



HOUSE BILL 236: NCAOC Omnibus Bill.

**This Bill Analysis
reflects the contents
of the bill as it was
presented in
committee.**

2017-2018 General Assembly

Committee:	Senate Judiciary. If favorable, re-refer to Rules and Operations of the Senate	Date:	June 9, 2017
Introduced by:	Rep. R. Turner	Prepared by:	Bill Patterson
Analysis of:	Third Edition		Committee Co-Counsel

OVERVIEW: *House Bill 236 would make numerous technical corrections to several statutes dealing with the administration of the General Courts of Justice. It would also:*

- *Allow documents filed with the court to remain valid, even if a date stamp is not attached.*
- *Allow summary removal of disbarred or suspended attorneys serving as estate administrators or guardians.*
- *Provide an easier process for the appointment of an interim guardian in incompetency proceedings.*
- *Clarify the rules for filing estate inventory, accountings, and tax returns.*
- *Permit certain civil contempt cases to be heard in front of the clerk of court.*
- *Allow issuance of arrest warrant for individuals who fail to show at civil contempt hearings.*
- *Permit an assistant to a district attorney to be appointed in cases where the district attorney has a conflict of interest.*
- *Streamline the process of issuing service of process on behalf of indigent inmates,*
- *Clarify registration rules for those convicted of a sex offense in a federal court,*
- *Clarify videoconferencing rules for inpatient commitment proceedings,*
- *Permit the Administrative Office of the Courts (AOC) and Department of Natural and Cultural Resources to establish a records retention schedule for audio recordings in cases involving juveniles, and*
- *Permit various state officials to perform pro bono legal work, notwithstanding prohibitions on the private practice of law.*

These changes were recommended by the North Carolina Administrative Office of the Courts.

CURRENT LAW: When necessary, the current law is summarized in italics in each section of the Bill Analysis.

BILL ANALYSIS

Section 1 would make a series of technical corrections to the Rules of Civil Procedure regarding the service of pleadings and other papers. It would also clarify that the failure to date stamp a filed document will not affect its sufficiency, validity, or enforceability, provided that the clerk enters it as

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House Bill 236

Page 2

being effective *nunc pro tunc* after giving adequate notice to the parties affected. *Currently, there is no law establishing the validity or lack of validity of filed documents lacking a date stamp.*

Section 2 would make a technical change to Rule 58 of the North Carolina Rules of Civil Procedure, which deals with the entry of judgments.

Section 3 would amend G.S. 28A-9-2(a) to summarily revoke, without a hearing, letters of administration, letters of collection, and letters testamentary issued to an attorney who is later enjoined, suspended, or disbarred for professional misconduct. *Currently, there is no summary procedure to revoke the attorney's authority under these documents in this situation.*

Section 4 would make a series of technical changes to G.S. 35A-1290. It would also clarify that it is the duty of the clerk of court to remove an appointed guardian who is an attorney if that attorney is enjoined, suspended, or disbarred for professional misconduct. *Currently, there is no summary procedure to remove an attorney in this situation.*

Section 5 would amend G.S. 30-17 to allow the \$5,000 support allowance payable to a child from a deceased parent's estate to be paid either to the child's guardian of the estate or to the general guardian. *Currently, the payment can only be made to the general guardian.*

Section 6 would amend G.S. 35A-1114 to allow a guardian ad litem to petition the court for appointment of an interim guardian in an incompetency proceeding. It would also require notice of the hearing for an interim guardian to be served on the petitioner, the respondent, and the respondent's counsel or guardian ad litem. The hearing on the interim guardian motion must be within 15 days of service on the respondent. *Currently, a guardian ad litem cannot file a petition for appointment of an interim guardian.*

Section 7 would amend G.S. 35A-1112 to allow the clerk of court in an incompetency proceeding to appoint an interim guardian, without a motion from another party, if the clerk determines it is in the respondent's best interest. *Currently, the clerk may not appoint an interim guardian without a motion by a party to the proceeding.*

Section 8 would amend G.S. 28A-20-1 to allow the clerk to extend the time within which a personal representative or collector must file an inventory of a decedent's estate. *Under current law the inventory is due within 3 months of qualification of the personal representative or collector.*

Section 9 would amend G.S. 28A-21-1 to clarify that the initial annual accounting must be filed by a personal representative or collector within 30 days of the first anniversary of that individual's qualification as personal representative or collector.

