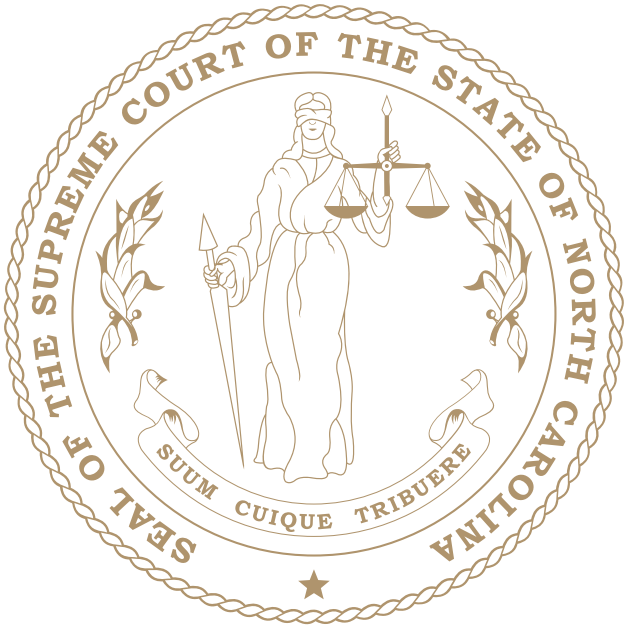
GENERAL RULES OF PRACTICE
FOR THE SUPERIOR AND DISTRICT COURTS



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CODIFIED BY THE OFFICE OF ADMINISTRATIVE COUNSEL, SUPREME COURT OF NORTH CAROLINA

RULES@SC.NCCOURTS.ORG
WWW.NCCOURTS.GOV/COURTS/SUPREME-COURT

GRANT E. BUCKNER
ADMINISTRATIVE COUNSEL

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Foreword

The only codification of the General Rules of Practice that the Supreme Court of North Carolina has adopted is the original 1970 promulgation of the rule set, which is published at 276 N.C. 735–47. Since that original promulgation, the Court has adopted numerous amendments to the rules that vary in form and style from the original. This up-to-date codification gathers the rules together once again, but many of the inconsistencies in form and style that are present in the various amendments remain.

Still, I have made several minor changes to the form and style of the rules in this codification to improve their readability. Examples of my changes include the adjustment of spacing, the reformatting of text, and the addition of titles to untitled rules. These changes are meant to be nonsubstantive. Editor's notes, which appear throughout the rule set, are intended to help the reader understand the editorial decisions that I have made. Nonetheless, if the reader wishes to view a rule as it has been approved by the Court, the history note after each rule contains links to the published orders of the Court.

Questions or feedback about this codification may be directed to rules@sc.nccourts.org.

Grant E. Buckner
Administrative Counsel
Supreme Court of North Carolina

TOC

General Rules of Practice
for the Superior and District Courts
Supplemental to the Rules of Civil Procedure
Adopted Pursuant to G.S. 7A-34

Rule 1. Philosophy of General Rules of Practice

These rules are applicable in the Superior and District Court Divisions of the General Court of Justice. They shall at all times be construed and enforced in such manner as to avoid technical delay and to permit just and prompt consideration and determination of all the business before them.

History Note.

276 N.C. 735.

Rule 2. Calendaring of Civil Cases

Subject to the provisions of Rule 40(a), Rules of Civil Procedure and G.S. 7A-146:

(a) The Senior Resident Judge and Chief District Judge in each Judicial District shall be responsible for the calendaring of all civil cases and motions for trial or hearing in their respective jurisdictions. A case management plan for the calendaring of civil cases must be developed by the Senior Resident Judge and the Chief District Court Judge. The Administrative Office of the Courts shall be available to provide assistance to judges in developing a case management program.

The effective date of the plan and any amendments thereto shall be either January 1 or July 1. The plan must be promulgated in writing and copies of the plan must be distributed to all attorneys of record within the judicial district. In order to provide for statewide dissemination, copies of plans effective January 1 shall be filed with the Administrative Office of the Courts on or before October 31 and on or before April 30 for plans effective July 1.

In districts with Trial Court Administrators, the responsibility for carrying out the case management plan may be delegated to the Trial Court Administrator.

The case management plan must contain a provision that attorneys may request that cases may be placed on the calendar.

(b) The civil calendar shall be prepared under the supervision of the Senior Resident Judge or Chief District Court Judge. Calendars must be published and distributed by the Clerk of Court to each attorney of record (or party where there is no attorney of record) and presiding judge no later than four weeks prior to the first day of court.

(c) Except in districts served by a Trial Court Administrator, a ready calendar shall be maintained by the Clerk of Court for the District and Superior Courts. Five months after a complaint is filed, the Clerk shall place that case on a ready calendar, unless the time is extended by written order of the Senior Resident Judge or the Chief District Judge for their respective jurisdictions. In districts with Trial Court Administrators, a case tracking system shall be maintained.

(d) During the first full week in January and the first full week following the 4th of July or such other weeks as the Senior Resident Judge shall designate that are agreeable to the Chief Justice, the Senior Resident Judge of each district shall be assigned to his home district for administrative purposes. During such administrative terms, the Senior Resident Judge shall be responsible for reviewing all cases on the ready calendar, or all cases designated by the Trial Court Administrator, of each county in the judicial district. The Senior Resident Judge shall take appropriate actions to insure prompt disposition of any pending motions or other matters necessary to move the cases toward a conclusion. The Chief District Court Judge shall undertake periodically such an administrative review of the District Court Civil Docket.

(e) When an attorney is notified to appear for the setting of a calendar, pretrial conference, hearing of a motion or for trial, he must, consistent with ethical requirements, appear or have a partner, associate or another attorney familiar with the case present. Unless an attorney has been excused in advance by the judge before whom the matter is scheduled and has given prior notice to his opponent, a case will not be continued.

(f) Requests for a peremptory setting for cases involving persons who must travel long distances or numerous expert witnesses or other extraordinary reasons for such a request must be made to the Senior Resident Judge or Chief District Judge. In districts with Trial Court Administrators, requests should be made to the Trial Court Administrator. A peremptory setting shall be granted only for good and compelling reasons. A Senior Resident Judge or Chief District Judge may set a case peremptorily on his own motion.

(g) When a case on a published calendar (tentative or final) is settled, all attorneys of record must notify the Trial Court Administrator (Clerk of Court in those counties with no Trial Court Administrator) within twenty-four (24) hours of the settlement and advise who will prepare and present judgment, *and when*.

History Note.

276 N.C. 735; 300 N.C. 751; 322 N.C. 842; Order Dated 14 May 2020.

Editor's Note.

References in the General Rules of Practice to statutes, other rule sets, and caselaw have not been updated in this codification.

Rule 2.1. Designation of Exceptional Civil Cases and Complex Business Cases

(a) The Chief Justice may designate any case or group of cases as (a) "exceptional" or (b) "complex business." A senior resident superior court judge, chief district court judge, or presiding superior court judge may ex mero motu, or on motion of any party, recommend to the Chief Justice that a case or cases be designated as exceptional or complex business.

