2018 APPELLATE PRACTICE SPECIALIZATION EXAM

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Supplemental Open-Book Reference Materials

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Index

IN THE SUPREME COURT OF NORTH CAROLINA

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ORDER AMENDING RULES 28, 29, AND 33.1 OF THE
NORTH CAROLINA RULES OF APPELLATE PROCEDURE

Pursuant to the authority vested in this Court by Article IV of the Constitution of North Carolina, Rules 28, 29, and 33.1 of the North Carolina Rules of Appellate Procedure are amended as follows:

Rule 28. Briefs—Function and Content

(a) **Function**. The function of all briefs required or permitted by these rules is to define clearly the issues presented to the reviewing court and to present the arguments and authorities upon which the parties rely in support of their respective positions thereon. The scope of review on appeal is limited to issues so presented in the several briefs. Issues not presented and discussed in a party's brief are deemed abandoned. Similarly, issues properly presented for review in the Court of Appeals, but not then stated in the notice of appeal or the petition accepted by the Supreme Court for review and discussed in the new briefs required by Rules 14(d)(1) and 15(g)(2) to be filed in the Supreme Court for review by that Court, are deemed abandoned. Parties shall protect the identity of juveniles covered by Rules 3(b)(1), 3.1(b), or 4(e) pursuant to said rules.

(b) **Content of Appellant's Brief**. An appellant's brief shall contain, under appropriate headings and in the form prescribed by Rule 26(g) and the appendixes to these rules, in the following order:

(1) A cover page, followed by a subject index and table of authorities as required by Rule 26(g).

(2) A statement of the issues presented for review. The proposed issues on appeal listed in the record on appeal shall not limit the scope of the issues that an appellant may argue in its brief.

(3) A concise statement of the procedural history of the case. This shall indicate the nature of the case and summarize the course of proceedings up to the taking of the appeal before the court.

(4) A statement of the grounds for appellate review. Such statement shall include citation of the statute or statutes permitting appellate review. When an appeal is based on Rule 54(b) of the Rules of Civil Procedure, the statement shall show that there has been a final judgment as to one or more but fewer than all of the claims or parties and that there has been a certification by the

trial court that there is no just reason for delay. When an appeal is interlocutory, the statement must contain sufficient facts and argument to support appellate review on the ground that the challenged order affects a substantial right.

(5) A full and complete statement of the facts. This should be a non-argumentative summary of all material facts underlying the matter in controversy which are necessary to understand all issues presented for review, supported by references to pages in the transcript of proceedings, the record on appeal, or exhibits, as the case may be.

(6) An argument, to contain the contentions of the appellant with respect to each issue presented. Issues not presented in a party's brief, or in support of which no reason or argument is stated, will be taken as abandoned.

The argument shall contain a concise statement of the applicable standard(s) of review for each issue, which shall appear either at the beginning of the discussion of each issue or under a separate heading placed before the beginning of the discussion of all the issues.

The body of the argument and the statement of applicable standard(s) of review shall contain citations of the authorities upon which the appellant relies. Evidence or other proceedings material to the issue may be narrated or quoted in the body of the argument, with appropriate reference to the record on appeal, the transcript of proceedings, or exhibits.

(7) A short conclusion stating the precise relief sought.

(8) Identification of counsel by signature, typed name, post office address, telephone number, State Bar number, and e-mail address.

(9) The proof of service required by Rule 26(d).

(10) Any appendix required or allowed by this Rule 28.

(c) **Content of Appellee's Brief; Presentation of Additional Issues**. An appellee's brief shall contain a subject index and table of authorities as required by Rule 26(g), an argument, a conclusion, identification of counsel, and proof of service in the form provided in Rule 28(b) for an appellant's brief, and any appendix required or allowed by this Rule 28. It does not need to contain a statement of the issues presented, procedural history of the case, grounds for appellate review, the facts, or the standard(s) of review, unless the appellee disagrees with the appellant's statements and desires to make a restatement or unless the appellee desires to present issues in addition to those stated by the appellant.

Without taking an appeal, an appellee may present issues on appeal based on any action or omission of the trial court that deprived the appellee of an alternative basis in law for supporting the judgment, order, or other determination from which appeal has been taken. Without having taken appeal or listing proposed issues as permitted by Rule 10(c), an appellee may also argue on appeal whether a new trial should be granted to the appellee rather than a judgment notwithstanding the verdict awarded to the appellant when the latter relief is sought on appeal by the appellant. If the appellee presents issues in addition to those stated by the appellant, the appellee's brief must contain a full, non-argumentative summary of all material facts necessary to understand the new issues supported by references to pages in the record on appeal, the transcript of proceedings, or the appendixes, as appropriate, as well as a statement of the applicable standard(s) of review for those additional issues.

An appellee may supplement the record with any materials pertinent to the issues presented on appeal, as provided in Rule 9(b)(5).

(d) **Appendixes to Briefs**. Whenever the transcript of proceedings is filed pursuant to Rule 9(c)(2), the parties must file verbatim portions of the transcript as appendixes to their briefs, if required by this Rule 28(d). Parties must modify verbatim portions of the transcript filed pursuant to this rule in a manner consistent with Rules 3(b)(1), 3.1(b), or 4(e).

(1) **When Appendixes to Appellant's Brief Are Required**. Except as provided in Rule 28(d)(2), the appellant must reproduce as appendixes to its brief:

a. those portions of the transcript of proceedings which must be reproduced verbatim in order to understand any issue presented in the brief;

b. those portions of the transcript showing the pertinent questions and answers when an issue presented in the brief involves the admission or exclusion of evidence;

c. relevant portions of statutes, rules, or regulations, the study of which is required to determine issues presented in the brief;

d. relevant items from the Rule 11(c) or Rule 18(d)(3) supplement to the printed record on appeal, the study of which are required to determine issues presented in the brief.

(2) **When Appendixes to Appellant's Brief Are Not Required**. Notwithstanding the requirements of Rule 28(d)(1), the appellant is not required to reproduce an appendix to its brief with respect to an issue presented:

a. whenever the portion of the transcript necessary to understand an issue presented in the brief is reproduced verbatim in the body of the brief;

b. to show the absence or insufficiency of evidence unless there are discrete portions of the transcript where the subject matter of the alleged insufficiency of the evidence is located; or

c. to show the general nature of the evidence necessary to understand an issue presented in the brief if such evidence has been fully summarized as required by Rule 28(b)(4) and (5).

(3) **When Appendixes to Appellee's Brief Are Required**. An appellee must reproduce appendixes to its brief in the following circumstances:

a. Whenever the appellee believes that appellant's appendixes do not include portions of the transcript or items from the Rule 11(c) or Rule 18(d)(3) supplement to the printed record on appeal that are required by Rule 28(d)(1), the appellee shall reproduce those portions of the transcript or supplement it believes to be necessary to understand the issue.

b. Whenever the appellee presents a new or additional issue in its brief as permitted by Rule 28(c), the appellee shall reproduce portions of the transcript or relevant items from the Rule 11(c) or Rule 18(d)(3) supplement to the printed record on appeal as if it were the appellant with respect to each such new or additional issue.

(4) **Format of Appendixes**. The appendixes to the briefs of any party shall be in the format prescribed by Rule 26(g) and shall consist of clear photocopies of transcript pages that have been deemed necessary for inclusion in the appendix under this Rule 28(d). The pages of the appendix shall be consecutively numbered, and an index to the appendix shall be placed at its beginning.

(e) **References in Briefs to the Record**. References in the briefs to parts of the printed record on appeal and to parts of the verbatim transcript or parts of documentary exhibits shall be to the pages where those portions appear.

(f) **Joinder of Multiple Parties in Briefs**. Any number of appellants or appellees in a single cause or in causes consolidated for appeal may join in a single brief even though they are not formally joined on the appeal. Any party to any appeal may adopt by reference portions of the briefs of others.

(g) **Additional Authorities**. Additional authorities discovered by a party after filing its brief may be brought to the attention of the court by filing a memorandum thereof with the clerk of the court and serving copies upon all other parties. The memorandum may not be used as a reply brief or for additional argument, but shall simply state the issue to which the additional authority applies and provide a full citation of the authority. Authorities not cited in the briefs or in such a memorandum may not be cited and discussed in oral argument. Before the Court of Appeals, the party shall file an original and three copies of the memorandum; in the Supreme Court, the party shall file an original and fourteen copies of the memorandum.

(h) **Reply Briefs**. Within fourteen days after an appellee's brief has been served on an appellant, the appellant may file and serve a reply brief, subject to the length limitations set forth in Rule 28(j). Any reply brief which an appellant elects to file shall be limited to a concise rebuttal of arguments set out in the appellee's brief and shall not reiterate arguments set forth in the appellant's principal brief. Upon motion of the appellant, the Court may extend the length limitations on such a reply brief to permit the appellant to address new or additional issues presented for the first time in the appellee's brief. Otherwise, motions to extend reply brief length limitations or to extend the time to file a reply brief are disfavored.

~~(i) **Amicus Curiae Briefs**. A brief of an amicus curiae may be filed only by leave of the appellate court wherein the appeal is docketed or in response to a request made by that court on its own initiative.~~

~~A person desiring to file an amicus curiae brief shall present to the court a motion for leave to file, served upon all parties. The motion shall state concisely the nature of the applicant's interest, the reasons why an amicus curiae brief is believed desirable, the issues of law to be addressed in the amicus curiae brief, and the applicant's position on those issues. The proposed amicus curiae brief may be conditionally filed with the motion for leave. Unless otherwise ordered by the court, the application for leave will be determined solely upon the motion and without responses thereto or oral argument.~~

~~The clerk of the appellate court will forthwith notify the applicant and all parties of the court's action upon the application. Unless other time limits are set out in the order of the court permitting the brief, the amicus curiae shall file the brief within the time allowed for the filing of the brief of the party supported or, if in support of neither party, within the time allowed for filing appellant's brief. Motions for leave to file an amicus curiae brief submitted to the court after the time within which the amicus curiae brief normally would be due are disfavored in the absence of good cause. Reply briefs of the parties to an amicus curiae brief will be limited to points or authorities presented in the amicus curiae brief which are not presented in the main briefs of the parties. No reply brief of an amicus curiae will be received.~~

~~A motion of an amicus curiae to participate in oral argument will be allowed only for extraordinary reasons.~~

(i) **Amicus Curiae Briefs**. An amicus curiae may file a brief with the permission of the appellate court in which the appeal is docketed.

(1) **Motion**. To obtain the court's permission to file a brief, amicus curiae shall file a motion with the court that states concisely the nature of amicus curiae's interest, the reasons why the brief is desirable, the issues of law to be addressed in the brief, and the position of amicus curiae on those issues.

(2) **Brief**. The motion must be accompanied by amicus curiae's brief. The amicus curiae brief shall contain, in a footnote on the first page, a statement that identifies any person or entity—other than amicus curiae, its members, or its counsel—who, directly or indirectly, either wrote the brief or contributed money for its preparation.

(3) **Time for Filing**. If the amicus curiae brief is in support of a party to the appeal, then amicus curiae shall file its motion and brief within the time allowed for filing that party's principal brief. If amicus curiae's brief does not support either party, then amicus curiae shall file its motion and proposed brief within the time allowed for filing appellee's principal brief.

(4) **Service on Parties**. When amicus curiae files its motion and brief, it must serve a copy of its motion and brief on all parties to the appeal.

(5) **Action by Court**. Unless the court orders otherwise, it will decide amicus curiae's motion without responses or argument. An amicus motion filed by an individual on his or her own behalf will be disfavored.

(6) **Reply Briefs**. A party to the appeal may file and serve a reply brief that responds to an amicus curiae brief no later than thirty days after having been served with the amicus curiae brief. A party's reply brief to an amicus curiae brief shall be limited to a concise rebuttal of arguments set out in the amicus curiae brief and shall not reiterate or rebut arguments set forth in the party's principal brief. The court will not accept a reply brief from an amicus curiae.

(7) **Oral Argument**. The court will allow a motion of an amicus curiae requesting permission to participate in oral argument only for extraordinary reasons.

(j) **Word-Count Limitations Applicable to Briefs Filed in the Court of Appeals**. Each brief filed in the Court of Appeals, whether filed by an appellant, appellee, or amicus curiae, shall be set in font as set forth in Rule 26(g)(1) and described in Appendix B to these rules. A principal brief may contain no more than

8,750 words. A reply brief may contain no more than 3,750 words. An amicus curiae brief may contain no more than 3,750 words.

(1) **Portions of Brief Included in Word Count**. Footnotes and citations in the body of the brief must be included in the word count. Covers, captions, indexes, tables of authorities, certificates of service, certificates of compliance with this rule, counsel's signature block, and appendixes do not count against these word-count limits.

(2) **Certificate of Compliance**. Parties shall submit with the brief, immediately before the certificate of service, a certification, signed by counsel of record, or in the case of parties filing briefs pro se, by the party, that the brief contains no more than the number of words allowed by this rule. For purposes of this certification, counsel and parties may rely on word counts reported by word-processing software, as long as footnotes and citations are included in those word counts.

* * *

Rule 29. Sessions of Courts; Calendar of Hearings

(a) **Sessions of Court**.

(1) **Supreme Court**. The Supreme Court shall be in continuous session for the transaction of business. Appeals will be heard in accordance with a schedule promulgated by the Chief Justice.~~Unless otherwise scheduled by the Court, hearings in appeals will be held during the months of February through May and September through December. Additional settings may be authorized by the Chief Justice.~~

(2) **Court of Appeals**. Appeals will be heard in accordance with a schedule promulgated by the Chief Judge. Panels of the Court will sit as scheduled by the Chief Judge. For the transaction of other business, the Court of Appeals shall be in continuous session.

(b) **Calendaring of Cases for Hearing**. Each appellate court will calendar the hearing of all appeals docketed in the court. In general, appeals will be calendared for hearing in the order in which they are docketed, but the court may vary the order for any cause deemed appropriate. On motion of any party, with notice to all other parties, the court may determine without hearing to give an appeal peremptory setting or otherwise to vary the normal calendar order. Except as advanced for peremptory setting on motion of a party or the court's own initiative, no appeal will be calendared for hearing at a time less than thirty days after the filing

of the appellant's brief. The clerk of the appellate court will give reasonable notice to all counsel of record of the setting of an appeal for hearing by either e-mailing or mailing a copy of the calendar.

* * *

Rule 33.1. Secure-Leave Periods for Attorneys

~~(a) **Purpose; Authorization**. In order to secure for the parties to actions and proceedings pending in the appellate division, and to the public at large, the heightened level of professionalism that an attorney is able to provide when the attorney enjoys periods of time that are free from the urgent demands of professional responsibility and to enhance the overall quality of the attorney's personal and family life, any attorney may from time to time designate and enjoy one or more secure-leave periods each year as provided in this rule.~~

~~(b) **Length; Number**. A secure-leave period shall consist of one or more complete calendar weeks. During any calendar year, an attorney's secure-leave periods pursuant to this rule and to Rule 26 of the General Rules of Practice for the Superior and District Courts shall not exceed, in the aggregate, three calendar weeks.~~

~~(c) **Designation; Effect**. To designate a secure-leave period, an attorney shall file a written designation containing the information required by subsection (d), with the official specified in subsection (e), and within the time provided in subsection (f). Upon such filing, the secure-leave period so designated shall be deemed allowed without further action of the court, and the attorney shall not be required to appear at any argument or other in-court proceeding in the appellate division during that secure-leave period.~~

~~(d) **Content of Designation**. The designation shall contain the following information: (1) the attorney's name, address, telephone number, State Bar number, and e-mail address; (2) the date of the Monday on which the secure-leave period is to begin and of the Friday on which it is to end; (3) the dates of all other secure-leave periods during the current calendar year that have previously been designated by the attorney pursuant to this rule and to Rule 26 of the General Rules of Practice for the Superior and District Courts; (4) a statement that the secure-leave period is not being designated for the purpose of delaying, hindering, or interfering with the timely disposition of any matter in any pending action or proceeding; (5) a statement that no argument or other in-court proceeding has been scheduled during the designated secure-leave period in any matter pending in the appellate division in which the attorney has entered an appearance; and (6) a listing of all cases, by caption and docket number, pending before the appellate court in which the designation is being filed. The designation shall apply only to those cases pending in that appellate court on the date of its filing. A separate designation shall be filed as to any cases on appeal subsequently filed and docketed.~~

~~(e) **Where to File Designation**. The designation shall be filed as follows: (1) if the attorney has entered an appearance in the Supreme Court, in the office of~~

~~the clerk of the Supreme Court, even if the designation was filed initially in the Court of Appeals; (2) if the attorney has entered an appearance in the Court of Appeals, in the office of the clerk of the Court of Appeals.~~

~~(f) **When to File Designation**. The designation shall be filed: (1) no later than ninety days before the beginning of the secure-leave period, and (2) before any argument or other in-court proceeding has been scheduled for a time during the designated secure-leave period.~~

(a) **Definition; Authorization**. A "secure-leave period" is a period of time that is designated by an attorney in which the appellate courts will not hold oral argument in any case in which that attorney is listed as an attorney of record. An attorney may designate secure-leave periods as provided in this rule.

(b) **Length; Number**. A secure-leave period shall consist of one complete calendar week. During a calendar year, an attorney may designate three different weeks as secure-leave periods.

(c) **Designation**. An attorney shall designate his or her secure-leave periods on the electronic filing site of the appellate courts at https://www.ncappellatecourts.org.

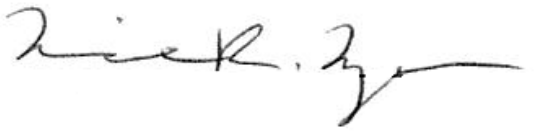
(d) **When to Designate**. An attorney shall designate a secure-leave period at least ninety days before it begins.

* * *

These amendments to the North Carolina Rules of Appellate Procedure shall be effective immediately.

These amendments shall be published in the North Carolina Reports and posted on the Court's web site.

Ordered by the Court in Conference, this the 1st day of March, 2018.



For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 2nd day of March, 2018.

AMY L. FUNDERBURK
Clerk of the Supreme Court

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

SESSION LAW 2018-4
SENATE BILL 470

AN ACT AMENDING RULE 26 OF THE NORTH CAROLINA RULES OF CIVIL PROCEDURE RELATING TO DISCOVERY IN BANKRUPTCY TRUST PERSONAL INJURY CLAIMS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1A-1, Rule 26(b) of the Rules of Civil Procedure, is amended by adding a new subdivision to read:

"**Rule 26. General provisions governing discovery.**

…

(b) Discovery scope and limits. – Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

…

(2a) Bankruptcy Trust Personal Injury Claims. –

a. Within 30 days after a civil action is filed asserting personal injury claiming disease based upon exposure to asbestos, the plaintiff shall provide to all parties a sworn statement indicating that an investigation of all bankruptcy trust claims has been conducted and that all bankruptcy trust claims that can be made by the plaintiff have been filed.

b. The plaintiff shall provide the parties with the identity of all bankruptcy trust claims made and all materials submitted to or received from a bankruptcy trust.

c. The plaintiff shall supplement the information and materials that plaintiff provides pursuant to this subsection within 30 days after the plaintiff files an additional bankruptcy trust claim, supplements an existing bankruptcy trust claim, or receives additional information or materials related to any claim against a bankruptcy trust.

d. If a defendant has a reasonable belief that the plaintiff can file additional bankruptcy trust claims, the defendant may move the court to stay the civil action until the plaintiff files the bankruptcy trust claim.

e. A defendant in the civil action may seek discovery from a bankruptcy trust. The plaintiff may not claim privilege or confidentiality to bar discovery and shall provide consent or other expression of permission that may be required by the bankruptcy trust to release information and materials sought by the defendant.

…."

SECTION 2. Article 4 of Chapter 8C of the General Statutes is amended by adding a new section to read:

"**Rule 415. Evidence of bankruptcy asbestos trust claims.**

In any civil action asserting personal injury claiming disease based upon exposure to asbestos, there shall be a rebuttable presumption that bankruptcy trust claims materials are relevant, authentic, and admissible in evidence in the civil action."

SECTION 3. G.S. 1-75.12 reads as rewritten:

"**§ 1-75.12. Stay of proceeding to permit trial in a foreign ~~jurisdiction.~~jurisdiction or filing of a bankruptcy trust claim.**

(a) When Stay May be Granted. – If, in any action pending in any court of this State, the judge shall find that it would work substantial injustice for the action to be tried in a court of this State, the judge on motion of any party may enter an order to stay further proceedings in the action in this State. A moving party under this subsection must stipulate his consent to suit in another jurisdiction found by the judge to provide a convenient, reasonable and fair place of trial.

(a1) In any civil action asserting personal injury claiming disease based upon exposure to asbestos, if a defendant has a reasonable belief that the plaintiff can file additional bankruptcy trust claims, the court on motion of the defendant may enter an order to stay the civil action until the plaintiff files the bankruptcy trust claim.

(b) Subsequent Modification of Order to Stay Proceedings. – In a proceeding in which a stay has been ordered under this section, jurisdiction of the court continues for a period of five years from the entry of the last order affecting the stay; and the court may, on motion and notice to the parties, modify the stay order and take such action as the interests of justice require. When jurisdiction of the court terminates by reason of the lapse of five years following the entry of the last order affecting the stay, the clerk shall without notice enter an order dismissing the action.

(c) Review of Rulings on Motion. – Whenever a motion for a stay made pursuant to subsection (a) above is granted, any nonmoving party shall have the right of immediate appeal. Whenever such a motion is denied, the movant may seek review by means of a writ of certiorari and failure to do so shall constitute a waiver of any error the judge may have committed in denying the motion."

SECTION 4. This act is effective when it becomes law and applies to actions filed on or after that date.

In the General Assembly read three times and ratified this the 31st day of May, 2018.

s/ Philip E. Berger
President Pro Tempore of the Senate

s/ Tim Moore
Speaker of the House of Representatives

This bill having been presented to the Governor for signature on the 1st day of June, 2018 and the Governor having failed to approve it within the time prescribed by law, the same is hereby declared to have become a law. This 12th day of June, 2018.

s/ Karen Jenkins
Enrolling Clerk

SUBCHAPTER IX. APPEAL.

Article 27.

Appeal.

§ 1-268. Writs of error abolished.

Writs of error in civil actions are abolished, and the only mode of reviewing a judgment, or order, in a civil action, is that prescribed by this Chapter. (C.C.P., s. 296; Code, s. 544; Rev., s. 583; C.S., s. 629.)

§ 1-269. Certiorari, recordari, and supersedeas.

Writs of certiorari, recordari, and supersedeas are authorized as heretofore in use. The writs of certiorari and recordari, when used as substitutes for an appeal, may issue when ordered upon the applicant filing a written undertaking for the costs only; but the supersedeas, to suspend execution, shall not issue until an undertaking is filed or a deposit made to secure the judgment sought to be vacated, as in cases of appeal where execution is stayed. (1874-5, c. 109; Code, s. 545; Rev., s. 584; C.S., s. 630.)

§ 1-270. Appeal to appellate division; security on appeal; stay.

Cases shall be taken to the appellate division by appeal, as provided by law. All provisions in this Article as to the security to be given upon appeals and as to the stay of proceedings apply to appeals taken to the appellate division. (C.C.P., s. 312; Code, ss. 561, 946; Rev., ss. 595, 1540; C.S., s. 631; 1969, c. 444, s. 3.)

§ 1-271. Who may appeal.

Any party aggrieved may appeal in the cases prescribed in this Chapter. A party who cross assigns error in the grant or denial of a motion under the Rules of Civil Procedure is a party aggrieved. (C.C.P., s. 298; Code, s. 547; Rev., s. 585; C.S., s. 632; 1969, c. 895, s. 15.)

§§ 1-272 through 1-276: Repealed by Session Laws 1999-216, s. 2.

§ 1-277. Appeal from superior or district court judge.

(a) An appeal may be taken from every judicial order or determination of a judge of a superior or district court, upon or involving a matter of law or legal inference, whether made in or out of session, which affects a substantial right claimed in any action or proceeding; or which in effect determines the action, and prevents a judgment from which an appeal might be taken; or discontinues the action, or grants or refuses a new trial.

(b) Any interested party shall have the right of immediate appeal from an adverse ruling as to the jurisdiction of the court over the person or property of the defendant or such party may preserve his exception for determination upon any subsequent appeal in the cause. (1818, c. 962, s. 4, P.R.; C.C.P., s. 299; Code, s. 548; Rev., s. 587; C.S., s. 638; 1967, c. 954, s. 3; 1971, c. 268, s. 10.)

§ 1-278. Interlocutory orders reviewed on appeal from judgment.

Upon an appeal from a judgment, the court may review any intermediate order involving the merits and necessarily affecting the judgment. (C.C.P., s. 313; Code, s. 562; Rev., s. 589; C.S., s. 640.)

§ 1-279. Repealed by Session Laws 1989, c.377, s. 1.

§ 1-279.1. Manner and time for giving notice of appeal to appellate division in civil actions and in special proceedings.

Any party entitled by law to appeal from a judgment or order rendered by a judge in superior or district court in a civil action or in a special proceeding may take appeal by giving notice of appeal within the time, in the manner, and with the effect provided in the rules of appellate procedure. (1989, c. 377, s. 2.)

§ 1-280. Repealed by Session Laws 1975, c. 391, s. 4.

§ 1-281. Appeals from judgments not in session.

When appeals are taken from judgments of the clerk or judge not made in session, the clerk is authorized to make any and all necessary orders for the perfecting of such appeals. (Ex. Sess. 1921, c. 92, s. 19a; C.S., s. 642(a); 1971, c. 381, s. 12.)

§ 1-282. Repealed by Session Laws 1975, c. 391, s. 7.

§ 1-283. Trial judge empowered to settle record on appeal; effect of leaving office or of disability.