Section 10 would amend 28A-21-2 to allow 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 would also require personal representatives or collectors to produce vouchers or other verified proof of all payments made. *Current law does not make any provision for this certification*

Section 11 would amend G.S. 5A-23(b) to allow 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. *Current law does not allow clerks to hear civil contempt matters unless the General Statutes specifically provide for it.*

House Bill 236

Page 3

Section 12 would amend G.S. 15A-305(b) to permit an arrest warrant to be issued for an individual who fails to appear at a show cause hearing for civil contempt. *Current law does not provide for issuance of an arrest warrant for those who do not appear at a civil contempt show cause hearing.*

Section 13 would make technical corrections to G.S. 7A-307, which governs court costs in the administration of estates. No fee amounts are affected.

Section 14 would amend G.S. 7A-64 to allow the Director of the Administrative Office of the Courts (AOC) 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. Section 14 would also amend G.S. 7A-64 to remove the Director's power to assign an assistant in cases where there is evidence of prosecutorial misconduct. *Currently, no assignment can be made if there is a conflict of interest and an assignment can be made if there is evidence of prosecutorial misconduct.*

Section 15 was deleted by the House in the second edition of the bill.

Section 16 would amend G.S. 122C-268(g) to clarify the rules for videoconferencing in an inpatient commitment hearing.

Section 17 would amend G.S. 58-76-15 to remove the clerk of court as an individual against whom a plaintiff may have summary remedy on an official bond.

Section 18 would amend G.S. 58-76-25 to remove clerks of court from the list of individuals providing official bond against whom evidence of the principal's default can be used as evidence against the provider of the bond.

Section 19 would amend G.S. 1-110(b) to clarify that the clerk of court shall issue service of process against a defendant, relating back to the date an action was filed, in the even the plaintiff is an inmate in custody of the Division of Adult Correction of the Department of Public Safety and has been granted leave to proceed as an indigent.

Section 20 would amend Rule 3 of the Rules of Civil Procedure to remove the requirement that the clerk of court keep an index of all malpractice actions.

Section 21 would amend G.S. 122C-264 to remove the requirement that the clerk of court keep a list of outpatient commitment proceedings.

Section 22: Would amend G.S. 14-208.12A(a) to state that, for purposes of sex offender registration, a conviction of a sex offense in federal court will be treated as an out-of-state offense.

Section 23 would amend G.S. 7B-2901(a) to permit recordings of juvenile cases involving allegations of abuse, neglect, or dependency to be erased in accordance with a records retention schedule approved by the AOC and Department of Natural and Cultural Resources.

Section 24 would amend G.S. 7B-3000(d) to permit recordings of hearings involving juveniles to be erased in accordance with a records retention schedule approved by the AOC and Department of Natural and Cultural Resources.

Section 25 would make a technical correction to G.S. 7B-603(b1).

Section 26 would amend G.S. 84-2 to clarify that the prohibition against the private practice of law by justices, judges, magistrates, full-time district attorneys, full-time assistant district attorneys, public defenders, 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 include unpaid pro bono

House Bill 236

Page 4

legal services provided by a professional association of lawyers or a nonprofit organization rendering legal services.

Section 26.5 would permit a member of the Council of State having prosecutorial authority to appoint, on a temporary basis, a qualified attorney to assist the member in the execution of the duties of the member's office, and to pay the salary of the appointed attorney out of funds appropriated to the member's department that are unspent at the time of the temporary appointment.

EFFECTIVE DATE: Section 22 would be effective when this act becomes law and apply to petitions filed on or after that date. The remainder of the act would be effective when it becomes law.

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