§ 28A-2-6. Commencement of estate proceedings, pleadings, consolidation, and joinder.

(a) Contested Estate Proceedings. – Contested estate proceedings brought against adverse parties shall be commenced by petition in the existing estate administration file. All parties not joined as petitioners shall be joined as respondents. The clerk of superior court shall issue the estate proceeding summons to the respondents. The clerk of superior court may order that additional persons be joined as respondents and shall issue the estate proceeding summons to the additional persons. The estate proceeding summons shall notify a respondent to appear and answer the petition within 20 days after its service upon the respondents. The estate proceeding summons shall comply with the requirements set forth in G.S. 1-394 for a special proceeding summons except that the summons shall be titled "ESTATE PROCEEDING SUMMONS" and shall be served upon a respondent in accordance with G.S. 1A-1, Rule 4. After the time for responding to the petition or complaint has expired, any party or the clerk of superior court may give notice to all parties of a hearing.

(b) Uncontested Estate Proceedings. – Estate proceedings before the clerk of superior court that are uncontested may be decided without hearing according to practice and procedure provided by law and shall be commenced by the filing of a petition, setting forth the facts entitling the petitioners to relief and the nature of the relief demanded. In these proceedings, the clerk of superior court may hear and decide the petition summarily.

(c) Pleadings. – Any petition, response, or request for hearing in a contested estate proceeding before the clerk of superior court shall contain a short and plain statement of the claim that is sufficiently particular to give the court and the parties notice of the transactions, occurrences, or series of transactions intended to be proved showing that the pleaders are entitled to relief, and a demand for judgment for the relief to which the pleader is entitled. Each averment should be simple, concise, and direct. No technical forms of motions or responses are required. A party may set forth two or more statements of a claim or defense alternatively or hypothetically. The signature of an attorney or party constitutes a certificate by that attorney or party that (i) the attorney or party has read the pleading, motion, or other paper; (ii) to the best of the attorney's or party's knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and (iii) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. All motions, responses, and requests for hearing shall be so construed as to do substantial justice.

(d) Extensions of Time. – The clerk of superior court, for cause shown at any time in the clerk's discretion, with or without motion or notice, may enter an order enlarging the period of time within which an act is required or permitted in an estate proceeding, by any applicable rule of G.S. 1A-1, the Rules of Civil Procedure, or by order of the court, if the request is made before the expiration of the period originally prescribed, but not to exceed 10 days, provided that the court can enlarge the time for a period of more than 10 days for good cause shown, but only to the extent that the court in its discretion determines that justice requires. Upon motion made after the expiration of the specified period, the clerk of superior court may permit the act where the failure to act was the result of excusable neglect. Notwithstanding any other provision of this subsection, the parties to a proceeding may enter into binding stipulations, without approval of the clerk of superior court, enlarging the time within which an act is required or permitted by this Article, by any applicable Rules of Civil Procedure or by order of the court, not to exceed 30 days.

(e) Rules of Civil Procedure. – Unless the clerk of superior court otherwise directs, Rules 4, 5, 6(a), 6(d), 6(e), 18, 19, 20, 21, 24, 45, 52(b), 56, 58, 59, and 65 of G.S. 1A-1, the Rules of Civil Procedure, shall apply to estate proceedings. Upon motion of a party or the clerk of superior court, the clerk may further direct that any or all of the remaining Rules of Civil Procedure shall apply, including, without limitation, discovery rules; however, nothing in Rule 17 requires the appointment of a guardian ad litem for a party represented except as provided in G.S. 28A-2-7. In

applying these Rules to an estate proceeding pending before the clerk of superior court, the term "judge" shall mean "clerk of superior court."

(f) Consolidation. – When an estate proceeding pending before the clerk of superior court and a civil action pending before the Superior Court Division of the General Court of Justice involve a common question of law or fact, upon the court's motion or motion of a party to either the estate proceeding or the civil action, a superior court judge may order a consolidation of the estate proceeding and civil action, and the judge may make orders concerning proceedings therein as may tend to avoid unnecessary cost or delay. Upon the entry of an order consolidating an estate proceeding and civil action, the jurisdiction for all matters pending in both the estate proceeding and the civil action shall be vested in the superior court.

(g) Joinder. – In any civil action pending before the Superior Court Division of the General Court of Justice, the party asserting a claim for relief as an original claim, counterclaim, crossclaim, or third-party claim may join, either as independent or alternative claims, as many claims, legal or equitable, as the party may have against the opposing party, notwithstanding the fact that such claims may otherwise be within the exclusive jurisdiction of the clerk of superior court.

(h) Notice of Transfer. – A notice to transfer an estate proceeding brought pursuant to G.S. 28A-2-4(a)(4) must be served within 30 days after the moving party is served with a copy of the pleading requesting relief pursuant to G.S. 28A-2-4(a)(4), or in the case of the clerk of superior court, prior to or at the first hearing duly noticed in the estate proceeding and prior to the presentation of evidence by the parties, including a hearing at which an order of continuance is entered. Failure to timely serve a notice of transfer of an estate proceeding is a waiver of any objection to the clerk of superior court's exercise of jurisdiction over the estate proceeding then pending before the clerk. When a notice of transfer is duly served and filed, the clerk shall transfer the proceeding to the appropriate court. The proceeding after the transfer is subject to the provisions of the General Statutes and to the rules that apply to actions initially filed in the court to which the proceeding was transferred.

(i) Orders Upon Consolidation/Joinder/Transfer. – Upon the consolidation of an estate proceeding in a civil action, joinder of claims under subsection (f) or (g) of this section, or transfer to the Superior Court Division of the General Court of Justice pursuant to subsection (h) of this section, the clerk of superior court or judge may make appropriate orders to protect the interest of the parties and avoid unnecessary cost or delay. Notwithstanding the consolidation or joinder of claims under subsection (f) or (g) of this section, where the estate proceeding is transferred to the Superior Court Division of the General Court of Justice under subsection (h) of this section, the clerk of superior court's exclusive jurisdiction as set forth in G.S. 28A-2-4(a)(1) through (3) shall not be stayed unless so ordered by the court. (2011-344, s. 4; 2013-410, s. 6; 2020-69, s. 1.5; 2021-53, s. 3.2.)