

Probate Law For Personal Injury Lawyers: Part II

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All attorneys need to understand that they cannot practice their specialties in a vacuum. If they are to serve their clients properly, personal injury lawyers, like other legal specialists, must possess some knowledge of domestic relations law, criminal law, property law, and other areas. In this same regard, personal injury lawyers who occasionally find themselves faced with a deceased tortfeasor must have a basic knowledge of how North Carolina probate law might affect their practice. This article provides a discussion of those areas of North Carolina's probate law that should be understood by attorneys who practice personal injury law.

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Part II

Overcoming a Potential Statute of Limitations Defense

In some cases, an injured party may have waited too long to consult a personal injury attorney regarding his tort claim against a deceased tortfeasor's estate. A potential defense asserting a failure to timely present a tort claim should be anticipated. There are seven strategies that can be used when confronted with a potential statute of limitations defense in those cases where a deceased tortfeasor is involved. They are:

1. Demonstrate that the injured party was a known or ascertainable claimant;
2. Demonstrate that the contents of the notice to creditors were defective;
3. Demonstrate that the publication of the notice to creditors was defective;

4. Check to see if the correct statute of limitations is being used;

5. File the claim and see if the statute of limitations defense will be raised;

6. Determine if there is a remedy that does not involve recovery from the tortfeasor's assets; and

7. Be sure of the starting date of the probate statute of limitations.

Each of these seven counter-strategies is discussed below.

As discussed previously, a personal representative must personally deliver or mail (by first-class mail) a copy of the notice to creditors to the last known address of any claimant (e.g., plaintiff) actually known to or reasonably ascertainable by the personal representative within 75 days of being appointed.¹ Claimants who receive such a notice have until the deadline date stated in the notice to creditors or 90 days after the delivery or mailing of the notice to creditors, whichever is later, to present their claims.² Any notice to creditors mailed to a known or reasonably ascertainable claimant must contain a statement that specifically sets out the deadline that applies to the claimant involved.³

Example

On January 15, 2001, Janet was injured in an auto accident caused by Sam, who died a week after the accident of massive head injuries. Sam's wife, acting as personal representative, published a notice to creditors on February 4, 2001. In June of 2001, Janet consulted an attorney to sue Sam's estate for damages. The deadline date sent out in the notice to creditors was May 5, 2001. Janet's attorney filed Janet's claim, and when it was met with a statute of limitations defense, Janet's attorney countered by claiming that Janet was a known or ascertainable claimant

and could file her claim within 90 days of having a notice to creditors delivered or mailed to her by Sam's personal representative. Because no such notice was delivered or mailed, Janet's claim would be timely filed.⁴

A defective notice to creditors will prevent a probate statute of limitations from starting to run. A published notice to creditors must meet two statutory requirements.⁵ They are:

1. The notice must inform creditors or claimants (including injured parties) to present their claims by the deadline date set out in the notice (the deadline date must be *stated with specificity* and must be at least *three months* beyond the *first* date the notice to creditors is given);

2. The notice must contain the address of the personal representative to which claims should be sent.

If a notice to creditors is *statutorily* defective in some *material* regard, the basic three-month statute of limitations will not start to run until the defect is corrected.⁶

Example

On September 10, 2000, Kevin's wife died as the result of malpractice at the hands of Dr. Black. Dr. Black died in a hunting accident a week after Kevin's wife died. On October 15, 2000, Dr. Black's probate attorney published a notice to creditors giving claimants a 90-day deadline date of January 13, 2001, to file their claims. The personal representative was unaware of Dr. Black's malpractice regarding Kevin's wife. Kevin consulted an attorney for the first time on January 20, 2001, about a wrongful death action. Although it appears as if Kevin has missed his filing deadline for his wrongful death claim, his attorney determined that the notice to creditors was defective because the deadline date, by statute, must be at least *three months*, not *90 days*, beyond the date the notice was first published. This defect would have to be corrected and the notice republished. Kevin's three-month statute of limitations would not begin to run until the republication occurred.⁷

North Carolina probate law requires a notice to creditors to be published in one of three ways. They are:

1. By publishing the notice once a week for four consecutive weeks in a newspaper

published in the county where the estate is being administered. The newspaper must be one that is statutorily qualified to publish notices to creditors;⁸

