

- 1 (1) To prevent the clerk of the superior court from allowing reasonable
2 sums for necessary charges and disbursements incurred in the
3 management of the estate; or
- 4 (2) To allow commissions on distribution of the shares of heirs or on
5 distribution of shares of devisees; or
- 6 (3) To abridge the right of any party interested in the administration of a
7 decedent's estate to appeal an order of the clerk of superior court to a
8 judge of superior court.

9 (d1) In determining the maximum commissions allowable pursuant to subsection
10 (a) of this section, the clerk of superior court may take into account the fees paid by the
11 estate for professional services performed that were a part of the ordinary routine of
12 administration, including services performed by attorneys and accountants. The
13 discretion authorized by this subsection does not require the clerk to reduce the
14 maximum commissions allowed by the aggregate fees paid to professionals on a
15 dollar-for-dollar basis.

16 (e) No personal representative, collector or public administrator, who has been
17 guilty of ~~such~~ default or misconduct in the due execution of his or her office resulting in
18 the revocation of his or her appointment of the personal representative, collector, or
19 public administrator under the provisions of G.S. 28A-9-1, shall be entitled to any
20 commission under the provisions of this section.

21 (f) For the purpose of computing commissions whenever any portion of the
22 dividends, interest, rents or other amounts payable to a personal representative, collector
23 or public administrator is required by any law of the United States or other
24 governmental unit to be withheld for income tax purposes by the person, corporation,
25 organization or governmental unit paying the same, the amount so withheld shall be
26 deemed to have been received and expended.

27 (g) The provisions of subsection (a) of this section do not apply when the
28 testator's will specifies a stipulated amount or method or standard for determining the
29 compensation for the services rendered by the personal representative, including:

- 30 (1) A provision in the will that the compensation of the personal
31 representative is to be determined by applying its regularly adopted
32 schedule of compensation in effect at the time of performance of those
33 services.
- 34 (2) A provision in the will that the personal representative is to receive
35 "reasonable compensation" for those services or similar language to
36 that effect.

37 (h) Notwithstanding the provisions of subdivision (g)(2) of this section:

- 38 (1) When the will provides that the personal representative is to receive
39 "reasonable compensation" or similar language to that effect, the
40 personal representative shall receive commissions as determined under
41 subsection (a) of this section unless the personal representative and the
42 beneficiaries whose shares would be charged with the payment of the
43 personal representative's compensation consent in writing to the
44 specific amount that constitutes reasonable compensation.

1 (2) When the will provides that compensation of the personal
2 representative shall be the amount "as provided by law," the
3 "maximum amount provided by law," or other similar language, that
4 language shall be construed as the intention that the personal
5 representative shall receive commissions as determined under
6 subsection (a) of this section."

7 **SECTION 2.** G.S. 28A-19-6 reads as rewritten:

8 **"§ 28A-19-6. Order of payment of claims.**

9 After payment of costs and expenses of administration, the claims against the estate
10 of a decedent must be paid in the following order:

11 First class. Claims which by law have a specific lien on property to an amount not
12 exceeding the value of such property.

13 Second class. Funeral expenses to the extent of two thousand five hundred dollars
14 (\$2,500). This limitation shall not include cemetery lot or gravestone. The preferential
15 limitation herein granted shall be construed to be only a limit with respect to preference
16 of payment and shall not be construed to be a limitation on reasonable funeral expenses
17 which may be incurred; nor shall the preferential limitation of payment in the amount of
18 two thousand five hundred dollars (\$2,500) be diminished by any Veterans
19 Administration, social security or other federal governmental benefits awarded to the
20 estate of the decedent or to his or her beneficiaries.

21 Third class. All dues, taxes, and other claims with preference under the laws of the
22 United States.

23 Fourth class. All dues, taxes, and other claims with preference under the laws of the
24 State of North Carolina and its subdivisions.

25 Fifth class. Judgments of any court of competent jurisdiction within the State,
26 docketed and in force, to the extent to which they are a lien on the property of the
27 decedent at his death.

28 Sixth class. Wages due to any employee employed by the decedent, which claim for
29 wages shall not extend to a period of more than 12 months next preceding the death; or
30 if such employee was employed for the year current at the decease, then from the time
31 of such employment; for medical services within the 12 months preceding the decease;
32 for drugs and all other medical supplies necessary for the treatment of such decedent
33 during the last illness of such decedent, said period of last illness not to exceed 12
34 months.

35 Seventh class. All other claims.

36 Notwithstanding the above provisions, if payment of the commissions of the
37 personal representative under G.S. 28A-23-3(g) would cause the estate to be unable to
38 pay all claims against the estate of a decedent, then the commissions shall be limited to
39 the amount allowed under G.S. 28A-23-3(a)."

40 **SECTION 3.** This act becomes effective January 1, 2006, and applies to
41 commissions paid on or after that date.