



HOUSE BILL 236: NCAOC Omnibus Bill.

2017-2018 General Assembly

Committee:		Date:	August 15, 2017
Introduced by:		Prepared by:	Bill Patterson Staff Attorney
Analysis of:	S.L. 2017-158		

OVERVIEW: *S.L. 2017-158 makes numerous changes to law governing the administration of the General Courts of Justice.*

In addition to other technical and clarifying changes, the act: validates documents that are filed with a missing date stamp; provides for removal of disbarred or suspended attorneys serving as estate administrators or guardians; simplifies the process of appointing interim guardians in incompetency proceedings; clarifies the rules for filing inventory, accounting, and tax returns; permits clerks of court to hear certain civil contempt cases; permits the appointment of an assistant to a district attorney who has a conflict of interest in a criminal case; streamlines the process of issuing service of process on behalf of indigent inmates; clarifies the procedure for termination of sex offender registration resulting from a conviction in federal court; authorizes establishment of a records retention schedule for audio recordings in cases involving juveniles; permits various State officials to perform pro bono legal work; authorizes the Administrative Office of the Courts (AOC) to redact identifiable or financial information from images or copies of publicly accessible official records; directs the AOC to report its recommendations to the General Assembly on the establishment of an arbitration and mediation program for the North Carolina Business Court; adds a district attorney member to the Dispute Resolution Commission (DRC), clarifies the uses to which fees collected by the DRC may be used; modifies DRC disciplinary procedures for mediators and mediator training programs; and makes other technical and clarifying changes.

The act became effective July 21, 2017; the act's provisions relating to petitions to terminate sex offender registration apply to petitions filed on or after that date.

BILL ANALYSIS:

Section 1 makes technical corrections to the Rules of Civil Procedure regarding the service of pleadings and other papers and clarifies that failure to date stamp a filed document will not affect its validity provided that the clerk enters it as being effective *nunc pro tunc* after giving adequate notice to the parties affected. *Prior to this change, there was no law establishing the validity or lack of validity of filed documents lacking a date stamp.*

Section 2 makes a technical change to Rule 58 of the North Carolina Rules of Civil Procedure governing entry of judgments by adding a cross-reference to Rule 5.

Section 3 summarily revokes letters of administration, letters of collection, and letters testamentary issued to an attorney who is later enjoined, suspended, or disbarred for professional misconduct. *Prior to this change, there was no summary procedure to revoke, without a hearing, the attorney's authority under these documents in this situation.*

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578

House Bill 236

Page 2

Section 4 makes technical changes to G.S. 35A-1290, and clarifies that the clerk of court has a duty to remove an attorney appointed as a guardian or to take other action sufficient to protect the ward's interests if the attorney is enjoined, suspended, or disbarred for professional misconduct.

Section 5 allows a child's \$5,000 support allowance from a deceased parent's estate to be paid either to the child's general guardian or to the guardian of the child's estate. *Prior to this change, the payment could only be made to the child's general guardian.*

Section 6 allows a guardian ad litem to petition for appointment of an interim guardian in an incompetency proceeding, and requires the petitioner, the respondent, and the respondent's counsel or guardian ad litem to be served with notice of the hearing on the petition, which must be held within 15 days of service on the respondent. *Prior to this change, a guardian ad litem was not authorized to file a petition for appointment of an interim guardian.*

Section 7 provides that if a clerk determines that it is in the best interest of the respondent in an incompetency proceeding, the clerk can appoint an interim guardian even if no party has moved for the appointment. *Prior to this change, the clerk was authorized to appoint an interim guardian only upon motion of a party to the proceeding.*

Section 8 allows the clerk to extend the time within which a personal representative or collector must file an inventory of a decedent's estate. *Prior to this change, there was no statutory authority to extend this deadline.*

Section 9 clarifies that when a fiscal year is not selected by the personal representative or collector, the initial annual estate accounting must be filed within 30 days of the first anniversary of the qualification of the personal representative or collector.