2. If there is no statutorily qualified newspaper published in the county where the estate is being administered, a newspaper of general circulation in the county can be used. The notice to creditors must be published once a week for four consecutive weeks in such newspaper. Additionally, the notice to creditors must also be posted at the courthouse in the county of administration; or⁹

3. If there is no statutorily qualified newspaper or a newspaper of general circulation in the county of administration, the personal representative must post his notice to creditors at the courthouse where the estate is being administered *and* four other public places in the county.¹⁰

Probate statutes of limitation do not start to run where a defective notice to creditors is published.¹¹

Example

Mike was injured in a boating accident on June 5, 2000, in Charlotte. Tom, who was at fault, died in Raleigh on June 15, 2000, of causes unrelated to the boating accident. Tom's personal representative published a notice to creditors on July 1, 2000, setting out October 2, 2000, as the deadline date for filing claims against Tom's estate. The personal representative was unaware of the boating accident caused by Tom. Mike did not contact an attorney about his accident until late November of 2000. Although it appeared as if Mike's action against Tom's estate was time barred, Mike's attorney determined that the notice to creditors was run in a local newspaper not statutorily qualified to run such notices.¹² This defect would require the notice to creditors to be republished and would start the running of the three-month statute of limitations anew.

In many cases where a tortfeasor has died, the injured party automatically assumes his tort claim is governed by the deadline date set out in the notice to creditors. As discussed above, the deadline date set out in the notice to creditors generally creates a three-month statute of limitations

starting with the first posting of the notice to creditors.¹³

It is important to recall that the three-month probate statute of limitations applies only to cases where a plaintiff's claim arose *before* the tortfeasor's death.¹⁴ If the plaintiff's claim arose *at or after* the tortfeasor's death, a six-month statute of limitation applies.¹⁵ The six-month period begins to run from the date the claim arose.¹⁶ Ensuring that the correct statute of limitations is used may prevent a valid tort claim from being incorrectly barred.

Example

Susan was injured on January 15, 2001, in an automobile accident. Victor, the tortfeasor who caused the accident, died upon impact. The notice to creditors filed by the tortfeasor's personal representative set out a deadline date of May 21, 2001, for claimants to present their claims to the tortfeasor's estate. A copy of the notice was sent to Susan because she was known to be a claimant by the personal representative. Susan's extended deadline date was June 12, 2001. Susan did not consult an attorney until June 25, 2001. Although Susan's claim appeared to be time-barred, her attorney noticed that the tortfeasor died instantly at the scene of the accident in which Susan was injured. For this reason, Susan's claim actually arose *at not before* the tortfeasor's death, and therefore her probate statute of limitations is not governed by the deadline date set out in the notice to creditors. Susan's probate statute of limitations is six months from the date of the accident, which occurred on January 15, 2001. Therefore, Susan's statute of limitations does not run until July 16, 2001.¹⁷

The North Carolina Rules of Civil Procedure require that all statutes of limitation, including those created by probate law, be affirmatively pled as defenses to suits or they will be deemed to have been waived.¹⁸ When in doubt, a personal injury lawyer should file his client's claim and see whether the tortfeasor's personal representative will raise a statute of limitations defense.

Example

Andy was injured in an automobile accident on February 2, 1998. On March 7, 2001, Betty, the tortfeasor responsible for injuring Andy, died of a heart attack. Betty had no

auto insurance and Andy carried no underinsured coverage. The notice to creditors set out June 15, 2001, as the creditors' deadline date. Betty's personal representative had no knowledge of the auto accident. Andy sought the services of an attorney in July of 2001. He realized that Andy's claim was barred by the three-month probate statute of limitations. Nevertheless, Andy's attorney decided to file a suit for Andy to see if Betty's personal representative would raise a statute of limitations defense. No such defense was raised after the suit was filed. For this reason, Andy's tort action may proceed even though it was filed beyond the three-month probate statute of limitations.

