration under
- 17 G.S. 28A-23-5 shall be forty cents (40¢) per one hundred dollars (\$100.00),
- 18 or major fraction, of any additional gross estate, including income, coming
- 19 into the hands of the fiduciary after the estate is reopened; provided that the
- 20 total cost assessed when added to the total cost assessed in all prior
- 21 administrations of the estate shall not exceed six thousand dollars (\$6,000).

22 (b) In collections of personal property by affidavit, the facilities fee and thirty dollars  
 23 (\$30.00) of the General Court of Justice fee shall be paid at the time of filing the qualifying  
 24 affidavit pursuant to G.S. 28A-25-1. ~~In all other cases, these fees shall be paid at the time of~~  
 25 ~~filing of the first inventory.~~ If the sole asset of the estate is a cause of action, these fees shall be  
 26 paid at the time of the qualification of the fiduciary.

27 (b1) The clerk shall assess the following miscellaneous fees:

- 28 (1) Filing and indexing a will with no probate
- 29 – first page..... \$ 1.00
- 30 – each additional page or fraction thereof..... .25
- 31 (2) Issuing letters to fiduciaries, per letter over five letters issued..... 1.00
- 32 (3) Inventory of safe deposits of a decedent, per box, per day ..... 15.00
- 33 (4) Taking a deposition ..... 10.00
- 34 (5) Docketing and indexing a will probated in another county in the State
- 35 – first page..... 6.00
- 36 – each additional page or fraction thereof..... .25
- 37 (6) Hearing petition for year's allowance to surviving spouse or
- 38 child,
- 39 in cases not assigned to a magistrate, and allotting the same..... 8.00

40 (c) The following additional expenses, when incurred, are also assessable or  
 41 recoverable, as the case may be:

- 42 (1) Witness fees, as provided by law.
- 43 (2) Counsel fees, as provided by law.
- 44 (3) Costs on appeal, of the original transcript of testimony, if any, insofar as
- 45 essential to the appeal.
- 46 (4) Fees for personal service of civil process, and other sheriff's fees, as
- 47 provided by law.
- 48 (5) Fees of guardians ad litem, referees, receivers, commissioners, surveyors,
- 49 arbitrators, appraisers, and other similar court appointees, as provided by
- 50 law.



1 (d) Costs assessed before the clerk shall be added to costs assessable on appeal to the  
2 judge or upon transfer to the civil issue docket.

3 (e) Nothing in this section shall affect the liability of the respective parties for costs, as  
4 provided by law."

5 **SECTION 14.** G.S. 7A-64 reads as rewritten:

6 "**§ 7A-64. Temporary assistance for district attorneys.**

7 (a) A district attorney may apply to the Director of the Administrative Office of the  
8 Courts to:

9 (1) Temporarily assign an assistant district attorney from another district, after  
10 consultation with the district attorney thereof, to assist in the prosecution of  
11 cases in the requesting district;

12 (2) Authorize the temporary appointment, by the requesting district attorney, of  
13 a qualified attorney to assist the requesting district attorney; or

14 (3) Enter into contracts with local governments for the provision of services by  
15 the State pursuant to G.S. 153A-212.1 or G.S. 160A-289.1.

16 (a1) Repealed by Session Laws 2012-7, s. 9, effective June 7, 2012.

17 (b) The Director of the Administrative Office of the Courts may provide this assistance  
18 only upon a showing by the requesting district attorney ~~or the Chair of the North Carolina~~  
19 ~~Innocence Inquiry Commission, as appropriate, supported~~supported by facts, that:

20 (1) Criminal cases have accumulated on the dockets of the superior or district  
21 courts of the district beyond the capacity of the district attorney and the  
22 district attorney's full-time assistants to keep the dockets reasonably current;

23 (2) The overwhelming public interest warrants the use of additional resources  
24 for the speedy disposition of cases involving drug offenses, domestic  
25 violence, or other offenses involving a threat to public safety; or

26 (3) ~~There is an allegation of or evidence of prosecutorial misconduct in the case~~  
27 ~~that is the subject of the hearing under G.S. 15A-1469.~~There is a conflict of  
28 interest.

29 (c) The length of service and compensation of any temporary appointee or the terms of  
30 any contract entered into with local governments shall be fixed by Director of the  
31 Administrative Office of the Courts in each case. Nothing in this section shall be construed to  
32 obligate the General Assembly to make any appropriation to implement the provisions of this  
33 section or to obligate the Administrative Office of the Courts to provide the administrative  
34 costs of establishing or maintaining the positions or services provided for under this section.  
35 Further, nothing in this section shall be construed to obligate the Administrative Office of the  
36 Courts to maintain positions or services initially provided for under this section."