(b) Such recommendation for exceptional cases may include special areas of expertise needed by the judge to be assigned and may include a list of recommended judges. Every complex business case shall be assigned to a special superior court judge for complex business cases, designated by the Chief Justice under Rule 2.2, who shall issue a written opinion upon final disposition of the case.

(c) Such recommendation shall be communicated to the Chief Justice through the Administrative Office of the Courts.

(d) Factors which may be considered in determining whether to make such designations include: the number and diverse interests of the parties; the amount and nature of anticipated pretrial discovery and motions; whether the parties voluntarily agree to waive venue for hearing pretrial motions; the complexity of the evidentiary matters and legal issues involved; whether it will promote the efficient administration of justice; and such other matters as the Chief Justice shall deem appropriate.

(e) The Chief Justice may enter such orders as are appropriate for the pretrial, trial, and other disposition of such designated case or cases.

History Note.

319 N.C. 683; 341 N.C. 737.

Editor's Note.

In the order amending Rule 2.1, 341 N.C. 737, quotation marks around the word "exceptional" in subsection (a) were deleted without a strikethrough. This change has been treated as inadvertent. Accordingly, "exceptional" appears in this codification with quotation marks.

In the order amending Rule 2.1, 341 N.C. 737, a period after the word "exceptional" in subsection (a) was deleted without a strikethrough, and the word "cases" was inserted into the first sentence of subsection (b) without an underline. These changes have been treated as intentional. Accordingly, the period after "exceptional" does not appear in this codification, but "cases" does.

Rule 2.2. Designation of Special Superior Court Judge for Complex Business Cases

The Chief Justice shall designate one or more superior court judges as special judges to hear and decide complex business cases as provided in Rule 2.1. Any judge so designated shall be known as a Special Superior Court Judge for Complex Business Cases.

Comment

The portion of this rule providing for the designation of a case as "exceptional" has been in effect in North Carolina since January 5, 1988, and has been utilized numerous times in various situations. The portion of this rule providing for the designation of a "complex business case" was adopted by the North Carolina Supreme Court on August 28, 1995, as a result of a recommendation in the January 1995 ANNUAL REPORT OF THE NORTH CAROLINA COMMISSION ON BUSINESS LAWS AND THE ECONOMY chaired by the North Carolina Attorney General.

The North Carolina Commission on Business Laws and the Economy was established by an executive order of the Governor on April 19, 1994, to recommend "any needed changes in existing statutes and regulations which affect the operation of businesses in North Carolina, particularly Chapter 55 of the North Carolina General Statutes . . . and to recommend any needed new statutes, rules and regulations designed to assure that North Carolina offers a legal environment which provides the flexibility and support to allow businesses to operate successfully in this state and which will attract them to locate and incorporate here."

The Commission's report noted that many national corporations incorporate in the state of Delaware because of that state's Chancery Court which provides a high level of judicial expertise on corporate law issues. It also observed the desirability of a state having a substantial body of corporate law that provides predictability for business decision making. Also, it is essential that corporations litigating complex business issues receive timely and well reasoned written decisions from an expert judge.

Accordingly, the Commission recommended that the North Carolina Supreme Court amend Rule 2.1 to allow the Chief Justice to designate certain cases as complex business cases. The Commission also recommended that the Governor appoint at least one expert in corporate law matters as a Special Judge to hear cases designated by the Chief Justice pursuant to Rule 2.2.

The term "complex business case" is purposely not defined in order to give litigants the flexibility to seek a designation as such with respect to any business issue that they believe requires special judicial expertise. It is anticipated that any case involving significant issues arising under Chapters 55, 55B, 57C, 59, 78A, 78B and 78C of the General Statutes of North Carolina would be designated a complex business case.

History Note.

341 N.C. 737.

Editor's Note.

The order adopting Rule 2.2, 341 N.C. 737, includes the above comment.

References in the General Rules of Practice to statutes, other rule sets, and caselaw have not been updated in this codification.

Rule 3. Continuances

An application for a continuance shall be made to the presiding judge of the court in which the case is calendared.

History Note.

276 N.C. 735; 282 N.C. 737; 356 N.C. 703.

Rule 3.1. Guidelines for Resolving Scheduling Conflicts

(a) In resolving scheduling conflicts when an attorney has conflicting engagements in different courts, the following priorities should ordinarily prevail:

1. Appellate courts should prevail over trial courts.
2. Any of the trial court matters listed in this subdivision, regardless of trial division, should prevail over any trial court matter not listed in this subdivision, regardless of trial division; there is no priority among the matters listed in this subdivision:
    - any trial or hearing in a capital case;
    - the trial in any case designated pursuant to Rule 2.1 of these Rules;
    - the trial in a civil action that has been peremptorily set as the first case for trial at a session of superior court;
    - the trial of a criminal case in superior court, when the defendant is in jail or when the defendant is charged with a Class A through E felony and the trial is reasonably expected to last for more than one week;
    - the trial in an action or proceeding in district court in which any of the following is contested:
        - termination of parental rights,
        - child custody,
        - adjudication of abuse, neglect or dependency or disposition following adjudication,
        - interim or final equitable distribution,
        - alimony or post-separation support.
3. When none of the above priorities applies, priority shall be as follows: superior court, district court, magistrate's court.

(b) When an attorney learns of a scheduling conflict between matters in the same priority category, the attorney shall promptly give written notice to opposing counsel, the clerk of all courts and the appropriate judges in all cases, stating therein

the circumstances relevant to resolution of the conflict under these guidelines. When the attorney learns of the conflict before the date on which the matters are scheduled to be heard, the appropriate judges are Senior Resident Superior Court Judges for matters pending in the Superior Court Division and Chief District Court Judges for matters pending in the District Court Division; otherwise the appropriate judges are the judges presiding over those matters. The appropriate judges should promptly confer, resolve the conflict, and notify counsel of the resolution.

(c) In resolving scheduling conflicts between court proceedings in the same priority category, the presiding judges should give consideration to the following:

- the comparative age of the cases;
- the order in which the trial dates were set by published calendar, order or notice;
- the complexity of the cases;
- the estimated trial time;
- the number of attorneys and parties involved;
- whether the trial involves a jury;
- the difficulty or ease of rescheduling;
- the availability of witnesses, especially a child witness, an expert witness or a witness who must travel a long distance;
- whether the trial in one of the cases had already started when the other was scheduled to begin.

(d) When settlement proceedings have been ordered in superior or district court cases, only trials, hearings upon dispositive motions, and hearings upon motions scheduled for counties with less than one court session per month shall have precedence over settlement proceedings.

(e) When a mediator, other neutral, or attorney learns of a scheduling conflict between a court proceeding and a settlement proceeding, the mediator, other neutral, unrepresented parties or attorneys shall **promptly** give written notice to the appropriate judges and request them to resolve the conflict; stating therein the circumstances relevant to a determination under (d) above.

(f) Nothing in these guidelines is intended to prevent courts from voluntarily yielding a favorable scheduling position, and judges of all courts are urged to communicate with each other in an effort to lessen the impact of conflicts and continuances on all courts.

History Note.

