

GENERAL ASSEMBLY OF NORTH CAROLINA
1997 SESSION

S.L. 1997-310
SENATE BILL 132

AN ACT TO AUTHORIZE CLERKS TO ALLOCATE SPOUSE'S AND
CHILDREN'S YEAR'S ALLOWANCE FROM A DECEDENT'S ESTATE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 30-16 reads as rewritten:

"§ 30-16. Duty of personal ~~representative or magistrate~~ representative, magistrate, or clerk to assign allowance.

It shall be the duty of every administrator, collector, or executor of a will, on application in writing, signed by the surviving spouse, at any time within one year after the death of the deceased spouse, to assign to the surviving spouse the year's allowance as provided in this Article.

If there shall be no administration, or if the personal representative shall fail or refuse to apply to a ~~magistrate, magistrate or clerk of court~~, as provided in G.S. 30-20, for 10 days after the surviving spouse has filed the aforesaid application, or if the surviving spouse is the personal representative, the surviving spouse may make application to the ~~magistrate, magistrate or clerk~~, and it shall be the duty of the ~~magistrate or clerk~~ to proceed in the same manner as though the application had been made by the personal representative.

Where any personal property of the deceased spouse shall be located outside the township or county where the deceased spouse resided at the time of his death, the personal representative or the surviving spouse may apply to any magistrate or to any clerk of court of any township or county where such personal property is located, and it shall be the duty of such magistrate or clerk to assign the year's allowance as if the deceased spouse had resided and died in that township."

Section 2. G.S. 30-17 reads as rewritten:

"§ 30-17. When children entitled to an allowance.

Whenever any parent dies leaving any child under the age of 18 years, including an adopted child or a child with whom the widow may be pregnant at the death of her husband, or a child who is less than 22 years of age and is a full-time student in any educational institution, or a child under 21 years of age who has been declared mentally incompetent, or a child under 21 years of age who is totally disabled, or any other person under the age of 18 years residing with the deceased parent at the time of death to whom the deceased parent or the surviving parent stood in loco parentis, every such child shall be entitled, besides its share of the estate of such deceased parent, to an allowance of two thousand dollars (\$2,000) for its support for the year next ensuing the

death of such parent, less, however, the value of any articles consumed by said child since the death of said parent. Such allowance shall be exempt from any lien by judgment or execution against the property of such parent. The personal representative of the deceased parent, within one year after the parent's death, shall assign to every such child the allowance herein provided for; but if there is no personal representative or if he fails or refuses to act within 10 days after written request by a guardian or next friend on behalf of such child, the allowance may be assigned by a ~~magistrate,~~ magistrate or clerk of court upon application of said guardian or next friend.

If the child resides with the widow of the deceased parent at the time such allowance is paid, the allowance shall be paid to said widow for the benefit of said child. If the child resides with its surviving parent who is other than the widow of the deceased parent, such allowance shall be paid to said surviving parent for the use and benefit of such child, regardless of whether the deceased died testate or intestate or whether the widow dissented from the will. Provided, however, the allowance shall not be available to an illegitimate child of a deceased father, unless such deceased father shall have recognized the paternity of such illegitimate child by deed, will or other paper-writing. If the child does not reside with a parent when the allowance is paid, it shall be paid to its general guardian, if any, and if none, to the clerk of the superior court who shall receive and disburse same for the benefit of such child."

Section 3. Part 2 of Article 4 of Chapter 30 of the General Statutes reads as rewritten:

"Part 2. Assigned by ~~Magistrate.~~ Magistrate or Clerk.

"§ 30-19. Value of property ascertained.

The value of the personal property assigned to the surviving spouse and children shall be ascertained by a magistrate or the clerk of court of the county in which administration was granted or the will probated.

"§ 30-20. Procedure for assignment.