37 **SECTION 16.** G.S. 122C-268(g) reads as rewritten:

38 "(g) Hearings may be held in an appropriate room not used for treatment of clients at the  
39 facility in which the respondent is being treated if it is located within the judge's district court  
40 district as defined in G.S. 7A-133, by ~~interactive videoconferencing~~audio and video  
41 transmission between a treatment facility and a ~~courtroom~~courtroom in which the judge and  
42 the respondent can see and hear each other, or in the judge's chambers. A hearing may not be  
43 held in a regular courtroom, over objection of the respondent, if in the discretion of a judge a  
44 more suitable place is available. If the respondent has counsel, the respondent shall be allowed  
45 to communicate fully and confidentially with his attorney during the proceeding. Prior to the  
46 use of the audio and video transmission, the procedures and type of equipment for audio and  
47 video transmission shall be submitted to the Administrative Office of the Courts by the chief  
48 district court judge and approved by the Administrative Office of the Courts."

49 **SECTION 17.** G.S. 58-76-15 reads as rewritten:

50 "**§ 58-76-15. Summary remedy on official bond.**

1 When a sheriff, coroner, ~~clerk,~~ county or town treasurer, or other officer, collects or  
 2 receives any money by virtue or under color of his office, and on demand fails to pay the same  
 3 to the person entitled to require the payment thereof, the person thereby aggrieved may move  
 4 for judgment in the superior court against such officer and his sureties for any sum demanded;  
 5 and the court shall try the same and render judgment at the session when the motion shall be  
 6 made, but 10 days' notice in writing of the motion must have been previously given."

7 **SECTION 18.** G.S. 58-76-25 reads as rewritten:

8 "**§ 58-76-25. Evidence against principal admissible against sureties.**

9 In actions brought upon the official bonds of ~~clerks of courts,~~ sheriffs, coroners, or other  
 10 public officers, and also upon the bonds of executors, administrators, collectors or guardians,  
 11 when it may be necessary for the plaintiff to prove any default of the principal obligors, any  
 12 receipt or acknowledgment of such obligors, or any other matter or thing which by law would  
 13 be admissible and competent for or toward proving the same as against him, shall in like  
 14 manner be admissible and competent as presumptive evidence only against all or any of his  
 15 sureties who may be defendants with or without him in said actions."

16 **SECTION 19.** G.S. 1-110(b) reads as rewritten:

17 "(b) Whenever a motion to proceed as an indigent is filed pro se by an inmate in the  
 18 custody of the Division of Adult Correction of the Department of Public Safety, the motion to  
 19 proceed as an indigent and the proposed complaint shall be presented to any superior court  
 20 judge of the judicial district. This judge shall determine whether the complaint is frivolous. In  
 21 the discretion of the court, a frivolous case may be dismissed by order. The clerk of superior  
 22 court shall serve a copy of the order of dismissal upon the prison inmate. If the judge  
 23 determines that the inmate may proceed as an indigent, the clerk of superior court shall issue  
 24 service of process nunc pro tunc to the date of filing upon the defendant shall issue without  
 25 further order of the court. defendant."

26 **SECTION 20.** G.S. 1A-1, Rule 3, reads as rewritten:

27 "**Rule 3. Commencement of action.**

28 (a) A civil action is commenced by filing a complaint with the court. The clerk shall  
 29 enter the date of filing on the original complaint, and such entry shall be prima facie evidence  
 30 of the date of filing.

31 A civil action may also be commenced by the issuance of a summons when

- 32 (1) A person makes application to the court stating the nature and purpose of his  
 33 action and requesting permission to file his complaint within 20 days and
- 34 (2) The court makes an order stating the nature and purpose of the action and  
 35 granting the requested permission.

36 The summons and the court's order shall be served in accordance with the provisions of Rule 4.  
 37 When the complaint is filed it shall be served in accordance with the provisions of Rule 4 or by  
 38 registered mail if the plaintiff so elects. If the complaint is not filed within the period specified  
 39 in the clerk's order, the action shall abate.

40 (b) ~~The clerk shall maintain as prescribed by the Administrative Office of the Courts a~~  
 41 ~~separate index of all medical malpractice actions, as defined in G.S. 90-21.11. Upon the~~  
 42 ~~commencement of a medical malpractice action, the clerk shall provide a current copy of the~~  
 43 ~~index to the senior regular resident judge of the district in which the action is pending."~~

44 **SECTION 21.** G.S. 122C-264 reads as rewritten:

45 "**§ 122C-264. Duties of clerk of superior court and the district attorney.**

46 ...

47 (e) ~~The clerk of superior court of the county where outpatient commitment is to be~~  
 48 ~~supervised shall keep a separate list regarding outpatient commitment and shall prepare~~  
 49 ~~quarterly reports listing all active cases, the assigned supervisor, and the disposition of all~~  
 50 ~~hearings, supplemental hearings, and rehearings.~~

1 (f) The clerk of superior court of the county where inpatient commitment hearings and  
2 rehearings are held shall provide all notices, send all records and maintain a record of all  
3 proceedings as required by this Part; provided that if the respondent has been committed to a  
4 24-hour facility in a county other than his county of residence and the district court hearing is  
5 held in the county of the facility, the clerk of superior court in the county of the facility shall  
6 forward the record of the proceedings to the clerk of superior court in the county of  
7 respondent's residence, where they shall be maintained by receiving clerk."