356 N.C. 703; 358 N.C. 746.

Rule 4. Enlargement of Time

The judge or clerk of the court in which the action is pending may by order extend the time for filing answer.

When counsel, by consent under Rule 6(b), agree upon an enlargement of time, the agreement shall be reduced to writing and filed with the clerk.

History Note.

276 N.C. 735.

Editor's Note.

The rule referenced in the second paragraph of Rule 4 is ostensibly Rule 6(b) of the North Carolina Rules of Civil Procedure.

References in the General Rules of Practice to statutes, other rule sets, and caselaw have not been updated in this codification.

Rule 5. Filing of Pleadings and Other Documents

(a) **Electronic Filing**. Electronic filing is available only in (i) cases that are either designated "complex business" or assigned to a Business Court judge under Rule 2.1 of these rules and (ii) cases subject to the North Carolina eFiling Pilot Project. The procedure for filing documents electronically in those cases is governed by the North Carolina Business Court Rules and by the Supplemental Rules of Practice and Procedure for the North Carolina eFiling Pilot Project, respectively. In all other cases, only paper filing is available.

(b) **Paper Filing**. Documents filed with the court in paper should be unfolded and firmly bound with no manuscript cover. They must be letter size (8 ½" x 11"), except for wills and exhibits. The clerk of superior court may require a party to refile a document that does not conform to these requirements.

In civil actions, special proceedings, and estates, documents filed with the court in paper must include a cover sheet that summarizes the critical elements of the document in a format that the Administrative Office of the Courts prescribes. The clerk of superior court may not reject the filing of a document that does not include a cover sheet. Instead, the clerk must file the document, notify the party of the omission, and grant the party no more than five days to file the cover sheet. Other than dismissing the case, the court should not act on the document before the cover sheet is filed.

Comment

The North Carolina Judicial Branch will implement a statewide electronic-filing and case-management system beginning in 2021. The system will be made available across the state in phases over a five-year period.

Subsection (a) of Rule 5 of the General Rules of Practice lists those contexts in which electronic filing already exists and serves as a placeholder until the new electronic-filing and case-management system is available. As the

new system is implemented, litigants should expect the General Rules of Practice, the North Carolina Business Court Rules, and the Supplemental Rules of Practice and Procedure for the North Carolina eFiling Pilot Project to undergo change.

History Note.

276 N.C. 735; 304 N.C. 743; 344 N.C. 743; 346 N.C. 805; Order Dated 23 September 2020.

Rule 6. Motions in Civil Actions

All motions, written or oral, shall state the rule number or numbers under which the movant is proceeding. (See Rule 7 of Rules of Civil Procedure.)

Motions may be heard and determined either at the pre-trial conference or on motion calendar as directed by the presiding judge.

Every motion shall be signed by at least one attorney of record in his individual name. He shall state his office address and telephone number immediately following his signature. The signature of an attorney constitutes a certificate by him that he has read the motion; that to the best of his knowledge, information and belief, there are good grounds to support it; and that the motion is not interposed for delay. (See Rule 7(b)(2); also Rule 11).

The court in civil matters, on its motion or upon motion by a party, may in its discretion order that argument of any motion be accomplished by means of a telephone conference without requiring counsel to appear in court in person. Upon motion of any party, the court may order such argument to be recorded in such manner as the court shall direct. The court may direct which party shall pay the costs of the telephone calls. Conduct of counsel during such arguments may be subject to punishment as for direct criminal contempt of court.

History Note.

276 N.C. 735, 311 N.C. 774.

Editor's Note.

The rules referenced in the third paragraph of Rule 6 are ostensibly Rule 7(b)(2) and Rule 11 of the North Carolina Rules of Civil Procedure.

References in the General Rules of Practice to statutes, other rule sets, and caselaw have not been updated in this codification.

Rule 7. Pre-Trial Procedure (See Rule 16)

There shall be a pre-trial conference in every civil case, unless counsel for all parties stipulate in writing to the contrary and the court approves the stipulation. Upon its own motion or upon request of any party, the court may dispense with or limit the scope of the pre-trial conference or order.

In uncontested divorce, default, and magistrate cases and magistrate appeals, a pre-trial conference or order is not required.

A party who has not requested a pre-trial conference may not move for a continuance on the ground that it has not been held.

At least twenty-one days prior to trial date, the plaintiff's attorney shall arrange a pre-trial conference with the defendant's attorney to be held not later than seven days before trial date. At such conference a pre-trial order shall be prepared and signed by the attorneys.

If, after due diligence, plaintiff's attorney cannot arrange a conference with defendant's attorney, he may apply to the presiding judge or other judge holding court in the district (or district court judge with respect to district court cases) who shall make an appropriate order. The defense attorney may initiate pre-trial under the same rules applicable to plaintiff's attorney.

The pre-trial order shall be in substance as shown on the attached sample form.

History Note.

276 N.C. 735.

Editor's Note.

The rule referenced in the title of Rule 7 is ostensibly Rule 16 of the North Carolina Rules of Civil Procedure.

References in the General Rules of Practice to statutes, other rule sets, and caselaw have not been updated in this codification.

Rule 7.1. [Appointment of Guardian Ad Litem for Minor Victim or Minor Witness]

When any person is charged with a crime wherein the victim is a minor, or a minor is a potential witness to such crime, the court may appoint an attorney, from a list of *pro bono* attorneys approved by the Chief District Court Judge, as guardian ad litem for such minor victim or witness.

History Note.

327 N.C. 670.

Editor's Note.

The order adopting Rule 7.1, 327 N.C. 670, does not indicate a title for the rule. The title that appears in brackets, above, was added by the editor.

Rule 8. Discovery

Counsel are required to begin promptly such discovery proceedings as should be utilized in each case, and are authorized to begin even before the pleadings are completed. Counsel are not permitted to wait until the pre-trial conference is imminent to initiate discovery.

History Note.

276 N.C. 735; 322 N.C. 842.

Rule 9. Opening Statements

At any time before the presentation of evidence counsel for each party may make an opening statement setting forth the grounds for his claim or defense.

The parties may elect to waive opening statements.

Opening statements shall be subject to such time and scope limitations as may be imposed by the court.

History Note.

276 N.C. 735.

Rule 10. Opening and Concluding Arguments

In all cases, civil or criminal, if no evidence is introduced by the defendant, the right to open and close the argument to the jury shall belong to him. If a question arises as to whether the plaintiff or the defendant has the final argument to the jury, the court shall decide who is so entitled, and its decision shall be final.

In a criminal case, where there are multiple defendants, if any defendant introduces evidence the closing argument shall belong to the solicitor.

In a civil case, where there are multiple defendants, if any defendant introduces evidence, the closing argument shall belong to the plaintiff, unless the trial judge shall order otherwise.

History Note.

276 N.C. 735.

Editor's Note.

After Rule 10 was adopted, "solicitor" was changed in the Constitution to "district attorney." *Compare* N.C. Const. art. IV, § 18 (showing the current title as "district attorney"), *with* N.C. Const. of 1868, art. IV, § 16 (1962) (showing the former title as "solicitor").