Except as provided in this section, only the judge of superior court or of district court from whose order or judgment an appeal has been taken is empowered to settle the record on appeal when judicial settlement is required. A judge retains power to settle a record on appeal notwithstanding he has resigned or retired or his term of office has expired without reappointment or reelection since entry of the judgment or order. Proceedings for judicial settlement when the judge empowered by this section to settle the record on appeal is unavailable for the purpose by reason of death, mental or physical incapacity, or absence from the State shall be as provided by the rules of appellate procedure. (C.C.P., s. 301; Code, s. 550; 1889, c. 161; Rev., s. 591; 1907, c. 312; C.S., s. 644; 1971, c. 381, s. 12; 1975, c. 391, s. 8.)

§ 1-284. Repealed by Session Laws 1975, c. 391, s. 9.

§ 1-285. Undertaking on appeal.

(a) To render an appeal effectual for any purpose in a civil cause or special proceeding, a written undertaking must be executed on the part of the appellant, with good and sufficient surety, in the sum of two hundred fifty dollars ($250.00), or any lesser sum as might be adjudged by the court, to the effect that the appellant will pay all costs awarded against him on the appeal, and this undertaking must be filed with the clerk with whom the judgment or order was filed; or such sum must be deposited with the appropriate clerk of the appellate division in compliance with the North Carolina Rules of Appellate Procedure.

(b) The provisions of this section do not apply to the State of North Carolina, a city or a county or a local board of education, an officer thereof in his official capacity, or an agency thereof. (C.C.P., ss. 303, 312; 1871-2, c. 31; Code, ss. 552, 561; 1889, c. 135, s. 2; Rev., ss. 593, 595; C.S., s. 646; 1969, c. 44, s. 5; 1975, c. 391, s. 1; 1985, c. 468; 1987, c. 462, s. 2; 1995 (Reg. Sess., 1996), c. 742, s. 42.3.)

§ 1-286. Justification of sureties.

The written undertaking on appeal must be accompanied by the affidavit of one of the sureties that he is worth double the amount specified therein. The respondent may except to the sufficiency of the sureties within ten days after the notice of appeal; and unless they or other sureties justify within the ten days thereafter, the appeal shall be regarded as if no undertaking had been given. The justification must be upon a notice of not less than five days. (C.C.P., s. 310; Code, s. 560; 1887, c. 121; Rev., s. 594; C.S., s. 647; 1995 (Reg. Sess., 1996), c. 742, s. 42.4.)

§ 1-287. Repealed by Session Laws 1975, c. 391, s. 2.

§ 1-287.1. Repealed by Session Laws 1975, c. 391, s. 10.

§ 1-288. Appeals by indigents; clerk's fees.

When any party to a civil action tried and determined in the superior or district court at the time of trial or special proceeding desires an appeal from the judgment rendered in the action to the Appellate Division, and is unable, by reason of poverty, to make the deposit or to give the security required by law for the appeal, it shall be the duty of the judge or clerk of said court to make an order allowing the party to appeal from the judgment to the Appellate Division as in other cases of appeal, without giving security therefor. The party desiring to appeal from the judgment or order in a civil action or special proceeding shall, within 30 days after the entry of the judgment or order, make affidavit that he or she is unable by reason of poverty to give the security required by law. Nothing contained in this section deprives the clerk of the superior court of the right to demand the fees for the certificate and seal as now allowed by law in such cases. Provided, that where the judge or the clerk has made an order allowing the appellant to appeal as an indigent and the appeal has been filed in the Appellate Division, and an error or omission has been made in the affidavit or certificate of counsel, and the error is called to the attention of the court before the hearing of the argument of the case, the court shall permit an amended affidavit or certificate to be filed correcting the error or omission. (1873-4, c. 60; Code, s. 553; 1889, c. 161; Rev., s. 597; 1907, c. 878; C.S., s. 649; 1937, c. 89; 1951, c. 837, s. 7; 1969, c. 44, s. 8; 1971, c. 268, s. 12; 1991, c. 563, s. 1; 1993, c. 435, s. 3; 1995, c. 536, s. 1.)

§ 1-289. Undertaking to stay execution on money judgment.

(a) If the appeal is from a judgment directing the payment of money, it does not stay the execution of the judgment unless a written undertaking is executed on the part of the appellant, by one or more sureties, as set forth in this section.

(a1) In an action where the judgment directs the payment of money, the court shall specify the amount of the undertaking required to stay execution of the judgment pending appeal as provided in subsection (a2) of this section. The undertaking shall be to the effect that if the judgment appealed from, or any part thereof, is affirmed, or the appeal is dismissed, the appellant will pay the amount directed to be paid by the judgment, or the part of such amount as to which the judgment shall be affirmed, if affirmed only in part, and all damages which shall be awarded against the appellant upon the appeal, except as provided in subsection (b) of this section. Whenever it is satisfactorily made to appear to the court that since the execution of the undertaking the sureties have become insolvent, the court may, by rule or order, require the

appellant to execute, file and serve a new undertaking, as above. In case of neglect to execute such undertaking within twenty days after the service of a copy of the rule or order requiring it, the appeal may, on motion to the court, be dismissed with costs. Whenever it is necessary for a party to an action or proceeding to give a bond or an undertaking with surety or sureties, he may, in lieu thereof, deposit with the officer into court money to the amount of the bond or undertaking to be given. The court in which the action or proceeding is pending may direct what disposition shall be made of such money pending the action or proceeding. In a case where, by this section, the money is to be deposited with an officer, a judge of the court, upon the application of either party, may, at any time before the deposit is made, order the money deposited in court instead of with the officer; and a deposit made pursuant to such order is of the same effect as if made with the officer. The perfecting of an appeal by giving the undertaking mentioned in this section stays proceedings in the court below upon the judgment appealed from; except when the sale of perishable property is directed, the court below may order the property to be sold and the proceeds thereof to be deposited or invested, to abide the judgment of the appellate court.

(a2) The amount of the undertaking that shall be required by the court shall be an amount determined by the court after notice and hearing proper and reasonable for the security of the rights of the adverse party, considering relevant factors, including the following:

(1) The amount of the judgment.

(2) The amount of the limits of all applicable liability policies of the appellant judgment debtor.

(3) The aggregate net worth of the appellant judgment debtor.

(b) If the appellee in a civil action brought under any legal theory obtains a judgment directing the payment or expenditure of money in the amount of twenty five million dollars ($25,000,000) or more, and the appellant seeks a stay of execution of the judgment within the period of time during which the appellant has the right to pursue appellate review, including discretionary review and certiorari, the amount of the undertaking that the appellant is required to execute to stay execution of the judgment during the entire period of the appeal shall be twenty five million dollars ($25,000,000).

(c) If the appellee proves by a preponderance of the evidence that the appellant for whom the undertaking has been limited under subsection (b) of this section is, for the purpose of evading the judgment, (i) dissipating its assets, (ii) secreting its assets, or (iii) diverting its assets outside the jurisdiction of the courts of North Carolina or the federal courts of the United States other than in the ordinary course of business, then the limitation in subsection (b) of this section shall not apply and the appellant shall be required to make an undertaking in the full amount otherwise required by this section. (C.C.P., ss. 304, 311; Code, s. 554; Rev., s. 598; C.S., s. 650; 2000, Ex. Sess., c. 1, s. 2; 2003-19, s. 3; 2011-400, s. 1.)

§ 1-290. How judgment for personal property stayed.

If the judgment appealed from directs the assignment or delivery of documents or personal property, the execution of the judgment is not stayed by appeal, unless the things required to be assigned or delivered are brought into court, or placed in the custody of such officer or receiver as the court appoints, or unless an undertaking be entered into on the part of the appellant, by at least two sureties, and in such amount as the court or a judge thereof directs, to the effect that the appellant will obey the order of the appellate court upon the appeal. (C.C.P., s. 305; Code, s. 555; Rev., s. 599; C.S., s. 651.)

§ 1-291. How judgment directing conveyance stayed.

If the judgment appealed from directs the execution of a conveyance or other instrument, the execution of the judgment is not stayed by the appeal until the instrument has been executed and deposited with the clerk with whom the judgment is entered, to abide the judgment of the appellate court. (C.C.P., s. 306; Code, s. 556; Rev., s. 600; C.S., s. 652.)

§ 1-292. How judgment for real property stayed.

If the judgment appealed from directs the sale or delivery of possession of real property, the execution is not stayed, unless a bond is executed on the part of the appellant, with one or more sureties, to the effect that, during his possession of such property, he will not commit, or suffer to be committed, any waste thereon, and that if the judgment is affirmed he will pay the value of the use and occupation of the property, from the time of the appeal until the delivery of possession thereof pursuant to the judgment, not exceeding a sum to be fixed by a judge of the court by which judgment was rendered and which must be specified in the undertaking. When the judgment is for the sale of mortgaged premises, and the payment of a deficiency arising upon the sale, the undertaking must also provide for the payment of this deficiency. (C.C.P., s. 307; Code, s. 557; Rev., s. 601; C.S., s. 653.)

§ 1-293. Docket entry of stay.

When an appeal from a judgment is pending, and the undertaking requisite to stay execution on the judgment has been given, and the appeal perfected, the court in which the judgment was recovered may, on special motion, after notice to the person owning the judgment, on such terms as it sees fit, direct an entry to be made by the clerk on the docket of such judgment, that the same is secured on appeal, and no execution can issue upon such judgment during the pendency of the appeal. (C.C.P., s. 254; Code, s. 435; 1887, c. 192; Rev., s. 621; C.S., s. 654.)

§ 1-294. Scope of stay; security limited for fiduciaries.

When an appeal is perfected as provided by this Article it stays all further proceedings in the court below upon the judgment appealed from, or upon the matter embraced therein, unless otherwise provided by the Rules of Appellate Procedure; but the court below may proceed upon any other matter included in the action and not affected by the judgment appealed from. The court below may, in its discretion, dispense with or limit the security required, when the appellant is an executor, administrator, trustee, or other person acting in a fiduciary capacity. It may also limit such security to an amount not more than fifty thousand dollars ($50,000), where it would otherwise exceed that sum. (C.C.P., s. 308; Code, s. 558; Rev., s. 602; C.S., s. 655; 2015-25, s. 2.)

§ 1-295. Undertaking in one or more instruments; served on appellee.

The undertakings may be in one instrument or several, at the option of the appellant; and a copy, including the names and residences of the sureties, must be served on the adverse party, with the notice of appeal, unless the required deposit is made and notice thereof given. (C.C.P., s. 309; Code, s. 559; Rev., s. 603; C.S., s. 656.)

§ 1-296. Judgment not vacated by stay.

The stay of proceedings provided for in this Article shall not be construed to vacate the judgment appealed from, but in all cases such judgment remains in full force and effect, and its lien remains unimpaired, notwithstanding the giving of the undertaking or making the deposit required in this Chapter, until such judgment is reversed or modified by the appellate division. (1887, c. 192; Rev., s. 604; C.S., s. 657; 1969, c. 44, s. 9.)

§ 1-297. Judgment on appeal and on undertakings; restitution.

Upon an appeal from a judgment or order, the appellate court may reverse, affirm or modify the judgment or order appealed from, in the respect mentioned in the notice of appeal, and as to any or all of the parties, and may, if necessary or proper, order a new trial. When the judgment is reversed or modified, the appellate court may make complete restitution of all property and rights lost by the erroneous judgment. Undertakings for the prosecution of appeals and on writs of certiorari shall make a part of the record sent up to the appellate division on which judgment may be entered against the appellant or person prosecuting the writ of certiorari and his sureties, in all cases where judgment is rendered against the appellant or person prosecuting the writ. (1785, c. 233, s. 2, P.R.; 1810, c. 793, P.R.; 1831, c. 46, s. 2; R.C., c. 4, s. 10; C.C.P., s. 314; Code, s. 563; Rev., s. 605; C.S., s. 658; 1969, c. 44, s. 10.)

§ 1-298. Procedure after determination of appeal.

In civil cases, at the first session of the superior or district court after a certificate of the determination of an appeal is received, if the judgment is affirmed the court below shall direct the execution thereof to proceed, and if the judgment is modified, shall direct its modification and performance. If a new trial is ordered the cause stands in its regular order on the docket for trial at such first session after the receipt of the certificate from the Appellate Division. (1887, c. 192, s. 2; Rev., s. 1526; C.S., s. 659; 1969, c. 44, s. 11; 1971, c. 268, s. 13.)

§§ 1-299 through 1-301: Repealed by Session Laws 1971, c. 268, s. 34.

§ 1-569.28. Appeals.

(a) An appeal may be taken from:

(1) An order denying a motion to compel arbitration;

(2) An order granting a motion to stay arbitration;

(3) An order confirming or denying confirmation of an award;

(4) An order modifying or correcting an award;

(5) An order vacating an award without directing a rehearing; or

(6) A final judgment entered pursuant to this Article.

(b) An appeal under this section shall be taken as from an order or a judgment in a civil action. (1927, c. 94, s. 22; 1973, c. 676, s. 1; 2003-345, s. 2.)

Article 4.

Court of Appeals.

§ 7A-16. Creation and organization.

The Court of Appeals is created effective January 1, 1967. It shall consist initially of six judges, elected by the qualified voters of the State for terms of eight years. The Chief Justice of the Supreme Court shall designate one of the judges as Chief Judge, to serve in such capacity at the pleasure of the Chief Justice. Before entering upon the duties of his office, a judge of the Court of Appeals shall take the oath of office prescribed for a judge of the General Court of Justice.

The Governor on or after July 1, 1967, shall make temporary appointments to the six initial judgeships. The appointees shall serve until January 1, 1969. Their successors shall be elected at the general election for members of the General Assembly in November, 1968, and shall take office on January 1, 1969, to serve for the remainder of the unexpired term which began on January 1, 1967.

Upon the appointment of at least five judges, and the designation of a Chief Judge, the court is authorized to convene, organize, and promulgate, subject to the approval of the Supreme Court, such supplementary rules as it deems necessary and appropriate for the discharge of the judicial business lawfully assigned to it.

Effective January 1, 1969, the number of judges is increased to nine, and the Governor, on or after March 1, 1969, shall make temporary appointments to the additional judgeships thus created. The appointees shall serve until January 1, 1971. Their successors shall be elected at the general election for members of the General Assembly in November, 1970, and shall take office on January 1, 1971, to serve for the remainder of the unexpired term which began on January 1, 1969.

Effective January 1, 1977, the number of judges is increased to 12; and the Governor, on or after July 1, 1977, shall make temporary appointments to the additional judgeships thus created. The appointees shall serve until January 1, 1979. Their successors shall be elected at the general election for members of the General Assembly in November, 1978, and shall take office on January 1, 1979, to serve the remainder of the unexpired term which began on January 1, 1977.

On or after December 15, 2000, the Governor shall appoint three additional judges to increase the number of judges to 15.

On or after January 1, 2017, whenever the seat of an incumbent judge becomes vacant prior to the expiration of the judge's term due to the death, resignation, retirement, impeachment, or removal pursuant to G.S. 7A-374.2(8) of the incumbent judge, that seat is abolished until the total number of Court of Appeals seats is decreased to 12.

The Court of Appeals shall sit in panels of three judges each and may also sit en banc to hear or rehear any cause upon a vote of the majority of the judges of the court. The Chief Judge insofar as practicable shall assign the members to panels in such fashion that each member sits a substantially equal number of times with each other member, shall preside when a member of a panel, and shall designate the presiding judge of the other panel or panels.

Except as may be provided in G.S. 7A-32, three judges shall constitute a quorum for the transaction of the business of the court when sitting in panels of three judges, and a majority of the then sitting judges on the Court of Appeals shall constitute a quorum for the transaction of the business of the court when sitting en banc.

In the event the Chief Judge is unable, on account of absence or temporary incapacity, to perform the duties placed upon him as Chief Judge, the Chief Justice shall appoint an acting

Chief Judge from the other judges of the Court, to temporarily discharge the duties of Chief Judge. (1967, c. 108, s. 1; 1969, c. 1190, s. 3; 1973, c. 301; 1977, c. 1047; 2000-67, s. 15.5(a); 2004-203, s. 16; 2016-125, 4th Ex. Sess., s. 22(a); 2017-7, s. 1.)

§ 7A-17: Repealed by Session Laws 1969, c. 1190, s. 57.

§ 7A-18. Compensation of judges.

(a) The Chief Judge and each associate judge of the Court of Appeals shall receive the annual salary provided in the Current Operations Appropriations Act. Each judge is entitled to reimbursement for travel and subsistence expenses at the rate allowed State employees generally.

(a1) In addition to the reimbursement for travel and subsistence expenses authorized by subsection (a) of this section, and notwithstanding G.S. 138-6, each judge whose permanent residence is at least 50 miles from the City of Raleigh shall also be reimbursed for the mileage the judge travels each week to the City of Raleigh from the judge's home for business of the court. The reimbursement authorized by this subsection shall be calculated for each judge by multiplying the actual round-trip mileage from that judge's home to the City of Raleigh by a rate-per-mile established by the Director of the Administrative Office of the Courts, but not to exceed the business standard mileage rate set by the Internal Revenue Service.

(b) In lieu of merit and other increment raises paid to regular State employees, a judge of the Court of Appeals shall receive as longevity pay an annual amount equal to four and eight-tenths percent (4.8%) of the annual salary set forth in the Current Operations Appropriations Act payable monthly after five years of service, nine and six-tenths percent (9.6%) after 10 years of service, fourteen and four-tenths percent (14.4%) after 15 years of service, nineteen and two-tenths percent (19.2%) after 20 years of service, and twenty-four percent (24%) after 25 years of service. "Service" means service as a justice or judge of the General Court of Justice, as a member of the Utilities Commission, as an administrative law judge, or as the Director of the Administrative Office of the Courts. Service shall also mean service as a district attorney or as a clerk of superior court. (1967, c. 108, s. 1; 1983, c. 761, s. 243; 1983 (Reg. Sess., 1984), c. 1034, s. 165; c. 1109, ss. 11, 13.1; 1985, c. 698, s. 10(a); 2007-323, ss. 14.21(b), 28.18A(b); 2015-241, s. 30.3(e); 2017-57, s. 35.4(e).)

§ 7A-19. Seats and sessions of court.

(a) The Court of Appeals shall sit in Raleigh, and at such other locations within the State as the Supreme Court may designate.

(b) The Department of Administration shall provide adequate quarters for the Court of Appeals.

(c) The Chief Judge shall schedule sessions of the court as required to discharge expeditiously the court's business. (1967, c. 108, s. 1.)

§ 7A-20. Clerk; oath; bond; salary; assistants; fees.

(a) The Court of Appeals shall appoint a clerk to serve at its pleasure. Before entering upon his duties, the clerk shall take the oath of office prescribed for the clerk of the Supreme Court, conformed to the office of clerk of the Court of Appeals, and shall be bonded, in the same manner as the clerk of superior court, in an amount prescribed by the Administrative Officer of the Courts, payable to the State, for the faithful performance of his duties. The salary of the clerk shall be fixed by the Administrative Officer of the Courts, subject to the approval of the Court of

Appeals. The number and salaries of his assistants, and their bonds, if required, shall be fixed by the Administrative Officer of the Courts. The clerk shall adopt a seal of office, to be approved by the Court of Appeals.

(b) Subject to approval of the Supreme Court, the Court of Appeals shall promulgate from time to time a fee bill for services rendered by the clerk, and such fees shall be remitted to the State Treasurer. Charges to litigants for the reproduction of appellate records and briefs shall be fixed by rule of the Supreme Court and remitted to the Appellate Courts Printing and Computer Operations Fund established in G.S. 7A-343.3. The operations of the Court of Appeals shall be subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes. (1967, c. 108, s. 1; 1983, c. 913, s. 4; 2002-126, s. 2.2(k).)

§ 7A-21. Marshal; powers; salary.

The Court of Appeals may appoint a marshal to serve at its pleasure and to perform such duties as it may assign. The marshal shall have the criminal and civil powers of a sheriff and any additional powers necessary to execute the orders of the appellate division in any county of the State. His salary shall be fixed by the Administrative Officer, subject to the approval of the Court of Appeals. (1981, c. 485.)

§ 7A-22. Reserved for future codification purposes.

§ 7A-23. Reserved for future codification purposes.

§ 7A-24. Reserved for future codification purposes.

Article 5.

Jurisdiction.

§ 7A-25. Original jurisdiction of the Supreme Court.

The Supreme Court has original jurisdiction to hear claims against the State, but its decisions shall be merely recommendatory; no process in the nature of execution shall issue thereon; the decisions shall be reported to the next session of the General Assembly for its action. The court shall by rule prescribe the procedures to be followed in the proper exercise of the jurisdiction conferred by this section. (1967, c. 108, s. 1.)

§ 7A-26. Appellate jurisdiction of the Supreme Court and the Court of Appeals.

The Supreme Court and the Court of Appeals respectively have jurisdiction to review upon appeal decisions of the several courts of the General Court of Justice and of administrative agencies, upon matters of law or legal inference, in accordance with the system of appeals provided in this Article. (1967, c. 108, s. 1.)

§ 7A-27. Appeals of right from the courts of the trial divisions.

(a) Appeal lies of right directly to the Supreme Court in any of the following cases:

(1) All cases in which the defendant is convicted of murder in the first degree and the judgment of the superior court includes a sentence of death.

(2) From any final judgment in a case designated as a mandatory complex business case pursuant to G.S. 7A-45.4 or designated as a discretionary complex business case pursuant to Rule 2.1 of the General Rules of Practice for the Superior and District Courts.

(3) From any interlocutory order of a Business Court Judge that does any of the following:

a. Affects a substantial right.

b. In effect determines the action and prevents a judgment from which an appeal might be taken.

c. Discontinues the action.

d. Grants or refuses a new trial.

(4) Any trial court's decision regarding class action certification under G.S. 1A-1, Rule 23.

(5) **(Effective January 1, 2019 – see editor's note)** Any order that terminates parental rights or denies a petition or motion to terminate parental rights.

(a1) Repealed by Session Laws 2016-125, s. 22(b), 4th Ex. Sess., effective December 1, 2016.

(b) Except as provided in subsection (a) of this section, appeal lies of right directly to the Court of Appeals in any of the following cases:

(1) From any final judgment of a superior court, other than one based on a plea of guilty or nolo contendere, including any final judgment entered upon review of a decision of an administrative agency, except for a final judgment entered upon review of a court martial under G.S. 127A-62.

(2) From any final judgment of a district court in a civil action.

(3) From any interlocutory order or judgment of a superior court or district court in a civil action or proceeding that does any of the following:

a. Affects a substantial right.

b. In effect determines the action and prevents a judgment from which an appeal might be taken.
c. Discontinues the action.
d. Grants or refuses a new trial.
e. Determines a claim prosecuted under G.S. 50-19.1.
f. Grants temporary injunctive relief restraining the State or a political subdivision of the State from enforcing the operation or execution of an act of the General Assembly. This sub-subdivision only applies where the State or a political subdivision of the State is a party in the civil action.

(4) From any other order or judgment of the superior court from which an appeal is authorized by statute.

(c) through (e) Repealed by Session Laws 2013-411, s. 1, effective August 23, 2013. (1967, c. 108, s. 1; 1971, c. 377, s. 3; 1973, c. 704; 1977, c. 711, s. 4; 1987, c. 679; 1995, c. 204, s. 1; 2010-193, s. 17; 2013-411, s. 1; 2014-100, s. 18B.16(e); 2014-102, s. 1; 2015-264, s. 1(b); 2016-125, 4th Ex. Sess., s. 22(b); 2017-7, s. 2.)

§ 7A-28. Decisions of Court of Appeals on post-trial motions for appropriate relief, valuation of exempt property, or courts-martial are final.

(a) Decisions of the Court of Appeals upon review of motions for appropriate relief listed in G.S. 15A-1415(b) are final and not subject to further review in the Supreme Court by appeal, motion, certification, writ, or otherwise.

(b) Decisions of the Court of Appeals upon review of valuation of exempt property under G.S. 1C are final and not subject to further review in the Supreme Court by appeal, motion, certification, writ, or otherwise.

(c) Decisions of the Court of Appeals upon review of courts-martial under G.S. 127A-62 are final and not subject to further review in the Supreme Court by appeal, motion, certification, writ, or otherwise. (1981, c. 470, s. 1; 1981 (Reg. Sess., 1982), c. 1224, s. 16.; 2010-193, s. 18.)

§ 7A-29. Appeals of right from certain administrative agencies.

(a) From any final order or decision of the North Carolina Utilities Commission not governed by subsection (b) of this section, the Department of Health and Human Services under G.S. 131E-188(b), the North Carolina Industrial Commission, the North Carolina State Bar under G.S. 84-28, the Property Tax Commission under G.S. 105-290 and G.S. 105-342, the Commissioner of Insurance under G.S. 58-2-80, the Bipartisan State Board of Elections and Ethics Enforcement under G.S. 163A-1030, the Office of Administrative Hearings under G.S. 126-34.02, or the Secretary of Environmental Quality under G.S. 104E-6.2 or G.S. 130A-293, appeal as of right lies directly to the Court of Appeals.

(b) From any final order or decision of the Utilities Commission in a general rate case, appeal as of right lies directly to the Supreme Court. (1967, c. 108, s. 1; 1971, c. 703, s. 5; 1975, c. 582, s. 12; 1979, c. 584, s. 1; 1981, c. 704, s. 28; 1983, c. 526, s. 1; c. 761, s. 188; 1983 (Reg. Sess., 1984), c. 1000, s. 2; c. 1087, s. 2; c. 1113, s. 2; 1985, c. 462, s. 3; 1987, c. 850, s. 2; 1991, c. 546, s. 2; c. 679, s. 2; 1993, c. 501, s. 2; 1995, c. 115, s. 1; c. 504, s. 2; c. 509, s. 2; 1997-443, ss. 11A.118(a), 11A.119(a); 2003-63, s. 1; 2006-155, s. 1.1; 2013-382, s. 6.4; 2015-241, s. 14.30(v); 2017-6, s. 3.)