8 **SECTION 22.** G.S. 14-208.12A(a) reads as rewritten:

9 "(a) Ten years from the date of initial county registration, a person required to register  
10 under this Part may petition the superior court to terminate the 30-year registration requirement  
11 if the person has not been convicted of a subsequent offense requiring registration under this  
12 Article.

13 If the reportable conviction is for an offense that occurred in North Carolina, the petition  
14 shall be filed in the district where the person was convicted of the offense.

15 If the reportable conviction is for an offense that occurred in another state, the petition shall  
16 be filed in the district where the person resides. A person who petitions to terminate the  
17 registration requirement for a reportable conviction that is an out-of-state offense shall also do  
18 the following: (i) provide written notice to the sheriff of the county where the person was  
19 convicted that the person is petitioning the court to terminate the registration requirement and  
20 (ii) include with the petition at the time of its filing, an affidavit, signed by the petitioner, that  
21 verifies that the petitioner has notified the sheriff of the county where the person was convicted  
22 of the petition and that provides the mailing address and contact information for that sheriff.

23 Regardless of where the offense occurred, if the defendant was convicted of a reportable  
24 offense in any federal court, the conviction will be treated as an out-of-state offense for the  
25 purposes of this section."

26 **SECTION 23.** G.S. 7B-2901(a) reads as rewritten:

27 "(a) The clerk shall maintain a complete record of all juvenile cases filed in the clerk's  
28 office alleging abuse, neglect, or dependency. The records shall be withheld from public  
29 inspection and, except as provided in this subsection, may be examined only by order of the  
30 court. The record shall include the summons, petition, custody order, court order, written  
31 motions, the electronic or mechanical recording of the hearing, and other papers filed in the  
32 proceeding. The recording of the hearing shall be reduced to a written transcript only when  
33 notice of appeal has been timely given. After the time for appeal has expired with no appeal  
34 having been filed, the recording of the hearing may be erased or destroyed upon the written  
35 order of the ~~court~~ court or in accordance with a retention schedule approved by the Director of  
36 the Administrative Office of the Courts and the Department of Natural and Cultural Resources  
37 under G.S. 121-5(c).

38 The following persons may examine the juvenile's record maintained pursuant to this  
39 subsection and obtain copies of written parts of the record without an order of the court:

- 40 (1) The person named in the petition as the juvenile;
- 41 (2) The guardian ad litem;
- 42 (3) The county department of social services; and
- 43 (4) The juvenile's parent, guardian, or custodian, or the attorney for the juvenile  
44 or the juvenile's parent, guardian, or custodian."

45 **SECTION 24.** G.S. 7B-3000(d) reads as rewritten:

46 "(d) Any portion of a juvenile's record consisting of an electronic or mechanical  
47 recording of a hearing shall be transcribed only when notice of appeal has been timely given  
48 and shall be copied electronically or mechanically, only by order of the court. After the time for  
49 appeal has expired with no appeal having been filed, the court may enter a written order  
50 directing the clerk to destroy the recording of the ~~hearing~~ hearing, or the recording may be  
51 destroyed in accordance with a retention schedule approved by the Director of the

1 Administrative Office of the Courts and the Department of Natural and Cultural Resources  
2 under G.S.121-5(c)."

3 **SECTION 25.** G.S. 7B-603(b1) reads as rewritten:

4 "(b1) The court may require payment of the fee for an attorney appointed pursuant to  
5 G.S. 7B-602 or ~~G.S. 7B-1101~~G.S. 7B-1101.1 from the respondent. In no event shall the  
6 respondent be required to pay the fees for a court-appointed attorney in an abuse, neglect, or  
7 dependency proceeding unless the juvenile has been adjudicated to be abused, neglected, or  
8 dependent or, in a proceeding to terminate parental rights, unless the respondent's rights have  
9 been terminated. At the dispositional hearing or other appropriate hearing, the court shall make  
10 a determination whether the respondent should be held responsible for reimbursing the State for  
11 the respondent's attorneys' fees. This determination shall include the respondent's financial  
12 ability to pay.

13 If the court determines that the respondent is responsible for reimbursing the State for the  
14 respondent's attorneys' fees, the court shall so order. If the respondent does not comply with the  
15 order at the time of disposition, the court shall file a judgment against the respondent for the  
16 amount due the State."

17 **SECTION 26.** G.S. 84-2 reads as rewritten:

18 **"§ 84-2. Persons disqualified.**

19 No justice, judge, magistrate, full-time district attorney, full-time assistant district attorney,  
20 full-time public defender, full-time assistant public defender, clerk, deputy or assistant clerk of  
21 the General Court of Justice, register of deeds, deputy or assistant register of deeds, sheriff or  
22 deputy sheriff shall engage in the private practice of law. As used in this section, the private  
23 practice of law shall not include the performance of pro bono legal services by a lawyer, other  
24 than a justice or judge of the general court of justice, who is otherwise disqualified by this  
25 section if the pro bono services are sponsored or organized by a professional association of  
26 lawyers or a nonprofit corporation rendering legal services pursuant to G.S. 84-5.1. Persons  
27 violating this provision shall be guilty of a Class 3 misdemeanor and only fined not less than  
28 two hundred dollars (\$200.00)."

