

Article 10.

Resignation.

**§ 28A-10-1. Clerk's power to accept resignation.**

The clerk of superior court in the county where a person has been appointed personal representative shall have the power to accept that person's resignation. (1973, c. 1329, s. 3; 2011-344, s. 4.)

**§ 28A-10-2. Contents of petition; notice.**

(a) When a personal representative desires to resign the personal representative's office, the personal representative shall file a verified petition in the office of the clerk of the superior court, setting forth:

- (1) The facts relating to the personal representative's appointment and qualifications;
- (2) The names and residences of all interested persons known to the personal representative;
- (3) A full statement of the reasons why the petitioner should be permitted to resign the petitioner's office; and
- (4) A statement that the personal representative has filed with the clerk of superior court the personal representative's accounts and a record of the personal representative's conduct of the office.

(b) Notice of the petition for resignation, together with the date and time of the hearing thereon, shall be served upon all interested persons named in the petition in such manner as the clerk of superior court shall determine. (1973, c. 1329, s. 3; 2011-344, s. 4.)

**§ 28A-10-3. Statement of account; record of conduct.**

When the personal representative files the personal representative's petition requesting permission to resign the personal representative's office, the personal representative shall also file a verified statement of:

- (1) The personal representative's accounts since that personal representative's qualification, or if the personal representative has previously filed an account, a statement of the personal representative's accounts since the date thereof;
- (2) The assets of the estate and their location;
- (3) The debts and liabilities of the estate;
- (4) All facts and circumstances known to the personal representative the disclosure of which is necessary for a full and fair assessment of the personal representative's conduct of the office; and
- (5) All additional facts and circumstances known to the personal representative the disclosure of which is necessary for a full and fair understanding of all matters concerning the estate. (1973, c. 1329, s. 3; 2011-344, s. 4.)

**§ 28A-10-4. Hearing; order.**

The clerk of superior court shall conduct a hearing in accordance with Article 2 of this Chapter on the petition not sooner than 10 days nor later than 20 days after notice to interested persons pursuant to G.S. 28A-10-2(b). If the clerk of superior court finds all the accounts proper, including accounts subsequent to the filing of the petition, and determines that the resignation of the personal representative is in the best interest of the estate and can be allowed, the resignation may be

approved subject to the provisions of G.S. 28A-10-5. Except in cases governed by G.S. 28A-10-8, the clerk of superior court shall appoint a successor pursuant to G.S. 28A-4-1. (1973, c. 1329, s. 3; 2011-344, s. 4.)

**§ 28A-10-5. When resignation becomes effective.**

The resignation shall not become effective until:

- (1) A successor has been duly qualified, unless G.S. 28A-10-8 is applicable; and
- (2) The clerk of superior court is satisfied that the accounts of the personal representative are true and correct; and
- (3) The personal representative has accounted to the personal representative's successor in full for all assets of the estate, or if pursuant to G.S. 28A-10-8 no successor is appointed, to the remaining personal representative or representatives, and the personal representative's final account has been filed with and approved by the clerk of superior court. (1973, c. 1329, s. 3; 2011-344, s. 4.)

**§ 28A-10-6. Appeal; stay effected.**

Any interested person who has appeared at the hearing and objected to the order of the clerk of superior court granting or denying resignation may appeal an order denying or allowing the resignation as a special proceeding pursuant to G.S. 28A-2-9(b). The clerk of superior court may issue a stay of an order allowing the resignation upon the appellant posting an appropriate bond set by the clerk until the cause is heard and determined upon appeal. (1973, c. 1329, s. 3; 2011-344, s. 4.)

**§ 28A-10-7. Rights and duties devolve on successor.**

Upon the qualification and appointment of a successor to a personal representative whose resignation has been allowed as provided in G.S. 28A-10-4, the substituted personal representative shall succeed to all the powers as provided in G.S. 28A-13-7 and shall also be subject to all the duties, responsibilities, and liabilities as provided in Article 13. (1973, c. 1329, s. 3; 2011-344, s. 4.)

**§ 28A-10-8. When appointment of successor to personal representative who has resigned is not required.**

When two or more personal representatives have qualified, and one or more personal representatives resign pursuant to this Article, leaving in office one or more personal representatives, the appointment of successors shall not be required unless:

- (1) The clerk of superior court determines, in the clerk's discretion, that it is in the best interest of the estate to appoint a successor or successors to the personal representative or representatives who have resigned, or
- (2) In the case of executors, the will so provides. (1973, c. 1329, s. 3; 2011-344, s. 4.)