

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

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HOUSE BILL 122  
Committee Substitute Favorable 2/28/13  
Senate Judiciary I Committee Substitute Adopted 6/6/13  
Senate Judiciary I Committee Substitute Adopted 6/13/13

Short Title: Amend Interlocutory Appeals/Family Law.

(Public)

Sponsors:

Referred to:

February 20, 2013

1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND THE LAWS PERTAINING TO INTERLOCUTORY APPEALS AS  
3 RELATED TO FAMILY LAW AND TO MODIFY THE LAW REGARDING  
4 DISCIPLINE FOR JUDGES.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 7A-27 reads as rewritten:

7 "**§ 7A-27. Appeals of right from the courts of the trial divisions.**

8 (a) Appeal lies of right directly to the Supreme Court in all cases in which the  
9 defendant is convicted of murder in the first degree and the judgment of the superior court  
10 includes a sentence of death.

11 (b) Appeal lies of right directly to the Court of Appeals in any of the following cases:

12 (1) From any final judgment of a superior court, other than the one described in  
13 subsection (a) of this section, or one based on a plea of guilty or nolo  
14 contendere, including any final judgment entered upon review of a decision  
15 of an administrative agency, except for a final judgment entered upon review  
16 of a court martial under G.S. 127A-62.

17 (2) From any final judgment of a district court in a civil action.

18 (3) From any interlocutory order or judgment of a superior court or district court  
19 in a civil action or proceeding which does any of the following:

20 a. Affects a substantial right.

21 b. In effect determines the action and prevents a judgment from which  
22 an appeal might be taken.

23 c. Discontinues the action.

24 d. Grants or refuses a new trial.

25 e. Determines a claim prosecuted under G.S. 50-19.1.

26 (4) From any other order or judgment of the superior court from which an  
27 appeal is authorized by statute.

28 (b) ~~From any final judgment of a superior court, other than the one described in~~  
29 ~~subsection (a) of this section, or one based on a plea of guilty or nolo contendere, including any~~  
30 ~~final judgment entered upon review of a decision of an administrative agency, except for a final~~  
31 ~~judgment entered upon review of a court martial under G.S. 127A-62, appeal lies of right to the~~  
32 ~~Court of Appeals.~~

33 (c) ~~From any final judgment of a district court in a civil action appeal lies of right~~  
34 ~~directly to the Court of Appeals.~~



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1 (d) ~~From any interlocutory order or judgment of a superior court or district court in a~~  
2 ~~civil action or proceeding which~~

3 (1) ~~Affects a substantial right, or~~

4 (2) ~~In effect determines the action and prevents a judgment from which appeal~~  
5 ~~might be taken, or~~

6 (3) ~~Discontinues the action, or~~

7 (4) ~~Grants or refuses a new trial, appeal lies of right directly to the Court of~~  
8 ~~Appeals.~~

9 (e) ~~From any other order or judgment of the superior court from which an appeal is~~  
10 ~~authorized by statute, appeal lies of right directly to the Court of Appeals."~~

11 **SECTION 2.** Article 1 of Chapter 50 of the General Statutes is amended by adding  
12 the following new section to read:

13 **"§ 50-19.1. Maintenance of certain appeals allowed.**

14 Notwithstanding any other pending claims filed in the same action, a party may appeal from  
15 an order or judgment adjudicating a claim for absolute divorce, divorce from bed and board,  
16 child custody, child support, alimony, or equitable distribution if the order or judgment would  
17 otherwise be a final order or judgment within the meaning of G.S. 1A-1, Rule 54(b), but for the  
18 other pending claims in the same action. A party does not forfeit the right to appeal under this  
19 section if the party fails to immediately appeal from an order or judgment described in this  
20 section. An appeal from an order or judgment under this section shall not deprive the trial court  
21 of jurisdiction over any other claims pending in the same action."