29 **SECTION 26.3.** G.S. 132-1.10 reads as rewritten:

30 **"§ 132-1.10. Social security numbers and other personal identifying information.**

31 ...  
32 (f1) Without a request made pursuant to subsection (f) of this section, a register of deeds  
33 ~~or deeds, clerk of court, or the Administrative Office of the Courts~~ may remove from an  
34 ~~image images or copy copies of an publicly accessible official record placed on a register of~~  
35 ~~deeds' or clerk of court's Internet Web site available to the general public, or placed on an~~  
36 ~~Internet Web site available to the general public used by a register of deeds or clerk of court to~~  
37 ~~display public records, a person's social security or drivers license number records any of the~~  
38 identifying and financial information listed in subsection (f) of this section that is contained in  
39 that official record. Registers of deeds and deeds, clerks of court, and the Administrative  
40 Office of the Courts may apply optical character recognition technology or other reasonably  
41 available technology to publicly accessible official records placed on Internet Web sites  
42 available to the general public in order to, in good faith, identify and redact social security and  
43 drivers license numbers any of the identifying and financial information listed in subsection (f)  
44 of this section. Notwithstanding the foregoing, law enforcement personnel, judicial officials,  
45 and parties to a case and their counsel shall be entitled to access, inspect, and copy unredacted  
46 records.

47 ...."

48 **SECTION 26.6.** In order to make North Carolina a leading jurisdiction for the  
49 resolution of business, commercial, financial, and other legal disputes, the Director of the  
50 Administrative Office of the Courts, in consultation with the Chief Justice of the Supreme  
51 Court, shall submit to the Speaker of the House of Representatives and the President Pro

1 Tempore of the Senate a report recommending whether and how to establish an arbitration  
2 program within the North Carolina Business Court, including how parties may make  
3 themselves subject to the jurisdiction of said program, required qualifications and trainings for  
4 arbitrators, and requirements for persons who may represent parties in arbitration proceedings  
5 before the Business Court. Such recommendations may include suggestions on the form of  
6 appeal for both binding and nonbinding arbitrations in cases arbitrated under such a proposal.  
7 The Director of the Administrative Office of the Courts or through the North Carolina Dispute  
8 Resolution Commission may also include recommendations for establishing a mediation  
9 program operated by the Business Court, including suggestions as to how parties may make  
10 themselves subject to the jurisdiction of said program, required qualifications for mediators,  
11 and for persons who may represent parties in mediation proceedings.

12 **SECTION 26.7.(a)** G.S. 7A-38.1 reads as rewritten:

13 **"§ 7A-38.1. Mediated settlement conferences in superior court civil actions.**

14 ...

15 (l) Inadmissibility of negotiations. – Evidence of statements made and conduct  
16 occurring in a mediated settlement conference or other settlement proceeding conducted under  
17 this section, whether attributable to a party, the mediator, other neutral, or a neutral observer  
18 present at the settlement proceeding, shall not be subject to discovery and shall be inadmissible  
19 in any proceeding in the action or other civil actions on the same claim, except:

- 20 (1) In proceedings for sanctions under this section;  
21 (2) In proceedings to enforce or rescind a settlement of the action;  
22 (3) In disciplinary ~~proceedings~~ hearings before the State Bar or ~~any agency~~  
23 ~~established to enforce standards of conduct for mediators or other~~  
24 ~~neutrals;~~ the Dispute Resolution Commission; or  
25 (4) In proceedings to enforce laws concerning juvenile or elder abuse.

26 As used in this section, the term "neutral observer" includes persons seeking mediator  
27 certification, persons studying dispute resolution processes, and persons acting as interpreters.

28 No settlement agreement to resolve any or all issues reached at the proceeding conducted  
29 under this subsection or during its recesses shall be enforceable unless it has been reduced to  
30 writing and signed by the parties against whom enforcement is sought. No evidence otherwise  
31 discoverable shall be inadmissible merely because it is presented or discussed in a mediated  
32 settlement conference or other settlement proceeding.

33 No mediator, other neutral, or neutral observer present at a settlement proceeding shall be  
34 compelled to testify or produce evidence concerning statements made and conduct occurring in  
35 anticipation of, during, or as a follow-up to a mediated settlement conference or other  
36 settlement proceeding pursuant to this section in any civil proceeding for any purpose,  
37 including proceedings to enforce or rescind a settlement of the action, except to attest to the  
38 signing of any agreements, and except proceedings for sanctions under this section, disciplinary  
39 hearings before the State Bar or ~~any agency established to enforce standards of conduct for~~  
40 ~~mediators or other neutrals;~~ the Dispute Resolution Commission, and proceedings to enforce  
41 laws concerning juvenile or elder abuse.

42 ...."