§ 7A-30. Appeals of right from certain decisions of the Court of Appeals.

Except as provided in G.S. 7A-28, an appeal lies of right to the Supreme Court from any decision of the Court of Appeals rendered in a case:

(1) Which directly involves a substantial question arising under the Constitution of the United States or of this State, or

(2) In which there is a dissent when the Court of Appeals is sitting in a panel of three judges. An appeal of right pursuant to this subdivision is not effective until after the Court of Appeals sitting en banc has rendered a decision in the case, if the Court of Appeals hears the case en banc, or until after the time for filing a motion for rehearing of the cause by the Court of Appeals has expired or the Court of Appeals has denied the motion for rehearing. (1967, c. 108, s. 1; 1983, c. 526, s. 2; 2016-125, 4th Ex. Sess., s. 22(c).)

§ 7A-31. Discretionary review by the Supreme Court.

(a) In any cause in which appeal is taken to the Court of Appeals, including any cause heard while the Court of Appeals was sitting en banc, except a cause appealed from the North Carolina Industrial Commission, the North Carolina State Bar pursuant to G.S. 84-28, the Property Tax Commission pursuant to G.S. 105-345, the Board of State Contract Appeals pursuant to G.S. 143-135.9, the Commissioner of Insurance pursuant to G.S. 58-2-80 or G.S. 58-65-131(c), a court-martial pursuant to G.S. 127A-62, a motion for appropriate relief, or valuation of exempt property pursuant to G.S. 7A-28, the Supreme Court may, in its discretion, on motion of any party to the cause or on its own motion, certify the cause for review by the Supreme Court, either before or after it has been determined by the Court of Appeals. A cause appealed to the Court of Appeals from any of the administrative bodies listed in the preceding sentence may be certified in similar fashion, but only after determination of the cause in the Court of Appeals. The effect of such certification is to transfer the cause from the Court of Appeals to the Supreme Court for review by the Supreme Court. If the cause is certified for transfer to the Supreme Court before its determination in the Court of Appeals, review is not had in the Court of Appeals but the cause is forthwith transferred for review in the first instance by the Supreme Court. If the cause is certified for transfer to the Supreme Court after its determination by the Court of Appeals, the Supreme Court reviews the decision of the Court of Appeals.

Except in courts-martial and motions within the purview of G.S. 7A-28, the State may move for certification for review of any criminal cause, but only after determination of the cause by the Court of Appeals.

(b) In causes subject to certification under subsection (a) of this section, certification may be made by the Supreme Court before determination of the cause by the Court of Appeals when in the opinion of the Supreme Court any of the following apply:

(1) The subject matter of the appeal has significant public interest.

(2) The cause involves legal principles of major significance to the jurisprudence of the State.

(3) Delay in final adjudication is likely to result from failure to certify and thereby cause substantial harm.

(4) The work load of the courts of the appellate division is such that the expeditious administration of justice requires certification.

(5) The subject matter of the appeal is important in overseeing the jurisdiction and integrity of the court system.

(c) In causes subject to certification under subsection (a) of this section, certification may be made by the Supreme Court after determination of the cause by the Court of Appeals when in the opinion of the Supreme Court any of the following apply:

(1) The subject matter of the appeal has significant public interest.

(2) The cause involves legal principles of major significance to the jurisprudence of the State.

(3) The decision of the Court of Appeals appears likely to be in conflict with a decision of the Supreme Court.

Interlocutory determinations by the Court of Appeals, including orders remanding the cause for a new trial or for other proceedings, shall be certified for review by the Supreme Court only upon a determination by the Supreme Court that failure to certify would cause a delay in final adjudication which would probably result in substantial harm.

(d) The procedure for certification by the Supreme Court on its own motion, or upon petition of a party, shall be prescribed by rule of the Supreme Court. (1967, c. 108, s. 1; 1969, c. 1044; 1975, c. 555; 1977, c. 711, s. 5; 1981, c. 470, s. 2; 1981 (Reg. Sess., 1982), c. 1224, s. 17; c. 1253, s. 1; 1983, c. 526, s. 3; c. 761, s. 189; 2010-193, s. 19; 2016-125, 4th Ex. Sess., s. 22(d); 2017-7, s. 3.)

§ 7A-31.1. Discretionary Review by the Court of Appeals.

(a) In the case of a court-martial in which appeal is taken to the Wake County Superior Court under G.S. 127A-62, the Court of Appeals may, in its discretion, on motion of any party to the cause or on its own motion, certify the cause for review by the Court of Appeals after it has been reviewed by the Wake County Superior Court. The effect of such certification is to transfer the cause from the Wake County Superior Court to the Court of Appeals, and the Court of Appeals reviews the decision by the Wake County Superior Court.

(b) In causes subject to certification under subsection (a) of this section, certification may be made by the Court of Appeals after determination of the cause by the Wake County Superior Court when in the opinion of the Court of Appeals:

(1) The subject matter of the appeal has significant public interest, or

(2) The cause involves legal principles of major significance to the jurisprudence of the State, or

(3) The decision of the Wake County Superior Court appears likely to be in conflict with a decision of the United States Court of Appeals for the Armed Forces.

Interlocutory determinations by the Wake County Superior Court, including orders remanding the cause for a new trial or for other proceedings, shall be certified for review by the Court of Appeals only upon a determination by the Court of Appeals that failure to certify would cause a delay in final adjudication which would probably result in substantial harm.

(c) Any rules for practice and procedure for review of courts-martial that may be required shall be prescribed pursuant to G.S. 7A-33. (2010-193, s. 20.)

§ 7A-32. Power of Supreme Court and Court of Appeals to issue remedial writs.

(a) The Supreme Court and the Court of Appeals have jurisdiction, exercisable by any one of the justices or judges of the respective courts, to issue the writ of habeas corpus upon the

application of any person described in G.S. 17-3, according to the practice and procedure provided therefor in chapter 17 of the General Statutes, and to rule of the Supreme Court.

(b) The Supreme Court has jurisdiction, exercisable by one justice or by such number of justices as the court may by rule provide, to issue the prerogative writs, including mandamus, prohibition, certiorari, and supersedeas, in aid of its own jurisdiction or in exercise of its general power to supervise and control the proceedings of any of the other courts of the General Court of Justice. The practice and procedure shall be as provided by statute or rule of the Supreme Court, or, in the absence of statute or rule, according to the practice and procedure of the common law.

(c) The Court of Appeals has jurisdiction, exercisable by one judge or by such number of judges as the Supreme Court may by rule provide, to issue the prerogative writs, including mandamus, prohibition, certiorari, and supersedeas, in aid of its own jurisdiction, or to supervise and control the proceedings of any of the trial courts of the General Court of Justice, and of the Utilities Commission and the Industrial Commission. The practice and procedure shall be as provided by statute or rule of the Supreme Court, or, in the absence of statute or rule, according to the practice and procedure of the common law. (1967, c. 108, s. 1.)

§ 7A-33. Supreme Court to prescribe appellate division rules of practice and procedure.

The Supreme Court shall prescribe rules of practice and procedure designed to procure the expeditious and inexpensive disposition of all litigation in the appellate division. (1967, c. 108, s. 1.)

§ 7A-34. Rules of practice and procedure in trial courts.

The Supreme Court is hereby authorized to prescribe rules of practice and procedure for the superior and district courts supplementary to, and not inconsistent with, acts of the General Assembly. (1967, c. 108, s. 1.)

§ 7A-34.1: Repealed by Session Laws 2011-145, s. 31.23(f), effective July 1, 2011.

§ 7A-35. Repealed by Session Laws 1971, c. 377, s. 32.

§ 7A-36. Repealed by Session Laws 1969, c. 1190, s. 57.

§ 7A-37: Repealed by Session Laws 1993, c. 553, s. 1.

§ 7A-37.1. Statewide court-ordered, nonbinding arbitration in certain civil actions.

(a) The General Assembly finds that court-ordered, nonbinding arbitration may be a more economical, efficient and satisfactory procedure to resolve certain civil actions than by traditional civil litigation and therefore authorizes court-ordered nonbinding arbitration as an alternative civil procedure, subject to these provisions.

(b) The Supreme Court of North Carolina may adopt rules governing this procedure and may supervise its implementation and operation through the Administrative Office of the Courts. These rules shall ensure that no party is deprived of the right to jury trial and that any party dissatisfied with an arbitration award may have trial de novo.

(c) Except as otherwise provided in rules promulgated by the Supreme Court of North Carolina pursuant to subsection (b) of this section, this procedure shall be employed in all civil actions in district court, unless all parties to the action waive arbitration under this section.

(c1) Except as provided in subsection (c2) of this section, in cases referred to nonbinding arbitration as provided in this section, a fee of one hundred dollars ($100.00) shall be assessed per arbitration, to be divided equally among the parties, to cover the cost of providing arbitrators. Fees assessed under this section shall be paid to the clerk of superior court in the county where the case was filed and remitted by the clerk to the State Treasurer.

(c2) In appeals in small claims actions under Article 19 of Chapter 7A of the General Statutes, if (i) the arbitrator finds in favor of the appellee, (ii) the arbitrator's decision is appealed for trial de novo under G.S. 7A-229, and (iii) the arbitrator's decision is affirmed on appeal, then the court shall consider the fact that the arbitrator's decision was affirmed as a significant factor in favor of assessing all court costs and attorneys' fees associated with the case in both the original action and the two appeals, including the arbitration fee assessed under subsection (c1) of this section, against the appellant.

(d) This procedure may be implemented in a judicial district, in selected counties within a district, or in any court within a district, if the Director of the Administrative Office of the Courts, and the cognizant Senior Resident Superior Court Judge or the Chief District Court Judge of any court selected for this procedure, determine that use of this procedure may assist in the administration of justice toward achieving objectives stated in subsection (a) of this section in a judicial district, county, or court. The Director of the Administrative Office of the Courts, acting upon the recommendation of the cognizant Senior Resident Superior Court Judge or Chief District Court Judge of any court selected for this procedure, may terminate this procedure in any judicial district, county, or court upon a determination that its use has not accomplished objectives stated in subsection (a) of this section.

(e) Arbitrators in this procedure shall have the same immunity as judges from civil liability for their official conduct. (1989, c. 301, s. 1; 2002-126, s. 14.3(a); 2003-284, s. 36A.1; 2013-159, s. 3; 2013-225, s. 1.)

§ 7A-38: Repealed by Session Laws 1995, c. 500, s. 3.

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

(a) Purpose. – The General Assembly finds that a system of court-ordered mediated settlement conferences should be established to facilitate the settlement of superior court civil actions and to make civil litigation more economical, efficient, and satisfactory to litigants and the State. Therefore, this section is enacted to require parties to superior court civil actions and their representatives to attend a pretrial, mediated settlement conference conducted pursuant to this section and pursuant to rules of the Supreme Court adopted to implement this section.

(b) Definitions. – As used in this section:

(1) "Mediated settlement conference" means a pretrial, court-ordered conference of the parties to a civil action and their representatives conducted by a mediator.

(2) "Mediation" means an informal process conducted by a mediator with the objective of helping parties voluntarily settle their dispute.

(3) "Mediator" means a neutral person who acts to encourage and facilitate a resolution of a pending civil action. A mediator does not make an award or render a judgment as to the merits of the action.

(c) Rules of procedure. – The Supreme Court may adopt rules to implement this section.

(d) Statewide implementation. – Mediated settlement conferences authorized by this section shall be implemented in all judicial districts as soon as practicable, as determined by the Director of the Administrative Office of the Courts.

(e) Cases selected for mediated settlement conferences. – The senior resident superior court judge of any participating district may order a mediated settlement conference for any superior court civil action pending in the district. The senior resident superior court judge may by local rule order all cases, not otherwise exempted by the Supreme Court rule, to mediated settlement conference.

(f) Attendance of parties. – The parties to a superior court civil action in which a mediated settlement conference is ordered, their attorneys and other persons or entities with authority, by law or by contract, to settle the parties' claims shall attend the mediated settlement conference unless excused by rules of the Supreme Court or by order of the senior resident superior court judge. Nothing in this section shall require any party or other participant in the conference to make a settlement offer or demand which it deems is contrary to its best interests.

(g) Sanctions. – Any person required to attend a mediated settlement conference or other settlement procedure under this section who, without good cause, fails to attend or fails to pay any or all of the mediator's or other neutral's fee in compliance with this section and the rules promulgated by the Supreme Court to implement this section is subject to the contempt powers of the court and monetary sanctions imposed by a resident or presiding superior court judge. The monetary sanctions may include the payment of fines, attorneys' fees, mediator and neutral fees, and the expenses and loss of earnings incurred by persons attending the procedure. A party seeking sanctions against another party or person shall do so in a written motion stating the grounds for the motion and the relief sought. The motion shall be served upon all parties and upon any person against whom the sanctions are being sought. The court may initiate sanction proceedings upon its own motion by the entry of a show cause order. If the court imposes sanctions, it shall do so, after notice and a hearing, in a written order, making findings of fact and conclusions of law. An order imposing sanctions shall be reviewable upon appeal where the entire record as submitted shall be reviewed to determine whether the order is supported by substantial evidence.

(h) Selection of mediator. – The parties to a superior court civil action in which a mediated settlement conference is to be held pursuant to this section shall have the right to designate a mediator. Upon failure of the parties to designate a mediator within the time established by the rules of the Supreme Court, a mediator shall be appointed by the senior resident superior court judge.

(i) Promotion of other settlement procedures. – Nothing in this section is intended to preclude the use of other dispute resolution methods within the superior court. Parties to a superior court civil action are encouraged to select other available dispute resolution methods. The senior resident superior court judge, at the request of and with the consent of the parties, may order the parties to attend and participate in any other settlement procedure authorized by rules of the Supreme Court or by the local superior court rules, in lieu of attending a mediated settlement conference. Neutral third parties acting pursuant to this section shall be selected and compensated in accordance with such rules or pursuant to agreement of the parties. Nothing in this section shall prohibit the parties from participating in, or the court from ordering, other dispute resolution procedures, including arbitration to the extent authorized under State or federal law.

(j) Immunity. – Mediator and other neutrals acting pursuant to this section shall have judicial immunity in the same manner and to the same extent as a judge of the General Court of Justice, except that mediators and other neutrals may be disciplined in accordance with enforcement procedures adopted by the Supreme Court pursuant to G.S. 7A-38.2.

(k) Costs of mediated settlement conference. – Costs of mediated settlement conferences shall be borne by the parties. Unless otherwise ordered by the court or agreed to by the parties, the mediator's fees shall be paid in equal shares by the parties. For purposes of this section, multiple parties shall be considered one party when they are represented by the same counsel. The rules adopted by the Supreme Court implementing this section shall set out a method whereby parties found by the court to be unable to pay the costs of the mediated settlement conference are afforded an opportunity to participate without cost. The rules adopted by the Supreme Court shall set the fees to be paid a mediator appointed by a judge upon the failure of the parties to designate a mediator.

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

(1) In proceedings for sanctions under this section;
(2) In proceedings to enforce or rescind a settlement of the action;
(3) In disciplinary hearings before the State Bar or the Dispute Resolution Commission; or
(4) In proceedings to enforce laws concerning juvenile or elder abuse.

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

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

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

(m) Right to jury trial. – Nothing in this section or the rules adopted by the Supreme Court implementing this section shall restrict the right to jury trial. (1995, c. 500, s. 1; 1999-354, s. 5; 2005-167, s. 1; 2008-194, s. 8(a); 2015-57, s. 1; 2017-158, s. 26.7(a).)

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

(a) The Supreme Court may adopt standards of conduct for mediators and other neutrals who are certified or otherwise qualified pursuant to G.S. 7A-38.1, 7A-38.3, 7A-38.3B, 7A-38.3D, 7A-38.3E, and 7A-38.4A, or who participate in proceedings conducted pursuant to

those sections. The standards may also regulate mediator and other neutral training programs. The Supreme Court may adopt procedures for the enforcement of those standards.

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

(c) The Dispute Resolution Commission shall consist of 17 members: five judges appointed by the Chief Justice of the Supreme Court, at least two of whom shall be active superior court judges, and at least two of whom shall be active district court judges; one clerk of superior court appointed by the Chief Justice of the Supreme Court; two mediators certified to conduct superior court mediated settlement conferences and two mediators certified to conduct equitable distribution mediated settlement conferences appointed by the Chief Justice of the Supreme Court; one certified district criminal court mediator who is a representative of a community mediation center appointed by the Chief Justice of the Supreme Court; a district attorney appointed by the Chief Justice of the Supreme Court; two practicing attorneys who are not certified as mediators appointed by the President of the North Carolina State Bar, one of whom shall be a family law specialist; and three citizens knowledgeable about mediation, one of whom shall be appointed by the Governor, one by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, and one by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121. Commission members shall serve three-year terms and shall be ineligible to serve more than two consecutive terms. Members appointed to fill unexpired terms shall be eligible to serve two consecutive terms upon the expiration of the unexpired term. The Chief Justice shall designate one of the members to serve as chair for a two-year term. Members of the Commission shall be compensated pursuant to G.S. 138-5.

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

(d) An administrative fee, not to exceed two hundred dollars ($200.00) per certification, may be charged by the Dispute Resolution Commission to applicants for certification and annual renewal of certification for mediators and mediation training programs operating under this Article. The fees collected shall be deposited in a Dispute Resolution Fund. The Fund shall be established within the Judicial Department as a nonreverting, interest-bearing special revenue account. Accordingly, interest and other investment income earned by the Fund shall be credited to it. All moneys collected through the fees authorized and assessed under this statute shall be

remitted to the Fund. Moneys in the Fund shall be used to support the operations of the Commission and used at the direction of the Commission.

(e) The chair of the Commission may employ an executive director and other staff as necessary to assist the Commission in carrying out its duties. The chair may also employ special counsel or call upon the Attorney General to furnish counsel to assist the Commission in conducting hearings pursuant to its certification or qualification and regulatory responsibilities. Special counsel or counsel furnished by the Attorney General may present the evidence in support of a denial or revocation of certification or qualification or a complaint against a mediator, other neutral, training program, or trainers or staff affiliated with a program. Special counsel or counsel furnished by the Attorney General may also represent the Commission when its final determinations are the subject of an appeal.

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

(1) Administer oaths and affirmations;

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

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

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

(h) The Commission shall keep confidential all information in its files pertaining to the initial and renewal applications for certification of mediators, the qualification of other neutrals, and the initial and renewal applications for certification or qualification of training programs for mediators or other neutrals, except that in the case of an initial or renewal application for certification in the District Criminal Court Mediation Program, Commission staff shall notify the Executive Director of the Mediation Network of North Carolina, Inc., and the Executive Director of the community mediation center that is sponsoring the application of any matter regarding the qualifications, character, conduct, or fitness to practice of the applicant. The Commission shall also keep confidential the identity of those persons requesting informal guidance or the issuance of formal advisory opinions from the Commission or its staff.

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

(1) A preliminary investigation is completed.

(2) A determination is made that probable cause exists to believe that the words or actions of the mediator, neutral, trainer, or other training program personnel:

a. Violate standards for the conduct of mediators or other neutrals;

b. Violate other standards of professional conduct to which the mediator, neutral, trainer, or other training program personnel is subject;
c. Violate program rules or applicable governing law; or
d. Consist of conduct or actions that are inconsistent with good moral character or reflect a lack of fitness to serve as a mediator, other neutral, trainer, or other training program personnel.

(3) One of the following events has occurred:
a. The respondent does not appeal the determination before the time permitted for an appeal has expired.
b. Upon a timely filed appeal, the Commission holds a hearing and issues a decision affirming the determination.

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

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

(i) All appeals from denials of initial applications for mediator certification and initial applications for mediator training program certification shall be held in private, unless the applicant requests a public hearing. Appeals from a denial of a mediator or mediator training program application for certification renewal or reinstatement that relate to moral character, conduct, or fitness to practice shall be open to the public, except that for good cause shown, the presiding officer may exclude from the hearing room all persons except the parties, counsel, and those engaged in the hearing. All other appeals from denials of a mediator training program's application for certification renewal shall be held in private, unless the applicant requests a public hearing.

(j) Appeals from the Commission's initial determination after review and investigation of a complaint that probable cause exists to believe that the conduct of a mediator, neutral, trainer, or other training program personnel violated a provision set out in subdivision (2) of subsection (h) of this section shall be open to the public, except that for good cause shown, the presiding officer may exclude from the hearing room all persons except the parties, counsel, and those engaged in the hearing. No hearing shall be closed to the public over the objection of the mediator, neutral, trainer, or training program personnel that is the subject of the complaint.

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

(*l*) The Commission may issue a cease and desist letter to any individual who falsely represents himself or herself to the public as certified or as eligible to be certified pursuant to this section, or who uses any words, letters, titles, signs, cards, Web site postings, or advertisements

that expressly or implicitly convey such misrepresentation to the public. If the individual continues to make such false representations after receipt of the cease and desist letter, the Commission, through its Chair, may petition the Superior Court of Wake County for an injunction restraining the individual's conduct and for any other relief that the court deems appropriate. (1995, c. 500, s. 1; 1998-212, s. 16.19(b), (c); 2005-167, ss. 2, 4; 2007-387, ss. 2, 3; 2010-169, s. 21(b); 2011-145, s. 15.5; 2011-411, s. 5; 2017-158, s. 26.8.)

§ 7A-38.3. Prelitigation mediation of farm nuisance disputes.

(a) Definitions. – As used in this section:

(1) "Farm nuisance dispute" means a claim that the farming activity of a farm resident constitutes a nuisance.

(2) "Farm resident" means a person holding an interest in fee, under a real estate contract, or under a lease, in land used for farming activity when that person manages the operations on the land.

(3) "Farming activity" means the cultivation of farmland for the production of crops, fruits, vegetables, ornamental and flowering plants, and the utilization of farmland for the production of dairy, livestock, poultry, and all other forms of agricultural products having a domestic or foreign market.

(4) "Mediator" means a neutral person who acts to encourage and facilitate a resolution of a farm nuisance dispute.

(5) "Nuisance" means an action that is injurious to health, indecent, offensive to the senses, or an obstruction to the free use of property.

(6) "Party" means any person having a dispute with a farm resident.

(7) "Person" means a natural person, or any corporation, trust, or limited partnership as defined in G.S. 59-102.

(b) Voluntary Mediation. – The parties to a farm nuisance dispute may agree at any time to mediation of the dispute under the provisions of this section.

(c) Mandatory Mediation. – Prior to bringing a civil action involving a farm nuisance dispute, a farm resident or any other party shall initiate mediation pursuant to this section. If a farm resident or any other party brings an action involving a farm nuisance dispute, this action shall, upon the motion of any party prior to trial, be dismissed without prejudice by the court unless any one or more of the following apply:

(1) The dispute involves a claim that has been brought as a class action.

(2) The nonmoving party has satisfied the requirements of this section and such is indicated in a mediator's certification issued under subsection (g) of this section.

(3) The court finds that a mediator improperly failed to issue a certification indicating that the nonmoving party satisfied the requirements of this section.

(4) The court finds good cause for a failure to attempt mediation. Good cause includes, but is not limited to, a determination that the time delay required for mediation would likely result in irreparable harm or that injunctive relief is otherwise warranted.

(d) Initiation of Mediation. – Prelitigation mediation of a farm nuisance dispute shall be initiated by filing a request for mediation with the clerk of superior court in a county in which the action may be brought. The Administrative Office of the Courts shall prescribe a request for mediation form. The party filing the request for mediation also shall mail a copy of the request

by certified mail, return receipt requested, to each party to the dispute. The clerk shall provide each party with a list of mediators certified by the Dispute Resolution Commission. If the parties agree in writing to the selection of a mediator from that list, the clerk shall appoint that mediator selected by the parties. If the parties do not agree on the selection of a mediator, the party filing the request for mediation shall bring the matter to the attention of the clerk, and a mediator shall be appointed by the senior resident superior court judge. The clerk shall notify the mediator and the parties of the appointment of the mediator.

(e) Mediation Procedure. – Except as otherwise expressly provided in this section, mediation under this section shall be conducted in accordance with the provisions for mediated settlement of civil cases in G.S. 7A-38.1 and G.S. 7A-38.2 and rules and standards adopted pursuant to those sections. The Supreme Court may adopt additional rules and standards to implement this section, including an exemption from the provisions of G.S. 7A-38.1 for cases in which mediation was attempted under this section.

(f) Waiver of Mediation. – The parties to the dispute may waive the mediation required by this section by informing the mediator of their waiver in writing. No costs shall be assessed to any party if all parties waive mediation prior to the occurrence of an initial mediation meeting.

(g) Certification That Mediation Concluded. – Immediately upon a waiver of mediation under subsection (f) of this section or upon the conclusion of mediation, the mediator shall prepare a certification stating the date on which the mediation was concluded and the general results of the mediation, including, as applicable, that the parties waived the mediation, that an agreement was reached, that mediation was attempted but an agreement was not reached, or that one or more parties, to be specified in the certification, failed or refused without good cause to attend one or more mediation meetings or otherwise participate in the mediation. The mediator shall file the original of the certification with the clerk and provide a copy to each party. Each party to the mediation has satisfied the requirements of this section upon the filing of the certification, except any party specified in the certification as having failed or refused to attend one or more mediation meetings or otherwise participate. The sanctions in G.S. 7A-38.1(g) do not apply to prelitigation mediation conducted under this section.

(h) Time Periods Tolled. – Any applicable statutes of limitations relating to a farm nuisance dispute shall be tolled upon the filing of a request for mediation under this section, until 30 days after the date on which the mediation is concluded as set forth in the mediator's certification, or if the mediator fails to set forth such date, until 30 days after the filing of the certification under subsection (g) of this section. The filing of a request for prelitigation mediation under subsection (d) of this section does not constitute the commencement or the bringing of an action involving a farm nuisance dispute. (1995, c. 500, s. 1; 2013-314, s. 2.)