As discussed above, it is critical for personal injury attorneys to understand that the three-month and six-month time limitations found in our probate law are *not* true statutes of limitations, but are really non-claim statutes.¹⁹ Non-claim statutes do not bar suits against deceased tortfeasors if the plaintiff's recovery will be sought against some source other than the deceased tortfeasor's estate. For example, where recovery is sought from an insurance company, a living joint-tortfeasor, or a living co-conspirator, etc., the standard tort statutes of limitation would apply. The shorter probate statutes of limitation are ignored where recovery is sought from some source other than the tortfeasor's assets.²⁰

Example

In February of 2001, Sarah discovered that she had been the victim of a fraud conspiracy. Her banker and a local stockbroker had defrauded Sarah out of \$400,000. Sarah's attorney filed suit against the banker and broker. The attorney later discovered that the banker had died seven months before the suit was filed. Sarah's probate statute of limitations (i.e., non-claim statute) has run.²¹ For this reason, no portion of any judgment Sarah might receive can be collected from the banker's estate. However, the suit may proceed, and any damages awarded against the stockbroker could be recovered from him alone on the theory of joint and several liability.²²

Sometimes personal injury attorneys fail to realize that the running of a probate statute of limitations can be significantly delayed or even postponed indefinitely. As discussed earlier, if no notice to creditors is published within three years of a deceased

tortfeasor's death, whether a personal representative has been appointed or not, all claims arising *before* a tortfeasor's death that could be barred by the three-month statute of limitations will only become barred after this three-year period runs and a personal representative was appointed in this three-year period.²³ Claims arising *at* or *after* a tortfeasor's death that could be

may only be made by a personal representative. It must be in writing and be absolute and unequivocal.²⁵ When a rejection occurs, the claimant (i.e., injured party) must file a suit in the appropriate court within *three months* of such rejection.²⁶ Failure of a plaintiff to file a suit within this three-month statute of limitations will result in the plaintiff's claim being time barred.²⁷

More importantly, all judgments that constitute liens against a decedent's estate are treated equally and are not given any priority based on the date such judgments were filed.

barred by the six-month statute of limitations established by probate law are not subject to being barred until a personal representative is appointed who can receive a claim from an injured party.²⁴

Malpractice Traps

Dealing with standard tort statutes of limitation can be challenging. This task is compounded where a deceased tortfeasor is involved. With this added complexity, the possibility of not timely meeting a statute of limitations can raise the specter of legal malpractice. The six major malpractice traps facing personal injury attorneys in this area are:

1. Not filing a timely suit after a plaintiff's claim has been rejected by a deceased tortfeasor's personal representative;
2. Not filing a timely claim for recorded judgment liens;
3. Assuming a notice to creditors has not been published;
4. Using a Rule 41 voluntary dismissal where a deceased tortfeasor is involved;
5. Relying on discovery statutes of limitation to extend a statute of limitations; and
6. Using legal disabilities to extend a statute of limitations.

In many cases, tort claims are presented in a timely fashion to a personal representative, only to be rejected or denied by the personal representative. A proper rejection

Example

Frank was severely injured in an automobile accident on December 20, 2000. Gina, the tortfeasor, died several days after the accident. Frank received a notice to creditors as a known claimant giving him until April 15, 2001, to file his claim. Frank's attorney filed a proper claim for Frank's injury with Gina's personal representative on March 1, 2001. On March 7, 2001, Frank's attorney received a proper rejection of Frank's claim from the personal representative. Seven months later, Frank's attorney filed suit against Gina's estate. His suit was dismissed because his three-month statute of limitations for filing suit on a rejected claim ran on June 8, 2001.²⁸ The attorney's ability to maintain a suit to recover damages from any other source may also be lost. The reason for this is that a failure to timely file a suit following a rejection results in the plaintiff being "... forever barred from maintaining an action thereon."²⁹ This language can be construed to be a true statute of limitations rather than a non-claim statute. Non-claim statutes typically employ language that merely bars claims "against the [tortfeasor's] estate, the personal representative . . . the heirs and devisees of the [deceased tortfeasor]."³⁰

Recorded judgments are treated as any other claim and must be presented in a proper and timely manner or risk being time barred.³¹ More importantly, all judgments that constitute liens against a decedent's estate are treated *equally* and are *not* given any priority based on the date such judgments were filed.³²

