

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 579

Short Title: Clerks of Court Authority.

(Public)

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Sponsors: Senator Jordan.

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Referred to: Judiciary I.

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March 29, 1999

A BILL TO BE ENTITLED

1 AN ACT TO EXPAND THE AUTHORITY OF CLERKS OF SUPERIOR COURT BY  
2 ALLOWING CLERKS TO GRANT UNCONTESTED DIVORCES, TO ACCEPT  
3 GUILTY PLEAS IN INFRACTION CASES, MISDEMEANOR TRAFFIC CASES,  
4 AND WORTHLESS CHECK MATTERS, TO EXERCISE SUPERVISORY  
5 AUTHORITY OVER MAGISTRATES, AND TO AUTHORIZE VOLUNTARY  
6 SUPPORT AGREEMENTS.  
7

8 The General Assembly of North Carolina enacts:

9 Section 1. G.S. 7A-103 reads as rewritten:

10 **"§ 7A-103. Authority of clerk of superior court.**

11 The clerk of superior court is authorized to:

- 12 (1) Issue subpoenas to compel the attendance of any witness residing or  
13 being in the State, or to compel the production of any document or  
14 paper, material to any inquiry in his court.  
15 (2) Administer oaths, and to take acknowledgment and proof of the  
16 execution of all instruments or writings.  
17 (3) Issue commissions to take the testimony of any witness within or  
18 without the State.  
19 (4) Issue citations and orders to show cause to parties in all matters  
20 cognizable in his court, and to compel the appearance of such parties.

- 1 (5) Enforce all lawful orders and decrees, by execution or otherwise,  
2 against those who fail to comply therewith or to execute lawful process.  
3 Process may be issued by the clerk, to be executed in any county of the  
4 State, and to be returned before him.
- 5 (6) Certify and exemplify, under seal of his court, all documents, papers or  
6 records therein, which shall be received in evidence in all the courts of  
7 the State.
- 8 (7) Preserve order in this court, punish criminal contempts, and hold  
9 persons in civil contempt; subject to the limitations contained in Chapter  
10 5A of the General Statutes of North Carolina.
- 11 (8) Adjourn any proceeding pending before him from time to time.
- 12 (9) Open, vacate, modify, set aside, or enter as of a former time, decrees or  
13 orders of his court.
- 14 (10) Enter default or judgment in any action or proceeding pending in his  
15 court as authorized by law.
- 16 (11) Award costs and disbursements as prescribed by law, to be paid  
17 personally, or out of the estate or fund, in any proceeding before him.
- 18 (12) Compel an accounting by magistrates and compel the return to the clerk  
19 of superior court by the person having possession thereof, of all money,  
20 records, papers, dockets and books held by such magistrate by virtue or  
21 color of his office.
- 22 (13) Grant and revoke letters testamentary, letters of administration, and  
23 letters of trusteeship.
- 24 (14) Appoint and remove guardians and trustees, as provided by law.
- 25 (15) Audit the accounts of fiduciaries, as required by law.
- 26 (15a) Grant uncontested divorces.
- 27 (15b) Accept guilty pleas in infraction cases, misdemeanor traffic cases, and  
28 worthless check cases involving checks in the amount of up to three  
29 thousand dollars (\$3,000).
- 30 (16) Exercise jurisdiction conferred on him in every other case prescribed by  
31 law."

32 Section 2. G.S. 7A-180 reads as rewritten:

33 **"§ 7A-180. Functions of clerk of superior court in district court matters.**

34 The clerk of superior court:

- 35 (1) Has and exercises all of the judicial powers and duties in respect of  
36 actions and proceedings pending from time to time in the district court  
37 of his county which are now or hereafter conferred or imposed upon  
38 him by law in respect of actions and proceedings pending in the superior  
39 court of his county;
- 40 (2) Performs all of the clerical, administrative and fiscal functions required  
41 in the operation of the district court of his county in the same manner as  
42 he is required to perform such functions in the operation of the superior  
43 court of his county;

- 1 (3) Maintains, under the supervision of the Administrative Office of the  
2 Courts, an office of uniform consolidated records of all judicial  
3 proceedings in the superior court division and the district court division  
4 of the General Court of Justice in his county. Those records shall  
5 include civil actions, special proceedings, estates, criminal actions,  
6 juvenile actions, minutes of the court and all other records required by  
7 law to be maintained. The form and procedure for filing, docketing,  
8 indexing, and recording shall be as prescribed by the Administrative  
9 Officer of the Courts notwithstanding any contrary statutory provision  
10 as to the title and form of the record or as a method of indexing;
- 11 (4) Has the power to accept written appearances, waivers of trial or hearing  
12 and pleas of guilty or admissions of responsibility for the types of  
13 offenses specified in G.S. 7A-273(2) in accordance with the schedules  
14 of offenses promulgated by the Conference of Chief District Judges  
15 pursuant to G.S. 7A-148, and in such cases, to enter judgment and  
16 collect the fine or penalty and costs;
- 17 (5) Has the power to issue warrants of arrest valid throughout the State, and  
18 search warrants valid throughout the county of the issuing clerk;
- 19 (6) Has the power to conduct an initial appearance in accordance with  
20 Chapter 15A, Article 24, Initial Appearance, and to fix conditions of  
21 release in accordance with Chapter 15A, Article 26, Bail;
- 22 (7) Continues to exercise all powers, duties and authority theretofore vested  
23 in or imposed upon clerks of superior court by general law, with the  
24 exception of jurisdiction in juvenile matters; ~~and~~
- 25 (8) Has the power to accept written appearances, waivers of trial and pleas  
26 of guilty to violations of G.S. 14-107 when restitution, including service  
27 charges and processing fees allowed under G.S. 14-107, is made, the  
28 amount of the check is two thousand dollars (\$2,000) or less, and the  
29 warrant does not charge a fourth or subsequent violation of this statute,  
30 and, in such cases, to enter such judgments as the chief district judge  
31 shall direct and, forward the amounts collected as restitution to the  
32 appropriate prosecuting witnesses and to collect the ~~costs~~-costs; and
- 33 (8a) Has the power to grant uncontested divorces.
- 34 (9) Repealed by Session Laws 1991 (Regular Session, 1992), c. 900, s.  
35 118(c)."