§ 7A-38.3A. Prelitigation mediation of insurance claims.

(a) Initiation of Mediation. – Prelitigation mediation of an insurance claim may be initiated by an insurer that has provided the policy limits in accordance with G.S. 58-3-33 by filing a request for mediation with the clerk of superior court in a county in which the action may be brought. The insurer also shall mail a copy of the request by certified mail, return receipt requested, to the person who requested the information under G.S. 58-3-33.

(b) Costs of Mediation. – Costs of mediation, including the mediator's fees, shall be borne by the insurer and claimant equally. When an attorney represents a party to the mediation, that party shall pay his or her attorneys' fees.

(c) Mediation Procedure. – Except as otherwise expressly provided in this section, mediation under this section shall be conducted in accordance with the provisions for mediated settlement of civil cases in G.S. 7A-38.1 and G.S. 7A-38.2, and rules and standards adopted pursuant to those sections. The Supreme Court may adopt additional rules and standards to implement this section, including an exemption from the provisions of G.S. 7A-38.1 for cases in which mediation was attempted under this section.

(d) Certification That Mediation Concluded. – Upon the conclusion of mediation, the mediator shall prepare a certification stating the date on which the mediation was concluded and the general results of the mediation, including, as applicable, that an agreement was reached, that mediation was attempted but an agreement was not reached, or that one or more parties, to be specified in the certification, failed or refused without good cause to attend one or more mediation meetings or otherwise participate in the mediation. The mediator shall file the original of the certification with the clerk and provide a copy to each party. Each party to the mediation has satisfied the requirements of this section upon the filing of the certification, except any party specified in the certification as having failed or refused to attend one or more mediation meetings or otherwise participate. The sanctions in G.S. 7A-38.1(g) do not apply to prelitigation mediation conducted under this section.

(e) Time Periods Tolled. – Time periods relating to the filing of a claim or the taking of other action with respect to an insurance claim, including any applicable statutes of limitations, shall be tolled upon the filing of a request for mediation under this section, until 30 days after the date on which the mediation is concluded as set forth in the mediator's certification or, if the mediator fails to set forth such date, until 30 days after the filing of the certification under subsection (d) of this section.

(f) Medical Malpractice Claims Excluded. – This section does not apply to claims seeking recovery for medical malpractice. (2003-307, s. 2.)

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

(a) Purpose. – The General Assembly finds that the clerk of superior court in the General Court of Justice should have the discretion and authority to order that mediation be conducted in matters within the clerk's jurisdiction in order to facilitate a more economical, efficient, and satisfactory resolution of those matters.

(b) Enabling Authority. – The clerk of superior court may order that mediation be conducted in any matter in which the clerk has exclusive or original jurisdiction, except for matters under Chapters 45 and 48 of the General Statutes and except in matters in which the jurisdiction of the clerk is ancillary. The Supreme Court may adopt rules to implement this section. Such mediations shall be conducted pursuant to this section and the Supreme Court rules as adopted.

(c) Attendance. – In those matters ordered to mediation pursuant to this section, the following persons or entities, along with their attorneys, may be ordered by the clerk to attend the mediation:

(1) Named parties.

(2) Interested persons, meaning persons or entities who have a right, interest, or claim in the matter; heirs or devisees in matters under Chapter 28A of the General Statutes, next of kin under Chapter 35A of the General Statutes, and other persons or entities as the clerk deems necessary for the adjudication of

the matter. The meaning of "interested person" may vary according to the issues involved in the matter.

(3) Nonparty participants, meaning any other person or entity identified by the clerk as possessing useful information about the matter and whose attendance would be beneficial to the mediation.

(4) Fiduciaries, meaning persons or entities who serve as fiduciaries, as that term is defined by G.S. 36A-22.1, of named parties, interested persons, or nonparty participants.

Any person or entity ordered to attend a mediation shall be notified of its date, time, and location and shall attend unless excused by rules of the Supreme Court or by order of the clerk. No one attending the mediation shall be required to make a settlement offer or demand that it deems contrary to its best interests.

(d) Selection of Mediator. – Persons ordered to mediation pursuant to this section have the right to designate a mediator in accordance with rules promulgated by the Supreme Court implementing this section. Upon failure of those persons to agree upon a designation within the time established by rules of the Supreme Court, a mediator certified by the Dispute Resolution Commission pursuant to those rules shall be appointed by the clerk.

(e) Immunity. – Mediators acting pursuant to this section shall have judicial immunity in the same manner and to the same extent as a judge of the General Court of Justice, except that mediators may be disciplined in accordance with procedures adopted by the Supreme Court pursuant to G.S. 7A-38.2.

(f) Costs of Mediation. – Costs of mediation under this section shall be borne by the named parties, interested persons, and fiduciaries ordered to attend the mediation. The rules adopted by the Supreme Court implementing this section shall set out the manner in which costs shall be paid and a method by which an opportunity to participate without cost shall be afforded to persons found by the clerk to be unable to pay their share of the costs of mediation. Costs may only be assessed against the estate of a decedent, the estate of an adjudicated or alleged incompetent, a trust corpus, or against a fiduciary upon the entry of a written order making specific findings of fact justifying the taxing of costs.

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

(1) Proceedings for sanctions pursuant to this section;

(2) Proceedings to enforce or rescind a written and signed settlement agreement;

(3) Incompetency, guardianship, or estate proceedings in which a mediated agreement is presented to the clerk;

(4) Disciplinary hearings before the State Bar or the Dispute Resolution Commission; or

(5) Proceedings for abuse, neglect, or dependency of a juvenile, or for abuse, neglect, or exploitation of an adult, for which there is a duty to report under G.S. 7B-301 and Article 6 of Chapter 108A of the General Statutes, respectively.

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

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

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

(1) Proceedings for sanctions pursuant to this section;

(2) Disciplinary hearings before the State Bar or the Dispute Resolution Commission; or

(3) Proceedings for abuse, neglect, or dependency of a juvenile, or for abuse, neglect, or exploitation of an adult, for which there is a duty to report under G.S. 7B-301 and Article 6 of Chapter 108A of the General Statutes, respectively.

(i) Agreements. – In matters before the clerk in which agreements are reached in a mediation conducted pursuant to this section, or during one of its recesses, those agreements shall be treated as follows:

(1) Where as a matter of law, a matter may be resolved by agreement of the parties, a settlement is enforceable only if it has been reduced to writing and signed by the parties against whom enforcement is sought.

(2) In all other matters before the clerk, including guardianship and estate matters, all agreements shall be delivered to the clerk for consideration in deciding the matter.

(j) Sanctions. – Any person ordered to attend a mediation conducted pursuant to this section and rules of the Supreme Court who, without good cause, fails to attend the mediation or fails to pay any or all of the mediator's fee in compliance with this section and the rules promulgated by the Supreme Court to implement this section, is subject to the contempt powers of the clerk and monetary sanctions. The monetary sanctions may include the payment of fines, attorneys' fees, mediator fees, and the expenses and loss of earnings incurred by persons attending the mediation. If the clerk imposes sanctions, the clerk shall do so, after notice and a hearing, in a written order, making findings of fact and conclusions of law. An order imposing sanctions is reviewable by the superior court in accordance with G.S. 1-301.2 and G.S. 1-301.3, as applicable, and thereafter by the appellate courts in accordance with G.S. 7A-38.1(g).

(k) Authority to Supplement Procedural Details. – The clerk of superior court shall make all those orders just and necessary to safeguard the interests of all persons and may supplement all necessary procedural details not inconsistent with rules adopted by the Supreme Court implementing this section. (2005-67, s. 1; 2008-194, s. 8(b); 2015-57, s. 2; 2017-158, s. 26.7(c).)

§ 7A-38.3C: Repealed by Session Laws 2007-491, s. 4, effective August 21, 2007.

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

(a) Purpose. – The General Assembly finds that it is in the public interest to promote high standards for persons who mediate matters in district criminal court. To that end, a program of certification for these mediators shall be established in judicial districts designated by the Dispute Resolution Commission and the Director of the Administrative Office of the Courts and

in which the chief district court judge, the district attorney, and the community mediation center agree to participate. This section does not supersede G.S. 7A-38.5.

(b) Enabling Authority. – In each district, the court may encourage mediation for any criminal district court action pending in the district, and the district attorney may delay prosecution of those actions so that the mediation may take place.

(c) Program Administration. – A community mediation center established under G.S. 7A-38.5 and located in a district designated under subsection (a) of this section shall assist the court in administering a program providing mediation services in district criminal court cases. A community mediation center may assist in the screening and scheduling of cases for mediation and provide certified volunteer or staff mediators to conduct district criminal court mediations.

(d) Rules of Procedure. – The Supreme Court shall adopt rules to implement this section. Each mediation shall be conducted pursuant to this section and the Supreme Court Rules as adopted.

(e) Mediator Authority. – In the mediator's discretion, any person whose presence and participation may assist in resolving the dispute or addressing any issues underlying the mediation may be permitted to attend and participate. The mediator shall have discretion to exclude any individual who seeks to attend the mediation but whose participation the mediator deems would be counterproductive. Lawyers for the participants may attend and participate in the mediation.

(f) Mediator Qualification. – The Supreme Court shall establish requirements for the certification or qualification of mediators serving under this section. The Court shall also establish requirements for the qualification of training programs and trainers, including community mediation center staff, that train these mediators. The Court shall also adopt rules regulating the conduct of these mediators and trainers.

(g) Oversight and Evaluation. – The Supreme Court may require community mediation centers and their volunteer or staff mediators to collect and report caseload statistics, referral sources, fees collected, and any other information deemed essential for program oversight and evaluation purposes.

(h) Immunity. – A mediator under this section has judicial immunity in the same manner and to the same extent as a judge of the General Court of Justice, except that a mediator may be disciplined in accordance with procedures adopted by the Supreme Court. A community mediation center and its staff involved in supplying volunteer or staff mediators or other personnel to schedule cases or perform other duties under this section are immune from suit in any civil action, except in any case of willful or wanton misconduct.

(i) Confidentiality. – Any memorandum, work note, or product of the mediator and any case file maintained by a community mediation center acting under this section and any mediator certification application are confidential.

(j) Inadmissibility of Negotiations. – Evidence of any statement made and conduct occurring during a mediation under this section shall not be subject to discovery and shall be inadmissible in any proceeding in the action from which the mediation arises. Any participant in a mediation conducted under this section, including the mediator, may report to law enforcement personnel any statement made or conduct occurring during the mediation process that threatens or threatened the safety of any person or property. A mediator has discretion to warn a person whose safety or property has been threatened. No evidence otherwise discoverable is

inadmissible for the reason it is presented or discussed in a mediated settlement conference or other settlement proceeding under this section.

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

(1) Proceedings for abuse, neglect, or dependency of a juvenile, or for abuse, neglect, or exploitation of an adult, for which there is a duty to report under G.S. 7B-301 and Article 6 of Chapter 108A of the General Statutes, respectively.

(2) Disciplinary hearings before the State Bar or the Dispute Resolution Commission.

(3) Proceedings in which the mediator acts as a witness pursuant to subsection (j) of this section.

(4) Trials of a felony, during which a presiding judge may compel the disclosure of any evidence arising out of the mediation, excluding a statement made by the defendant in the action under mediation, if it is to be introduced in the trial or disposition of the felony and the judge determines that the introduction of the evidence is necessary to the proper administration of justice and the evidence cannot be obtained from any other source.

(*l*) Written Agreements. – Any agreement reached in mediation is enforceable only if it has been reduced to writing and signed by the parties against whom enforcement is sought. A non-attorney mediator may assist parties in reducing the agreement to writing.

(m) Dispute Resolution Fee. – A dispute resolution fee shall be assessed and paid to the clerk in advance of mediation as set forth in G.S. 7A-38.7. By agreement, all or any portion of the fee may be paid by a person other than the defendant.

(n) Definitions. – As used in this section, the following definitions apply:

(1) Court. – A district court judge, a district attorney, or the designee of a district court judge or district attorney.

(2) Neutral observer. – Includes any person seeking mediator certification, any person studying any dispute resolution process, and any person acting as an interpreter. (2007-387, s. 1; 2012-194, s. 63.3(b); 2015-57, s. 3; 2016-107, s. 7; 2017-158, s. 26.7(d).)

§ 7A-38.3E. Mediation of public records disputes.

(a) Voluntary Mediation. – The parties to a public records dispute under Chapter 132 of the General Statutes may agree at any time prior to filing a civil action under Chapter 132 of the General Statutes to mediation of the dispute under the provisions of this section. Mediation of a public records dispute shall be initiated by filing a request for mediation with the clerk of superior court in a county in which the action may be brought.

(b) Mandatory Mediation. – Subsequent to filing a civil action under Chapter 132 of the General Statutes, a person shall initiate mediation pursuant to this section. Such mediation shall be initiated no later than 30 days from the filing of responsive pleadings with the clerk in the county where the action is filed.

(c) Initiation of Mediation. – The Administrative Office of the Courts shall prescribe a request for mediation form. The party filing the request for mediation shall mail a copy of the

request by certified mail, return receipt requested, to each party to the dispute. The clerk shall provide each party with a list of mediators certified by the Dispute Resolution Commission. If the parties agree in writing to the selection of a mediator from that list, the clerk shall appoint that mediator selected by the parties. If the parties do not agree on the selection of a mediator, the party filing the request for mediation shall bring the matter to the attention of the clerk, and a mediator shall be appointed by the senior resident superior court judge. The clerk shall notify the mediator and the parties of the appointment of the mediator.

(d) Mediation Procedure. – Except as otherwise expressly provided in this section, mediation under this section shall be conducted in accordance with the provisions for mediated settlement of civil cases in G.S. 7A-38.1 and G.S. 7A-38.2 and rules and standards adopted pursuant to those sections. The Supreme Court may adopt additional rules and standards to implement this section, including an exemption from the provisions of G.S. 7A-38.1 for cases in which mediation was attempted under this section.

(e) Waiver of Mediation. – The parties to the dispute may waive the mediation required by this section by informing the mediator of the parties' waiver in writing. No costs shall be assessed to any party if all parties waive mediation prior to the occurrence of an initial mediation meeting.

(f) Certification That Mediation Concluded. – Immediately upon a waiver of mediation under subsection (e) of this section or upon the conclusion of mediation, the mediator shall prepare a certification stating the date on which the mediation was concluded and the general results of the mediation, including, as applicable, that the parties waived the mediation, that an agreement was reached, that mediation was attempted but an agreement was not reached, or that one or more parties, to be specified in the certification, failed or refused without good cause to attend one or more mediation meetings or otherwise participate in the mediation. The mediator shall file the original of the certification with the clerk and provide a copy to each party.

(g) Time Periods Tolled. – Time periods relating to the filing of a claim or the taking of other action with respect to a public records dispute, including any applicable statutes of limitations, shall be tolled upon the filing of a request for mediation under this section, until 30 days after the date on which the mediation is concluded as set forth in the mediator's certification, or if the mediator fails to set forth such date, until 30 days after the filing of the certification under subsection (f) of this section.

(h) [Other Remedies Not Affected.] – Nothing in this section shall prevent a party seeking production of public records from seeking injunctive or other relief, including production of public records prior to any scheduled mediation. (2010-169, s. 21(a).)

§ 7A-38.3F. Prelitigation mediation of condominium and homeowners association disputes.

(a) Definitions. – The following definitions apply in this section:

(1) Association. – An association of unit or lot owners organized as allowed under North Carolina law, including G.S. 47C-3-101 and G.S. 47F-3-101.

(2) Dispute. – Any matter relating to real estate under the jurisdiction of an association about which the member and association cannot agree. The term "dispute" does not include matters expressly exempted in subsection (b) of this section.

(3) Executive board. – The body, regardless of name, designated in the declaration to act on behalf of an association.

(4) Mediator. – A neutral person who acts to encourage and facilitate a resolution of a dispute between an association and a member.

(5) Member. – A person who is a member of an association of unit or lot owners organized as allowed under North Carolina law, including G.S. 47C-3-101 and G.S. 47F-3-101.

(6) Party or parties. – An association or member who is involved in a dispute, as that term is defined in subdivision (2) of this subsection.

(b) Voluntary Prelitigation Mediation. – Prior to filing a civil action, the parties to a dispute arising under Chapter 47C of the General Statutes (North Carolina Condominium Act), Chapter 47F of the General Statutes (North Carolina Planned Community Act), or an association's declaration, bylaws, or rules and regulations are encouraged to initiate mediation pursuant to this section. However, disputes related solely to a member's failure to timely pay an association assessment or any fines or fees associated with the levying or collection of an association assessment are not covered under this section.

(c) Initiation of Mediation. – Either an association or a member may contact the North Carolina Dispute Resolution Commission or the Mediation Network of North Carolina for the name of a mediator or community mediation center. Upon contacting a mediator, either the association or member may supply to the mediator the physical address of the other party, or the party's representative, and the party's telephone number and e-mail address, if known. The mediator shall contact the party, or the party's representative, to notify him or her of the request to mediate. If the parties agree to mediate, they shall request in writing that the mediator schedule the mediation. The mediator shall then notify the parties in writing of the date, time, and location of the mediation, which shall be scheduled not later than 25 days after the mediator receives the written request from the parties.

(d) Mediation Procedure. – The following procedures shall apply to mediation under this section:

(1) Attendance. – The mediator shall determine who may attend mediation. The mediator may require the executive board or a large group of members to designate one or more persons to serve as their representatives in the mediation.

(2) All parties are expected to attend mediation. The mediator may allow a party to participate in mediation by telephone or other electronic means if the mediator determines that the party has a compelling reason to do so.

(3) If the parties cannot reach a final agreement in mediation because to do so would require the approval of the full executive board or the approval of a majority or some other percentage of the members of the association, the mediator may recess the mediation meeting to allow the executive board or members to review and vote on the agreement.

(e) Decline Mediation. – Either party to a dispute may decline mediation under this section. If either party declines mediation after mediation has been initiated under subsection (c) of this section but mediation has not been held, the party declining mediation shall inform the mediator and the other party in writing of his or her decision to decline mediation. No costs shall be assessed to any party if either party declines mediation prior to the occurrence of an initial mediation meeting.

(f) Costs of Mediation. – The costs of mediation, including the mediator's fees, shall be shared equally by the parties unless otherwise agreed to by the parties. Fees shall be due and

payable at the end of each mediation meeting. When an attorney represents a party to the mediation, that party shall pay his or her attorneys' fees.

(g) Certification That Mediation Concluded. – Upon the conclusion of mediation, the mediator shall prepare a certification stating the date on which the mediation was concluded and a statement that an agreement was reached or that mediation was attempted but an agreement was not reached. If both parties participate in mediation and a cause of action involving the dispute mediated is later filed, either party may file the certificate with the clerk of court, and the parties shall not be required to mediate again under any provision of law.

(h) Inadmissibility of Evidence. – Evidence of statements made and conduct occurring during mediation under this section shall not be subject to discovery and shall be inadmissible in any proceeding in a civil action arising from the dispute which was the subject of that mediation; except proceedings to enforce or rescind a settlement agreement reached at that mediation, disciplinary proceedings before the State Bar or Dispute Resolution Commission, or proceedings to enforce laws concerning juvenile or elder abuse. No evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed in a mediation under this section.

No mediator shall be compelled to testify or produce evidence concerning statements made and conduct occurring in anticipation of, during, or as a follow-up to a mediation pursuant to this section in any civil proceeding for any purpose, including proceedings to enforce or rescind the settlement agreement; except in disciplinary hearings before the State Bar or Dispute Resolution Commission and proceedings to enforce laws concerning juvenile or elder abuse, and except in proceedings to enforce or rescind an agreement reached in a mediation under this section, but only to attest to the signing of the agreement.

(i) Time Periods Tolled. – Time periods relating to the filing of a civil action, including any applicable statutes of limitations or statutes of repose, with respect to a dispute described in subsection (a) of this section, shall be tolled upon the initiation of mediation under this section until 30 days after the date on which the mediation is concluded as set forth in the mediator's certification. For purposes of this section, "initiation of mediation" shall be defined as the date upon which both parties have signed the written request to schedule the mediation.

(j) Association Duty to Notify. – Each association shall, in writing, notify the members of the association each year that they may initiate mediation under this section to try to resolve a dispute with the association. The association shall publish the notice required in this subsection on the association's Web site; but if the association does not have a Web site, the association shall publish the notice at the same time and in the same manner as the names and addresses of all officers and board members of the association are published as provided in G.S. 47C-3-103 and G.S. 47F-3-103. (2013-127, s. 1.)

§ 7A-38.4: Repealed by Session Laws 2001-320, s. 1.

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

(a) The General Assembly finds that a system of settlement events should be established to facilitate the settlement of district court actions involving equitable distribution, alimony, or support and to make that litigation more economical, efficient, and satisfactory to the parties, their representatives, and the State. District courts should be able to require parties to those actions and their representatives to attend a pretrial mediated settlement conference or other settlement procedure conducted under this section and rules adopted by the Supreme Court to implement this section.

(b) The definitions in G.S. 7A-38.1(b)(2) and (b)(3) apply in this section.

(c) Any chief district court judge in a judicial district may order a mediated settlement conference or another settlement procedure, as provided under subsection (g) of this section, for any action pending in that district involving issues of equitable distribution, alimony, child or post separation support, or claims arising out of contracts between the parties under G.S. 52-10, G.S. 52-10.1, or Chapter 52B of the General Statutes. The chief district court judge may adopt local rules that order settlement procedures in all of the foregoing actions and designate other district court judges or administrative personnel to issue orders implementing those settlement procedures. However, local rules adopted by a chief district court judge shall not be inconsistent with any rules adopted by the Supreme Court.

(d) The parties to a district court action where a mediated settlement conference or other settlement procedure is ordered, their attorneys, and other persons or entities with authority, by law or contract, to settle a party's claim, shall attend the mediated settlement conference or other settlement procedure, unless the rules ordering the settlement procedure provide otherwise. No party or other participant in a mediated settlement conference or other settlement procedure is required to make a settlement offer or demand that the party or participant deems contrary to that party's or participant's best interests. Parties who have been victims of domestic violence may be excused from physically attending or participating in a mediated settlement conference or other settlement procedure.

(e) Any person required to attend a mediated settlement conference or other settlement procedure under this section who, without good cause fails to attend or fails to pay any or all of the mediator or other neutral's fee in compliance with this section is subject to the contempt powers of the court and monetary sanctions imposed by a district court judge. A party seeking sanctions against another party or person shall do so in a written motion stating the grounds for the motion and the relief sought. The motion shall be served upon all parties and upon any person against whom sanctions are being sought. The court may initiate sanction proceedings upon its own motion by the entry of a show cause order. If the court imposes sanctions, it shall do so, after notice and hearing, in a written order making findings of fact and conclusions of law. An order imposing sanctions is reviewable upon appeal, and the entire record shall be reviewed to determine whether the order is supported by substantial evidence.

(f) The parties to a district court action in which a mediated settlement conference is to be held under this section shall have the right to designate a mediator. Upon failure of the parties to designate within the time established by the rules adopted by the Supreme Court, a mediator shall be appointed by a district court judge.

(g) A chief district court judge or that judge's designee, at the request of a party and with the consent of all parties, may order the parties to attend and participate in any other settlement procedure authorized by rules adopted by the Supreme Court or adopted by local district court rules, in lieu of attending a mediated settlement conference. Neutrals acting under this section shall be selected and compensated in accordance with rules adopted by the Supreme Court. Nothing herein shall prohibit the parties from participating in other dispute resolution procedures, including arbitration, to the extent authorized under State or federal law. Nothing herein shall prohibit the parties from participating in mediation at a community mediation center operating under G.S. 7A-38.5.

(h) Mediators and other neutrals acting under this section shall have judicial immunity in the same manner and to the same extent as a judge of the General Court of Justice, except that

mediators and other neutrals may be disciplined in accordance with enforcement procedures adopted by the Supreme Court under G.S. 7A-38.2.

(i) Costs of mediated settlement conferences and other settlement procedures shall be borne by the parties. Unless otherwise ordered by the court or agreed to by the parties, the mediator's fees shall be paid in equal shares by the parties. The rules adopted by the Supreme Court shall set out a method whereby a party found by the court to be unable to pay the costs of settlement procedures is afforded an opportunity to participate without cost to that party and without expenditure of State funds.

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

(1) In proceedings for sanctions under this section;
(2) In proceedings to enforce or rescind a settlement of the action;
(3) In disciplinary proceedings before the State Bar or the Dispute Resolution Commission; or
(4) In proceedings to enforce laws concerning juvenile or elder abuse.

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

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

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

(k) The Supreme Court may adopt standards for the certification and conduct of mediators and other neutrals who participate in settlement procedures conducted under this section. The standards may also regulate mediator training programs. The Supreme Court may adopt procedures for the enforcement of those standards. The administration of mediator certification, regulation of mediator conduct, and decertification shall be conducted through the Dispute Resolution Commission.

(*l*) An administrative fee not to exceed two hundred dollars ($200.00) may be charged by the Administrative Office of the Courts to applicants for certification and annual renewal of certification for mediators and mediator training programs operating under this section. The fees collected may be used by the Director of the Administrative Office of the Courts to establish and maintain the operations of the Commission and its staff. The administrative fee shall be set by the Director of the Administrative Office of the Courts in consultation with the Dispute Resolution Commission.

(m) The Administrative Office of the Courts, in consultation with the Dispute Resolution Commission, may require the chief district court judge of any district to report statistical data about settlement procedures conducted under this section for administrative purposes.

(n) Nothing in this section or in rules adopted by the Supreme Court implementing this section shall restrict a party's right to a trial by jury.

