

### Article 3.

#### Venue for Probate of Wills and Administration of Estates of Decedents.

##### **§ 28A-3-1. Proper county.**

The venue for the probate of a will and for all proceedings relating to the administration of the estate of a decedent shall be:

- (1) In the county in this State where the decedent was domiciled at the time of the decedent's death; or
- (2) If the decedent had no domicile in this State at the time of death, then in any county wherein the decedent left any property or assets or into which any property or assets belonging to this estate may have come. If there be more than one such county, that county in which proceedings are first commenced shall have priority of venue; or
- (3) If the decedent was a nonresident motorist who died in the State, then in any county in the State. (R.C., c. 46, s. 1; C.C.P., s. 433; 1868-9, c. 113, s. 115; Code, s. 1374; Rev., s. 16; C.S., s. 1; 1931, c. 165; 1943, c. 543; 1951, c. 765; 1973, c. 1329, s. 3; 2011-344, s. 4.)

##### **§ 28A-3-2. Proceedings to determine venue.**

(a) If proceedings are commenced in more than one county or if upon commencement of a proceeding a question arises as to the proper county of venue, or if for any other reason a delay arises in determining venue, the matter shall be referred by the clerk of superior court for a hearing and determination by the senior resident superior court judge or any judge assigned to hold the superior courts of the district which includes the county where the proceedings were first commenced. Upon the filing of a motion or petition to determine venue, the judge shall determine which is the proper county for administration of the estate and stay proceedings in all other counties. The judge shall make such orders as are necessary to transfer the entire proceedings to the proper county. The clerk of superior court of each county in which proceedings are stayed shall retain a true copy of the entire file and transmit the original to the clerk of superior court of such county as the judge directs.

(a1) Any interested person may file a petition to determine proper venue within the time prescribed by G.S. 28A-3-5. The matter shall be referred by the clerk of superior court by or before whom the petition is filed for a hearing and determination by the senior resident superior court judge or any judge assigned to hold the superior courts of the district that includes the county where the proceedings were first commenced.

(b) A proceeding shall be deemed commenced by the offering of a will for probate or by applying for letters of administration as provided by G.S. 28A-6-1 through 28A-6-5 or by applying for letters of collection as provided by G.S. 28A-11-1 through 28A-11-4 and the proceeding first legally commenced shall extend to all of the property or assets of the decedent in this State. (1973, c. 1329, s. 3; 1975, c. 19, s. 7; 2011-344, s. 4.)

##### **§ 28A-3-3. Procedure after determination of improper appointment.**

Where a person has been improperly appointed, and a different person in another county is determined under G.S. 28A-3-2(a) to be the properly appointed personal representative, such improperly appointed personal representative shall surrender to the properly appointed personal representative all assets of the estate under control of the improperly appointed personal representative. In addition such improperly appointed personal representative shall file an

accounting with the clerk of superior court in the proper county according to the form prescribed for collectors by G.S. 28A-11-4. (1973, c. 1329, s. 3; 2011-344, s. 4.)

**§ 28A-3-4. Liability of personal representative appointed in improper county.**

When a personal representative has been appointed in an improper county, and a different person in another county is determined under G.S. 28A-3-2(a) to be the properly appointed personal representative, such improperly appointed personal representative shall not thereby incur personal liability for administrative acts performed prior to the transfer except as provided in G.S. 28A-13-10. (1973, c. 1329, s. 3.)

**§ 28A-3-5. Waiver of venue.**

If questions as to priority of venue are not raised within three months after the issuance of letters testamentary or letters of administration to the personal representative, the validity of the proceeding shall not be affected by any error in venue. (1973, c. 1329, s. 3.)