

NORTH CAROLINA GENERAL ASSEMBLY
1973 SESSION

CHAPTER 148
HOUSE BILL 41

AN ACT TO AMEND CHAPTER 7A TO REVISE PROCEDURES FOR THE REMOVAL
OF SOLICITORS, ASSISTANT SOLICITORS, CLERKS OF SUPERIOR COURT,
MAGISTRATES, AND PUBLIC DEFENDERS.

The General Assembly of North Carolina enacts:

Section 1. General Statute 7A-66 is rewritten to read as follows:

"G.S. 7A-66. Removal of solicitors. The following are grounds for suspension of a solicitor or for his removal from office:

- (1) mental or physical incapacity interfering with the performance of his duties which is, or is likely to become, permanent;
- (2) willful misconduct in office;
- (3) willful and persistent failure to perform his duties;
- (4) habitual intemperance;
- (5) conviction of a crime involving moral turpitude;
- (6) conduct prejudicial to the administration of justice which brings the office into disrepute; or
- (7) knowingly authorizing or permitting an assistant solicitor to commit any act constituting grounds for removal, as defined in subsections (1) through (6) hereof.

A proceeding to suspend or remove a solicitor is commenced by filing with the clerk of superior court of the county where the solicitor resides a sworn affidavit charging the solicitor with one or more grounds for removal. The clerk shall immediately bring the matter to the attention of the senior regular resident superior court judge for the district, who shall within 15 days either review and act on the charges or refer them for review and action within 15 days to another superior court judge residing in or regularly holding the courts of the district. If the superior court judge upon review finds that the charges if true constitute grounds for suspension, and finds probable cause for believing that the charges are true, he may enter an order suspending the solicitor from performing the duties of his office until a final determination of the charges on the merits. During the suspension the salary of the solicitor continues.

If a hearing, with or without suspension, is ordered, the solicitor should receive immediate written notice of the proceedings and a true copy of the charges, and the matter shall be set for hearing not less than 10 days nor more than 30 days thereafter. The matter shall be set for hearing before the judge who originally examined the charges or before another regular superior court judge resident in or regularly holding the courts of the district. The hearing shall be open to the public. All testimony shall be recorded. At the hearing the superior court judge shall hear evidence and make findings of fact and conclusions of law and if he finds that grounds for removal exist, he shall enter an order permanently removing the solicitor from office, and terminating his salary. If he finds that no grounds exist, he shall terminate the suspension, if any.

The solicitor may appeal from an order of removal to the Court of Appeals on the basis of error of law by the superior court judge. Pending decision of the case on appeal, the solicitor

shall not perform any of the duties of his office. If, upon final determination, he is ordered reinstated either by the appellate division or by the superior court upon remand, his salary shall be restored from the date of the original order of removal."

Sec. 2. G.S. 7A-105 is rewritten to read as follows:

"G.S. 7A-105. Suspension, removal, and reinstatement of clerk. A clerk of superior court may be suspended or removed from office for willful misconduct or mental or physical incapacity, and reinstated, under the same procedures as are applicable to a superior court solicitor, except that the procedure shall be initiated by the filing of a sworn affidavit with the chief district judge of the district in which the clerk resides, and the hearing shall be conducted by the senior regular resident superior court judge serving the county of the clerk's residence. If suspension is ordered, the judge shall appoint some qualified person to act as clerk during the period of the suspension."

Sec. 3. G.S. 7A-173(a) is amended by deleting "district judge" in the second sentence, and inserting "judge of the General Court of Justice" in lieu thereof.

Sec. 4. G.S. 7A-173(c) is amended in line one by deleting "suspension", and inserting in lieu thereof "a hearing, with or without suspension,", and in line 12, by deleting the period at the end of the subsection, and inserting in lieu thereof", if any."

Sec. 5. G.S. 7A-466 is amended by deleting "district court judge" in the last sentence thereof, and inserting in lieu thereof "superior court solicitor".

Sec. 6. G.S. 7A-143, and all other laws and parts of laws in conflict with this Act, are repealed.

Sec. 7. This act shall become effective upon ratification.

In the General Assembly read three times and ratified, this the 9th day of April, 1973.