22 **SECTION 3.** G.S. 7A-374.2 reads as rewritten:

23 **"§ 7A-374.2. Definitions.**

24 Unless the context clearly requires otherwise, the definitions in this section shall apply  
25 throughout this Article:

26 (1) "Censure" means a finding by the Supreme Court, based upon a written  
27 recommendation by the Commission, that a judge has willfully engaged in  
28 misconduct prejudicial to the administration of justice that brings the judicial  
29 office into disrepute, but which does not warrant the suspension of the judge  
30 from the judge's judicial duties or the removal of the judge from judicial  
31 office. A censure may require that the judge follow a corrective course of  
32 action. Unless otherwise ordered by the Supreme Court, the judge shall  
33 personally appear in the Supreme Court to receive a censure.

34 (2) "Commission" means the North Carolina Judicial Standards Commission.

35 (3) "Incapacity" means any physical, mental, or emotional condition that  
36 seriously interferes with the ability of a judge to perform the duties of  
37 judicial office.

38 (4) "Investigation" means the gathering of information with respect to alleged  
39 misconduct or disability.

40 (5) "Judge" means any justice or judge of the General Court of Justice of North  
41 Carolina, including any retired justice or judge who is recalled for service as  
42 an emergency judge of any division of the General Court of Justice.

43 (6) "Letter of caution" means a written action of the Commission that cautions a  
44 judge not to engage in certain conduct that violates the Code of Judicial  
45 Conduct as adopted by the Supreme Court.

46 (7) "Public reprimand" means ~~a written action of the Commission issued upon a~~  
47 ~~finding~~finding by the Supreme Court, based upon a written recommendation  
48 by the Commission that a judge has violated the Code of Judicial Conduct  
49 and has engaged in conduct prejudicial to the administration of justice, but  
50 that misconduct is minor and does not warrant a recommendation by the  
51 Commission that the judge be disciplined by the Supreme Court. ~~minor. A~~

1 public reprimand may require that the judge follow a corrective course of  
2 action.

3 (8) "Remove" or "removal" means a finding by the Supreme Court, based upon  
4 a written recommendation by the Commission, that a judge should be  
5 relieved of all duties of the judge's office and disqualified from holding  
6 further judicial office.

7 (9) "Suspend" or "suspension" means a finding by the Supreme Court, based  
8 upon a written recommendation by the Commission, that a judge should be  
9 relieved of the duties of the judge's office for a period of time, and upon  
10 conditions, including those regarding treatment and compensation, as may  
11 be specified by the Supreme Court."

12 **SECTION 4.** G.S. 7A-376 reads as rewritten:

13 **"§ 7A-376. Grounds for discipline by Commission; public reprimand, censure,**  
14 **suspension, or removal by the Supreme Court.**

15 (a) The Commission, upon a determination that any judge has engaged in conduct that  
16 violates the North Carolina Code of Judicial Conduct as adopted by the Supreme Court but that  
17 is not of such a nature as would warrant a recommendation of public reprimand, censure,  
18 suspension, or removal, may issue to the judge a private letter of ~~caution or may issue to the~~  
19 ~~judge a public reprimand-caution.~~

20 (b) Upon recommendation of the Commission, the Supreme Court may issue a public  
21 reprimand, censure, suspend, or remove any judge for willful misconduct in office, willful and  
22 persistent failure to perform the judge's duties, habitual intemperance, conviction of a crime  
23 involving moral turpitude, or conduct prejudicial to the administration of justice that brings the  
24 judicial office into disrepute. A judge who is suspended for any of the foregoing reasons shall  
25 receive no compensation during the period of that suspension. A judge who is removed for any  
26 of the foregoing reasons shall receive no retirement compensation and is disqualified from  
27 holding further judicial office.

28 (c) Upon recommendation of the Commission, the Supreme Court may suspend, for a  
29 period of time the Supreme Court deems necessary, any judge for temporary physical or mental  
30 incapacity interfering with the performance of the judge's duties, and may remove any judge for  
31 physical or mental incapacity interfering with the performance of the judge's duties which is, or  
32 is likely to become, permanent. A judge who is suspended for temporary incapacity shall  
33 continue to receive compensation during the period of the suspension. A judge removed for  
34 mental or physical incapacity is entitled to retirement compensation if the judge has  
35 accumulated the years of creditable service required for incapacity or disability retirement  
36 under any provision of State law, but he shall not sit as an emergency justice or judge."