43 **SECTION 26.7.(b)** G.S. 7A-38.4A reads as rewritten:

44 **"§ 7A-38.4A. Settlement procedures in district court actions.**

45 ...

46 (j) Evidence of statements made and conduct occurring in a mediated settlement  
47 conference or other settlement proceeding conducted under this section, whether attributable to  
48 a party, the mediator, other neutral, or a neutral observer present at the settlement proceeding,  
49 shall not be subject to discovery and shall be inadmissible in any proceeding in the action or  
50 other civil actions on the same claim, except:

- 51 (1) In proceedings for sanctions under this section;

- 1 (2) In proceedings to enforce or rescind a settlement of the action;  
 2 (3) In disciplinary proceedings before the State Bar or ~~any agency established to~~  
 3 ~~enforce standards of conduct for mediators or other neutrals;~~the Dispute  
 4 Resolution Commission; or  
 5 (4) In proceedings to enforce laws concerning juvenile or elder abuse.

6 As used in this subsection, the term "neutral observer" includes persons seeking mediator  
 7 certification, persons studying dispute resolution processes, and persons acting as interpreters.

8 No settlement agreement to resolve any or all issues reached at the proceeding conducted  
 9 under this section or during its recesses shall be enforceable unless it has been reduced to  
 10 writing and signed by the parties against whom enforcement is sought and in all other respects  
 11 complies with the requirements of Chapter 50 of the General Statutes. No evidence otherwise  
 12 discoverable shall be inadmissible merely because it is presented or discussed in a settlement  
 13 proceeding.

14 No mediator, other neutral, or neutral observer present at a settlement proceeding under this  
 15 section, shall be compelled to testify or produce evidence concerning statements made and  
 16 conduct occurring in anticipation of, during, or as a follow-up to a mediated settlement  
 17 conference or other settlement proceeding pursuant to this section in any civil proceeding for  
 18 any purpose, including proceedings to enforce or rescind a settlement of the action, except to  
 19 attest to the signing of any agreements, and except proceedings for sanctions under this section,  
 20 disciplinary hearings before the State Bar or ~~any agency established to enforce standards of~~  
 21 ~~conduct for mediators or other neutrals;~~the Dispute Resolution Commission, and proceedings to  
 22 enforce laws concerning juvenile or elder abuse.

23 ...."

24 **SECTION 26.7.(c)** G.S. 7A-38.3B reads as rewritten:

25 **"§ 7A-38.3B. Mediation in matters within the jurisdiction of the clerk of superior court.**

26 ...

27 (g) Inadmissibility of Negotiations. – Evidence of statements made or conduct  
 28 occurring during a mediation conducted pursuant to this section, whether attributable to any  
 29 participant, mediator, expert, or neutral observer, shall not be subject to discovery and shall be  
 30 inadmissible in any proceeding in the matter or other civil actions on the same claim, except in:

- 31 (1) Proceedings for sanctions pursuant to this section;  
 32 (2) Proceedings to enforce or rescind a written and signed settlement agreement;  
 33 (3) Incompetency, guardianship, or estate proceedings in which a mediated  
 34 agreement is presented to the clerk;  
 35 (4) Disciplinary ~~proceedings-hearings~~ before the ~~North Carolina State Bar or~~  
 36 ~~any agency established to enforce standards of conduct for mediators or~~  
 37 ~~other neutrals;~~the Dispute Resolution Commission; or  
 38 (5) Proceedings for abuse, neglect, or dependency of a juvenile, or for abuse,  
 39 neglect, or exploitation of an adult, for which there is a duty to report under  
 40 G.S. 7B-301 and Article 6 of Chapter 108A of the General Statutes,  
 41 respectively.

42 No evidence otherwise discoverable shall be inadmissible merely because it is presented or  
 43 discussed in mediation.

44 As used in this section, the term "neutral observer" includes persons seeking mediator  
 45 certification, persons studying dispute resolution processes, and persons acting as interpreters.

46 (h) Testimony. – No mediator or neutral observer shall be compelled to testify or  
 47 produce evidence concerning statements made and conduct occurring in anticipation of, during,  
 48 or as a follow-up to the mediation in any civil proceeding for any purpose, including  
 49 proceedings to enforce or rescind a settlement of the matter except to attest to the signing of  
 50 any agreements reached in mediation, and except in:

- 51 (1) Proceedings for sanctions pursuant to this section;

- 1           (2)    Disciplinary ~~proceedings~~ hearings before the North Carolina State Bar or  
2            ~~any agency established to enforce standards of conduct for mediators or~~  
3            ~~other neutrals;~~ the Dispute Resolution Commission; or  
4           (3)    Proceedings for abuse, neglect, or dependency of a juvenile, or for abuse,  
5            neglect, or exploitation of an adult, for which there is a duty to report under  
6            G.S. 7B-301 and Article 6 of Chapter 108A of the General Statutes,  
7            respectively.

8            ...."

9            **SECTION 26.7.(d)** G.S. 7A-38.3D reads as rewritten:

10          "**§ 7A-38.3D. Mediation in matters within the jurisdiction of the district criminal courts.**

11          ...

