

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 122
Committee Substitute Favorable 2/28/13
PROPOSED SENATE COMMITTEE SUBSTITUTE H122-CSSA-51 [v.3]

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Short Title: Amend Interlocutory Appeals/Family Law.

(Public)

Sponsors:

Referred to:

February 20, 2013

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

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

a. Affects a substantial right.

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

c. Discontinues the action.

d. Grants or refuses a new trial.

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

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

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

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



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

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

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

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

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

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

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

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

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

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

"§ 7A-374.2. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"§ 7A-377. Procedures.

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

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

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

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

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

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

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

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

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

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

SECTION 6. G.S. 7A-378 reads as rewritten:

"§ 7A-378. Censure, Public reprimand, censure, suspension, or removal of justice of Supreme Court.

(a) ~~The recommendation of~~ If the Judicial Standards Commission determines that a recommendation for public reprimand, censure, suspension, or removal of any justice of the Supreme Court for any grounds provided by G.S. 7A-376 shall be made to, and the record filed with, the Court of Appeals, which shall have and shall proceed under the same authority for censure, suspension, or removal of any justice as is granted to the Supreme Court under G.S. 7A-376 and G.S. 7A-377(a) for censure, suspension, or removal of any judge, should be made,

1 the Commission shall notify the Governor, the President Pro Tempore of the Senate, and the
2 Speaker of the House of Representatives, who shall each appoint one judge to participate in a
3 three judge panel to review the record and determine whether there are sufficient grounds to
4 warrant a recommendation for public reprimand, censure, suspension, or removal to the
5 Supreme Court. The judges appointed to the three judge panel may be from the district court,
6 superior court, or Court of Appeals, and no judge appointed to the three judge panel shall be a
7 member of the Judicial Standards Commission. Upon appointment of the three judge panel, the
8 Commission shall file the record with the panel. If the majority of the three judge panel
9 determines that the recommendation should be made to the Supreme Court, the record shall be
10 filed with the Supreme Court. If the majority of the three judge panel determines that the
11 recommendation for public reprimand, censure, suspension, or removal should not be made to
12 the Supreme Court, the record shall be returned to the Commission and no further proceedings
13 may be conducted on the same record.

14 (b) ~~The proceeding shall be heard by a panel of the Court of Appeals consisting of the~~
15 ~~Chief Judge, who shall be the presiding judge of the panel, and six other judges, the senior in~~
16 ~~service, excluding the judge who is chairman of the Commission. For good cause, a judge may~~
17 ~~be excused by a majority of the panel. If the Chief Judge is excused, the presiding judge shall~~
18 ~~be designated by a majority of the panel. The vacancy created by an excused judge shall be~~
19 ~~filled by the judge of the court who is next senior in service. Upon receipt of the~~
20 ~~recommendation and the record from the three judge panel provided for in subsection (a) of this~~
21 ~~section, the Supreme Court shall proceed as otherwise provided in this Article."~~

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