Section 10 allows personal representatives or collectors of decedents who die before January 1, 2013, to certify in the final accounting that no estate or inheritance tax return was required to be filed by the estate. The certification must include a list of all the decedent's property, including any property transferred within three years of the decedent's death. Once accepted by the clerk, this filing is prima facie evidence the property is free from estate or inheritance tax. Section 10 also requires personal representatives or collectors to produce vouchers or other verified proof of all payments made. *Prior to this change, there was no statutory provision for this certification*

Section 11 allows civil contempt proceedings to be heard in front of the clerk of court when the clerk has original subject matter jurisdiction and issued the order alleged to have been disobeyed. *Prior to this change, clerks did not have authority to hear civil contempt matters unless the General Statutes specifically provided for it.*

Section 12 was deleted prior to enactment.

Section 13 makes technical corrections governing court costs in the administration of estates that do not affect any fee amounts.

Section 14 authorizes the AOC Director to assign a district attorney from another district, appoint a private attorney, or enter into contracts with local governments to provide assistance to a district attorney if there is a conflict of interest in a given matter, but not when there is evidence of prosecutorial misconduct. *Prior to this change, the AOC Director was granted this authority only when there was evidence of prosecutorial misconduct, and not when there was a conflict of interest.*

Section 15 was deleted prior to enactment.

Section 16 clarifies the rules governing the use of videoconferencing in inpatient commitment hearings.

House Bill 236

Page 3

Sections 17 and 18 delete statutory references to clerks of court that are not obsolete because clerks are no longer county employees.

Section 19 allows the issuance of service of process against a defendant to relate back to the date an action was filed when the plaintiff is an inmate in DPS custody who has been granted permission to proceed as an indigent.

Sections 20 and 21 repeal obsolete requirements assigned to the clerk of court.

Section 22 provides that a federal court sex offense conviction is treated the same as an out-of-state offense for purposes of the procedure governing petitions to terminate sex offender registration.

Sections 23 and 24 permit the erasure of recordings of juvenile delinquency, abuse, neglect, or dependency proceedings if done in accordance with a records retention schedule approved by the AOC and Department of Natural and Cultural Resources.

Section 25 corrects a statutory cross-reference.

Section 26 provides that the prohibition against the private practice of law otherwise applicable to magistrates, full-time district attorneys, full-time assistant district attorneys, full-time public defenders, full-time assistant public defenders, clerks, deputy or assistant clerks of court, registers of deeds, deputy or assistant registers of deeds, and sheriffs or deputy sheriffs, does not apply to pro bono legal services sponsored or organized by a professional association of lawyers or a nonprofit corporation that is statutorily permitted to render legal services.

Section 26.3 authorizes the AOC to redact identifying and financial information from images or copies of publicly accessible official records.

Section 26.6 directs the AOC to submit to the Speaker and President Pro Tem a report recommending whether and how to establish arbitration and mediation programs in the North Carolina Business Court.

Section 26.7 makes technical and conforming changes to the statute governing superior court mediated settlement conferences.

Section 26.8:

- Adds a district attorney appointed by the Chief Justice of the Supreme Court as a new member of the DRC, which now comprises 17 members.
- Provides that fees collected by the DRC for certification of mediators and mediator training programs shall be deposited into a non-reverting fund within the Judicial Department and shall be used exclusively to support DRC operations.
- Modifies DRC procedures governing hearings on applications for mediator and mediator training program certification, appeals from Commission decisions denying certification, and notification of third-parties concerning DRC certification denials.
- Authorizes the Commission to issue cease and desist letters to persons falsely representing their certification or eligibility to be certified by the Commission.

EFFECTIVE DATE: The act became effective on July, 21, 2017. The provisions relating to sex offender registration apply to petitions to terminate registration filed on or after that date.

Jason Moran-Bates, counsel to House Judiciary Committee, substantially contributed to this summary.