37 **SECTION 5.** G.S. 7A-377 reads as rewritten:

38 **"§ 7A-377. Procedures.**

39 (a) Any citizen of the State may file a written complaint with the Commission  
40 concerning the qualifications or conduct of any justice or judge of the General Court of Justice,  
41 and thereupon the Commission shall make such investigation as it deems necessary. The  
42 Commission may also make an investigation on its own motion. The Commission may issue  
43 process to compel the attendance of witnesses and the production of evidence, to administer  
44 oaths, and to punish for contempt. No justice or judge shall be recommended for public  
45 reprimand, censure, suspension, or removal unless he has been given a hearing affording due  
46 process of law.

47 (a1) Unless otherwise waived by the justice or judge involved, all papers filed with and  
48 proceedings before the Commission, including any investigation that the Commission may  
49 make, are confidential, and no person shall disclose information obtained from Commission  
50 proceedings or papers filed with or by the Commission, except as provided herein. Those  
51 papers are not subject to disclosure under Chapter 132 of the General Statutes.

1 (a2) Information submitted to the Commission or its staff, and testimony given in any  
2 proceeding before the Commission, shall be absolutely privileged, and no civil action  
3 predicated upon that information or testimony may be instituted against any complainant,  
4 witness, or his or her counsel.

5 (a3) If, after an investigation is completed, the Commission concludes that a letter of  
6 caution is appropriate, it shall issue to the judge a letter of caution in lieu of any further  
7 proceeding in the matter. The issuance of a letter of caution is confidential in accordance with  
8 subsection (a1) of this section.

9 ~~(a4) If, after an investigation is completed, the Commission concludes that a public  
10 reprimand is appropriate, the judge shall be served with a copy of the proposed reprimand and  
11 shall be allowed 20 days within which to accept the reprimand or to reject it and demand, in  
12 writing, that disciplinary proceedings be instituted in accordance with subsection (a5) of this  
13 section. A public reprimand, when issued by the Commission and accepted by the respondent  
14 judge, is not confidential.~~

15 (a5) If, after an investigation is completed, the Commission concludes that disciplinary  
16 proceedings should be instituted, the notice and statement of charges filed by the Commission,  
17 along with the answer and all other pleadings, ~~are not~~ remain confidential. Disciplinary hearings  
18 ordered by the Commission are ~~not~~ confidential, and recommendations of the Commission to  
19 the Supreme Court, along with the record filed in support of such recommendations are ~~not~~  
20 confidential. Testimony and other evidence presented to the Commission is privileged in any  
21 action for defamation. At least five members of the Commission must concur in any  
22 recommendation to issue a public reprimand, censure, suspend, or remove any judge. A  
23 respondent who is recommended for public reprimand, censure, suspension, or removal is  
24 entitled to a copy of the proposed record to be filed with the Supreme Court, and if the  
25 respondent has objections to it, to have the record settled by the Commission's chair. The  
26 respondent is also entitled to present a brief and to argue the respondent's case, in person and  
27 through counsel, to the Supreme Court. A majority of the members of the Supreme Court  
28 voting must concur in any order of public reprimand, censure, suspension, or removal. The  
29 Supreme Court may approve the recommendation, remand for further proceedings, or reject the  
30 recommendation. A justice of the Supreme Court or a member of the Commission who is a  
31 judge is disqualified from acting in any case in which he is a respondent.

32 (a6) Upon issuance of a public reprimand, censure, suspension, or removal by the  
33 Supreme Court, the notice and statement of charges filed by the Commission, along with the  
34 answer and all other pleadings, and recommendations of the Commission to the Supreme  
35 Court, along with the record filed in support of such recommendations, are no longer  
36 confidential.

37 (b) Repealed by Session Laws 2006-187, s. 11, effective January 1, 2007.

38 (c) The Commission may issue advisory opinions to judges, in accordance with rules  
39 and procedures adopted by the Commission.

40 (d) The Commission has the same power as a trial court of the General Court of Justice  
41 to punish for contempt, or for refusal to obey lawful orders or process issued by the  
42 Commission."

43 **SECTION 6.** G.S. 7A-378 is repealed.

44 **SECTION 7.** This act is effective when it becomes law.