Rule 11. Examination of Witnesses

When several counsel are employed by the same party, the examination or cross-examination of each witness for such party shall be conducted by one counsel, but the counsel may change with each successive witness or, with leave of the court, in a prolonged examination of a single witness.

History Note.

276 N.C. 735.

Rule 12. Courtroom Decorum

Except for some unusual reason connected with the business of the court, attorneys will not be sent for when their cases are called in their regular order.

Counsel are at all times to conduct themselves with dignity and propriety. All statements and communications to the court other than objections and exceptions shall be clearly and audibly made from a standing position behind the counsel table. Counsel shall not approach the bench except upon the permission or request of the court.

The examination of witnesses and jurors shall be conducted from a sitting position behind the counsel table except as otherwise permitted by the court (see *S. vs. Bass*, 5 N.C. App. 429, 431 (1969)). Counsel shall not approach the witness except for the purpose of presenting, inquiring about, or examining the witness with respect to an exhibit, document, or diagram.

Any directions or instructions to the court reporter are to be made in open court by the presiding judge only, and not by an attorney.

Business attire shall be appropriate dress for counsel while in the courtroom.

All personalities between counsel should be avoided. The personal history or peculiarities of counsel on the opposing side should not be alluded to. Colloquies between counsel should be avoided.

Adverse witnesses and suitors should be treated with fairness and due consideration. Abusive language or offensive personal references are prohibited.

The conduct of the lawyers before the court and with other lawyers should be characterized by candor and fairness. Counsel shall not knowingly misinterpret the contents of a paper, the testimony of a witness, the language or argument of opposite counsel or the language of a decision or other authority; nor shall he offer evidence which he knows to be inadmissible. In an argument addressed to the court, remarks or statements should not be interjected to influence the jury or spectators. (See Rule 22, Canons of Ethics and Rules of Professional Conduct, N.C. State Bar, G.S. 4A p. 273.)

Suggestions of counsel looking to the comfort or convenience of jurors should be made to the court out of the jury's hearing. Before, and during trial, a lawyer should attempt to avoid communicating with jurors, even as to matters foreign to the cause.

Counsel should yield gracefully to rulings of the court and avoid detrimental remarks both in court and out. He should at all times promote respect for the court. (See Rule 1, Canons of Ethics and Rules of Professional Conduct, N.C. State Bar, G.S. 4A p. 269.)

History Note.

276 N.C. 735.

Editor's Note.

In the order adopting Rule 12, 276 N.C. 735, the reference to *State v. Bass* is set off by brackets. In this codification, those brackets have been replaced by parentheses so that the reference is not mistakenly interpreted as an alteration by the editor.

References in the General Rules of Practice to statutes, other rule sets, and caselaw have not been updated in this codification.

Rule 13. Presence of Counsel During Jury Deliberation

The right to be present during the trial of civil cases shall be deemed to be waived by a party or his counsel by voluntary absence from the courtroom at a time when it is known that proceedings are being conducted, or are about to be conducted. In such event the proceedings, including the giving of additional instructions to the jury after they have once retired, or receiving the verdict, may go forward without waiting for the arrival or return of counsel or a party.

After the jury has retired to deliberate upon a verdict in a criminal case, at least one attorney representing the defendant shall remain in the immediate area of the courtroom so as to be available at all times during the deliberation of the jury and when the verdict is received.

History Note.

276 N.C. 735.

Rule 14. Custody and Disposition of Evidence at Trial

Once any item of evidence has been introduced, the clerk (not the court reporter) is the official custodian thereof and is responsible for its safekeeping and availability for use as needed at all adjourned sessions of the court and for appeal.

After being marked for identification, all exhibits offered or admitted in evidence in any cause shall be placed in the custody of the clerk, unless otherwise ordered by the court.

Whenever any models, diagrams, exhibits, or materials have been offered into evidence and received by the clerk, they shall be removed by the party offering them, except as otherwise directed by the court, within 30 days after final judgment in the trial court if no appeal is taken; if the case is appealed, within 60 days after certification of a final decision from the appellate division. At the time of removal a detailed receipt shall be given to the clerk and filed in the case file.

If the party offering an exhibit which has been placed in the custody of the clerk fails to remove such article as provided herein, the clerk shall write the attorney of record (or the party offering the evidence if he has no counsel) calling attention to the provisions of this rule. If the articles are not removed within 30 days after the mailing of such notice, they may be disposed of by the clerk.

History Note.

276 N.C. 735.

Rule 15. Electronic Media and Still Photography Coverage of Public Judicial Proceedings

(a) **Definition**. The terms "electronic media coverage" and "electronic coverage" are used in the generic sense to include coverage by television, motion picture and still photography cameras, broadcast microphones and recorders.

(b) **Coverage allowed**. Electronic media and still photography coverage of public judicial proceedings shall be allowed in the appellate and trial courts of this state, subject to the conditions below.

(1) The presiding justice or judge shall at all times have authority to prohibit or terminate electronic media and still photography coverage of public judicial proceedings, in the courtroom or the corridors immediately adjacent thereto.

(2) Coverage of the following types of judicial proceedings is expressly prohibited: adoption proceedings, juvenile proceedings, proceedings held before clerks of court, proceedings held before magistrates, probable cause proceedings, child custody proceedings, divorce proceedings, temporary and permanent alimony proceedings, proceedings for the hearing of motions to suppress evidence, proceedings involving trade secrets, and in camera proceedings.

(3) Coverage of the following categories of witnesses is expressly prohibited: police informants, minors, undercover agents, relocated witnesses, and victims and families of victims of sex crimes.

(4) Coverage of jurors is prohibited expressly at any stage of a judicial proceeding, including that portion of a proceeding during which a jury is selected. The trial judge shall inform all potential jurors at the beginning of the jury selection process of the restrictions of this particular provision which is designated (b)(4).

(c) **Location of equipment and personnel**.

(1) The location of equipment and personnel necessary for electronic media and still photographic coverage of trial proceedings shall be at a place either inside or outside the courtroom in such a manner that equipment and personnel are completely obscured from view from within the courtroom and not heard by anyone inside the courtroom.

(i) If located within the courtroom, this area must be set apart by a booth or other partitioning device constructed therein at the expense of the media. Such construction must be in harmony with the general architectural style and decor of the courtroom and must meet the approval of the Senior Resident Superior Court Judge and the governing body of the county or municipality that owns the facility.

(ii) If located outside the courtroom, any booth or other partitioning device must be built so that passage to and from the courtroom will not be obstructed. This arrangement must meet the approval of the Senior Resident Superior Court Judge and the governing body of the county or municipality that owns the facility.

(2) Appropriate openings to allow photographic coverage of the proceedings under these rules may be made in the booth or partitioning device, provided that no one in the courtroom will see or hear any photographic or audio equipment or the personnel operating such equipment. Those in the courtroom are not to know when or if any such equipment is in operation.

(3) The presiding judge may, however, exercise his or her discretion to permit the use of electronic media and still photography coverage without booths or other restrictions set out in Rule 15(c)(1) and (c)(2) if the use can be made without disruption of the proceedings and without distraction to the jurors and other participants. Such permission may be withdrawn at any time.