Example

Jack sued Kevin four years ago for assault and obtained a judgment for \$125,000. The judgment was properly filed in Mecklenburg County.³³ Kevin died recently at his home in Wake County and his personal representative published a notice to creditors setting out January 18, 2001, as the deadline date for claimants to file their claims. Kevin had two other recorded judgments against him for \$25,000 and \$50,000. Both were recorded before Jack filed his judgment lien. The three judgments were the only debts owed by Kevin at this death. Kevin's net estate was valued at \$75,000. Jack's attorney must present Jack's \$125,000 claim (i.e., judgment lien) as he would any other claim. Such presentation must occur by January 18, 2001.³⁴ Because judgment liens carry no priority after the death of the judgment debtor, Jack's attorney would be making a mistake to assume the other judgment lienholders would be entitled to Kevin's \$75,000 net estate.³⁵ Assuming the other judgment lienholders presented timely claims also, all three judgment lienholders would share in Kevin's \$75,000 net estate on a pro-rata basis.³⁶ The order in which the judgments were filed while Kevin was alive would be immaterial.³⁷ Based on these facts, Jack would be entitled to 62 1/2 percent of Kevin's \$75,000 net estate, or \$46,875.³⁸

A proper notice to creditors may be published in any newspaper in the county of administration if the newspaper is qualified to do so by statute.³⁹ Many personal representatives, in order to save money, will publish their notice to creditors in qualified small weekly newspapers rather than a qualified large daily newspaper. This can pose a potential legal malpractice trap for careless personal injury attorneys.

Example

Lora was injured in a snowmobile accident in Boone, North Carolina, on November 20, 2000. Mike was the one who injured Lora. Mike died in an unrelated accident in Raleigh on January 18, 2001. Mike's personal representative was unaware of the accident that injured Lora. He published a notice to creditors in a small weekly newspaper printed in Apex, North Carolina. Lora contacted an attorney in Raleigh about her injuries. The attorney learned that Mike died on January 15, 2001, and checked the county's largest newspaper

(*The Raleigh News and Observer*) every week for the publication of a notice to creditors by Mike's personal representative. After doing this for several months, Lora's attorney called Mike's personal representative to inquire as to when the notice to creditors would be published, only to learn that it had been published more than three months earlier in the *Apex Weekly*. If the *Apex Weekly* is statutorily qualified to publish notices to creditors, Lora's attorney will have missed the statute of limitations for filing Lora's tort action.⁴⁰

Rule 41 of the North Carolina Rules of Civil Procedure allows a plaintiff to voluntarily dismiss his or her action. An action dismissed pursuant to Rule 41 must be re-filed within one year of such dismissal or the action will be deemed time barred. If an action is timely re-filed, the re-filing will relate back to the date the original suit was filed. Plaintiff's attorneys need to understand that Rule 41 does *not* apply to cases involving deceased tortfeasors.⁴¹

Example

Nora was injured in a hunting accident in Asheville due to the negligence of Paul. Shortly after the hunting accident, Nora's attorney sued Paul. A few weeks before trial, Paul died of a heart attack. Paul's personal representative published a notice to creditors with a deadline of March 4, 2001, as the date for claimants to present claims against Paul's estate. Because Nora was a known claimant, the personal representative sent her a notice to creditors and extended the deadline date for Nora to April 7, 2001. In February of 2001, Nora's attorney filed a voluntary dismissal of Nora's suit against Paul and re-filed the suit four months later, in June, naming Paul's personal representative as the new defendant. The court dismissed Nora's suit because it was not filed by April 7, 2001. The fact that Rule 41 allows a one year period to re-file a dismissed suit and provides that such a re-filed suit is to relate back to the date the original suit was filed is immaterial. In short, North Carolina's probate law does not recognize Rule 41 of the North Carolina Rules of Civil Procedure.⁴²

Many standard tort statutes of limitation do not begin to run until the underlying tort is discovered. These statutes of limitations, as mentioned above, are commonly referred to as discovery statutes of

limitation and begin to run when a tort action *accrues*, which usually occurs upon discovery of the tort. Personal injury attorneys must understand that North Carolina probate law does not recognize the concept of discovery statutes of limitation.⁴³ The three-month and six-month statutes of limitation applicable under our probate law begin to run when a tort action *arises*, not when it *accrues* or is discovered.⁴⁴

Example

On October 15, 1997, Sally had surgery. Dr. Marshall, who performed the surgery, died on November 1, 2000. His personal representative published a notice to creditors setting out the date of February 2, 2001, as the deadline for claimants to submit claims. On March 14, 2001, Sally learned for the first time that Dr. Marshall left a scalpel in her when he performed surgery on her in 1997. The scalpel had nicked her spinal cord and caused partial paralysis. Normally, Sally's statute of limitations would not *accrue* until March 14, 2001, when she discovered Dr. Marshall's malpractice.⁴⁵ However, under North Carolina's probate law, Sally's action against Dr. Marshall had to *arise* when he was alive. For this reason, Sally's statute of limitations would run at the expiration of the deadline date set out in the notice to creditors published by Dr. Marshall's personal representative (i.e., February 2, 2001).⁴⁶ The fact that Sally did not discover Dr. Marshall's malpractice until after this deadline date had run is immaterial.