(o) The Supreme Court may adopt rules to implement this section. (1997-229, s. 1; 1998-212, s. 16.19(a); 1999-354, s. 6; 2000-140, s. 1; 2001-320, s. 2; 2001-487, s. 39; 2005-167, s. 3; 2008-194, s. 8(c); 2015-57, s. 4; 2017-158, s. 26.7(b).)

§ 7A-38.5. Community mediation centers.

(a) The General Assembly finds that it is in the public interest to encourage the establishment of community mediation centers, also known as dispute settlement centers or dispute resolution centers, to support the work of these centers in facilitating communication, understanding, reconciliation, and settlement of conflicts in communities, courts, and schools, and to promote the widest possible use of these centers by the courts and law enforcement officials across the State. A center may establish and charge fees for its services other than for criminal court mediations. Fees for criminal court mediation are set forth in G.S. 7A-38.7, and centers and mediators shall not charge any other fees in such cases.

(b) Community mediation centers, functioning as or within nonprofit organizations and local governmental entities, may receive referrals from courts, law enforcement agencies, and other public entities for the purpose of facilitating communication, understanding, reconciliation, and settlement of conflicts.

(c) Each chief district court judge and district attorney shall encourage mediation for any criminal district court action pending in the district when the judge and district attorney determine that mediation is an appropriate alternative.

(d) Each chief district court judge shall encourage mediation for any civil district court action pending in the district when the judge determines that mediation is an appropriate alternative.

(e) Except as provided in this subsection and subsection (f) of this section, each chief district court judge and district attorney shall refer any misdemeanor criminal action in district court that is generated by a citizen-initiated arrest warrant or criminal summons to the local mediation center for resolution, except for (i) any case involving domestic violence; (ii) any case in which the judge or the district attorney determine that mediation would be inappropriate; or (iii) any case being tried in a county in which mediation services are not available. The mediation center shall have 45 days to resolve each case and report back to the court with a resolution. The district attorney shall delay prosecution in order for the mediation to occur. If the case is not resolved through mediation within 45 days of referral, or if any party declines to enter into mediation, the court may proceed with the case as a criminal action. For purposes of this section, the term "citizen-initiated arrest warrant or criminal summons" means a warrant or summons issued pursuant to G.S. 15A-303 or G.S. 15A-304 by a magistrate or other judicial official based upon information supplied through the oath or affirmation of a private citizen.

(f) Any prosecutorial district may opt out of the mandatory mediation under subsection (e) of this section if the district attorney files a statement with the chief district court judge declaring that subsection shall not apply within the prosecutorial district.

(g) Nothing in this section is intended to prohibit or delay the appointment or engagement of an attorney for a defendant in a criminal case. (1999-354, s. 1; 2011-145, s. 31.24(b); 2012-194, s. 63.3(a); 2016-107, s. 8.)

§ 7A-38.6: Repealed by Session Laws 2014-100, s. 18B.1(g), effective July 1, 2014.

§ 7A-38.7. Dispute resolution fee for cases referred to mediation.

(a) In each criminal case filed in the General Court of Justice that is referred to a community mediation center, a dispute resolution fee shall be assessed in the sum of sixty dollars ($60.00) per mediation of that criminal case, in accordance with subsection (c) of this section, to support the services provided by the community mediation centers and the Mediation Network of North Carolina. Prior to mediation, the court shall cause the mediation participants to be informed that the dispute resolution fee shall be paid as part of any mediation of a criminal case. The fee shall be paid to the clerk in advance of the mediation. Fees assessed under this section shall be paid to the clerk of superior court in the county where the case was filed and remitted by the clerk to the Mediation Network of North Carolina. The Mediation Network may retain up to three dollars ($3.00) of this amount as an allowance for its administrative expenses. The Mediation Network must remit the remainder of this amount to the community mediation center that mediated the case. The court may waive or reduce a fee assessed under this section only upon entry of a written order, supported by findings of fact and conclusions of law, determining there is just cause to grant the waiver or reduction.

(b) Before providing the district attorney with a dismissal form, the community mediation center shall require proof that the defendant has paid the dispute resolution fee as required by subsection (a) of this section and shall attach the receipt to the dismissal form.

(c) All related criminal charges per defendant that are subject to mediation shall be treated as a single criminal case for the purpose of calculating the sixty-dollar ($60.00) dispute resolution fee. In advance of the mediation, the participants, including all complainants, defendants, and other parties to the mediation, shall discuss whether the dispute resolution fee shall be allocated between them. If the participants do not reach agreement on an allocation of the dispute resolution fee, then the fee shall be the responsibility of the defendant, unless the court waives or reduces the fee upon entry of a written order, supported by findings of fact and conclusions of law, determining there is just cause to waive or reduce the fee. In connection with any mediation subject to this section, no mediator or any other community mediation center volunteer or employee shall receive any payment directly from any participant in the mediation, regardless of whether the payment is a dispute resolution fee, cost of court, restitution, or any other fee required by law or court order. No mediator or community mediation center shall charge or collect any fees for mediating criminal cases other than the dispute resolution fee assessed pursuant to subsection (a) of this section. (2002-126, s. 29A.11(a); 2003-284, s. 13.13; 2011-145, s. 31.24(d); 2012-142, s. 16.6(a); 2016-107, s. 9.)

§ 7A-39. Cancellation of court sessions and closing court offices; extension of statutes of limitations and other emergency orders in catastrophic conditions.

(a) Cancellation of Court Sessions, Closing Court Offices. – In response to adverse weather or other emergency situations, including catastrophic conditions, any session of any court of the General Court of Justice may be cancelled, postponed, or altered by judicial officials, and court offices may be closed by judicial branch hiring authorities, pursuant to uniform

statewide guidelines prescribed by the Director of the Administrative Office of the Courts. As used in this section, "catastrophic conditions" means any set of circumstances that makes it impossible or extremely hazardous for judicial officials, employees, parties, witnesses, or other persons with business before the courts to reach a courthouse, or that creates a significant risk of physical harm to persons in a courthouse, or that would otherwise convince a reasonable person to avoid traveling to or being in a courthouse.

(b) Authority of Chief Justice. – When the Chief Justice of the North Carolina Supreme Court determines and declares that catastrophic conditions exist or have existed in one or more counties of the State, the Chief Justice may by order entered pursuant to this subsection:

(1) Extend, to a date certain no fewer than 10 days after the effective date of the order, the time or period of limitation within which pleadings, motions, notices, and other documents and papers may be timely filed and other acts may be timely done in civil actions, criminal actions, estates, and special proceedings in each county named in the order. The Chief Justice may enter an order under this subsection during the catastrophic conditions or at any time after such conditions have ceased to exist. The order shall be in writing and shall become effective for each affected county upon the date set forth in the order, and if no date is set forth in the order, then upon the date the order is signed by the Chief Justice.

(2) Issue any emergency directives that, notwithstanding any other provision of law, are necessary to ensure the continuing operation of essential trial or appellate court functions, including the designation or assignment of judicial officials who may be authorized to act in the general or specific matters stated in the emergency order, and the designation of the county or counties and specific locations within the State where such matters may be heard, conducted, or otherwise transacted. The Chief Justice may enter such emergency orders under this subsection in response to existing or impending catastrophic conditions or their consequences. An emergency order under this subsection shall expire the sooner of the date stated in the order, or 30 days from issuance of the order, but the order may be extended in whole or in part by the Chief Justice for additional 30-day periods if the Chief Justice determines that the directives remain necessary.

(c) In Chambers Jurisdiction Not Affected. – Nothing in this section prohibits a judge or other judicial officer from exercising, during adverse weather or other emergency situations, including catastrophic conditions, any in chambers or ex parte jurisdiction conferred by law upon that judge or judicial officer, as provided by law. The effectiveness of any such exercise shall not be affected by a determination by the Chief Justice that catastrophic conditions existed at the time it was exercised.

(d) Nothing in this section shall be construed to abrogate or diminish the inherent judicial powers of the Chief Justice or the Judicial Branch. (2000-166, s. 1; 2006-187, s. 6; 2009-516, s. 11.)

§ 7A-45.4. Designation of complex business cases.

(a) Any party may designate as a mandatory complex business case an action that involves a material issue related to any of the following:

(1) Disputes involving the law governing corporations, except charitable and religious organizations qualified under G.S. 55A-1-40(4) on the grounds of religious purpose, partnerships, and limited liability companies, including disputes arising under Chapters 55, 55A, 55B, 57D, and 59 of the General Statutes.

(2) Disputes involving securities, including disputes arising under Chapter 78A of the General Statutes.

(3) Disputes involving antitrust law, including disputes arising under Chapter 75 of the General Statutes that do not arise solely under G.S. 75-1.1 or Article 2 of Chapter 75 of the General Statutes.

(4) Disputes involving trademark law, including disputes arising under Chapter 80 of the General Statutes.

(5) Disputes involving the ownership, use, licensing, lease, installation, or performance of intellectual property, including computer software, software applications, information technology and systems, data and data security, pharmaceuticals, biotechnology products, and bioscience technologies.

(6), (7) Repealed by Session Laws 2014-102, s. 3, effective October 1, 2014.

(8) Disputes involving trade secrets, including disputes arising under Article 24 of Chapter 66 of the General Statutes.

(9) Contract disputes in which all of the following conditions are met:

a. At least one plaintiff and at least one defendant is a corporation, partnership, or limited liability company, including any entity authorized to transact business in North Carolina under Chapter 55, 55A, 55B, 57D, or 59 of the General Statutes.

b. The complaint asserts a claim for breach of contract or seeks a declaration of rights, status, or other legal relations under a contract.

c. The amount in controversy computed in accordance with G.S. 7A-243 is at least one million dollars ($1,000,000).

d. All parties consent to the designation.

(b) The following actions shall be designated as mandatory complex business cases:

(1) An action involving a material issue related to tax law that has been the subject of a contested tax case for which judicial review is requested under G.S. 105-241.16, or a civil action under G.S. 105-241.17 containing a constitutional challenge to a tax statute, shall be designated as a mandatory complex business case by the petitioner or plaintiff.

(2) An action described in subdivision (1), (2), (3), (4), (5), or (8) of subsection (a) of this section in which the amount in controversy computed in accordance with G.S. 7A-243 is at least five million dollars ($5,000,000) shall be designated as a mandatory complex business case by the party whose pleading caused the amount in controversy to equal or exceed five million dollars ($5,000,000).

(3) Repealed by Session Laws 2015-119, s. 6, effective June 29, 2015, and applicable to any action filed on or after that date.

(c) A party designating an action as a mandatory complex business case shall file a Notice of Designation in the Superior Court in which the action has been filed, shall contemporaneously serve the notice on each opposing party or counsel and on the Special Superior Court Judge for Complex Business Cases who is then the Chief Business Court Judge,

and shall contemporaneously send a copy of the notice by e-mail to the Chief Justice of the Supreme Court for approval of the designation of the action as a mandatory complex business case. The Notice of Designation shall, in good faith and based on information reasonably available, succinctly state the basis of the designation and include a certificate by or on behalf of the designating party that the civil action meets the criteria for designation as a mandatory complex business case pursuant to subsection (a) or (b) of this section.

(d) The Notice of Designation shall be filed:

(1) By the plaintiff, the third-party plaintiff, or the petitioner for judicial review contemporaneously with the filing of the complaint, third-party complaint, or the petition for judicial review in the action.

(2) By any intervenor when the intervenor files a motion for permission to intervene in the action.

(3) By any defendant or any other party within 30 days of receipt of service of the pleading seeking relief from the defendant or party.

(4) By any party whose pleading caused the amount in controversy computed in accordance with G.S. 7A-243 to equal or exceed five million dollars ($5,000,000) contemporaneously with the filing of that pleading.

(e) Within 30 days after service of the Notice of Designation, any other party may, in good faith, file and serve an opposition to the designation of the action as a mandatory complex business case. The opposition to the designation of the action shall assert all grounds on which the party opposing designation objects to the designation, and any grounds not asserted shall be deemed conclusively waived. Within 30 days after the entry of an order staying a pending action pursuant to subsection (g) of this section, any party opposing the stay shall file an objection with the Business Court asserting all grounds on which the party objects to the case proceeding in the Business Court, and any grounds not asserted shall be deemed conclusively waived. Based on the opposition or on its own motion, the Business Court Judge shall rule by written order on the opposition or objection and determine whether the action should be designated as a mandatory complex business case. If a party disagrees with the decision, the party may appeal in accordance with G.S. 7A-27(a).

(f) Once a designation is filed under subsection (d) of this section, and after preliminary approval by the Chief Justice, a case shall be designated and administered a complex business case. All proceedings in the action shall be before the Business Court Judge to whom it has been assigned unless and until an order has been entered under subsection (e) of this section ordering that the case not be designated a mandatory complex business case or the Chief Justice revokes approval. If complex business case status is revoked or denied, the action shall be treated as any other civil action, unless it is designated as an exceptional civil case or a discretionary complex business case pursuant to Rule 2.1 of the General Rules of Practice for the Superior and District Courts.

(g) If an action required to be designated as a mandatory complex business case pursuant to subsection (b) of this section is not so designated, the Superior Court in which the action has been filed shall, by order entered sua sponte, stay the action until it has been designated as a mandatory complex business case by the party required to do so in accordance with subsection (b) of this section.

(h) Nothing in this section is intended to permit actions for personal injury grounded in tort to be designated as mandatory complex business cases or to confer, enlarge, or diminish the subject matter jurisdiction of any court. (2005-425, s. 2; 2007-491, s. 4; 2014-102, s. 3; 2015-119, s. 6; 2016-91, s. 2.)

Article 91.

Appeal to Appellate Division.

§ 15A-1441. Correction of errors by appellate division.

Errors of law may be corrected upon appellate review as provided in this Article, except that review of capital cases shall be given priority on direct appeal and in State postconviction proceedings. (1977, c. 711, s. 1; 1995 (Reg. Sess., 1996), c. 719, s. 6.)

§ 15A-1442. Grounds for correction of error by appellate division.

The following constitute grounds for correction of errors by the appellate division.

(1) Lack of Jurisdiction. –
  a. The trial court lacked jurisdiction over the offense.
  b. The trial court did not have jurisdiction over the person of the defendant.

(2) Error in the Criminal Pleading. – Failure to charge a crime, in that:
  a. The criminal pleading charged acts which at the time they were committed did not constitute a violation of criminal law; or
  b. The pleading fails to state essential elements of an alleged violation as required by G.S. 15A-924(a)(5).

(3) Insufficiency of the Evidence. – The evidence was insufficient as a matter of law.

(4) Errors in Procedure. –
  a. There has been a denial of pretrial motions or relief to which the defendant is entitled, so as to affect the defendant's preparation or presentation of his defense, to his prejudice.
  b. There has been a denial of a trial motion or relief to which the defendant is entitled, to his prejudice.
  c. There has been error in the admission or exclusion of evidence, to the prejudice of the defendant.
  d. There has been error in the judge's instructions to the jury, to the prejudice of the defendant.
  e. There has been a denial of a post-trial motion or relief to which the defendant is entitled, to his prejudice. This provision is subject to the provisions of G.S. 15A-1422.

(5) Constitutionally Invalid Procedure or Statute; Prosecution for Constitutionally Protected Conduct. –
  a. The conviction was obtained by a violation of the Constitution of the United States or of the Constitution of North Carolina.
  b. The defendant was convicted under a statute that is in violation of the Constitution of the United States or the Constitution of North Carolina.
  c. The conduct for which the defendant was prosecuted was protected by the Constitution of the United States or the Constitution of North Carolina.

(5a) Insufficient Basis for Sentence. – The sentence imposed on the defendant is not supported by evidence introduced at the trial and sentencing hearing.

(5b) Violation of Sentencing Structure. – The sentence imposed:

a. Results from an incorrect finding of the defendant's prior record level under G.S. 15A-1340.14 or the defendant's prior conviction level under G.S. 15A-1340.21;
b. Contains a type of sentence disposition that is not authorized by G.S. 15A-1340.17 or G.S. 15A-1340.23 for the defendant's class of offense and prior record or conviction level; or
c. Contains a term of imprisonment that is for a duration not authorized by G.S. 15A-1340.17 or G.S. 15A-1340.23 for the defendant's class or offense and prior record or conviction level.

(6) Other Errors of Law. – Any other error of law was committed by the trial court to the prejudice of the defendant. (1977, c. 711, s. 1; 1979, c. 760, s. 3; 1993, c. 538, s. 26; 1994, Ex. Sess., c. 24, s. 14(b).)

§ 15A-1443. Existence and showing of prejudice.

(a) A defendant is prejudiced by errors relating to rights arising other than under the Constitution of the United States when there is a reasonable possibility that, had the error in question not been committed, a different result would have been reached at the trial out of which the appeal arises. The burden of showing such prejudice under this subsection is upon the defendant. Prejudice also exists in any instance in which it is deemed to exist as a matter of law or error is deemed reversible per se.

(b) A violation of the defendant's rights under the Constitution of the United States is prejudicial unless the appellate court finds that it was harmless beyond a reasonable doubt. The burden is upon the State to demonstrate, beyond a reasonable doubt, that the error was harmless.

(c) A defendant is not prejudiced by the granting of relief which he has sought or by error resulting from his own conduct. (1977, c. 711, s. 1.)

§ 15A-1444. When defendant may appeal; certiorari.

(a) A defendant who has entered a plea of not guilty to a criminal charge, and who has been found guilty of a crime, is entitled to appeal as a matter of right when final judgment has been entered.

(a1) A defendant who has been found guilty, or entered a plea of guilty or no contest to a felony, is entitled to appeal as a matter of right the issue of whether his or her sentence is supported by evidence introduced at the trial and sentencing hearing only if the minimum sentence of imprisonment does not fall within the presumptive range for the defendant's prior record or conviction level and class of offense. Otherwise, the defendant is not entitled to appeal this issue as a matter of right but may petition the appellate division for review of this issue by writ of certiorari.

(a2) A defendant who has entered a plea of guilty or no contest to a felony or misdemeanor in superior court is entitled to appeal as a matter of right the issue of whether the sentence imposed:

(1) Results from an incorrect finding of the defendant's prior record level under G.S. 15A-1340.14 or the defendant's prior conviction level under G.S. 15A-1340.21;
(2) Contains a type of sentence disposition that is not authorized by G.S. 15A-1340.17 or G.S. 15A-1340.23 for the defendant's class of offense and prior record or conviction level; or

(3) Contains a term of imprisonment that is for a duration not authorized by G.S. 15A-1340.17 or G.S. 15A-1340.23 for the defendant's class of offense and prior record or conviction level.

(b) Procedures for appeal from the magistrate to the district court are as provided in Article 90, Appeals from Magistrates and from District Court Judges.

(c) Procedures for appeal from the district court to the superior court are as provided in Article 90, Appeals from Magistrates and from District Court Judges.

(d) Procedures for appeal to the appellate division are as provided in this Article, the rules of the appellate division, and Chapter 7A of the General Statutes. The appeal must be perfected and conducted in accordance with the requirements of those provisions.

(e) Except as provided in subsections (a1) and (a2) of this section and G.S. 15A-979, and except when a motion to withdraw a plea of guilty or no contest has been denied, the defendant is not entitled to appellate review as a matter of right when he has entered a plea of guilty or no contest to a criminal charge in the superior court, but he may petition the appellate division for review by writ of certiorari. If an indigent defendant petitions the appellate division for a writ of certiorari, the presiding superior court judge may in his discretion order the preparation of the record and transcript of the proceedings at the expense of the State.

(f) The ruling of the court upon a motion for appropriate relief is subject to review upon appeal or by writ of certiorari as provided in G.S. 15A-1422.

(g) Review by writ of certiorari is available when provided for by this Chapter, by other rules of law, or by rule of the appellate division. (1977, c. 711, s. 1; 1979, c. 760, s. 3; 1981, c. 179, ss. 8, 9; 1993, c. 538, s. 27; 1994, Ex. Sess., c. 24, s. 14(b); 1997-80, s. 4.)

§ 15A-1445. Appeal by the State.

(a) Unless the rule against double jeopardy prohibits further prosecution, the State may appeal from the superior court to the appellate division:

(1) When there has been a decision or judgment dismissing criminal charges as to one or more counts.

(2) Upon the granting of a motion for a new trial on the ground of newly discovered or newly available evidence but only on questions of law.

(3) When the State alleges that the sentence imposed:

a. Results from an incorrect determination of the defendant's prior record level under G.S. 15A-1340.14 or the defendant's prior conviction level under G.S. 15A-1340.21;

b. Contains a type of sentence disposition that is not authorized by G.S. 15A-1340.17 or G.S. 15A-1340.23 for the defendant's class of offense and prior record or conviction level;

c. Contains a term of imprisonment that is for a duration not authorized by G.S. 15A-1340.17 or G.S. 15A-1340.23 for the defendant's class of offense and prior record or conviction level; or

d. Imposes an intermediate punishment pursuant to G.S. 15A-1340.13(g) based on findings of extraordinary mitigating circumstances that are not supported by evidence or are insufficient as a matter of law to support the dispositional deviation.

(b) The State may appeal an order by the superior court granting a motion to suppress as provided in G.S. 15A-979. (1977, c. 711, s. 1; 1993, c. 538, s. 28; 1994, Ex. Sess., c. 14, s. 28, c. 24, s. 14(b).)

§ 15A-1446. Requisites for preserving the right to appellate review.

(a) Except as provided in subsection (d), error may not be asserted upon appellate review unless the error has been brought to the attention of the trial court by appropriate and timely objection or motion. No particular form is required in order to preserve the right to assert the alleged error upon appeal if the motion or objection clearly presented the alleged error to the trial court. Formal exceptions are not required, but when evidence is excluded a record must be made in the manner provided in G.S. 1A-1, Rule 43(c), in order to assert upon appeal error in the exclusion of that evidence.

(b) Failure to make an appropriate and timely motion or objection constitutes a waiver of the right to assert the alleged error upon appeal, but the appellate court may review such errors affecting substantial rights in the interest of justice if it determines it appropriate to do so.

(c) The making of post-trial motions is not a prerequisite to the assertion of error on appeal.

(d) Errors based upon any of the following grounds, which are asserted to have occurred, may be the subject of appellate review even though no objection, exception or motion has been made in the trial division.

(1) Lack of jurisdiction of the trial court over the offense of which the defendant was convicted.
(2) Lack of jurisdiction of the trial court over the person of the defendant.
(3) The criminal pleading charged acts which, at the time they were committed, did not constitute a violation of criminal law.
(4) The pleading fails to state essential elements of an alleged violation, as required by G.S. 15A-924(a)(5).
(5) The evidence was insufficient as a matter of law.
(6) The defendant was convicted under a statute that is in violation of the Constitution of the United States or the Constitution of North Carolina.
(7) Repealed by Session Laws 1977, 2nd Sess., c. 1147, s. 28.
(8) The conduct for which the defendant was prosecuted was protected by the Constitution of the United States or the Constitution of North Carolina.
(9) Subsequent admission of evidence from a witness when there has been an improperly overruled objection to the admission of evidence on the ground that the witness is for a specified reason incompetent or not qualified or disqualified.
(10) Subsequent admission of evidence involving a specified line of questioning when there has been an improperly overruled objection to the admission of evidence involving that line of questioning.
(11) Questions propounded to a witness by the court or a juror.
(12) Rulings and orders of the court, not directed to the admissibility of evidence during trial, when there has been no opportunity to make an objection or motion.
(13) Error of law in the charge to the jury.

(14) The court has expressed to the jury an opinion as to whether a fact is fully or sufficiently proved.
(15) The defendant was not present at any proceeding at which his presence was required.
(16) Error occurred in the entry of the plea.
(17) The form of the verdict was erroneous.
(18) The sentence imposed was unauthorized at the time imposed, exceeded the maximum authorized by law, was illegally imposed, or is otherwise invalid as a matter of law.
(19) A significant change in law, either substantive or procedural, applies to the proceedings leading to the defendant's conviction or sentence, and retroactive application of the changed legal standard is required. (1977, c. 711, s. 1; 1977, 2nd Sess., c. 1147, s. 28; 1983 (Reg. Sess., 1984), c. 1037, s. 1.)

§ 15A-1447. Relief available upon appeal.

(a) If the appellate court finds that there has been reversible error which denied the defendant a fair trial conducted in accordance with law, it must grant the defendant a new trial.

(b) If the appellate court finds that the facts charged in a pleading were not at the time charged a crime, the judgment must be reversed and the charge must be dismissed.

(c) If the appellate court finds that the evidence with regard to a charge is insufficient as a matter of law, the judgment must be reversed and the charge must be dismissed unless there is evidence to support a lesser included offense. In that case the court may remand for trial on the lesser offense.

(d) If the appellate court affirms only some of the charges, or if it finds error relating only to the sentence, it may direct the return of the case to the trial court for the imposition of an appropriate sentence.

(e) If the appellate court affirms one or more of the charges, but not all of them, and makes a finding that the sentence is sustained by the charge or charges which are affirmed and is appropriate, the court may affirm the sentence.

(f) If the appellate court finds that there is an error with regard to the sentence which may be corrected without returning the case to the trial division for that purpose, it may direct the entry of the appropriate sentence.

(g) If the appellate court finds that there has been reversible error and the rule against double jeopardy prohibits further prosecution, it must dismiss the charges with prejudice. (1977, c. 711, s. 1.)

§ 15A-1448. Procedures for taking appeal.

(a) Time for Entry of Appeal; Jurisdiction over the Case. –
(1) A case remains open for the taking of an appeal to the appellate division for the period provided in the rules of appellate procedure for giving notice of appeal.
(2) When a motion for appropriate relief is made under G.S. 15A-1414 or G.S. 15A-1416(a), the case remains open for the taking of an appeal until the court has ruled on the motion. The time for taking an appeal as provided in subsection (b) shall begin to run immediately upon the entry of an order under

G.S. 15A-1420(c)(7), and the case shall remain open for the taking of an appeal until the expiration of that time.