(4) Video tape recording equipment which is not a component part of a television camera shall be located in an area remote from the courtroom.

(5) Media personnel shall not exit or enter the booth area or courtroom once the proceedings are in session except during a court recess or adjournment.

(6) Electronic media equipment and still photography equipment shall not be taken into the courtroom or removed from the designated media area except at the following times:

(i) prior to the convening of proceedings;

(ii) during the luncheon recess;

(iii) during any court recess with the permission of the presiding justice or judge; and

(iv) after adjournment for the day of the proceedings.

(7) The Chief Justice of the Supreme Court, and the Chief Judge of the Court of Appeals may waive the requirements of Rule 15(c)(1) and (2) with respect to judicial proceedings in the Supreme Court and in the Court of Appeals, respectively.

(d) **Official representatives of the media**.

(1) This Court hereby designates the North Carolina Association of Broadcasters, the Radio and Television News Directors Association of the Carolinas, and the North Carolina Press Association, as the official representatives of the news media. The governing boards of these associations shall designate one person to represent the television media, one person to represent the radio broadcasters, and one person to represent still photographers in each county in which electronic media and still photographic coverage is desired. The names of the persons so designated shall be forwarded to the Senior Resident Superior Court Judge, the Director of the Administrative Office of the Courts, and the county manager or other official responsible for administrative matters in the county or municipality in which coverage is desired. Thereafter, these persons shall conduct all negotiations with the appropriate officials concerning the construction of the booths or partitioning devices referred to above. Such persons shall also be the only persons authorized to speak for the media to the presiding judge concerning the coverage of any judicial proceedings.

(2) It is the express intent and purpose of this rule to preclude judges and other officials from having to "negotiate" with various representatives of the news media. Since these rules require pooling of equipment and personnel, cooperation by the media is of the essence and the designation of three media representatives

is expressly intended to prevent presiding judges from having to engage in discussion with others from the media.

(e) **Equipment and personnel**.

(1) Not more than two television cameras shall be permitted in any trial or appellate court proceedings.

(2) Not more than one still photographer, utilizing not more than two still cameras with not more than two lenses for each camera and related equipment for print purposes, shall be permitted in any proceeding in a trial or appellate court.

(3) Not more than one wired audio system for radio broadcast purposes shall be permitted in any proceeding in a trial or appellate court. Audio pickup for all media purposes shall be accomplished with existing audio systems present in the court facility. If no technically suitable audio system exists in the court facility, microphones and related wiring essential for media purposes may be installed and maintained at media expense. The microphones and wiring must be unobtrusive and shall be located in places designated in advance of any proceeding by the Senior Resident Superior Court Judge of the judicial district in which the court facility is located. Such modifications or additions must be approved by the governing body of the county or municipality which owns the facility. Provided, however, hand-held audio tape recorders may be used upon prior notification to, and with the approval of, the presiding judge; such approval may be withdrawn at any time.

(4) Any "pooling" arrangements among the media required by these limitations on equipment and personnel shall be the sole responsibility of the media without calling upon the presiding judge to mediate any dispute as to the appropriate media representative or equipment authorized to cover a particular proceeding. In the absence of advance media agreement on disputed equipment or personnel issues, the presiding judge shall exclude all contesting media personnel from a proceeding.

(5) In no event shall the number of personnel in the designated area exceed the number necessary to operate the designated equipment or which can comfortably be secluded in the restricted area.

(f) **Sound and light criteria**.

(1) Only television photographic and audio equipment which does not produce distracting sound or light shall be employed to cover

judicial proceedings. No artificial lighting device of any kind shall be employed in connection with the television camera.

(2) Only still camera equipment which does not produce distracting sound or light shall be employed to cover judicial proceedings. No artificial lighting device of any kind shall be employed in connection with a still camera.

(g) **Courtroom light sources**. With the concurrence of the Senior Resident Superior Court Judge of the judicial district in which a court facility is situated, modifications and additions may be made in light sources existing in the facility, provided such modifications or additions are installed and maintained without public expense and provided such modifications or additions are approved by the governing body of the county or municipality which owns the facility.

(h) **Conferences of counsel**. To protect the attorney-client privilege and the right to counsel, there shall be no audio pickup or broadcast of conferences which occur in a court facility between attorneys and their clients, between co-counsel of a client, between adverse counsel, or between counsel and the presiding judge held at the bench.

(i) **Impermissible use of media material**. None of the film, video tape, still photographs or audio reproductions developed during or by virtue of coverage of a judicial proceeding shall be admissible as evidence in the proceeding out of which it arose, any proceeding subsequent and collateral thereto, or upon any retrial or appeal of such proceedings.

History Note.

276 N.C. 735; 306 N.C. 797; 307 N.C. 741; 311 N.C. 775; 319 N.C. 681; 322 N.C. 868; 327 N.C. 664.

Rule 16. Withdrawal of Appearance

No attorney who has entered an appearance in any civil action shall withdraw his appearance, or have it stricken from the record, except on order of the court. Once a client has employed an attorney who has entered a formal appearance, the attorney may not withdraw or abandon the case without (1) justifiable cause, (2) reasonable notice to the client, and (3) the permission of the court. (See *Smith vs. Bryant*, 264 N.C. 208. See also Rule 43 of Rules of the N.C. State Bar, Volume 4A of General Statutes of North Carolina, page 278, entitled "Withdrawal from employment as attorney or counsel.")

History Note.

276 N.C. 735.

Editor's Note.

References in the General Rules of Practice to statutes, other rule sets, and caselaw have not been updated in this codification.

Rule 17. Entries on Records

No entry shall be made on the records of the Superior or District Court by any person except the clerk, his regular deputy, a person specifically directed by the presiding judge, or the judge himself.

History Note.

276 N.C. 735.

Rule 18. Custody of Appellate Reports

The clerks of the Superior Court shall be officially responsible for the care and preservation of the volumes of the Appellate Division Reports furnished by the State pursuant to G.S. 147-45, and for the General Statutes of North Carolina furnished by the Administrative Office of the Courts under G.S. 7A-300(9).

Each clerk of the Superior Court shall report to the presiding judge of the Superior Court at the first session of court held in January and July each year what volumes, if any, of said reports are missing or have been lost since the last report to the end that the judge may enter an appropriate order for replacement of same pursuant to G.S. 147-51.

History Note.

276 N.C. 735.

Editor's Note.

References in the General Rules of Practice to statutes, other rule sets, and caselaw have not been updated in this codification.

Rule 19. Recordari; Supersedeas; Certiorari

The Superior Court shall grant the writ of recordari only upon petition specifying the grounds of the application. The petition shall be verified and the writ may be granted with or without notice. When notice is given the petition shall be heard upon answer thereto duly verified and upon the affidavits and other evidence offered by the parties. The decision thereupon shall be final, subject to appeal as in other cases. If the petition is granted without notice, the petitioner shall give an undertaking for costs and for the writ of supersedeas, if prayed for. In such case the writ of recordari shall be made returnable to the session of the Superior Court of the county in which the judgment or proceeding complained of was granted, and ten days' written notice shall be given to the adverse party before the session of the court to which the writ is returnable. At that session the respondent may move to dismiss, or may answer the writ, and the answer shall be verified. After hearing the application upon the petition, answer, affidavits, and evidence offered, the court shall dismiss it or order it placed on the trial docket.