Upon the application of the surviving spouse, a child by his guardian or next friend, or the personal representative of the deceased, the clerk of superior court of the county in which the deceased resided ~~shall~~ may assign the inquiry to a magistrate of the county. ~~The magistrate.~~ The clerk of court, or magistrate upon assignment, shall ascertain the person or persons entitled to an allowance according to the provisions of this Article, and determine the money or other personal property of the estate, and pay over to or assign to the surviving spouse and to the children, if any, so much thereof as they shall be entitled to as provided in this Article. Any deficiencies shall be made up from any of the personal property of the deceased, and if the personal property of the estate shall be insufficient to satisfy such allowance, the clerk of the superior court shall enter judgment against the personal representative for the amount of such deficiency, to be paid when a sufficiency of such assets shall come into his hands.

"§ 30-21. Report of clerk or magistrate.

The ~~magistrate~~ clerk of court, or magistrate upon assignment, shall make and sign three lists of the money or other personal property assigned to each person, stating their quantity and value, and the deficiency to be paid by the personal representative. Where the allowance is to the surviving spouse, one of these lists shall be delivered to him.

Where the allowance is to a child, one of these lists shall be delivered to the surviving parent with whom the child is living; or to the child's guardian or next friend if the child is not living with said surviving parent; or to the child if said child is not living with the surviving parent and has no guardian or next friend. One list shall be delivered to the personal representative. One list shall be returned by the ~~magistrate~~, magistrate or clerk, within 20 days after the assignment, to the superior court of the county in which administration was granted or the will probated, and the clerk shall file and record the same, together with any judgment entered pursuant to G.S. 30-20.

"§ 30-22. Repealed by Session Laws 1971, c. 528, s. 25.

"§ 30-23. Right of appeal.

The personal representative, or the surviving spouse, or child by his guardian or next friend, or any creditor, legatee or heir of the deceased, may appeal from the finding of the magistrate or clerk of court to the superior court of the county, and, within 10 days after the assignment, cite the adverse party to appear before such court on a certain day, not less than five nor exceeding 10 days after the service of the citation.

"§ 30-24. Hearing on appeal.

At or before the day named, the appellant shall file with the clerk a copy of the assignment and a statement of his exceptions thereto, and the issues thereby raised shall be decided ~~as other issues are directed to be de novo. When the issues shall have been decided, judgment shall be entered accordingly, if it may be without injustice, without remitting the proceedings to the magistrate.~~

"§ 30-25. Personal representative entitled to credit.

Upon the settlement of the accounts of the personal representative, he shall be credited with the articles assigned, and the value of the deficiency assessed as aforesaid, if the same shall have been paid, unless the allowance be impeached for fraud or gross negligence in him.

"§ 30-26. When above allowance is in full.

If the estate of a deceased be insolvent, or if his personal estate does not exceed ten thousand dollars (\$10,000), the allowances for the year's support of the surviving spouse and the children shall not, in any case, exceed the value prescribed in G.S. 30-15 and [G.S.] 30-17; and the allowances made to them as above prescribed shall preclude them from any further allowances."

Section 4. G.S. 7A-307(b1) reads as rewritten:

"(b1) The clerk shall assess the following miscellaneous fees:

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|-----|---|---------|
| (1) | Filing and indexing a will with no probate | |
| | – first page | \$ 1.00 |
| | – each additional page or fraction thereof | .25 |
| (2) | Issuing letters to fiduciaries, per letter over five letters issued | 1.00 |
| (3) | Inventory of safe deposits of a decedent, per box, per day | 15.00 |
| (4) | Taking a deposition | 5.00 |
| (5) | Docketing and indexing a will probated in another county in the State | |
| | – first page | 1.00 |

– each additional page or fraction thereof.....	.25
(6) <u>Hearing petition for year's allowance to surviving spouse or child, in cases not assigned to a magistrate, and allotting the same</u>	<u>4.00"</u>

Section 5. This act becomes effective October 1, 1997, and applies to applications for year's allowances filed on or after that date.

In the General Assembly read three times and ratified this the 9th day of July, 1997.

s/ Dennis A. Wicker
President of the Senate

s/ Harold J. Brubaker
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 10:50 a.m. this 17th day of July, 1997