

Article 27A.

Appeals and Transfers From the Clerk.

§ 1-301.1. Appeal of clerk's decision in civil actions.

(a) **Applicability.** – This section applies to orders or judgments entered by the clerk of superior court in civil actions in which the clerk exercises the judicial powers of that office. If this section conflicts with a specific provision of the General Statutes, that specific provision of the General Statutes controls.

(b) **Appeal of Clerk's Order or Judgment.** – A party aggrieved by an order or judgment entered by the clerk may, within 10 days of entry of the order or judgment, appeal to the appropriate court for a trial or hearing de novo. The order or judgment of the clerk remains in effect until it is modified or replaced by an order or judgment of a judge. Notice of appeal shall be filed with the clerk in writing. Notwithstanding the service requirement of G.S. 1A-1, Rule 58, orders of the clerk shall be served on other parties only if otherwise required by law. A judge of the court to which the appeal lies or the clerk may issue a stay of the order or judgment upon the appellant's posting of an appropriate bond set by the judge or clerk issuing the stay.

(c) **Duty of Judge on Appeal.** – Upon appeal, the judge may hear and determine all matters in controversy in the civil action, unless it appears to the judge that any of the following apply:

- (1) The matter is one that involves an action that can be taken only by a clerk.
- (2) Justice would be more efficiently administered by the judge's disposing of only the matter appealed.

When either subdivision (1) or subdivision (2) of this subsection applies, the judge shall dispose of the matter appealed and remand the action to the clerk. When subdivision (1) of this subsection applies, the judge may order the clerk to take the action.

(d) **Judge's Concurrent Authority Not Affected.** – If both the judge and the clerk are authorized by law to enter an order or judgment in a matter in controversy, a party may seek to have the judge determine the matter in controversy initially. (Rev. s. 529; C.S., s. 558; 1971, c. 381, s. 12; 1999-216, s. 1.)