In proper cases and in like manner, the court may grant the writ of certiorari. When a diminution of the record is suggested and the record is manifestly imperfect, the court may grant the writ upon motion in the cause.

History Note.

276 N.C. 735.

Rule 20. Sureties

No member of the bar, in any case, suit, action or proceeding in which he appears as counsel, and no employee of the General Court of Justice, employee of the Sheriff's Department, or other law enforcement officer, shall act as a surety in any suit, action or proceeding pending in any division of the General Court of Justice.

History Note.

276 N.C. 735.

Rule 21. Jury Instruction Conference

At the close of the evidence (or at such earlier time as the judge may reasonably direct) in every jury trial, civil and criminal, in the superior and district courts, the trial judge shall conduct a conference on instructions with the attorneys of record (or party, if not represented by counsel). Such conference shall be out of the presence of the jury, and shall be held for the purpose of discussing the proposed instructions to be given to the jury. An opportunity must be given to the attorneys (or party if not represented by counsel) to request any additional instructions or to object to any of those instructions proposed by the judge. Such requests, objections and the rulings of the court thereon shall be placed in the record. If special instructions are desired, they should be submitted in writing to the trial judge at or before the jury instruction conference.

At the conclusion of the charge and before the jury begins its deliberations, and out of the hearing, or upon request, out of the presence of the jury, counsel shall be given the opportunity to object on the record to any portion of the charge, or omission therefrom, stating distinctly that to which he objects and the grounds of his objection.

The court may recall the jury after they have retired and give them additional instructions in order: (i) to correct or withdraw an erroneous instruction; or (ii) to inform the jury on a point of law which should have been covered in the original instructions. The provisions of the first two paragraphs of this Rule 21 also apply to the giving of all additional instructions, except that the court in its discretion shall decide whether additional argument will be permitted.

History Note.

304 N.C. 744.

Rule 22. Local Court Rules

In order to insure general uniformity throughout each respective judicial district, all trial judges shall observe and enforce the local rules in effect in any judicial district where they are assigned to hold court. The senior resident judge shall see that each judge *assigned to hold a session of court in his district* is furnished with a copy of the local court rules at or before the commencement of his assignment.

History Note.

304 N.C. 745.

Rule 23. [Summary Jury Proceedings]

The senior resident superior court judge of any superior court district or a presiding judge unless prohibited by local rule may upon joint motion or consent of all parties order the use of a summary jury upon good cause shown and upon such terms and conditions as justice may require. The order shall describe the terms and conditions proposed for the summary jury proceeding. Such terms and conditions may include: (1) a provision as to the binding or non-binding nature of the summary jury proceeding; (2) variations in the method for selecting jurors; (3) limitations on the amount of time provided for argument and the presentation of witnesses; (4) limitations on the method or manner of presentation of evidence; (5) appointment of a referee to preside over the summary jury trial; (6) setting the date for conducting the summary jury trial; (7) approval of a settlement agreement contingent upon the outcome of the summary jury proceeding; or (8) such other matters as would in the opinion of the court contribute to the fair and efficient resolution of the dispute. The court shall maintain jurisdiction over the case, and may, where appropriate, rule on pending motions.

Comment

The summary jury trial is a dispute resolution technique pioneered in the federal courts in the early 1980s. Pursuant to reports of its success as a settlement tool, the North Carolina Supreme Court in 1987 authorized the use of summary jury trials in three judicial districts on an experimental basis. Since that time, a number of summary jury trials have been conducted.

In May, 1991, a report prepared by the Private Adjudication Center detailed the North Carolina state courts' experience with the summary jury trial. That report noted that a number of variations in the summary jury trial process had been used successfully. The report concluded with a number of recommendations subsequently endorsed by the Dispute Resolution Committee of the North Carolina Bar Association. One of the recommendations was that the North Carolina Supreme Court adopt a General Rule of Practice authorizing the use of summary jury trials throughout the state.

Pursuant to that recommendation, this General Rule provides for the use of summary jury trials based upon the voluntary agreement of the parties, manifested by way of a joint motion to the court. The rule further provides that the authority to approve the request lies with the senior resident superior court judge for the county or judicial district in which the action is pending (or a presiding judge unless prohibited by local rule). The request shall be approved if the court finds that it is in the interest of justice for good cause shown. In this context, good cause

relates to a judicial determination that the use of a summary jury trial represents a fair and efficient method for pursuing settlement of the dispute.

The Rule does *not* authorize a court to mandate the use of a summary jury trial. Nothing in the rule, however, prohibits a judge or other court administrator from raising the possibility of using a summary jury trial with the parties during a pre-trial conference or other event and explaining the possible benefits of the process.

The summary jury trials conducted to date in North Carolina have employed a number of innovative techniques. These variations, many of which are detailed in the above referenced report, have ranged from variations on the methods used to select a jury to limitations on the manner in which evidence is presented. In other cases, the parties have requested that the court appoint a referee to preside over the summary jury proceeding. In addition, the parties in several summary jury trials have agreed that the results would be binding, sometimes pursuant to a "high/low agreement" that limits both parties' risk of an aberrant result. The Rule specifically provides that the court has the power to authorize these practices in appropriate cases.

History Note.

329 N.C. 805.

Editor's Note.

The order adopting Rule 23, 329 N.C. 805, does not indicate a title for the rule. The title that appears in brackets, above, was added by the editor.

The order adopting Rule 23, 329 N.C. 805, includes the above comment.

Rule 23.1. Summary Procedure for Significant Commercial Disputes

(a) The senior resident superior court judge of any superior court district, or a presiding judge unless prohibited by local rule may, upon joint motion or consent of all parties, order Summary Procedures For A Significant Commercial Dispute ("Summary Procedures") in any case within the subject matter jurisdiction of the superior court that does not include a claim for personal, physical or mental injury where 1) the amount in controversy exceeds $500,000; 2) at least one party is a North Carolina citizen, corporation or business entity (or a subsidiary of such corporation or business entity) or has its principal place of business in North Carolina; and 3) all parties agree to forego any claim of punitive damages and waive the right to a jury trial. The joint motion or consent for summary procedures must be filed with the court on or before the time the answer or other responsive pleading is due.

(b) To the extent they are not inconsistent with these Rules, the North Carolina Rules of Civil Procedure shall apply to Summary Procedures.

(c) Summary Procedures are commenced by filing with the court and serving a complaint.

(d) The complaint and any accompanying documents shall be sent, via next-day delivery, to either a person identified in the agreement between the parties to receive notice of Summary Procedures or, absent such specification, to each defendant's principal place of business or residence.

(e) The complaint must state prominently on the first page that Summary Procedures are requested. The complaint also must contain a statement of the amount in controversy exclusive of interest and costs, a statement that one of the parties is a North Carolina citizen, corporation or other business entity, or a subsidiary of such corporation or business entity, or that such citizen, corporation or business entity has its principal place of business in North Carolina, and a statement that the defendant has agreed to submit to the court's jurisdiction for Summary Procedures.