(3) The jurisdiction of the trial court with regard to the case is divested, except as to actions authorized by G.S. 15A-1453, when notice of appeal has been given and the period described in (1) and (2) has expired.

(4) Repealed by Session Laws 1987, c. 624.

(5) The right to appeal is not waived by withdrawal of an appeal if the appeal is reentered within the time specified in (1) and (2).

(6) The right to appeal is not waived by compliance with all or a portion of the judgment imposed. If the defendant appeals, the court may enter appropriate orders remitting any fines or costs which have been paid. The court may delay the remission pending the determination of the appeal.

(b) How and When Appeal of Right Taken. – Notice of appeal shall be given within the time, in the manner and with the effect provided in the rules of appellate procedure.

(c) Certiorari. – Petitions for writs of certiorari are governed by rules of the appellate division. (1977, c. 711, s. 1; 1977, 2nd Sess., c. 1147, s. 29; 1987, c. 624; 1989, c. 377, s. 5.)

§ 15A-1449. Security for costs not required.

In criminal cases no security for costs is required upon appeal to the appellate division. (1977, c. 711, s. 1.)

§ 15A-1450. Withdrawal of appeal.

An appeal may be withdrawn by filing with the clerk of superior court a written notice of the withdrawal, signed by the defendant and, if he has counsel, his attorney. The clerk must forward a copy of the notice to the clerk of the appellate division in which the case is pending. The appellate division may enter an appropriate order with regard to the costs of the appeal. (1977, c. 711, s. 1.)

§ 15A-1451. Stay of sentence; bail; no stay when State appeals.

(a) When a defendant has given notice of appeal:

(1) Payment of costs is stayed.

(2) Payment of a fine is stayed.

(3) Confinement is stayed only when the defendant has been released pursuant to Article 26, Bail.

(4) Probation or special probation is stayed.

(b) The effect of dismissal of charges is not stayed by an appeal by the State, and the defendant is free from such charges unless they are subsequently reinstated as a result of the determination upon appeal. (1977, c. 711, s. 1.)

§ 15A-1452. Execution of sentence upon determination of appeal; compliance with directive of appellate court.

(a) If an appeal is withdrawn, the clerk of superior court must enter an order reflecting that fact and directing compliance with the judgment.

(b) If the appellate division affirms the judgment in whole or in part, the clerk of superior court must file the directive of the appellate division and order compliance with its terms.

(c) If the appellate division orders a new trial or directs other relief or proceedings, the clerk must file the directive of the appellate court and bring the directive to the attention of the district attorney or the court for compliance with the directive. (1977, c. 711, s. 1.)

§ 15A-1453. Ancillary actions during appeal.

(a) While an appeal is pending in the appellate division, the court in which the defendant was convicted has continuing authority to act with regard to the defendant's release pursuant to Article 26, Bail.

(b) The appropriate court of the appellate division may direct that additional steps be taken in the trial court while the appeal is pending, including but not limited to:

(1) Appointment of counsel.

(2) Hearings with regard to matters relating to the appeal.

(3) Taking evidence or conducting other proceedings relating to motions for appropriate relief made in the appellate division, as provided in G.S. 15A-1418. (1977, c. 711, s. 1.)

§ 15A-1454. Reserved for future codification purposes.

§ 15A-1455. Reserved for future codification purposes.

§ 15A-1456. Reserved for future codification purposes.

§ 15A-1457. Reserved for future codification purposes.

§ 15A-1458. Reserved for future codification purposes.

§ 15A-1459. Reserved for future codification purposes.

§ 50-19.1. Maintenance of certain appeals allowed.

Notwithstanding any other pending claims filed in the same action, a party may appeal from an order or judgment adjudicating a claim for absolute divorce, divorce from bed and board, child custody, child support, alimony, or equitable distribution if the order or judgment would otherwise be a final order or judgment within the meaning of G.S. 1A-1, Rule 54(b), but for the other pending claims in the same action. A party does not forfeit the right to appeal under this section if the party fails to immediately appeal from an order or judgment described in this section. An appeal from an order or judgment under this section shall not deprive the trial court of jurisdiction over any other claims pending in the same action. (2013-411, s. 2.)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

SESSION LAW 2018-86
HOUSE BILL 688

AN ACT TO PROVIDE THAT AN ORDER OR JUDGMENT PERTAINING TO THE VALIDITY OF A PREMARITAL AGREEMENT MAY BE IMMEDIATELY APPEALED AND TO CLARIFY FINDINGS OF FACT REQUIREMENTS MADE IN DISPOSITIONAL ORDERS WHERE REASONABLE EFFORTS FOR REUNIFICATION ARE NOT REQUIRED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50-19.1 reads as rewritten:

"**§ 50-19.1. Maintenance of certain appeals allowed.**

Notwithstanding any other pending claims filed in the same action, a party may appeal from an order or judgment adjudicating a claim for absolute divorce, divorce from bed and board, the validity of a premarital agreement as defined by G.S. 52B-2(1), child custody, child support, alimony, or equitable distribution if the order or judgment would otherwise be a final order or judgment within the meaning of G.S. 1A-1, Rule 54(b), but for the other pending claims in the same action. A party does not forfeit the right to appeal under this section if the party fails to immediately appeal from an order or judgment described in this section. An appeal from an order or judgment under this section shall not deprive the trial court of jurisdiction over any other claims pending in the same action."

SECTION 2. G.S. 7B-901(c) reads as rewritten:

"(c) If the disposition order places a juvenile in the custody of a county department of social services, the court shall direct that reasonable efforts for reunification as defined in G.S. 7B-101 shall not be required if the court makes written findings of fact pertaining to any of the following, unless the court concludes that there is compelling evidence warranting continued reunification efforts:

(1) A court of competent jurisdiction determines or has determined that aggravated circumstances exist because the parent has committed or encouraged the commission of, or allowed the continuation of, any of the following upon the juvenile:
   a. Sexual abuse.
   b. Chronic physical or emotional abuse.
   c. Torture.
   d. Abandonment.
   e. Chronic or toxic exposure to alcohol or controlled substances that causes impairment of or addiction in the juvenile.
   f. Any other act, practice, or conduct that increased the enormity or added to the injurious consequences of the abuse or neglect.

(2) A court of competent jurisdiction terminates or has terminated involuntarily the parental rights of the parent to another child of the parent.

(3) A court of competent jurisdiction determines or has determined that (i) the parent has committed murder or voluntary manslaughter of another child of the parent; (ii) has aided, abetted, attempted, conspired, or solicited to commit

murder or voluntary manslaughter of the child or another child of the parent; (iii) has committed a felony assault resulting in serious bodily injury to the child or another child of the parent; (iv) has committed sexual abuse against the child or another child of the parent; or (v) has been required to register as a sex offender on any government-administered registry."

SECTION 3. Section 1 of this act is effective when it becomes law and applies to appeals filed on or after that date. Section 2 of this act is effective when it becomes law and applies to disposition orders effective on or after that date.

In the General Assembly read three times and ratified this the 14th day of June, 2018.

s/ Bill Rabon
Presiding Officer of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Roy Cooper
Governor

Approved 10:47 a.m. this 25th day of June, 2018

§ 84-4.1. Limited practice of out-of-state attorneys.

Any attorney domiciled in another state, and regularly admitted to practice in the courts of record of and in good standing in that state, having been retained as attorney for a party to any civil or criminal legal proceeding pending in the General Court of Justice of North Carolina, the North Carolina Utilities Commission, the North Carolina Industrial Commission, the Office of Administrative Hearings of North Carolina, or any administrative agency, may, on motion, be admitted to practice in that forum for the sole purpose of appearing for a client in the proceeding. The motion required under this section shall be signed by the attorney and shall contain or be accompanied by:

(1) The attorney's full name, post-office address, bar membership number, and status as a practicing attorney in another state.

(2) A statement, signed by the client, setting forth the client's address and declaring that the client has retained the attorney to represent the client in the proceeding.

(3) A statement that unless permitted to withdraw sooner by order of the court, the attorney will continue to represent the client in the proceeding until its final determination, and that with reference to all matters incident to the proceeding, the attorney agrees to be subject to the orders and amenable to the disciplinary action and the civil jurisdiction of the General Court of Justice and the North Carolina State Bar in all respects as if the attorney were a regularly admitted and licensed member of the Bar of North Carolina in good standing.

(4) A statement that the state in which the attorney is regularly admitted to practice grants like privileges to members of the Bar of North Carolina in good standing.

(5) A statement to the effect that the attorney has associated and is personally appearing in the proceeding, with an attorney who is a resident of this State, has agreed to be responsible for filing a registration statement with the North Carolina State Bar, and is duly and legally admitted to practice in the General Court of Justice of North Carolina, upon whom service may be had in all matters connected with the legal proceedings, or any disciplinary matter, with the same effect as if personally made on the foreign attorney within this State.

(6) A statement accurately disclosing a record of all that attorney's disciplinary history. Discipline shall include (i) public discipline by any court or lawyer regulatory organization, and (ii) revocation of any pro hac vice admission.

(7) A fee in the amount of two hundred twenty-five dollars ($225.00), of which two hundred dollars ($200.00) shall be remitted to the State Treasurer for support of the General Court of Justice and twenty-five dollars ($25.00) shall be transmitted to the North Carolina State Bar to regulate the practice of out-of-state attorneys as provided in this section.

Compliance with the foregoing requirements does not deprive the court of the discretionary power to allow or reject the application. (1967, c. 1199, s. 1; 1971, c. 550, s. 1; 1975, c. 582, ss. 1, 2; 1977, c. 430; 1985 (Reg. Sess., 1986), c. 1022, s. 8; 1991, c. 210, s. 2; 1995, c. 431, s. 5; 2003-116, s. 1; 2004-186, s. 4.2; 2005-396, s. 1; 2007-200, s. 4; 2007-323, s. 30.8(k).)

§ 97-86. Award conclusive as to facts; appeal; certified questions of law.

The award of the Industrial Commission, as provided in G.S. 97-84, if not reviewed in due time, or an award of the Commission upon such review, as provided in G.S. 97-85, shall be conclusive and binding as to all questions of fact; but either party to the dispute may, within 30 days from the date of the award or within 30 days after receipt of notice to be sent by any class of U.S. mail that is fully prepaid or electronic mail of the award, but not thereafter, appeal from the decision of the Commission to the Court of Appeals for errors of law under the same terms and conditions as govern appeals from the superior court to the Court of Appeals in ordinary civil actions. The procedure for the appeal shall be as provided by the rules of appellate procedure.

The Industrial Commission of its own motion may certify questions of law to the Court of Appeals for decision and determination by the Court. In case of an appeal from the decision of the Commission, or of a certification by the Commission of questions of law, to the Court of Appeals, the appeal or certification shall operate on a supersedeas except as provided in G.S. 97-86.1, and no employer shall be required to make payment of the award involved in the appeal or certification until the questions at issue therein shall have been fully determined in accordance with the provisions of this Article. If the employer is a noninsurer, then the appeal of the employer shall not act as a supersedeas and the plaintiff in such case shall have the same right to issue execution or to satisfy the award from the property of the employer pending the appeal as obtains to the successful party in an action in the superior court.

When any party to an appeal from an award of the Commission is unable, by reason of the party's poverty, to make the deposit or to give the security required by law for the appeal, any member of the Commission or any deputy commissioner shall enter an order allowing the party to appeal from the award of the Commission without giving security therefor. The party appealing from the judgment shall, within 30 days from the filing of the appeal from the award, make an affidavit that the party is unable by reason of the party's poverty to give the security required by law. The request shall be passed upon and granted or denied by a member of the Commission or deputy commissioner within 20 days from receipt of the affidavit. (1929, c. 120, s. 60; 1947, c. 823; 1957, c. 1396, s. 9; 1959, c. 863, s. 4; 1967, c. 669; 1971, c. 1189; 1975, c. 391, s. 15; 1977, c. 521, s. 1; 1993 (Reg. Sess., 1994), c. 679, s. 10.5; 1995 (Reg. Sess., 1996), c. 552, s. 1; 2017-57, s. 15.17.)

§ 143-293. Appeals to Court of Appeals.

Either the claimant or the State may, within 30 days after receipt of the decision and order of the full Commission, to be sent by registered or certified mail, but not thereafter, appeal from the decision of the Commission to the Court of Appeals. Such appeal shall be for errors of law only under the same terms and conditions as govern appeals in ordinary civil actions, and the findings of fact of the Commission shall be conclusive if there is any competent evidence to support them. The appellant shall cause to be prepared a statement of the case as required by the rules of the Court of Appeals. A copy of this statement shall be served on the respondent within 45 days from the entry of the appeal taken; within 20 days after such service, the respondent shall return the copy with his approval or specified amendments endorsed or attached; if the case be approved by the respondent, it shall be filed with the clerk of the Court of Appeals as a part of the record; if not returned with objections within the time prescribed, it shall be deemed approved. The chairman of the Industrial Commission shall have the power, in the exercise of his discretion, to enlarge the time in which to serve statement of case on appeal and exceptions thereto or counterstatement of case.

If the case on appeal is returned by the respondent with objections as prescribed, or if a countercase is served on appellant, the appellant shall immediately request the chairman of the Industrial Commission to fix a time and place for settling the case before him. If the appellant delays longer than 15 days after the respondent serves his countercase or exceptions to request the chairman to settle the case on appeal, and delays for such period to mail the case and countercase or exceptions to the chairman, then the exceptions filed by the respondent shall be allowed; or the countercase served by him shall constitute the case on appeal; but the time may be extended by agreement of counsel.

The chairman shall forthwith notify the attorneys of the parties to appear before him for that purpose at a certain time and place, which time shall not be more than 20 days from the receipt of the request. At the time and place stated, the chairman of the Industrial Commission or his designee shall settle and sign the case and deliver a copy to the attorneys of each party. The appellant shall within five days thereafter file it with the clerk of the Court of Appeals, and if he fails to do so the respondent may file his copy.

No appeal bond or supersedeas bond shall be required of State departments or agencies. (1951, c. 1059, s. 3; 1967, c. 655, s. 1; 1987 (Reg. Sess., 1988), c. 1087, s. 4.)

§ 143-294. Appeal to Court of Appeals to act as supersedeas.

The appeal from the decision of the Industrial Commission to the Court of Appeals shall act as a supersedeas, and the State department, institution or agency shall not be required to make payment of any judgment until the questions at issue therein shall have been finally determined as provided in this Article. (1951, c. 1059, s. 4; 1967, c. 655, s. 2.)

Article 4.

Judicial Review.

§ 150B-43. Right to judicial review.

Any party or person aggrieved by the final decision in a contested case, and who has exhausted all administrative remedies made available to the party or person aggrieved by statute or agency rule, is entitled to judicial review of the decision under this Article, unless adequate procedure for judicial review is provided by another statute, in which case the review shall be under such other statute. Nothing in this Chapter shall prevent any party or person aggrieved from invoking any judicial remedy available to the party or person aggrieved under the law to test the validity of any administrative action not made reviewable under this Article. Absent a specific statutory requirement, nothing in this Chapter shall require a party or person aggrieved to petition an agency for rule making or to seek or obtain a declaratory ruling before obtaining judicial review of a final decision or order made pursuant to G.S. 150B-34. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 2011-398, s. 22; 2012-194, s. 62.1.)

§ 150B-44. Right to judicial intervention when final decision unreasonably delayed.

Failure of an administrative law judge subject to Article 3 of this Chapter or failure of an agency subject to Article 3A of this Chapter to make a final decision within 120 days of the close of the contested case hearing is justification for a person whose rights, duties, or privileges are adversely affected by the delay to seek a court order compelling action by the agency or by the administrative law judge. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1985 (Reg. Sess., 1986), c. 1022, s. 1(17); 1987, c. 878, ss. 5, 27; 1991, c. 35, s. 9; 2000-190, s. 9; 2008-168, s. 5(b); 2011-398, s. 23; 2014-120, s. 59(b).)

§ 150B-45. Procedure for seeking review; waiver.

(a) Procedure. – To obtain judicial review of a final decision under this Article, the person seeking review must file a petition within 30 days after the person is served with a written copy of the decision. The petition must be filed as follows:

(1) Contested tax cases. – A petition for review of a final decision in a contested tax case arising under G.S. 105-241.15 must be filed in the Superior Court of Wake County.

(2) Other final decisions. – A petition for review of any other final decision under this Article must be filed in the superior court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, in the county where the contested case which resulted in the final decision was filed.

(b) Waiver. – A person who fails to file a petition within the required time waives the right to judicial review under this Article. For good cause shown, however, the superior court may accept an untimely petition. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1987, c. 878, s. 16; 2007-491, s. 43; 2013-143, s. 4.)

§ 150B-46. Contents of petition; copies served on all parties; intervention.

The petition shall explicitly state what exceptions are taken to the decision or procedure and what relief the petitioner seeks. Within 10 days after the petition is filed with the court, the party seeking the review shall serve copies of the petition by personal service or by certified mail upon all who were parties of record to the administrative proceedings. Names and addresses of such

parties shall be furnished to the petitioner by the agency upon request. Any party to the administrative proceeding is a party to the review proceedings unless the party withdraws by notifying the court of the withdrawal and serving the other parties with notice of the withdrawal. Other parties to the proceeding may file a response to the petition within 30 days of service. Parties, including agencies, may state exceptions to the decision or procedure and what relief is sought in the response.

Any person aggrieved may petition to become a party by filing a motion to intervene as provided in G.S. 1A-1, Rule 24. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1991, c. 35, s. 10.)

§ 150B-47. Records filed with clerk of superior court; contents of records; costs.

Within 30 days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the Office of Administrative Hearings shall transmit to the reviewing court the original or a certified copy of the official record in the contested case under review. With the permission of the court, the record may be shortened by stipulation of all parties to the review proceedings. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for such additional costs as may be occasioned by the refusal. The court may require or permit subsequent corrections or additions to the record when deemed desirable. (1973, c. 1331, s. 1; 1983, c. 919, s. 3; 1985, c. 746, s. 1; 1985 (Reg. Sess., 1986), c. 1022, s. 1(18); 1987, c. 878, s. 22; 2011-398, s. 24.)

§ 150B-48. Stay of decision.

At any time before or during the review proceeding, the person aggrieved may apply to the reviewing court for an order staying the operation of the administrative decision pending the outcome of the review. The court may grant or deny the stay in its discretion upon such terms as it deems proper and subject to the provisions of G.S. 1A-1, Rule 65. (1973, c. 1331, s. 1; 1985, c. 746, s. 1.)

§ 150B-49. New evidence.

A party or person aggrieved who files a petition in the superior court may apply to the court to present additional evidence. If the court is satisfied that the evidence is material to the issues, is not merely cumulative, and could not reasonably have been presented at the administrative hearing, the court may remand the case so that additional evidence can be taken. If an administrative law judge did not make a final decision in the case, the court shall remand the case to the agency that conducted the administrative hearing under Article 3A of this Chapter. After hearing the evidence, the agency may affirm or modify its previous findings of fact and final decision. If an administrative law judge made a final decision in the case, the court shall remand the case to the administrative law judge. After hearing the evidence, the administrative law judge may affirm or modify his previous findings of fact and final decision. The additional evidence and any affirmation or modification of a final decision shall be made part of the official record. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1987, c. 878, s. 17; 2000-190, s. 10; 2011-398, s. 25.)

§ 150B-50. Review by superior court without jury.

The review by a superior court of administrative decisions under this Chapter shall be conducted by the court without a jury. (1973, c. 1331, s. 1; 1983, c. 919, s. 2; 1985, c. 746, s. 1; 1987, c. 878, s. 18; 2011-398, s. 26.)

§ 150B-51. Scope and standard of review.

(a), (a1) Repealed by Sessions Laws, 2011-398, s. 27. For effective date and applicability, see editor's note.

(b) The court reviewing a final decision may affirm the decision or remand the case for further proceedings. It may also reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because the findings, inferences, conclusions, or decisions are:

(1) In violation of constitutional provisions;
(2) In excess of the statutory authority or jurisdiction of the agency or administrative law judge;
(3) Made upon unlawful procedure;
(4) Affected by other error of law;
(5) Unsupported by substantial evidence admissible under G.S. 150B-29(a), 150B-30, or 150B-31 in view of the entire record as submitted; or
(6) Arbitrary, capricious, or an abuse of discretion.

(c) In reviewing a final decision in a contested case, the court shall determine whether the petitioner is entitled to the relief sought in the petition based upon its review of the final decision and the official record. With regard to asserted errors pursuant to subdivisions (1) through (4) of subsection (b) of this section, the court shall conduct its review of the final decision using the de novo standard of review. With regard to asserted errors pursuant to subdivisions (5) and (6) of subsection (b) of this section, the court shall conduct its review of the final decision using the whole record standard of review.

(d) In reviewing a final decision allowing judgment on the pleadings or summary judgment, the court may enter any order allowed by G.S. 1A-1, Rule 12(c) or Rule 56. If the order of the court does not fully adjudicate the case, the court shall remand the case to the administrative law judge for such further proceedings as are just. (1973, c. 1331, s. 1; 1983, c. 919, s. 4; 1985, c. 746, s. 1; 1987, c. 878, s. 19; 2000-140, s. 94.1; 2000-190, s. 11; 2011-398, s. 27.)

§ 150B-52. Appeal; stay of court's decision.

A party to a review proceeding in a superior court may appeal to the appellate division from the final judgment of the superior court as provided in G.S. 7A-27. The scope of review to be applied by the appellate court under this section is the same as it is for other civil cases. In cases reviewed under G.S. 150B-51(c), the court's findings of fact shall be upheld if supported by substantial evidence. Pending the outcome of an appeal, an appealing party may apply to the court that issued the judgment under appeal for a stay of that judgment or a stay of the administrative decision that is the subject of the appeal, as appropriate. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1987, c. 878, s. 20; 2000-140, s. 94; 2000-190, s. 12.)

§§ 150B-53 through 150B-57. Reserved for future codification purposes.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

SESSION LAW 2018-13
SENATE BILL 486

AN ACT TO MAKE VARIOUS CHANGES RELATED TO ELECTION LAWS.

The General Assembly of North Carolina enacts:

PART I. CRIMINAL RECORD CHECKS FOR STATE BOARD OF ELECTIONS AND ETHICS ENFORCEMENT

SECTION 1.(a) Subpart D of Part 4 of Article 13 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-968. Criminal record checks for employees and contractors of the State Board of Elections and Ethics Enforcement and county directors of elections.**

(a) As used in this section, the term:

(1) "Current or prospective employee" means any of the following:

a. A current or prospective permanent or temporary employee of the State Board or a current or prospective county director of elections.

b. A current or prospective contractor with the State Board.

c. An employee or agent of a current or prospective contractor with the State Board.

d. Any other individual otherwise engaged by the State Board who has or will have the capability to update, modify, or change elections systems or confidential elections or ethics data.

(2) "State Board" means the State Board of Elections and Ethics Enforcement.

(b) The Department of Public Safety may provide to the Executive Director of the State Board a current or prospective employee's criminal history from the State and National Repositories of Criminal Histories. The Executive Director shall provide to the Department of Public Safety, along with the request, the fingerprints of the current or prospective employee, a form signed by the current or prospective employee consenting to the criminal record check and use of fingerprints and other identifying information required by the State and National Repositories, and any additional information required by the Department of Public Safety. The fingerprints of the current or prospective employee shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check.

(c) The Department of Public Safety may charge a fee to offset the cost incurred by it to conduct a criminal record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information.

(d) The criminal history report shall be provided to the Executive Director of the State Board, who shall keep all information obtained pursuant to this section confidential to the State Board. A criminal history report obtained as provided in this section is not a public record under Chapter 132 of the General Statutes."

SECTION 1.(b) Subpart D of Part 4 of Article 13 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-969. Criminal record checks for employees of county boards of elections.**

(a) As used in this section, the term:

(1) "Current or prospective employee" means a current or prospective permanent or temporary employee of a county board of elections.

(2) "State Board" means the State Board of Elections and Ethics Enforcement.

(b) The Department of Public Safety may provide to a county board of elections a current or prospective employee's criminal history from the State and National Repositories of Criminal Histories. The county board of elections shall provide to the Department of Public Safety, along with the request, the fingerprints of the current or prospective employee, a form signed by the current or prospective employee consenting to the criminal record check and use of fingerprints and other identifying information required by the State and National Repositories, and any additional information required by the Department of Public Safety. The fingerprints of the current or prospective employee shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check.

(c) The Department of Public Safety may charge a fee to offset the cost incurred by it to conduct a criminal record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information.

(d) The criminal history report shall be provided to the county board of elections, who shall keep all information obtained pursuant to this section confidential to the county board of elections, the county director of elections, the State Board, and the Executive Director of the State Board. A criminal history report obtained as provided in this section is not a public record under Chapter 132 of the General Statutes."

SECTION 1.(c) Article 1 of Chapter 163A of the General Statutes is amended by adding a new section to read:

"**§ 163A-7. Criminal history record checks of current and prospective employees of the State Board and county directors of elections.**

(a) As used in this section, the term "current or prospective employee" means any of the following:

(1) A current or prospective permanent or temporary employee of the State Board or a current or prospective county director of elections.

(2) An employee or agent of a current or prospective contractor with the State Board.

(3) Any other individual otherwise engaged by the State Board who has or will have the capability to update, modify, or change elections systems or confidential elections or ethics data.

(b) A criminal history record check shall be required of all current or prospective permanent or temporary employees of the State Board and all current or prospective county directors of elections, which shall be conducted by the Department of Public Safety as provided in G.S. 143B-968. The criminal history report shall be provided to the Executive Director, who shall keep all information obtained pursuant to this section confidential to the State Board, as provided in G.S. 143B-968(d). A criminal history report provided under this subsection is not a public record under Chapter 132 of the General Statutes.

