

§ 31-36. Effect of Caveat on Estate Administration.

(a) Order of Clerk. Where a caveat is entered and bond given, the clerk of superior court shall forthwith issue an order that shall apply during the pendency of the caveat to any personal representative, having the estate in charge, as follows:

1. Distributions to beneficiaries. That there shall be no distributions of assets of the estate to any beneficiary;
2. Commissions. That no commissions shall be advanced or awarded to any personal representative;
3. Accountings. That the personal representative shall file all accountings required by the clerk of superior court and that the personal representative may pay any applicable filing fees associated with such accountings from the assets of the estate;
4. Preservation of Estate Assets. That the personal representative shall preserve the property of the estate that the personal representative is authorized to pursue and prosecute claims that the estate may have against others;
5. Taxes, Claims and Debts of Estate. That the personal representative shall file all appropriate tax returns and that the personal representative may pay, in accordance with the procedures of subsection (b) below: taxes, funeral expenses of the decedent; debts that are a lien upon the property of the decedent; bills of the decedent accrued before death; claims against the estate that are timely filed; professional fees related to administration of the estate, including but not limited to fees for tax return preparation, appraisal fees, and attorney's fees for estate administration.

(b) Procedures. In regard to payment of any of the items listed in subsection 5 above, the personal representative shall file a notice of the personal representative's intent to pay such items with the clerk and shall serve the notice upon all parties to the caveat, pursuant to Rule 4 of the Rules of Civil Procedure. If within ten days of service any party files with the clerk a written objection to such payment, the clerk shall schedule a hearing and determine whether the proposed payment shall be made. If no such objection is filed with the clerk, the clerk may approve the payment without hearing, and upon such approval, the personal representative may make such payment. The parties to the caveat may consent to any such payment, and upon such consent, the clerk may approve the payment without hearing. The clerk may defer ruling on the payment pending the resolution of the caveat.

(c) Preservation of Estate Assets. Questions regarding the use, location, and disposition of assets, which cannot be resolved by the parties and consented to by the clerk, shall be decided by the clerk. When a question has not been resolved by agreement, either party may request a hearing before the clerk upon ten days notice and shall serve the

notice upon all parties to the caveat, pursuant to Rule 4 of the Rules of Civil Procedure. Decisions of the clerk may be appealed to Superior Court.

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October 30, 2008

Ms. Kim Crouch  
Director of Governmental Affairs  
North Carolina Bar Association  
Post Office Box 3688  
Cary, North Carolina 27519

Dear Kim:

This is a follow up to our telephone conversation yesterday.

(1) **G.S. §31-36 Effect of Caveat on Estate Administration.**

- The current law essentially directs that all estate administration must cease once a caveat has been filed.
- Not being able to at least partially administer an estate while a caveat is pending is not practical.
- No inventories can be filed.
- No debts or claims can be paid, even if everyone agrees they are legitimate and they will have to ultimately be paid.
- Costs of administration, such as payment of funeral expenses cannot be paid.
- The proposed changes permit the basics of the estate administration process to go forward but do not permit the payment of Executor's commissions or the distribution of any assets.

- All parts of the estate administration are subject to approval by the Clerk.
- Enactment of the revised statute will save expenses. The parties will know what can and cannot be done and this will eliminate unnecessary fighting over the payment of debts, claims and costs and it will provide a much clearer explanation about how to handle an estate involved in a caveat.

(2) **G.S. §35A-12-32 Exclusion of deposited money (“assets”) in computing amount of bond.**

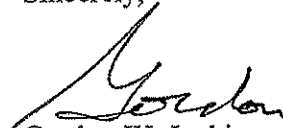
- First, the word “**money**” in the title of the heading of the statute should be changed to “assets.”
- The purpose of the statute is good but the current method to carry out the purpose is archaic.
- It is intended to reduce the costs of a guardian’s bond. Money held in a bank account can be excluded from the guardian’s bond, if the bank where the money is deposited agrees in writing that it will not release the money without order of the Clerk.
- The current statute is restricted to “money” and to a very limited number of financial institutions.
- The proposed amendment expands the definition of “money” to include other assets and expands the definition of institutions where such assets could be held.
- For example, stocks, bonds and cash in an IRA account for an incompetent person must be bonded under the current statute. Under the proposed statute, if the financial institution, where the retirement account is held, agrees in writing that the funds cannot be accessed without authority of the Clerk, then such assets would not be subject to a bond. The incompetent person’s estate would save the cost of the bond premium on this account, which could be substantial.

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If I can provide further clarification or help regarding these proposed statute changes, please do not hesitate to get in touch with me.

Sincerely,



Gordon W. Jenkins

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