

Article 9.

Revocation of Letters.

**§ 28A-9-1. Revocation after hearing.**

(a) Grounds. – Letters testamentary, letters of administration, or letters of collection may be revoked after hearing on any of the following grounds:

- (1) The person to whom they were issued was originally disqualified under the provisions of G.S. 28A-4-2 or has become disqualified since the issuance of letters.
- (2) The issuance of letters was obtained by false representation or mistake.
- (3) The person to whom they were issued has violated a fiduciary duty through default or misconduct in the execution of the person's office, other than acts specified in G.S. 28A-9-2.
- (4) The person to whom they were issued has a private interest, whether direct or indirect, that might tend to hinder or be adverse to a fair and proper administration. The relationship upon which the appointment was predicated shall not, in and of itself, constitute such an interest.
- (5) The person to whom they were issued is employed by, acts as an agent for, or conducts business in a contractual capacity with a property finder, as defined in G.S. 116B-52(11a), who has entered into an agreement subject to G.S. 116B-78 to locate the estate property defined by the agreement.

(b) Procedure. –

- (1) The clerk of superior court may, on the clerk's own motion, conduct a hearing in accordance with Article 2 of this Chapter to determine whether any of the grounds set forth in subsection (a) of this section exist with regard to any personal representative or collector within the jurisdiction of the clerk of superior court.
- (2) Upon the verified petition of any person interested in the estate for an order finding that any of the grounds set forth in subsection (a) of this section exist with regard to any personal representative or collector within the jurisdiction of the clerk of superior court, the clerk shall conduct a hearing in accordance with Article 2 of this Chapter.
- (3) Notice of the time and date of the hearing shall be given in accordance with Article 2 of this Chapter and to such persons as the clerk of superior court shall determine. If at the hearing the clerk of superior court finds any one of the grounds set forth in subsection (a) of this section to exist, the clerk of superior court shall revoke the letters issued to such personal representative or collector. (C.C.P., s. 470; Code, s. 2171; Rev., s. 38; C.S., s. 31; 1921, c. 98; 1953, c. 795; 1973, c. 1329, s. 3; 2011-344, s. 4; 2021-157, s. 2(b).)

**§ 28A-9-2. Summary revocation.**

(a) Grounds. – Letters testamentary, letters of administration, or letters of collection, shall be revoked by the clerk of superior court without hearing when:

- (1) After letters of administration or collection have been issued, a will is subsequently admitted to probate.
- (2) After letters testamentary have been issued:
  - a. The will is set aside, or

- b. A subsequent testamentary paper revoking the appointment of the executor is admitted to probate.
- (3) Any personal representative or collector required to give a new bond or furnish additional security pursuant to G.S. 28A-8-3 fails to do so within the time ordered.
  - (4) A nonresident personal representative refuses or fails to obey any citation, notice, or process served on that nonresident personal representative or the process agent of the nonresident personal representative.
  - (5) A trustee in bankruptcy, liquidating agent, or receiver has been appointed for any personal representative or collector, or any personal representative or collector has executed an assignment for the benefit of creditors.
  - (6) A personal representative has failed to file an inventory or an annual account with the clerk of superior court, as required by Article 20 and Article 21 of this Chapter, and proceedings to compel such filing pursuant to G.S. 28A-20-2 or 28A-21-4 cannot be had because service cannot be completed because the personal representative cannot be found.
  - (7) A personal representative or collector is a licensed attorney, and the clerk is in receipt of an order entered pursuant to G.S. 84-28 enjoining, suspending, or disbaring the attorney.

(b) Procedure. – Upon the occurrence of any of the acts set forth in subsection (a) of this section, the clerk of superior court shall enter an order revoking the letters issued to such personal representative or collector and shall cause a copy of the order to be served on the personal representative or collector or the personal representative's or collector's process agent. (C.C.P., s. 469; Code, s. 2170; Rev., s. 37; C.S., s. 30; 1973, c. 1329, s. 3; 1975, c. 19, s. 8; 2011-344, s. 4; 2017-158, s. 3.)

#### **§ 28A-9-3. Effect of revocation.**

Upon entry of the order revoking a personal representative's or collector's letters, the authority of the personal representative or collector shall cease. The personal representative or collector shall surrender all assets of the estate under the control of the personal representative or collector to the personal representative's or collector's successor, or the remaining personal representative or collector or to the clerk of superior court; and shall file an accounting in the form prescribed by Article 21 of this Chapter. A personal representative or collector whose letters are revoked pursuant to G.S. 28A-9-2(a)(1) or 28A-9-2(a)(2) shall not thereby incur personal liability for administrative acts performed prior to revocation except as provided in G.S. 28A-13-10. (1973, c. 1329, s. 3; 2011-344, s. 4.)

#### **§ 28A-9-4. Appeal; stay effected.**

Any interested person may appeal from the order of the clerk of superior court granting or denying revocation as an estate proceeding pursuant to G.S. 1-301.3. The clerk of superior court may issue a stay of an order revoking the letters upon the appellant posting an appropriate bond set by the clerk until the cause is heard and determined upon appeal. (1973, c. 1329, s. 3; 2011-344, s. 4; 2021-53, s. 3.4.)

#### **§ 28A-9-5. Interlocutory orders.**

Pending any proceeding or appeal with respect to revocation of letters, the clerk of superior court may enter such interlocutory orders as are necessary to preserve the assets of the estate. (1868-9, c. 113, s. 92; Code, s. 1521; Rev., s. 35; C.S., s. 32; 1973, c. 1329, s. 3.)

**§ 28A-9-6. Appointment of successor to personal representative or collector whose letters have been revoked; when not required.**

Upon the revocation of letters issued to a sole or last surviving personal representative or collector, the clerk of superior court shall appoint another personal representative or collector as provided by G.S. 28A-4-1 to act as successor to the sole or last surviving personal representative or collector. When two or more personal representatives or collectors have qualified, and the letters of one or more personal representatives or collectors are revoked, leaving in office one or more personal representatives or collectors, the appointment of successors shall not be required unless:

- (1) The clerk of superior court determines, in the discretion of the clerk of superior court, that it is in the best interest of the estate to appoint a successor or successors to the personal representatives or collectors whose letters have been revoked, or
- (2) In the case of executors, the will so provides. (1868-9, c. 113, s. 92; Code, s. 1521; Rev., s. 35; C.S. 32; 1973, c. 1329, s. 3; 2011-344, s. 4.)

**§ 28A-9-7. Rights and duties devolve on successor.**

After the revocation of letters pursuant to this Article and upon the qualification and appointment of a successor, the substituted personal representative or collector shall succeed to all the powers stated in G.S. 28A-13-7. The substituted personal representative or collector shall be subject to all the duties, responsibilities and liabilities of the original personal representative or collector, other than liabilities arising out of the grounds for revocation. (1973, c. 1329, s. 3; 2011-344, s. 4.)