(c) If the current or prospective employee's verified criminal history record check reveals one or more convictions, the conviction shall constitute just cause for not selecting the person for employment or for dismissing the person from current employment. The conviction shall not automatically prohibit employment.

(d) A prospective employee may be denied employment or a current employee may be dismissed from employment for refusal to consent to a criminal history record check or to submit fingerprints or to provide other identifying information required by the State or National

Repositories of Criminal Histories. Any such refusal shall constitute just cause for the employment denial or the dismissal from employment.

(e) A conditional offer of employment or appointment may be extended pending the results of a criminal history record check authorized by this section.

(f) A county board of elections shall require a criminal history record check of all current or prospective employees of the county board of elections, as defined in G.S. 163A-778(a)(1), who have or will have access to the statewide computerized voter registration system maintained under G.S. 163A-874 and for any additional position or function as the State Board may designate. The county director of elections shall provide the criminal history record of all current or prospective employees of the county board of elections required by this subsection or in designated positions to the Executive Director and State Board.

(g) Neither appointment as a precinct official or assistant under Part 4 of Article 16 of this Chapter nor employment at a one-stop early voting location shall require a criminal history record check unless the official, assistant, or employee performs a function designated by the State Board pursuant to subsection (f) of this section."

SECTION 1.(d) Part 2 of Article 16 of Chapter 163A of the General Statutes is amended by adding a new section to read:

"**§ 163A-778. Criminal history record checks of current and prospective employees of county boards of elections.**

(a) As used in this section, the term "current or prospective employee" means a current or prospective permanent or temporary employee of a county board of elections who has or will have access to the statewide computerized voter registration system maintained under G.S. 163A-874 or has a position or function designated by the State Board as provided in G.S. 163A-7(f).

(b) The county board of elections shall require a criminal history record check of all current or prospective employees, which shall be conducted by the Department of Public Safety as provided in G.S. 143B-969. The criminal history report shall be provided to the county board of elections. A county board of elections shall provide the criminal history record of all current or prospective employees required by G.S. 163A-7 to the Executive Director and the State Board. The criminal history report shall be kept confidential as provided in G.S. 143B-969(d) and is not a public record under Chapter 132 of the General Statutes.

(c) If the current or prospective employee's verified criminal history record check reveals one or more convictions, the conviction shall constitute just cause for not selecting the person for employment, or for dismissing the person from current employment. The conviction shall not automatically prohibit employment.

(d) The county board of elections may deny employment to or dismiss from employment a current or prospective employee who refuses to consent to a criminal history record check or to submit fingerprints or to provide other identifying information required by the State or National Repositories of Criminal Histories. Any such refusal shall constitute just cause for the employment denial or the dismissal from employment.

(e) The county board of elections may extend a conditional offer of employment or appointment pending the results of a criminal history record check authorized by this section.

(f) Neither appointment as a precinct official or assistant under Part 4 of Article 16 of this Chapter nor employment at a one-stop early voting location shall require a criminal history record check unless the official, assistant, or employee performs a function designated by the State Board pursuant to G.S. 163A-7(f)."

SECTION 1.(e) G.S. 163A-774(b) reads as rewritten:

"(b) Appointment, Duties; Termination. – Upon receipt of a nomination from the county board of elections stating that the nominee for director of elections is submitted for appointment upon majority selection by the county board of elections the Executive Director shall issue a letter of appointment of such nominee to the chairman of the county board of elections within 10

days after receipt of the ~~nomination. Thereafter,~~nomination, unless good cause exists to decline the appointment. The Executive Director may delay the issuance of appointment for a reasonable time if necessary to obtain a criminal history records check sought under G.S. 143B-968. The Executive Director shall apply the standards provided in G.S. 163A-7 in determining whether a nominee with a criminal history shall be selected. If the Executive Director determines a nominee shall not be selected and does not issue a letter of appointment, the decision of the Executive Director of the State Board shall be final unless the decision is, within 10 days from the official date on which it was made, deferred by the State Board. If the State Board defers the decision, then the State Board shall make a final decision on appointment of the director of elections and may direct the Executive Director to issue a letter of appointment. If an Executive Director issues a letter of appointment, the county board of elections shall enter in its official minutes the specified duties, responsibilities and designated authority assigned to the director by the county board of elections. The specified duties and responsibilities shall include adherence to the duties delegated to the county board of elections pursuant to G.S. 163A-769. A copy of the specified duties, responsibilities and designated authority assigned to the director shall be filed with the State Board. In the event the Executive Director is recused due to an actual or apparent conflict of interest from rendering a decision under this section, the chair and vice-chair of the State Board shall designate a member of staff to fulfill those duties."

SECTION 1.(f) This section becomes effective August 1, 2018.

PART II. 2018 JUDICIAL ELECTIONS BALLOT INFORMATION

SECTION 2.(a) The General Assembly finds that both chambers of the General Assembly have carefully examined judicial redistricting and the forms of judicial selection with multiple committees considering various proposals of selection and new judicial district maps. The General Assembly finds that, to allow for more time to thoughtfully consider these changes, the General Assembly enacted S.L. 2017-214, the Electoral Freedom Act of 2017, which, among other items, provided for a one-time cancellation of partisan primaries for the offices of district court judge, superior court judge, judges of the Court of Appeals, and Supreme Court justices for the 2018 election cycle. The General Assembly finds that all elections for judges in 2018 were to be treated uniformly under S.L. 2017-214, the Electoral Freedom Act of 2017, while those changes were considered.

The General Assembly notes that election to these offices will be held under a plurality election system, with candidates running under a political party label on the ballot, without having gone through a party primary. The General Assembly finds that ballot language above the sections of election ballots regarding these impacted offices setting forth that the listed party affiliation is only the self-identified party of a candidate at the time of filing will aid voters' understanding of the 2018 judicial races.

SECTION 2.(b) For the 2018 general election, the State Board of Elections and Ethics Enforcement shall, notwithstanding G.S. 163A-1114(b)(2), list the following judicial offices at the end of all partisan offices listed on the general election ballot:

(1) Justices of the Supreme Court.
(2) Judges of the Court of Appeals.
(3) Judges of the superior courts.
(4) Judges of the district courts.

SECTION 2.(c) Notwithstanding G.S. 163A-1112, immediately prior to the placement of the judicial offices listed in subsection (b) of this section on the ballot, the following information shall be printed:

"No primaries for judicial office were held in 2018. The information listed by each of the following candidates' names indicates only the candidates' party affiliation or unaffiliated status on their voter registration at the time they filed to run for office."

SECTION 2.(d) Except as provided in this section, ballot order for the judicial offices listed in subsection (b) of this section shall be as provided in Section 4(j) of S.L. 2017-214.

SECTION 2.(e) This section is effective when it becomes law and applies to the 2018 general election.

PART III. OTHER ELECTION CHANGES

SECTION 3.1. G.S. 150B-45 reads as rewritten:

"**§ 150B-45. Procedure for seeking review; waiver.**

(a) Procedure. – To obtain judicial review of a final decision under this Article, the person seeking review must file a petition within 30 days after the person is served with a written copy of the decision. The petition must be filed as follows:

(1) Contested tax cases. – A petition for review of a final decision in a contested tax case arising under G.S. 105-241.15 must be filed in the Superior Court of Wake County.

(2) Other final decisions. – A petition for review of any other final decision under this Article must be filed in the superior court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, in the county where the contested case which resulted in the final decision was filed.

(b) Waiver. – A person who fails to file a petition within the required time waives the right to judicial review under this Article. For good cause shown, however, the superior court may accept an untimely petition.

(c) Judicial Review for State Board of Elections and Ethics Enforcement. – For a stay entered pursuant to G.S. 150B-33(b)(6), the State Board of Elections and Ethics Enforcement may obtain judicial review of the temporary restraining order or preliminary injunction in the superior court of the county designated in subsection (a) of this section."

SECTION 3.2.(a) G.S. 163A-741 is amended by adding a new subsection to read:

"(j1) Notwithstanding G.S. 153A-98 or any other provision of law, all officers, employees, and agents of a county board of elections are required to give to the State Board, upon request, all information, documents, and data within their possession, or ascertainable from their records, including any internal investigation or personnel documentation and are required to make available, upon request pursuant to an investigation under subsection (d) of this section, any county board employee for interview and to produce any equipment, hardware, or software for inspection. These requirements are mandatory and shall be timely complied with as specified in a request made by any four members of the State Board."

SECTION 3.2.(b) G.S. 153A-98 is amended by adding a new subsection to read:

"(c5) Notwithstanding the requirements of this section, information shall be provided to the State Board of Elections and Ethics Enforcement from employee personnel records as provided in G.S. 163A-741."

SECTION 3.3. G.S. 163A-775 is amended by adding a new subsection to read:

"(e) In the event the Executive Director is recused due to an actual or apparent conflict of interest from rendering a decision under this section, the chair and vice-chair of the State Board shall designate a member of staff to fulfill those duties."

SECTION 3.4. G.S. 163A-953 reads as rewritten:

"**§ 163A-953. General election participation by new political party.**

In the first general election following the date on which a new political party qualifies under the provisions of G.S. 163A-950, it shall be entitled to have the names of its candidates for national, State, congressional, and local offices printed on the official ballots upon paying a filing fee equal to that provided for candidates for the office in G.S. 163A-979 or upon complying with the alternative available to candidates for the office in G.S. 163A-980.

For the first general election following the date on which it qualifies under G.S. 163A-950, a new political party shall select its candidates by party convention. An individual whose name appeared on the ballot in a primary election preliminary to the general election shall not be eligible to have that individual's name placed on the general election ballot as a candidate for the new political party for the same office in that year. Following adjournment of the nominating convention, but not later than the first day of July prior to the general election, the president of the convention shall certify to the State Board the names of persons chosen in the convention as the new party's candidates in the ensuing general election. Any candidate nominated by a new party shall be affiliated with the party at the time of certification to the State Board. The requirement of affiliation with the party will be met if the candidate submits at or before the time of certification as a candidate an application to change party affiliation to that party. The State Board shall print names thus certified on the appropriate ballots as the nominees of the new party. The State Board shall send to each county board of elections the list of any new party candidates so that the county board can add those names to the appropriate ballot."

SECTION 3.6. G.S. 163A-1114(b)(4) reads as rewritten:

"(4) When offices are in the same class, they shall be listed in alphabetical order by office name, or in numerical or alphabetical order by district name. Governor and Lieutenant Governor, in that order, shall be listed before other Council of State offices. The Supreme Court shall be listed before the Court of Appeals. Judicial offices and district attorney shall be listed, in that order, after other offices in the same class. Mayor shall be listed before other citywide offices. Chair of a board, where elected separately, shall be listed before other board seats having the same electorate. Chief Justice shall be listed before Associate Justices."

SECTION 3.6A. G.S. 163A-1115(a)(1) reads as rewritten:

"(1) That the vendor post a performance bond or letter of credit to cover damages resulting from defects in the voting ~~system.~~system, expenses associated with State or federal decertification of the voting system, and to protect against the vendor's insolvency or financial inability to make State or federally mandated modifications or updates to the voting system. Damages may include, among other items, any costs of conducting a new county or statewide election attributable to those defects. The bond or letter of credit shall be maintained in the amount determined by the State Board as sufficient for the cost of a new statewide election or in the amount of ten million dollars ($10,000,000), whichever is greater."

SECTION 3.7.(a) G.S. 163A-1115(c) reads as rewritten:

"(c) Only electronic poll books or ballot duplication systems that have been certified by the State Board in accordance with procedures and subject to standards adopted by the State ~~Board~~ Board, or which have been developed or maintained by the State Board, shall be permitted for use in elections in this State. Among other requirements as set by the State Board, the certification requirements shall require that a vendor meet at least all of the following elements:

(1) That the vendor post a bond or letter of credit to cover damages resulting from defects in the electronic poll book or ballot duplication system. Damages may include, among other items, any costs of conducting a new election attributable to those defects.

(2) That the vendor provide access to all of any information required to be placed in escrow by a vendor pursuant to G.S. 163A-1118 for review and examination by the State Board, the Department of Information Technology, the State chairs of each political party recognized under G.S. 163A-950, the purchasing county, and designees as provided in subdivision (9) of subsection (f) of this section.

(3) That the vendor must quote a statewide uniform price for each unit of the equipment.

(4) That the vendor must separately agree with the purchasing county that if it is granted a contract to provide software for an electronic poll books or ballot duplication system but fails to debug, modify, repair, or update the software as agreed or, in the event of the vendor having bankruptcy filed for or against it, the source code described in G.S. 163A-1118(a) shall be turned over to the purchasing county by the escrow agent chosen under G.S. 163A-1118(a)(1) for the purposes of continuing use of the software for the period of the contract and for permitting access to the persons described in subdivision (2) of this subsection for the purpose of reviewing the source code."

SECTION 3.7.(b) G.S. 163A-1118 is amended by adding a new subsection to read:

"(c) Definitions. – For the purposes of this section, the term "voting system" shall include an electronic poll book or a ballot duplication system."

SECTION 3.8.(a) G.S. 163A-1115 is amended by adding the following new subsections to read:

"(h) Neither certification of electronic poll books, ballot duplication systems, or voting systems under this section shall constitute a license under Chapter 150B of the General Statutes.

(i) The State Board in writing may decertify or otherwise halt the use of electronic poll books in North Carolina. Any such action is appealable only to the Superior Court of Wake County.

(j) No voting system used in any election in this State shall be connected to a network, and any feature allowing connection to a network shall be disabled. Prohibited network connections include the Internet, intranet, fax, telephone line, networks established via modem, or any other wired or wireless connection."

SECTION 3.8.(b) G.S. 150B-2(3) reads as rewritten:

"(3) "License" means any certificate, permit or other evidence, by whatever name called, of a right or privilege to engage in any activity, except licenses issued under Chapter 20 and Subchapter I of Chapter 105 of the General ~~Statutes and~~ Statutes, occupational ~~licenses.~~licenses, and certifications of electronic poll books, ballot duplication systems, or voting systems under G.S. 163A-1115."

SECTION 3.9.(a) G.S. 163A-1388(a) reads as rewritten:

"(a) Class 2 Misdemeanors. — Any person who shall, in connection with any primary or election in this State, do any of the acts and things declared in this subsection to be unlawful, shall be guilty of a Class 2 misdemeanor. It shall be ~~unlawful:~~unlawful to do any of the following:

(1) For any person to fail, as an officer or as a judge or chief judge of a primary or election, or as a member of any board of elections, to prepare the books, ballots, and return blanks which it is ~~his~~ the person's duty under the law to prepare, or to distribute the same as required by law, or to perform any other duty imposed upon ~~him~~ that person within the time and in the manner required by ~~law;~~law.

(2) For any member, director, or employee of a board of elections to alter a voter registration application or other voter registration record without either the written authorization of the applicant or voter or the written authorization of the State ~~Board;~~Board.

(3) For any person to continue or attempt to act as a judge or chief judge of a primary or election, or as a member of any board of elections, after having been legally removed from such position and after having been given notice of such ~~removal;~~removal.

(4) For any person to break up or by force or violence to stay or interfere with the holding of any primary or election, to interfere with the possession of any

ballot box, election book, ballot, or return sheet by those entitled to possession of the same under the law, or to interfere in any manner with the performance of any duty imposed by law upon any election officer or member of any board of ~~elections;~~elections.

(5) For any person to be guilty of any boisterous conduct so as to disturb any member of any election board or any chief judge or judge of election in the performance of ~~his~~ that person's duties as imposed by ~~law;~~law.

(6) For any person to bet or wager any money or other thing of value on any ~~election;~~election.

(7) For any person, directly or indirectly, to discharge or threaten to discharge from employment, or otherwise intimidate or oppose any legally qualified voter on account of any vote such voter may cast or consider or intend to cast, or not to cast, or which ~~he~~ that voter may have failed to ~~cast;~~cast.

(8) For any person to publish in a newspaper or pamphlet or otherwise, any charge derogatory to any candidate or calculated to affect the candidate's chances of nomination or election, unless such publication be signed by the party giving publicity to and being responsible for such ~~charge;~~charge.

(9) For any person to publish or cause to be circulated derogatory reports with reference to any candidate in any primary or election, knowing such report to be false or in reckless disregard of its truth or falsity, when such report is calculated or intended to affect the chances of such candidate for nomination or ~~election;~~election.

(10) For any person to give or promise, in return for political support or influence, any political appointment or support for political ~~office;~~office.

(11) For any ~~chairman~~ chair of a county board of elections or other returning officer to fail or neglect, willfully or of malice, to perform any duty, act, matter or thing required or directed in the time, manner and form in which said duty, matter or thing is required to be performed in relation to any primary, general or special election and the returns ~~thereof;~~thereof.

(12) For any clerk of the superior court to refuse to make and give to any person applying in writing for the same a duly certified copy of the returns of any primary or election or of a tabulated statement to a primary or election, the returns of which are by law deposited in his office, upon the tender of the fees ~~therefor;~~therefor.

(13) For any person willfully and knowingly to impose upon any blind or illiterate voter a ballot in any primary or election contrary to the wish or desire of such voter, by falsely representing to such voter that the ballot proposed to ~~him~~ the voter is such as ~~he desires; or~~the voter desires.

(14) Except as authorized by G.S. 163A-878, for any person to provide false information, or sign the name of any other person, to a written report under ~~G.S. 163A-878; [or]~~G.S. 163A-878.

(15) For any person to be compensated based on the number of forms submitted for assisting persons in registering to vote.

(16) For any person who is not an elections official or who is not otherwise authorized by law to retain a registrant's signature, full or partial Social Security number, date of birth, or the identity of the public agency at which the registrant registered under G.S. 163A-884, any electronic mail address submitted under Part 2 of Article 17 of this Chapter, or drivers license number from any form described in G.S. 163-862 after submission of the form to the county board of elections or elections official."

SECTION 3.9.(b) This section becomes effective December 1, 2018, and applies to offenses committed on or after that date.

SECTION 3.10. G.S. 163A-1412(a) reads as rewritten:

"(a) Each ~~candidate,~~ candidate who has received funds or made payments or given consent for anyone else to receive funds or transfer anything of value for the purpose of bringing about that individual's nomination or election for office, political committee, and referendum committee shall appoint a treasurer and, under verification, report the name and address of the treasurer to the Board. Only an individual who resides in North Carolina shall be appointed as a treasurer. A candidate may appoint himself or herself or any other individual, including any relative except his or her spouse, as ~~his~~ the candidate's treasurer, and, upon failure to file report designating a treasurer, the candidate shall be concluded to have appointed himself or herself as treasurer and shall be required to personally fulfill the duties and responsibilities imposed upon the appointed treasurer and subject to the penalties and sanctions hereinafter provided."

SECTION 3.11.(a) Section 30.8 of S.L. 2013-281, as amended by Section 6(a) of S.L. 2015-103, reads as rewritten:

"**SECTION 30.8.** Any direct record electronic (DRE) voting systems currently certified by the State Board of Elections and Ethics Enforcement which do not use paper ballots shall be decertified and shall not be used in any election held on or after ~~September 1, 2019, for counties that use direct record electronic voting machines on election day as of January 1, 2015, and January 1, 2018, for all other counties.~~December 1, 2019. Decertification of a DRE voting system that does not use paper ballots may not be appealed to the Superior Court of Wake County pursuant to ~~G.S. 163-165.7(b).~~G.S. 163A-1115(d)."

SECTION 3.11.(b) Section 30.9 of S.L. 2013-281, as amended by Section 6(b) of S.L. 2015-103, reads as rewritten:

"**SECTION 30.9.** This Part becomes effective ~~September 1, 2019,~~December 1, 2019, for counties that use direct record electronic voting ~~machines on election day as of January 1, 2015. This Part becomes effective for all other counties January 1, 2018.~~machines."

PART IV. DUAL OFFICE HOLDING CHANGES

SECTION 4.(a) G.S. 160A-284 reads as rewritten:

"**§ 160A-284. Oath of office; holding other offices.**

(a) Each person appointed or employed as chief of police, policeman, or auxiliary policeman shall take and subscribe before some person authorized by law to administer oaths the oath of office required by Article VI, Sec. 7, of the Constitution. The oath shall be filed with the city clerk.

(b) The offices of ~~policeman,~~ policeman and chief of ~~police, and auxiliary policeman~~ police are hereby declared to be offices that may be held concurrently with any other appointive office pursuant to Article VI, Sec. 9, of the Constitution. The offices of policeman and chief of police are hereby declared to be offices that may be held concurrently with any elective office, other than elective office in the municipality employing the policeman or chief of police, pursuant to Section 9 of Article VI of the Constitution.

(c) The office of auxiliary policeman is hereby declared to be an office that may be held concurrently with any elective office or appointive office pursuant to Article VI, Sec. 9, of the Constitution."

SECTION 4.(b) This section is effective when it becomes law. Any policeman or chief of police having taken an oath of office to any elective office in this State prior to the effective date is not deemed to have resigned his or her position as a law enforcement officer due to the elective office.

PART V. TECHNICAL CHANGES TO G.S. 163A-2.

SECTION 5. G.S. 163A-2 is rewritten to read:

"**§ 163A-2. Membership.**

(a) The State Board shall consist of nine individuals registered to vote in North Carolina, appointed by the Governor, as follows:

(1) Four individuals registered with the political party with the highest number of registered affiliates in the State, from a list of six nominees submitted by the State party chairs of that party.

(2) Four individuals registered with the political party with the second highest number of registered affiliates in the State, from a list of six nominees submitted by the State party chairs of that party.

(3) One individual not registered with either the political party with the largest number of registered affiliates in the State or of the political party with the second-largest number of registered affiliates in the State, from a list of two nominees selected by the other eight members of the State Board.

The number of registered affiliates shall be as reflected by the latest registration statistics published by the State Board. The Governor shall make all appointments promptly upon receipt of the list of nominees from each nominating entity and in no instance shall appoint later than 30 days after receipt of the list.

(b) Within 14 days of appointment by the Governor of the eight members appointed under subdivisions (1) and (2) of subsection (a) of this section, the eight members shall hold an initial appointment selection meeting for the sole purpose of selecting two nominees who meet the qualifications for appointment under subdivision (3) of subsection (a) of this section and shall promptly submit those names to the Governor. No additional actions, other than the oath of office, shall be taken by the eight members appointed under subdivisions (1) and (2) of subsection (a) of this section at the appointment selection meeting.

(c) Beginning on May 1 of the odd-numbered year, members shall serve for two-year terms.

(d) Members may be removed from the State Board by the Governor, acting in the Governor's discretion. Vacancies created on the State Board by removal from office by the Governor shall be filled in accordance with subsection (e) of this section.

(e) Any vacancy occurring on the State Board shall be filled by an individual meeting the same appointment criteria under subsection (a) of this section as the vacating member. Any vacancy occurring in the State Board shall be filled by the Governor, and the person so appointed shall fill the unexpired term. The Governor shall fill vacancies as follows:

(1) For a vacancy for an appointment under subdivision (1) or (2) of subsection (a) of this section, the Governor shall fill the vacancy from a list of two names submitted by the State party chair of the political party with which the vacating member was affiliated if that list is submitted within 30 days of the occurrence of the vacancy.

(2) For a vacancy for an appointment under subdivision (3) of subsection (a) of this section, the Governor shall fill the vacancy from a list of two names submitted by the remaining members of the State Board if that list is submitted within 30 days of the occurrence of the vacancy. The State Board shall hold a meeting within 21 days of the occurrence of the vacancy for the purpose of selecting two nominees for submission to the Governor to fill the vacancy.

(f) At the first meeting held after any new appointments are made, the members of the State Board shall take the following oath:

"I, _____, do solemnly swear (or affirm) that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina and to the constitutional powers and authorities which are or may be established for the government thereof; that I will endeavor to support, maintain, and defend the Constitution of said State; and that I will well and truly execute the duties of the office of member of the Bipartisan State Board of

Elections and Ethics Enforcement according to the best of my knowledge and ability, according to law, so help me God."

(g) At the first meeting held after the appointment of the member under subdivision (3) of subsection (a) of this section, the State Board shall organize by electing one of its members chair and one of its members vice-chair, each to serve a two-year term as such. In 2017 and every four years thereafter, the chair shall be a member of the political party with the highest number of registered affiliates, as reflected by the latest registration statistics published by the State Board, and the vice-chair a member of the political party with the second highest number of registered affiliates. In 2019 and every four years thereafter, the chair shall be a member of the political party with the second highest number of registered affiliates, as reflected by the latest registration statistics published by the State Board, and the vice-chair a member of the political party with the highest number of registered affiliates.

(h) At the first meeting held after the appointment under subdivision (3) of subsection (a) of this section, the State Board shall elect one of its members as secretary, to serve a two-year term as such.

(i) No person shall be eligible to serve as a member of the State Board who meets any of the following criteria:

(1) Holds any elective or appointive office under the government of the United States, the State of North Carolina, or any political subdivision thereof.
(2) Holds any office in a political party or organization.
(3) Is a candidate for nomination or election to any office.
(4) Is a campaign manager or treasurer of any candidate in a primary or election.
(5) Has served two full consecutive terms.

(j) No person while serving on the State Board shall do any of the following:

(1) Make a reportable contribution to a candidate for a public office over which the State Board would have jurisdiction or authority.
(2) Register as a lobbyist under Article 8 of this Chapter.
(3) Make written or oral statements intended for general distribution or dissemination to the public at large supporting or opposing the nomination or election of one or more clearly identified candidates for public office.
(4) Make written or oral statements intended for general distribution or dissemination to the public at large supporting or opposing the passage of one or more clearly identified referendum or ballot issue proposals.
(5) Solicit contributions for a candidate, political committee, or referendum committee.

(k) State Board members shall receive per diem, subsistence, and travel, as provided in G.S. 138-5 and G.S. 138-6."

PART VI. SEVERABILITY CLAUSE

SECTION 6. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.