Certain legal disabilities may prevent a statute of limitations from starting or may toll a statute of limitations that has already begun to run. For example, the standard tort statute of limitations for personal injury is three years.⁴⁷ As a general rule, if a tortfeasor injures an eight-year-old child, that child's statute of limitations will not start until he reaches age 21.⁴⁸ If the same tortfeasor injured an adult, the standard tort statute of limitations would also be three years.⁴⁹ However, if the adult plaintiff were to become mentally incapacitated, the standard statute of limitations would be tolled until the plaintiff's disability was removed. Although North Carolina case law recognizes the concept of legal disabilities regarding probate statutes of limitation, personal injury attorneys should not delay filing claims against a deceased

tortfeasor's estate based on their client's legal disability.⁵⁰ If a long delay occurs, an estate could be distributed and may not contain assets from which a recovery can be made.

Example

Rita was injured in a bicycle accident in 1990 when she was four years old. Tom, who caused the accident, died in January of 2001. Tom had no insurance to cover the accident, but left a \$700,000 estate. Tom's personal representative did not know about the accident in which Rita was injured. The personal representative ran a notice to creditors setting out a deadline of April 25, 2001, as the date by which claimants had to present their claims. Rita was now 15. She and her parents consulted an attorney, who waited until Rita was nearly 19 to file suit for her tort claim. By the time the suit was filed, Tom's estate had been fully distributed and closed. The likelihood of recovering any assets from Tom's estate would be remote.

Practice Tips

Dealing with statute of limitations provisions where a deceased tortfeasor is involved can be a challenging task for most personal injury attorneys. However, by following three simple rules, personal injury lawyers can greatly reduce the possibility that they will miss a statute of limitations where a deceased tortfeasor is involved. These rules are:

1. Where a tort claim arises *before* the death of a tortfeasor, invoking the three-month probate statute of limitations, a proper claim should be filed with the clerk of superior court in the county where the tortfeasor resided. As soon as a personal representative is appointed, a proper tort claim should be presented to the personal representative. If a personal representative is not appointed within thirty days, the plaintiff's attorney should request that the clerk appoint the public administrator or some other qualified person to act as the personal representative of the tortfeasor's estate.⁵¹ A proper tort claim should be presented to such personal representative as soon as he or she is appointed.

2. Where a tort claim arises *at or after* the death of a tortfeasor, invoking the six-month probate statute of limitations, a

proper tort claim should be presented to the personal representative as soon as possible. If a personal representative is not appointed within thirty days, the plaintiff's attorney should request that the clerk appoint the public administrator or some other qualified person to act as the personal representative of the tortfeasor's estate.⁵² A proper tort claim should be presented to such personal representative as soon as he or she is appointed. (Presenting a claim to the clerk of superior court will be ineffective).

3. A good personal injury attorney should endeavor to learn those probate statutes and cases that impact his practice of tort law. The statutory citations and cases listed in the end notes to this article constitute the most commonly cited probate statutes and cases impacting the practice of personal injury law. Copies of these statutes and cases should be kept for quick reference.

Personal injury lawyers must take the time to learn other areas of the law to the extent they impact the practice of tort law. By understanding how probate law affects personal injury law, tort lawyers will be better able to serve and protect the interests of injured persons. ■

¹ N.C.G.S. § 28A-14-1(b) and N.C.G.S. § 28A-19-3(a).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ N.C.G.S. § 28A-19-3(a) and N.C.G.S. § 28A-14-1.

⁶ A notice sent under N.C.G.S. § 28A-19-3(a) that does not contain a specific deadline date applicable to the claimant renders such notice void. *Anderson v. Gooding*, 300 N.C. 170 (1980).

⁷ N.C.G.S. § 28A-19-3(a) and N.C.G.S. § 28A-14-1.

⁸ N.C.G.S. § 28A-14-1.