(f) Any action pending in any other jurisdiction which could have been brought initially as a Summary Procedure in this state may, subject to the procedures of the court of the other jurisdiction, be transferred to the superior courts of this state and converted to a Summary Procedure. Any pending action in this state may be converted to a Summary Procedure subject to the provisions of this Rule 23.1. Within 15 days of transfer or conversion, the court shall hold a conference at which time a schedule for the remainder of the action shall be established that will conform as closely as feasible to these Rules. Unless cause not to do so is shown, the record from any prior proceedings shall be incorporated into the record of the Summary Procedure.

(g) A defendant shall serve an answer together with any compulsory counterclaims within thirty days after service of the complaint.

(h) A plaintiff shall serve a reply to any counterclaim within twenty days after service of the counterclaim. Any answer or reply to a counterclaim shall be accompanied by a list of persons consulted, or relied upon, in connection with preparation of the answer or reply. Crossclaims, permissive counterclaims and third-party claims are not permitted absent agreement of all parties. Crossclaims, counterclaims and third-party claims, if any, are subject to the provisions of this Rule 23.1.

(i) A party may, in lieu of an answer, respond to a complaint or counterclaim by moving to dismiss. A motion to dismiss and accompanying brief must be served within thirty days after service of the complaint upon the defendant. A motion to dismiss a counterclaim and accompanying brief must be served within twenty days after service of the counterclaim. An answering brief in opposition to a motion to dismiss is due within fifteen days after service of the motion and accompanying brief. A reply brief in support of the motion to dismiss is due within ten days after service of the answering brief. The opening and answering briefs shall be limited to twenty-five pages, and the reply brief shall be limited to ten pages. Within thirty days after the filing of the final reply brief on all motions to dismiss, if no oral argument occurs, or within thirty days of oral argument if oral argument occurs, the court will either render to the parties its decision on such motions or will provide to the parties an estimate of when such decision will be rendered. Such additional time shall not normally exceed an additional thirty days. If a motion to dismiss a claim is denied, an answer to that claim shall be filed within ten days of such denial.

(j) Within seven days of filing of the answer, a plaintiff shall serve upon the answering defendant a copy of each document in the possession of plaintiff that plaintiff intends to rely upon at trial, a list of witnesses that plaintiff intends to call at trial and a list of all persons consulted or relied upon in connection with preparation of the complaint. Within thirty days of the filing of the answer, the answering defendant shall provide to all other parties a list of witnesses it intends to call at trial and all documents in its possession that it intends to rely upon at trial. A plaintiff against whom a counterclaim has been asserted shall serve upon the defendant asserting the counterclaim, within thirty days after such plaintiff receives from the defendant asserting the counterclaim the materials referred to in the preceding sentence, a list of witnesses it intends to call at trial in opposition to the counterclaim, all documents in its possession that it intends to rely upon at trial in opposition to the counterclaim and all persons consulted or relied upon in connection with preparation of the reply to the counterclaim.

(k) Any party may serve upon any other party up to ten written interrogatories (with any sub-part to be counted as a separate interrogatory) within thirty days after the filing of the last answer. Responses are due within twenty days after service of the interrogatories.

(l) Any party may serve on any other party a request to produce and permit the party making the request, or someone acting on his behalf, to inspect and copy any designated documents, said request to be served within thirty days after filing of the last answer. The response to a document request is due within thirty days after service of the document request and must include production of the documents at that time for inspection and copying.

(m) Any party may serve on any other party a notice of up to four depositions to begin no sooner than seven days from service of the deposition notice and subsequent to the filing of all answers. A party may also take the deposition of any person on the other party's witness list, as well as the deposition of all affiants designated under Section (s) of this Rule. The first deposition notice by a party shall be served not later than sixty days after the filing of the last answer. All depositions to be taken by a party are to be scheduled and completed within 120 days of the filing of the last answer.

(n) Any party may serve upon any other party up to ten requests for admission (with any sub-part to be counted as a separate request for admission) within thirty days of the filing of the last answer. Responses are due within twenty days after service.

(o) Parties are obligated to supplement promptly their witness list, the documents they intend to rely upon at trial and their discovery responses under this Rule.

(p) Discovery disputes, at the court's option, may be addressed by a referee at the expense of the parties or by the court.

(q) Unless otherwise ordered by the court, all discovery, except for discovery contemplated by Section(s) of this Rule, shall be completed within 180 days after the filing of the last answer.

(r) There shall be no motions for summary judgment in Summary Proceedings.

(s) If the parties notify the court within seven days after the close of discovery that the parties have agreed to forego witnesses at the trial of the case, the parties may submit briefs and appendices in support of their cause as follows:

(1) Plaintiff's Brief—thirty days following close of discovery;

(2) Defendant's Answering Brief—within thirty days after service of plaintiff's brief; and

(3) Plaintiff's Reply Brief—within fifteen days of service after Defendant's Answering Brief.

(t) The briefs must cite to the applicable portions of the record. Affidavits may be used but all affiants must be identified prior to the close of discovery and must, at the option of any other party, be produced for deposition within two weeks from the date discovery would otherwise close. The court shall make factual findings based upon the record presented by the parties.

(u) If the parties elect to forego witnesses at trial and submit briefs pursuant to Section(s) of this Rule, trial shall consist of oral argument, or submission on briefs if oral argument is waived by the parties with the consent of the court, to be scheduled and held by the court within one week of the close of briefing pursuant to Section(s).

(v) If the parties elect to present live witnesses at trial, the trial shall be scheduled to begin between thirty and sixty days after the close of discovery. Within thirty days after the close of discovery, the parties shall provide the court with an agreed upon pre-trial order. The pre-trial order shall include a summary of the claims or defenses of each party, a list of the witnesses each party expects to introduce at trial, a description of any evidentiary disputes, a statement of facts not in dispute and a statement of disputed issues of fact. Absent contrary court order, the trial shall be limited to five days, which shall be allocated equitably between the parties. Within ten days of the close of trial, each party shall file a post-trial brief including proposed findings of fact and conclusions of law. Each brief shall not exceed fifty pages.

(w) Within thirty days after the filing of the final brief, if no oral argument occurs, or within thirty days of argument if oral argument occurs, the court will either render to the parties its decision after trial or will provide the parties an estimate of when the decision will be rendered. Such additional time shall not normally exceed an additional thirty days.

(x) The schedule for trial or decision after trial or on motion to dismiss shall not be extended unless the assigned judge certifies that:

(1) the demands of the case and its complexity make the schedule under this Rule incompatible with serving the ends of justice; or

(2) the trial cannot reasonably be held or the decision rendered within such time because of the complexity of the case or the number or complexity of pending criminal cases.

Comment

This rule was adopted by the North Carolina Supreme Court on August 28, 1995 as a result of a recommendation in the January 1995 ANNUAL REPORT OF THE NORTH CAROLINA COMMISSION ON BUSINESS LAWS AND THE ECONOMY chaired by the North Carolina Attorney General.