36 Section 3. G.S. 7A-253 reads as rewritten:

37 **"§ 7A-253. Infractions.**

38 Except as provided in ~~G.S. 7A-271(d)~~, G.S. 7A-271(d) and G.S. 7A-103(15b), original,  
39 exclusive jurisdiction for the adjudication and disposition of infractions lies in the district  
40 court division."

41 Section 4. G.S. 7A-173 reads as rewritten:

42 **"§ 7A-173. Suspension; removal; reinstatement.**

1 (a) A magistrate may be suspended from performing the duties of his office by the  
2 chief district judge of the district court district in which his county is located, or removed  
3 from office by the senior regular resident superior court judge of, or any regular superior  
4 court judge holding court in, the district or set of districts as defined in G.S. 7A-41.1(a) in  
5 which the county is located. A magistrate may be suspended from performing the duties  
6 of the office of magistrate by the clerk of superior court of the superior court district in  
7 which the magistrate's county is located if the clerk has received a complaint from a third  
8 party and the clerk is satisfied that the complaint has a justifiable basis. Grounds for  
9 suspension or removal are the same as for a judge of the General Court of Justice.

10 (b) Suspension from performing the duties of the office may be ordered upon  
11 filing of sworn written charges in the office of clerk of superior court for the county in  
12 which the magistrate resides. If the chief district judge, upon examination of the sworn  
13 charges, finds that the charges, if true, constitute grounds for removal, he may enter an  
14 order suspending the magistrate from performing the duties of his office until a final  
15 determination of the charges on the merits. During suspension the salary of the magistrate  
16 continues.

17 (c) If a hearing, with or without suspension, is ordered, the magistrate against  
18 whom the charges have been made shall be given immediate written notice of the  
19 proceedings and a true copy of the charges, and the matter shall be set by the chief district  
20 judge for hearing before the senior regular resident superior court judge or a regular  
21 superior court judge holding court in the district or set of districts as defined in G.S. 7A-  
22 41.1(a) in which the county is located. The hearing shall be held in a county within the  
23 district or set of districts not less than 10 days nor more than 30 days after the magistrate  
24 has received a copy of the charges. The hearing shall be open to the public. All testimony  
25 offered shall be recorded. At the hearing the superior court judge shall receive evidence,  
26 and make findings of fact and conclusions of law. If he finds that grounds for removal  
27 exist, he shall enter an order permanently removing the magistrate from office, and  
28 terminating his salary. If he finds that no such grounds exist, he shall terminate the  
29 suspension, if any.

30 (d) A magistrate may appeal from an order of removal to the Court of Appeals on  
31 the basis of error of law by the superior court judge. Pending decision of the case on  
32 appeal, the magistrate shall not perform any of the duties of his office. If, upon final  
33 determination, he is ordered reinstated, either by the appellate division or by the superior  
34 court on remand, his salary shall be restored from the date of the original order of  
35 removal."

36 Section 5. G.S. 110-133 reads as rewritten:

37 "**§ 110-133. Agreements of support.**

38 In lieu of or in conclusion of any legal proceeding instituted to obtain support from a  
39 responsible parent for a dependent child born of the marriage, a written agreement to  
40 support the child by periodic payments executed by the responsible parent when  
41 acknowledged before a certifying officer or notary public or the equivalent or  
42 corresponding person of the state, territory, or foreign country where the  
43 acknowledgment is made and filed with and approved by a judge of the district court or

1 the clerk of superior court in the county where the custodial parent of the child resides or  
2 is found, or in the county where the noncustodial parent resides or is found, or in the  
3 county where the child resides or is found shall have the same force and effect,  
4 retroactively and prospectively, in accordance with the terms of the agreement, as an  
5 order of support entered by the court, and shall be enforceable and subject to  
6 modification in the same manner as is provided by law for orders of the court in such  
7 cases. A responsible parent executing a written agreement under this section shall provide  
8 on the agreement the responsible parent's social security number."

9           Section 6. This act is effective when it becomes law and applies to actions by  
10 the clerk of superior court on or after that date.