

§ 28A-26-3. Ancillary administration.

(a) Any domiciliary personal representative of a nonresident decedent upon the filing of a certified or exemplified copy of letters of appointment with the clerk of superior court who has venue under G.S. 28A-3-1 may be granted ancillary letters in this State notwithstanding that the domiciliary personal representative is a nonresident of this State or is a foreign corporation. If the domiciliary personal representative is a foreign corporation, it need not qualify under any other law of this State to authorize it to act as ancillary personal representative in the particular estate. If application is made for the issuance of ancillary letters to the domiciliary personal representative, the clerk of superior court shall give preference in appointment to the domiciliary personal representative unless the decedent shall have otherwise directed in a will.

(b) If, within 90 days after the death of the nonresident, or within 60 days after issue of domiciliary letters, should that be a shorter period, no application for ancillary letters has been made by a domiciliary personal representative, any person who could apply for issue of letters had the decedent been a resident may apply for issue of ancillary letters.

If it is known that there is a duly qualified domiciliary personal representative, the clerk of superior court shall send notice of such application to that personal representative and to the appointing court. Such notice shall include a statement that, within 14 days after its mailing, the domiciliary personal representative may apply for the issue of ancillary letters with the preference specified in subsection (a) of this section; and that failure of the domiciliary personal representative to do so will be deemed a waiver, with the result that letters will be issued to another. Upon such failure, the clerk of superior court may issue ancillary letters in accordance with the provisions of Article 4 of this Chapter.

If the applicant and the clerk of superior court have no knowledge of the existence of a domiciliary personal representative, the clerk of superior court may proceed to issue ancillary letters. Subsequently, upon it becoming known that a domiciliary personal representative has been appointed, whether such appointment occurred before or after the issue of ancillary letters, the clerk of superior court shall notify the domiciliary personal representative of the action taken by the clerk of superior court and the state of the ancillary administration. Such notice shall include a statement that at any time prior to approval of the ancillary personal representative's final account the domiciliary personal representative may appear in the proceedings for any purpose the domiciliary personal representative may deem advisable; and that the domiciliary personal representative may apply to be substituted as ancillary personal representative, but that such request will not be granted unless the clerk of superior court finds that such action will be for the best interests of North Carolina administration of the estate. (1973, c. 1329, s. 3; 2011-344, s. 4; 2024-33, s. 7.)