PART VII. EFFECTIVE DATE

SECTION 7. Except as otherwise provided herein, this act is effective when it becomes law and applies to elections held on or after that date.

In the General Assembly read three times and ratified this the 5th day of June, 2018.

s/ Philip E. Berger
President Pro Tempore of the Senate

s/ Nelson Dollar
Presiding Officer of the House of Representatives

VETO Roy Cooper
Governor

Became law notwithstanding the objections of the Governor at 1:20 p.m. this 20th day of June, 2018.

s/ James White
House Principal Clerk

TITLE 9—ARBITRATION

This title was enacted by act July 30, 1947, ch. 392, §1, 61 Stat. 669

AMENDMENTS

1990—Pub. L. 101–369, §2, Aug. 15, 1990, 104 Stat. 450, added item for chapter 3.

1970—Pub. L. 91–368, §2, July 31, 1970, 84 Stat. 693, added analysis of chapters.

TABLE

Showing where former sections of Title 9 and the laws from which such former sections were derived, have been incorporated in revised Title 9.

Title 9 Former Sections	*Statutes at Large*	*Title 9 New Sections*
1	Feb. 12, 1925, ch. 213, §1, 43 Stat. 883	1
2	Feb. 12, 1925, ch. 213, §2, 43 Stat. 883	2
3	Feb. 12, 1925, ch. 213, §3, 43 Stat. 883	3
4	Feb. 12, 1925, ch. 213, §4, 43 Stat. 883	4
5	Feb. 12, 1925, ch. 213, §5, 43 Stat. 884	5
6	Feb. 12, 1925, ch. 213, §6, 43 Stat. 884	6
7	Feb. 12, 1925, ch. 213, §7, 43 Stat. 884	7
8	Feb. 12, 1925, ch. 213, §8, 43 Stat. 884	8
9	Feb. 12, 1925, ch. 213, §9, 43 Stat. 885	9
10	Feb. 12, 1925, ch. 213, §10, 43 Stat. 885	10
11	Feb. 12, 1925, ch. 213, §11, 43 Stat. 885	11
12	Feb. 12, 1925, ch. 213, §12, 43 Stat. 885	12
13	Feb. 12, 1925, ch. 213, §13, 43 Stat. 886	13
14	Feb. 12, 1925, ch. 213, §14, 43 Stat. 886	Rep.
15	Feb. 12, 1925, ch. 213, §15, 43 Stat. 886	14

POSITIVE LAW; CITATION

This title has been made positive law by section 1 of act July 30, 1947, ch. 392, 61 Stat. 669, which provided in part that: ''title 9 of the United States Code, entitled 'Arbitration', is codified and enacted into positive law and may be cited as '9 U.S.C., §—' ''.

REPEALS

Act July 30, 1947, ch. 392, §2, 61 Stat. 674, provided that the sections or parts thereof of the Statutes at Large covering provisions codified in this Act, insofar as such provisions appeared in former title 9 were repealed and provided that any rights or liabilities now existing under such repealed sections or parts thereof shall not be affected by such repeal.

CHAPTER 1—GENERAL PROVISIONS

AMENDMENTS

1990—Pub. L. 101–650, title III, §325(a)(2), Dec. 1, 1990, 104 Stat. 5120, added item 15 ''Inapplicability of the Act of State doctrine'' and redesignated former item 15 ''Appeals'' as 16.

1988—Pub. L. 100–702, title X, §1019(b), Nov. 19, 1988, 102 Stat. 4671, added item 15 relating to appeals.

1970—Pub. L. 91–368, §3, July 31, 1970, 84 Stat. 693, designated existing sections 1 through 14 as ''Chapter 1'' and added heading for Chapter 1.

§1. "Maritime transactions" and "commerce" defined; exceptions to operation of title

''Maritime transactions'', as herein defined, means charter parties, bills of lading of water carriers, agreements relating to wharfage, supplies furnished vessels or repairs to vessels, collisions, or any other matters in foreign commerce which, if the subject of controversy, would be embraced within admiralty jurisdiction; ''commerce'', as herein defined, means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation, but nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce.

(July 30, 1947, ch. 392, 61 Stat. 670.)

DERIVATION

Act Feb. 12, 1925, ch. 213, §1, 43 Stat. 883.

§ 2. Validity, irrevocability, and enforcement of agreements to arbitrate

A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

(July 30, 1947, ch. 392, 61 Stat. 670.)

DERIVATION

Act Feb. 12, 1925, ch. 213, § 2, 43 Stat. 883.

§ 3. Stay of proceedings where issue therein referable to arbitration

If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration.

(July 30, 1947, ch. 392, 61 Stat. 670.)

DERIVATION

Act Feb. 12, 1925, ch. 213, § 3, 43 Stat. 883.

§ 4. Failure to arbitrate under agreement; petition to United States court having jurisdiction for order to compel arbitration; notice and service thereof; hearing and determination

A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court which, save for such agreement, would have jurisdiction under title 28, in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties, for an order directing that such arbitration proceed in the manner provided for in such agreement. Five days' notice in writing of such application shall be served upon the party in default. Service thereof shall be made in the manner provided by the Federal Rules of Civil Procedure. The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. The hearing and proceedings, under such agreement, shall be within the district in which the petition for an order directing such arbitration is filed. If the making of the arbitration agreement or the failure, neglect, or refusal to perform the same be in issue, the court shall proceed summarily to the trial thereof. If no jury trial be demanded by the party alleged to be in default, or if the matter in dispute is within admiralty jurisdiction, the court shall hear and determine such issue. Where such an issue is raised, the party alleged to be in default may, except in cases of admiralty, on or before the return day of the notice of application, demand a jury trial of such issue, and upon such demand the court shall make an order referring the issue or issues to a jury in the manner provided by the Federal Rules of Civil Procedure, or may specially call a jury for that purpose. If the jury find that no agreement in writing for arbitration was made or that there is no default in proceeding thereunder, the proceeding shall be dismissed. If the jury find that an agreement for arbitration was made in writing and that there is a default in proceeding thereunder, the court shall make an order summarily directing the parties to proceed with the arbitration in accordance with the terms thereof.

(July 30, 1947, ch. 392, 61 Stat. 671; Sept. 3, 1954, ch. 1263, § 19, 68 Stat. 1233.)

DERIVATION

Act Feb. 12, 1925, ch. 213, § 4, 43 Stat. 883.

REFERENCES IN TEXT

Federal Rules of Civil Procedure, referred to in text, are set out in Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1954—Act Sept. 3, 1954, brought section into conformity with present terms and practice.

§ 5. Appointment of arbitrators or umpire

If in the agreement provision be made for a method of naming or appointing an arbitrator or arbitrators or an umpire, such method shall be followed; but if no method be provided therein, or if a method be provided and any party thereto shall fail to avail himself of such method, or if for any other reason there shall be a lapse in the naming of an arbitrator or arbitrators or umpire, or in filling a vacancy, then upon the application of either party to the controversy the court shall designate and appoint an arbitrator or arbitrators or umpire, as the case may require, who shall act under the said agreement with the same force and effect as if he or they had been specifically named therein; and unless otherwise provided in the agreement the arbitration shall be by a single arbitrator.

(July 30, 1947, ch. 392, 61 Stat. 671.)

DERIVATION

Act Feb. 12, 1925, ch. 213, § 5, 43 Stat. 884.

§ 6. Application heard as motion

Any application to the court hereunder shall be made and heard in the manner provided by law for the making and hearing of motions, except as otherwise herein expressly provided.

(July 30, 1947, ch. 392, 61 Stat. 671.)

DERIVATION

Act Feb. 12, 1925, ch. 213, § 6, 43 Stat. 884.

§ 7. Witnesses before arbitrators; fees; compelling attendance

The arbitrators selected either as prescribed in this title or otherwise, or a majority of them, may summon in writing any person to attend before them or any of them as a witness and in a proper case to bring with him or them any book, record, document, or paper which may be deemed material as evidence in the case. The fees for such attendance shall be the same as the fees of witnesses before masters of the United States courts. Said summons shall issue in the name of the arbitrator or arbitrators, or a majority of them, and shall be signed by the arbitrators, or a majority of them, and shall be directed to the said person and shall be served in the same manner as subpoenas to appear and testify before the court; if any person or persons so summoned to testify shall refuse or neglect to obey said summons, upon petition the United States district court for the district in which such arbitrators, or a majority of them, are sitting may compel the attendance of such person or persons before said arbitrator or arbitrators, or punish said person or persons for contempt in the same manner provided by law for securing the attendance of witnesses or their punishment for neglect or refusal to attend in the courts of the United States.

(July 30, 1947, ch. 392, 61 Stat. 672; Oct. 31, 1951, ch. 655, § 14, 65 Stat. 715.)

DERIVATION

Act Feb. 12, 1925, ch. 213, § 7, 43 Stat. 884.

AMENDMENTS

1951—Act Oct. 31, 1951, substituted ''United States district court for'' for ''United States court in and for'', and ''by law for'' for ''on February 12, 1925, for''.

§ 8. Proceedings begun by libel in admiralty and seizure of vessel or property

If the basis of jurisdiction be a cause of action otherwise justiciable in admiralty, then, notwithstanding anything herein to the contrary, the party claiming to be aggrieved may begin his proceeding hereunder by libel and seizure of the vessel or other property of the other party according to the usual course of admiralty proceedings, and the court shall then have jurisdiction to direct the parties to proceed with the arbitration and shall retain jurisdiction to enter its decree upon the award.

(July 30, 1947, ch. 392, 61 Stat. 672.)

DERIVATION

Act Feb. 12, 1925, ch. 213, § 8, 43 Stat 884.

§ 9. Award of arbitrators; confirmation; jurisdiction; procedure

If the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration, and shall specify the court, then at any time within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title. If no court is specified in the agreement of the parties, then such application may be made to the United States court in and for the district within which such award was made. Notice of the application shall be served upon the adverse party, and thereupon the court shall have jurisdiction of such party as though he had appeared generally in the proceeding. If the adverse party is a resident of the district within which the award was made, such service shall be made upon the adverse party or his attorney as prescribed by law for service of notice of motion in an action in the same court. If the adverse party shall be a nonresident, then the notice of the application shall be served by the marshal of any district within which the adverse party may be found in like manner as other process of the court.

(July 30, 1947, ch. 392, 61 Stat. 672.)

DERIVATION

Act Feb. 12, 1925, ch. 213, § 9, 43 Stat. 885.

§ 10. Same; vacation; grounds; rehearing

(a) In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration—

(1) where the award was procured by corruption, fraud, or undue means;

(2) where there was evident partiality or corruption in the arbitrators, or either of them;

(3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or

(4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

(b) If an award is vacated and the time within which the agreement required the award to be made has not expired, the court may, in its discretion, direct a rehearing by the arbitrators.

(c) The United States district court for the district wherein an award was made that was issued pursuant to section 580 of title 5 may make an order vacating the award upon the application of a person, other than a party to the arbitration, who is adversely affected or aggrieved by the award, if the use of arbitration or the award is clearly inconsistent with the factors set forth in section 572 of title 5.

(July 30, 1947, ch. 392, 61 Stat. 672; Pub. L. 101–552, § 5, Nov. 15, 1990, 104 Stat. 2745; Pub. L. 102–354, § 5(b)(4), Aug. 26, 1992, 106 Stat. 946; Pub. L. 107–169, § 1, May 7, 2002, 116 Stat. 132.)

DERIVATION

Act Feb. 12, 1925, ch. 213, § 10, 43 Stat. 885.

AMENDMENTS

2002—Subsec. (a)(1) to (4). Pub. L. 107–169, § 1(1)–(3), substituted ''where'' for ''Where'' and realigned margins in pars. (1) to (4), and substituted a semicolon for

period at end in pars. (1) and (2) and ''; or'' for the period at end in par. (3).

Subsec. (a)(5). Pub. L. 107–169, §1(5), substituted ''If an award'' for ''Where an award'', inserted a comma after ''expired'', and redesignated par. (5) as subsec. (b).

Subsec. (b). Pub. L. 107–169, §1(4), (5), redesignated subsec. (a)(5) as (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 107–169, §1(4), redesignated subsec. (b) as (c).

1992—Subsec. (b). Pub. L. 102–354 substituted ''section 580'' for ''section 590'' and ''section 572'' for ''section 582''.

1990—Pub. L. 101–552 designated existing provisions as subsec. (a), in introductory provisions substituted ''In any'' for ''In either'', redesignated former subsecs. (a) to (e) as pars. (1) to (5), respectively, and added subsec. (b) which read as follows: ''The United States district court for the district wherein an award was made that was issued pursuant to section 580 of title 5 may make an order vacating the award upon the application of a person, other than a party to the arbitration, who is adversely affected or aggrieved by the award, if the use of arbitration or the award is clearly inconsistent with the factors set forth in section 572 of title 5.''

§ 11. Same; modification or correction; grounds; order

In either of the following cases the United States court in and for the district wherein the award was made may make an order modifying or correcting the award upon the application of any party to the arbitration—

(a) Where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award.

(b) Where the arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted.

(c) Where the award is imperfect in matter of form not affecting the merits of the controversy.

The order may modify and correct the award, so as to effect the intent thereof and promote justice between the parties.

(July 30, 1947, ch. 392, 61 Stat. 673.)

DERIVATION

Act Feb. 12, 1925, ch. 213, §11, 43 Stat. 885.

§ 12. Notice of motions to vacate or modify; service; stay of proceedings

Notice of a motion to vacate, modify, or correct an award must be served upon the adverse party or his attorney within three months after the award is filed or delivered. If the adverse party is a resident of the district within which the award was made, such service shall be made upon the adverse party or his attorney as prescribed by law for service of notice of motion in an action in the same court. If the adverse party shall be a nonresident then the notice of the application shall be served by the marshal of any district within which the adverse party may be found in like manner as other process of the court. For the purposes of the motion any judge who might make an order to stay the proceedings in an action brought in the same court may make an order, to be served with the notice of motion, staying the proceedings of the adverse party to enforce the award.

(July 30, 1947, ch. 392, 61 Stat. 673.)

DERIVATION

Act Feb. 12, 1925, ch. 213, §12, 43 Stat. 885.

§ 13. Papers filed with order on motions; judgment; docketing; force and effect; enforcement

The party moving for an order confirming, modifying, or correcting an award shall, at the time such order is filed with the clerk for the entry of judgment thereon, also file the following papers with the clerk:

(a) The agreement; the selection or appointment, if any, of an additional arbitrator or umpire; and each written extension of the time, if any, within which to make the award.

(b) The award.

(c) Each notice, affidavit, or other paper used upon an application to confirm, modify, or correct the award, and a copy of each order of the court upon such an application.

The judgment shall be docketed as if it was rendered in an action.

The judgment so entered shall have the same force and effect, in all respects, as, and be subject to all the provisions of law relating to, a judgment in an action; and it may be enforced as if it had been rendered in an action in the court in which it is entered.

(July 30, 1947, ch. 392, 61 Stat. 673.)

DERIVATION

Act Feb. 12, 1925, ch. 213, §13, 43 Stat. 886.

§ 14. Contracts not affected

This title shall not apply to contracts made prior to January 1, 1926.

(July 30, 1947, ch. 392, 61 Stat. 674.)

DERIVATION

Act Feb. 12, 1925, ch. 213, §15, 43 Stat. 886.

PRIOR PROVISIONS

Act Feb. 12, 1925, ch. 213, §14, 43 Stat. 886, former provisions of section 14 of this title relating to ''short title'' is not now covered.

§ 15. Inapplicability of the Act of State doctrine

Enforcement of arbitral agreements, confirmation of arbitral awards, and execution upon judgments based on orders confirming such awards shall not be refused on the basis of the Act of State doctrine.

(Added Pub. L. 100–669, §1, Nov. 16, 1988, 102 Stat. 3969.)

CODIFICATION

Another section 15 of this title was renumbered section 16 of this title.

§ 16. Appeals

(a) An appeal may be taken from—

(1) an order—

(A) refusing a stay of any action under section 3 of this title,

(B) denying a petition under section 4 of this title to order arbitration to proceed,

(C) denying an application under section 206 of this title to compel arbitration,

(D) confirming or denying confirmation of an award or partial award, or

(E) modifying, correcting, or vacating an award;

(2) an interlocutory order granting, continuing, or modifying an injunction against an arbitration that is subject to this title; or

(3) a final decision with respect to an arbitration that is subject to this title.

(b) Except as otherwise provided in section 1292(b) of title 28, an appeal may not be taken from an interlocutory order—

(1) granting a stay of any action under section 3 of this title;

(2) directing arbitration to proceed under section 4 of this title;

(3) compelling arbitration under section 206 of this title; or

(4) refusing to enjoin an arbitration that is subject to this title.

(Added Pub. L. 100–702, title X, § 1019(a), Nov. 19, 1988, 102 Stat. 4670, § 15; renumbered § 16, Pub. L. 101–650, title III, § 325(a)(1), Dec. 1, 1990, 104 Stat. 5120.)

AMENDMENTS

1990—Pub. L. 101–650 renumbered the second section 15 of this title as this section.

CHAPTER 2—CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

AMENDMENTS

1970—Pub. L. 91–368, § 1, July 31, 1970, 84 Stat. 692, added heading for chapter 2 and analysis of sections for such chapter.

§ 201. Enforcement of Convention

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958, shall be enforced in United States courts in accordance with this chapter.

(Added Pub. L. 91–368, § 1, July 31, 1970, 84 Stat. 692.)

EFFECTIVE DATE

Pub. L. 91–368, § 4, July 31, 1970, 84 Stat. 693, provided that: ''This Act [enacting this chapter] shall be effective upon the entry into force of the Convention on Recognition and Enforcement of Foreign Arbitral Awards with respect to the United States.'' The Convention entered into force for the United States on Dec. 29, 1970.

§ 202. Agreement or award falling under the Convention

An arbitration agreement or arbitral award arising out of a legal relationship, whether contractual or not, which is considered as commercial, including a transaction, contract, or agreement described in section 2 of this title, falls under the Convention. An agreement or award arising out of such a relationship which is entirely between citizens of the United States shall be deemed not to fall under the Convention unless that relationship involves property located abroad, envisages performance or enforcement abroad, or has some other reasonable relation with one or more foreign states. For the purpose of this section a corporation is a citizen of the United States if it is incorporated or has its principal place of business in the United States.

(Added Pub. L. 91–368, § 1, July 31, 1970, 84 Stat. 692.)

EFFECTIVE DATE

Section effective upon the entry into force of the Convention on Recognition and Enforcement of Foreign Arbitral Awards with respect to the United States (Dec. 29, 1970), see section 4 of Pub. L. 91–368, set out as a note under section 201 of this title.

§ 203. Jurisdiction; amount in controversy

An action or proceeding falling under the Convention shall be deemed to arise under the laws and treaties of the United States. The district courts of the United States (including the courts enumerated in section 460 of title 28) shall have original jurisdiction over such an action or proceeding, regardless of the amount in controversy.

(Added Pub. L. 91–368, § 1, July 31, 1970, 84 Stat. 692.)

EFFECTIVE DATE

Section effective upon the entry into force of the Convention on Recognition and Enforcement of Foreign Arbitral Awards with respect to the United States (Dec. 29, 1970), see section 4 of Pub. L. 91–368, set out as a note under section 201 of this title.

§ 204. Venue

An action or proceeding over which the district courts have jurisdiction pursuant to section 203 of this title may be brought in any such court in which save for the arbitration agreement an action or proceeding with respect to the controversy between the parties could be brought, or in such court for the district and division which embraces the place designated in the agreement as the place of arbitration if such place is within the United States.

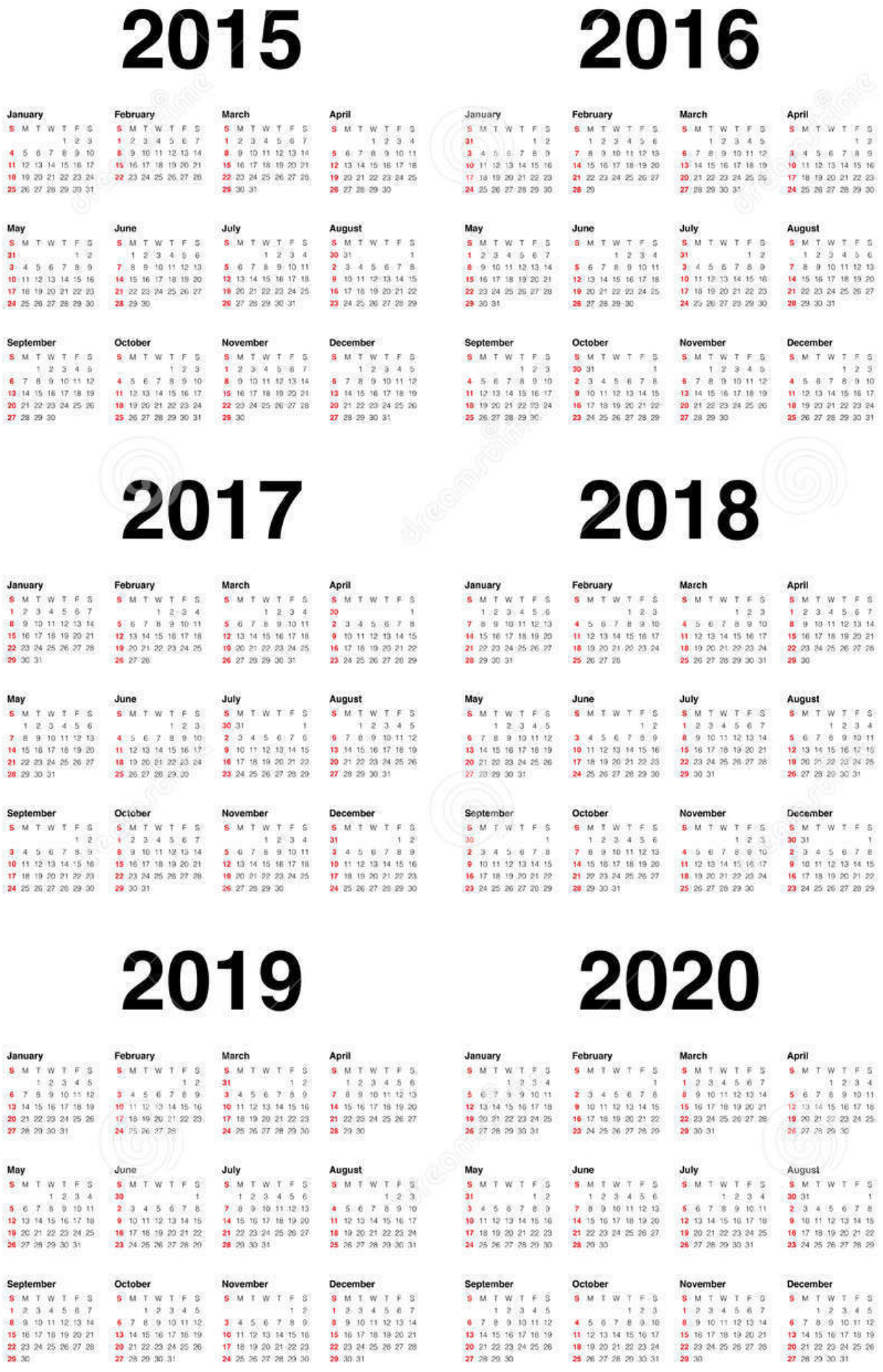
(Added Pub. L. 91–368, § 1, July 31, 1970, 84 Stat. 692.)

EFFECTIVE DATE

Section effective upon the entry into force of the Convention on Recognition and Enforcement of Foreign Arbitral Awards with respect to the United States (Dec. 29, 1970), see section 4 of Pub. L. 91–368, set out as a note under section 201 of this title.

§ 205. Removal of cases from State courts

Where the subject matter of an action or proceeding pending in a State court relates to an arbitration agreement or award falling under the Convention, the defendant or the defendants may, at any time before the trial thereof, remove such action or proceeding to the district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JUDGE MARION WARREN
DIRECTOR
N.C. ADMINISTRATIVE OFFICE OF THE COURTS

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MARION.R.WARREN@NCCOURTS.ORG

April 17, 2017

MEMORANDUM

TO: Judicial Branch of Government

FROM: Marion R. Warren, Director

SUBJECT: Calendar Year 2018 Holiday Schedule

The 2018 holiday schedule for the Judicial Branch of Government is the same for the Executive Branch, allowing for twelve holidays.

Holiday	**Observance Date**	**Day of Week**
New Year's Day	January 1, 2018	Monday
Martin Luther King, Jr.'s Birthday	January 15, 2018	Monday
Good Friday	March 30, 2018	Friday
Memorial Day	May 28, 2018	Monday
Independence Day	July 4, 2018	Wednesday
Labor Day	September 3, 2018	Monday
Veteran's Day	November 12, 2018	Monday
Thanksgiving Day	November 22 & 23, 2018	Thursday & Friday
Christmas	December 24, 25, & 26, 2018	Monday, Tuesday and Wednesday

Please remember that any variations in this schedule could result in overtime and premium pay costs, for which funds have not been budgeted. For this reason, any adjustment or change in this holiday schedule must be approved in advance by me. After receiving such approval, should court be held on a scheduled holiday requiring some of your employees to work, the employees will be granted an alternate day off, plus holiday premium pay. Please contact the NCAOC Human Resources Division if this occurs to determine who is eligible for holiday premium pay, and the procedures necessary to make appropriate payments.

★★★

ADMINISTRATIVE OFFICE OF THE COURTS

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Memorial Day	May 27, 2019	Monday
Independence Day	July 4, 2019	Thursday
Labor Day	September 2, 2019	Monday
Veteran's Day	November 11, 2019	Monday
Thanksgiving Day	November 28 & 29, 2019	Thursday & Friday
Christmas	December 24, 25, & 26, 2019	Tuesday, Wednesday & Thurs.

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