12          (k)    Testimony. – No mediator or neutral observer present at the mediation shall be  
13          compelled to testify or produce evidence concerning statements made and conduct occurring in  
14          or related to a mediation conducted under this section in any proceeding in the same action for  
15          any purpose, except in:

- 16           (1)    Proceedings for abuse, neglect, or dependency of a juvenile, or for abuse,  
17            neglect, or exploitation of an adult, for which there is a duty to report under  
18            G.S. 7B-301 and Article 6 of Chapter 108A of the General Statutes,  
19            respectively.  
20           (2)    Disciplinary ~~proceedings~~ hearings before the North Carolina State Bar or  
21            ~~any agency established to enforce standards of conduct for mediators~~ the  
22            Dispute Resolution Commission.  
23           (3)    Proceedings in which the mediator acts as a witness pursuant to subsection  
24            (j) of this section.  
25           (4)    Trials of a felony, during which a presiding judge may compel the disclosure  
26            of any evidence arising out of the mediation, excluding a statement made by  
27            the defendant in the action under mediation, if it is to be introduced in the  
28            trial or disposition of the felony and the judge determines that the  
29            introduction of the evidence is necessary to the proper administration of  
30            justice and the evidence cannot be obtained from any other source.

31          ...."

32          **SECTION 26.8.** G.S. 7A-38.2 reads as rewritten:

33          "**§ 7A-38.2. Regulation of mediators and other neutrals.**

34          (a)    The Supreme Court may adopt standards of conduct for mediators and other neutrals  
35          who are certified or otherwise qualified pursuant to G.S. 7A-38.1, 7A-38.3, 7A-38.3B,  
36          7A-38.3D, 7A-38.3E, and 7A-38.4A, or who participate in proceedings conducted pursuant to  
37          those sections. The standards may also regulate mediator and other neutral training programs.  
38          The Supreme Court may adopt procedures for the enforcement of those standards.

39          (b)    The administration of the certification and qualification of mediators and other  
40          neutrals, and mediator and other neutral training programs shall be conducted through the  
41          Dispute Resolution Commission, established under the Judicial Department. The Supreme  
42          Court shall adopt rules and regulations governing the operation of the Commission. The  
43          Commission shall exercise all of its duties independently of the Director of the Administrative  
44          Office of the Courts, except that the Commission shall consult with the Director regarding  
45          personnel and budgeting matters.

46          (c)    The Dispute Resolution Commission shall consist of ~~16~~ 17 members: five judges  
47          appointed by the Chief Justice of the Supreme Court, at least two of whom shall be active  
48          superior court judges, and at least two of whom shall be active district court judges; one clerk  
49          of superior court appointed by the Chief Justice of the Supreme Court; two mediators certified  
50          to conduct superior court mediated settlement conferences and two mediators certified to  
51          conduct equitable distribution mediated settlement conferences appointed by the Chief Justice

1 of the Supreme Court; one certified district criminal court mediator who is a representative of a  
2 community mediation center appointed by the Chief Justice of the Supreme Court; a district  
3 attorney appointed by the Chief Justice of the Supreme Court; two practicing attorneys who are  
4 not certified as mediators appointed by the President of the North Carolina State Bar, one of  
5 whom shall be a family law specialist; and three citizens knowledgeable about mediation, one  
6 of whom shall be appointed by the Governor, one by the General Assembly upon the  
7 recommendation of the Speaker of the House of Representatives in accordance with  
8 G.S. 120-121, and one by the General Assembly upon the recommendation of the President Pro  
9 Tempore of the Senate in accordance with G.S. 120-121. ~~Members shall initially serve~~  
10 ~~four year terms, except that one judge, one mediator, one attorney, and the citizen member~~  
11 ~~appointed by the Governor, shall be appointed for an initial term of two years. Incumbent~~  
12 ~~members as of September 30, 1998 shall serve the remainder of the terms to which they were~~  
13 ~~appointed. Members appointed to newly created membership positions effective October 1,~~  
14 ~~1998 shall serve initial terms of two years. Thereafter, Commission members shall serve~~  
15 ~~three-year terms and shall be ineligible to serve more than two consecutive terms. Members~~  
16 ~~appointed to fill unexpired terms shall be eligible to serve two consecutive terms upon the~~  
17 ~~expiration of the unexpired term. The Chief Justice shall designate one of the members to serve~~  
18 ~~as chair for a two-year term. Members of the Commission shall be compensated pursuant to~~  
19 ~~G.S. 138-5.~~

20 Vacancies shall be filled for unexpired terms and full terms in the same manner as  
21 incumbents were appointed. Appointing authorities may receive and consider suggestions and  
22 recommendations of persons for appointment from the Dispute Resolution Commission, the  
23 Family Law, Litigation, and Dispute Resolution Sections of the North Carolina Bar  
24 Association, the North Carolina Association of Professional Family Mediators, the North  
25 Carolina Conference of Clerks of Superior Court, the North Carolina Conference of Court  
26 Administrators, the Mediation Network of North Carolina, the Dispute Resolution Committee  
27 of the Supreme Court, the Conference of Chief District Court Judges, the Conference of  
28 Superior Court Judges, the Director of the Administrative Office of the Courts, and the Child  
29 Custody Mediation Advisory Committee of the Administrative Office of the Courts.