⁹ *Id.*

¹⁰ *Id.*

¹¹ A notice sent under N.C.G.S. 28A-19-3(a) that does not contain a specific deadline date applicable to the claimant renders such notice void. *Anderson v. Gooding*, 300 N.C. 170 (1980).

¹² N.C.G.S. § 1-597 to 1-600.

¹³ N.C.G.S. § 28A-19-3(a).

¹⁴ *Id.*

¹⁵ N.C.G.S. § 28A-19-3(b).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ North Carolina Rules of Civil Procedure 8(c) and *Duke University v. St. Paul Mercury Insurance Company*, 95 N.C. App. 663 (1989).

¹⁹ *Ragan v. Hill*, 337 N.C. 667 (1994).

²⁰ *Id.*

²¹ N.C.G.S. § 28A-19-3(a) and *Liner v. DeCresce*, 905 F. Supp. 280 (1994).

²² *Hall v. Carroll*, 253 N.C. 220.

²³ N.C.G.S. § 28A-19-3(f).

²⁴ N.C.G.S. § 28A-19-3(b)(2) and *Ragan v. Hill*, 337 N.C. 667 (1994).

²⁵ N.C.G.S. § 28A-19-15 and *Rutherford v. Harbison*, 254 N.C. 236 (1961).

²⁶ N.C.G.S. § 28A-19-16, *Storey v. Hailey*, 114 N.C. App. 173 (1994); *Gelder and Associates, Inc. v. Higgins*, 52 N.C. App. 336 (1981), and *Estate of Neiscen*, 114 N.C. App. 82 (1994).

²⁷ *Id.* and *Batts v. Batts*, 198 N.C. 395 (1930).

²⁸ *Id.*

²⁹ *Id.*

³⁰ N.C.G.S. § 28A-19-3(a).

³¹ N.C.G.S. § 28A-19-3(a), *Williams v. Johnson*, 230 N.C. 338 (1949). Judgment liens are general liens against a decedent's estate as a whole. Liens on specific property are different. Such liens are to be satisfied with the collateral that secures them. Liens on specific property are recognized only to the extent of the value of collateral (*See* N.C.G.S. § 28A-19-6). If the collateral is worth more than the lien, the lien will be paid in full. If the collateral is worth less than the lien, the lien will be treated as general claims if a timely claim has been filed against the estate.

³² N.C.G.S. § 28A-19-13, *Price v. Askins*, 212 N.C. 583 (1937) and *Moore v. Byers*, 65 N.C. 240, (1871).

³³ If this judgment lien were filed in Wake County, the personal representative would be obligated to find it. Once this occurred, the judgment lienholder would be a *known* claimant, and the personal representative would have to comply with N.C.G.S. §28A-19-3(a) and N.C.G.S. §28A-14-1(b).

³⁴ N.C.G.S. § 28A-19-3(a).

³⁵ N.C.G.S. § 28A-19-13, *Price v. Askins*, 212 N.C. 583 (1937) and *Moore v. Byers*, 65 N.C. 240, (1871).

³⁶ *Id.*

³⁷ *Id.*

³⁸ \$125,000 is 62 1/2 percent of \$200,000 (\$125,000 + \$25,000 + \$50,000).

³⁹ N.C.G.S. § 1-597 to 1-600.

⁴⁰ N.C.G.S. § 28A-19-3(a).

⁴¹ *Sweet v. Boggs*, 516 S.E. 2d 888 (1999) and *In re Watson*, 70 N.C. App. 120 (1984).

⁴² *Id.*

⁴³ *Liner v. DiCresce*, 905 F. Supp. 280 (1994).

⁴⁴ N.C.G.S. § 28A-19-3(a) and (b)(2). *Liner v. DiCresce*, 905 F. Supp. 280 (1994).

⁴⁵ Rule 15(c) of the North Carolina Rules of Civil Procedure and *Thorpe v. DeMent*, 312 N.C. 488, (1984).

⁴⁶ *Liner v. DiCresce*, 905 F. Supp. 280 (1994).

⁴⁷ N.C.G.S. § 1-52.

⁴⁸ *Jeffreys v. Tolin*, 368 S.E. 2d 201 (1988).

⁴⁹ N.C.G.S. § 1-52.

⁵⁰ *Jeffreys v. Tolin*, 368 S.E. 2d 201 (1988).

⁵¹ N.C.G.S. § 28A-5-1(b) and § 28A-5-2(b)(1).

⁵² *Id.*