30 (d) An administrative fee, not to exceed two hundred dollars ~~(\$200.00), (\$200.00) per~~  
31 ~~certification, may be charged by the Administrative Office of the Courts~~ Dispute Resolution  
32 Commission to applicants for certification and annual renewal of certification for mediators and  
33 mediation training programs operating under this Article. The fees collected ~~may be used by~~  
34 ~~the Director of the Administrative Office of the Courts to establish and maintain the operations~~  
35 ~~of the Commission and its staff. Notwithstanding the provisions of G.S. 143C-1-2(b),~~  
36 ~~certification and renewal fees collected by the Dispute Resolution Commission are~~  
37 ~~nonreverting and are only to be used at the direction of the Commission.~~ shall be deposited in a  
38 Dispute Resolution Fund. The Fund shall be established within the Judicial Department as a  
39 nonreverting, interest-bearing special revenue account. Accordingly, interest and other  
40 investment income earned by the Fund shall be credited to it. All moneys collected through the  
41 fees authorized and assessed under this statute shall be remitted to the Fund. Moneys in the  
42 Fund shall be used to support the operations of the Commission and used at the direction of the  
43 Commission.

44 (e) The chair of the Commission may employ an executive ~~secretary~~ director and other  
45 staff as necessary to assist the Commission in carrying out its duties. The chair may also  
46 employ special counsel or call upon the Attorney General to furnish counsel to assist the  
47 Commission in conducting hearings pursuant to its certification or qualification and regulatory  
48 responsibilities. Special counsel or counsel furnished by the Attorney General may present the  
49 evidence in support of a denial or revocation of certification or qualification or a complaint  
50 against a mediator, other neutral, training program, or trainers or staff affiliated with a program.



1 Special counsel or counsel furnished by the Attorney General may also represent the  
2 Commission when its final determinations are the subject of an appeal.

3 (f) In connection with any investigation or hearing conducted pursuant to an  
4 application for certification or qualification of any mediator, other neutral, or training program,  
5 or conducted pursuant to any disciplinary matter, the chair of the Dispute Resolution  
6 Commission or his/her designee, may:

7 (1) Administer oaths and affirmations;

8 (2) Sign and issue subpoenas in the name of the Dispute Resolution  
9 Commission or direct its executive secretary to issue such subpoenas on its  
10 behalf requiring attendance and the giving of testimony by witnesses and the  
11 production of books, papers, and other documentary evidence;

12 (3) Apply to the General Court of Justice, Superior Court Division, for any order  
13 necessary to enforce the ~~power~~ powers conferred in this ~~section~~ section,  
14 including an order for injunctive relief pursuant to G.S. 1A-1, Rule 65, when  
15 a certified mediator's conduct necessitates prompt action.

16 (g) The General Court of Justice, Superior Court Division, may enforce subpoenas  
17 issued in the name of the Dispute Resolution Commission and requiring attendance and the  
18 giving of testimony by witnesses and the production of books, papers, and other documentary  
19 evidence.

20 (h) The Commission shall keep confidential all information in its files pertaining to the  
21 initial and renewal applications for certification of mediators, the qualification of other neutrals,  
22 and the initial and renewal applications for certification or qualification of training programs  
23 for mediators or other neutrals, and the renewal of such certifications and qualifications.  
24 ~~However, disciplinary matters reported by an applicant for certification or qualification, a~~  
25 ~~mediator, other neutral, trainer, or manager shall be treated as a complaint as set forth below.~~  
26 except that in the case of an initial or renewal application for certification in the District  
27 Criminal Court Mediation Program, Commission staff shall notify the Executive Director of the  
28 Mediation Network of North Carolina, Inc., and the Executive Director of the community  
29 mediation center that is sponsoring the application of any matter regarding the qualifications,  
30 character, conduct, or fitness to practice of the applicant. The Commission shall also keep  
31 confidential the identity of those persons requesting informal guidance or the issuance of  
32 formal advisory opinions from the Commission or its staff.

33 ~~Unless an applicant, mediator, other neutral, or training program trainer or manager~~  
34 ~~requests otherwise, all~~ All information in the Commission's disciplinary files pertaining to a  
35 complaint regarding the ~~conduct~~ moral character, conduct, or fitness to practice of an applicant,  
36 a mediator, other neutral, trainer, or ~~manager~~ other training program personnel shall remain  
37 ~~confidential~~ confidential, unless the subject of the complaint requests otherwise, until such time  
38 as ~~a~~ all of the following conditions are met:

39 (1) ~~A~~ preliminary investigation is ~~completed and a~~ completed.

40 (2) ~~A~~ determination is made that probable cause exists to believe that the  
41 applicant, ~~words or actions of the~~ mediator, neutral, trainer, or ~~manager's~~  
42 ~~words or actions:~~ other training program personnel:

43 (1)a. Violate standards for the conduct of mediators or other neutrals;

44 (2)b. Violate other standards of professional conduct to which the  
45 applicant, ~~mediator, neutral, trainer, or manager~~ other training  
46 program personnel is subject;

47 (3)c. Violate program ~~rules;~~ rules or applicable governing law; or

48 (4)d. Consist of conduct or actions that are inconsistent with good moral  
49 character or reflect a lack of fitness to serve as a mediator, other  
50 neutral, trainer, or ~~manager~~ other training program personnel.

51 (3) One of the following events has occurred:

- 1           a.     The respondent does not appeal the determination before the time  
2                 permitted for an appeal has expired.  
3           b.     Upon a timely filed appeal, the Commission holds a hearing and  
4                 issues a decision affirming the determination.

5           Upon a finding of probable cause under this subsection against a mediator arising out of a  
6     mediated settlement conference, Commission staff shall provide notice of the finding of  
7     probable cause to any mediation program or agency under whose auspices the mediated  
8     settlement conference was conducted. Commission shall also make reasonable efforts to notify  
9     any such agency or program of any public sanction imposed by the Commission pursuant to  
10    Supreme Court rules governing the operation of the Commission against a certified mediator  
11    who serves as a mediator for any such agency or program. Commission staff and members of  
12    the Grievance and Disciplinary Committee of the Commission may share information with  
13    other committee chairs or committees of the Commission when relevant to a review of any  
14    matter before such other committee.

15         The Commission may publish names, contact information, and biographical information for  
16     mediators, neutrals, and training programs that have been certified or qualified.

17         ~~(i) The Commission shall conduct its initial review of all applications for certification~~  
18     ~~and certification renewal or qualification and qualification renewal in private. The Commission~~  
19     ~~shall also conduct its initial review of complaints regarding the qualifications of any certified~~  
20     ~~mediator, other neutral, or training program, but not involving issues of ethics or conduct, in~~  
21     ~~private. Appeals of denials of applications for certification, qualification, or renewal and~~  
22     ~~appeals of revocations of certification or qualification for reasons that do not relate to ethics or~~  
23     ~~conduct, shall be heard by the Commission in private unless the applicant, certified mediator,~~  
24     ~~qualified neutral, or certified or qualified training program requests a public hearing.~~All appeals  
25     from denials of initial applications for mediator certification and initial applications for  
26     mediator training program certification shall be held in private, unless the applicant requests a  
27     public hearing. Appeals from a denial of a mediator or mediator training program application  
28     for certification renewal or reinstatement that relate to moral character, conduct, or fitness to  
29     practice shall be open to the public, except that for good cause shown, the presiding officer may  
30     exclude from the hearing room all persons except the parties, counsel, and those engaged in the  
31     hearing. All other appeals from denials of a mediator training program's application for  
32     certification renewal shall be held in private, unless the applicant requests a public hearing.

33         ~~(j) The Commission shall conduct in private its initial review of all matters relating to~~  
34     ~~the ethics or conduct of an applicant for certification, qualification, or renewal of certification~~  
35     ~~or qualification or the ethics or conduct of a mediator, other neutral, trainer, or training program~~  
36     ~~manager. If an applicant appeals the Commission's initial determination that sanctions be~~  
37     ~~imposed, the hearing of such appeal by the Commission.~~Appeals from the Commission's initial  
38     determination after review and investigation of a complaint that probable cause exists to  
39     believe that the conduct of a mediator, neutral, trainer, or other training program personnel  
40     violated a provision set out in subdivision (2) of subsection (h) of this section shall be open to  
41     the public, except that for good cause shown, the presiding officer may exclude from the  
42     hearing room all persons except the parties, counsel, and those engaged in the hearing. No  
43     hearing shall be closed to the public over the objection of an applicant, the mediator, other  
44     neutral, trainer, or training program manager-personnel that is the subject of the complaint.

45         (k) Appeals of final determinations by the Commission to deny certification or renewal  
46     of certification, to revoke certification, or to discipline a mediator, trainer, or other training  
47     program ~~manager-personnel~~ shall be filed in the General Court of Justice, Wake County  
48     Superior Court Division. Notice of appeal shall be filed within 30 days of the date of the  
49     Commission's decision.

50         (l) The Commission may issue a cease and desist letter to any individual who falsely  
51     represents himself or herself to the public as certified or as eligible to be certified pursuant to

1 this section, or who uses any words, letters, titles, signs, cards, Web site postings, or  
2 advertisements that expressly or implicitly convey such misrepresentation to the public. If the  
3 individual continues to make such false representations after receipt of the cease and desist  
4 letter, the Commission, through its Chair, may petition the Superior Court of Wake County for  
5 an injunction restraining the individual's conduct and for any other relief that the court deems  
6 appropriate."

7           **SECTION 27.** Section 22 of this act is effective when it becomes law and applies  
8 to petitions filed on or after that date. The remainder of this act is effective when it becomes  
9 law.