In its report, the Commission observed that, historically, North Carolina has enjoyed a high quality, efficient civil justice system. In recent years, however, civil litigation (and in particular, complex commercial litigation) has become protracted and costly. This is the result of many factors, including more complex laws and regulations, legal tactics and increased caseload.

The North Carolina court system has responded by instituting a number of innovative programs designed to resolve civil disputes more efficiently. These include court-ordered arbitration and a pilot mediation program. Despite the success of these programs, resolution of complex business and commercial disputes in North Carolina can be slow and costly.

The Commission noted that a state court system that offers alternatives to the normal litigation process which can expedite the resolution of significant commercial and business disputes is an important element of a progressive, efficient business environment. States that can offer alternatives are more likely to attract new business organizations and incorporations as well as business expansions.

Accordingly, the Commission recommended that the State establish a summary procedure through which North Carolina citizens and business entities and their subsidiaries, and businesses which are headquartered in the State can more efficiently resolve significant commercial civil disputes. The Commission recommended that the availability of such a summary procedure be limited to civil actions in superior court where 1) at least $500,000 is in controversy, 2) at least one party is a North Carolina citizen or corporation, and 3) all parties consent to the summary proceeding. As part of that agreement, the parties to the summary proceeding must agree to waive punitive damages and a jury trial.

The summary procedure provided for in this Rule can be utilized only with consent of all parties. It does not restrict any parties' rights and is supplementary to, and not inconsistent with, the General Statutes. (See G.S. 7A-34.) Its purpose is to provide an alternative procedure for significant commercial disputes and thereby improve the overall efficiency of the court system.

History Note.

341 N.C. 737.

Editor's Note.

The order adopting Rule 23.1, 341 N.C. 737, includes the above comment.

References in the General Rules of Practice to statutes, other rule sets, and caselaw have not been updated in this codification.

Rule 24. Pretrial Conference in Capital Cases

There shall be a pretrial conference in every case in which the defendant stands charged with a crime punishable by death. No later than ten days after the superior court obtains jurisdiction in such a case, the district attorney shall apply to the presiding superior court judge or other superior court judge holding court in the district, who shall enter an order requiring the prosecution and defense counsel to appear before the court within forty-five days thereafter for the pretrial conference. Upon request of either party at the pretrial conference the judge may for good cause shown continue the pretrial conference for a reasonable time.

At the pretrial conference, the court and the parties shall consider:

(1) simplification and formulation of the issues, including, but not limited to, the nature of the charges against the defendant, and the existence of evidence of aggravating circumstances;

(2) timely appointment of assistant counsel for an indigent defendant when the State is seeking the death penalty; and

(3) such other matters as may aid in the disposition of the action.

The judge shall enter an order that recites that the pretrial conference took place, and any other actions taken at the pretrial conference.

This rule does not affect the rights of the defense or the prosecution to request, or the court's authority to grant, any relief authorized by law, including but not limited to appointment of assistant counsel, in advance of the pretrial conference.

History Note.

336 N.C. 789.

Rule 25. Motions for Appropriate Relief and Habeas Corpus Applications in Capital Cases

When considering motions for appropriate relief and/or applications for writs of habeas corpus in capital cases, the following procedures shall be followed:

(1) All appointments of defense counsel shall be in accordance with G.S. 7A-451(c), (d), and (e) and rules adopted by the Office of Indigent Defense Services;

(2) All requests for appointment of experts made prior to the filing of a motion for appropriate relief and subsequent to a denial by the Director of Indigent Defense Services shall be ruled on by the senior resident superior court judge or the senior resident superior court judge's designee in accordance with rules adopted by the Office of Indigent Defense Services;

(3) All requests for other *ex parte* and similar matters arising prior to the filing of a motion for appropriate relief shall be ruled on by the senior resident superior court judge or the senior resident superior court judge's designee in accordance with rules adopted by the Office of Indigent Defense Services;

(4) All motions for appropriate relief, when filed, shall be referred to the senior resident superior court judge or the senior resident superior court judge's designee for that judge's review and administrative action, including, as may be appropriate, dismissal, calendaring for hearing, entry of a scheduling order for subsequent events in the case, or other appropriate actions;

(5) Subsequent to direct appeal, an application for writ of habeas corpus shall not be used as a substitute for appeal and/or a motion for appropriate relief and is not available as a means of reviewing and correcting nonjurisdictional legal error. If the applicant has been sentenced pursuant to a final judgment issued by a competent tribunal of criminal jurisdiction (i.e., by a trial court having subject matter jurisdiction to enter the sentence), the application for writ of habeas corpus shall be denied. In the event the application for writ of habeas corpus raises a meritorious challenge to the original jurisdiction of the sentencing court, and the writ is granted, the judge shall make the writ returnable before the senior resident superior court judge of the judicial district where the applicant was sentenced or the senior resident superior court judge's designee. In the event the application for writ of habeas corpus raises a meritorious nonjurisdictional challenge to the applicant's conviction and sentence, the judge shall immediately refer the matter to the senior resident superior court judge of the judicial district where the applicant was sentenced or the senior resident superior court judge's designee for disposition as a motion for appropriate relief; and

(6) All requests for and awards of attorney fees and other expenses of representation shall be made in accordance with rules adopted by the Office of Indigent Defense Services.

History Note.

348 N.C. 709; 356 N.C. 710; 357 N.C. 669.

Editor's Note.

References in the General Rules of Practice to statutes, other rule sets, and caselaw have not been updated in this codification.

Rule 26. Secure-Leave Periods for Attorneys

(a) **Definition; Entitlement**. A "secure-leave period" is one complete calendar week that is designated by an attorney during which the superior courts and the district courts may not hold a proceeding in any case in which that attorney is an attorney of record. An attorney is entitled to enjoy a secure-leave period that has been designated according to this rule.

(b) **Allowance**.

(1) Within a calendar year, an attorney may enjoy three different secure-leave periods for any purpose. A secure-leave period that spans across calendar years counts against the attorney's allowance for the first calendar year.

(2) Within the twenty-four weeks after the birth or adoption of an attorney's child, that attorney may enjoy twelve additional secure-leave periods for the purpose of caring for the child.

(c) **Form of Designation**. An attorney must designate his or her secure-leave periods in writing.

(d) **Content of Designation**. An attorney's designation of a secure-leave period must contain the following information:

(1) the attorney's name, address, e-mail, telephone number, and state bar number;

(2) the date of the Sunday on which the secure-leave period is to begin and the date of the Saturday on which it is to end;

(3) the allowance that the secure-leave period will count against, with reference to either subsection (b)(1) or (b)(2) of this rule;

(4) the dates of any previously designated secure-leave periods that count against that allowance;

(5) a statement that the secure-leave period is not being designated for the purpose of interfering with the timely disposition of any proceeding;

(6) a statement that the attorney has taken adequate measures to protect the interests of the attorney's clients during the secure-leave period; and

(7) the attorney's signature and the date on which the attorney submits the designation.

(e) **Where to Submit Designation**.

(1) **In Criminal Actions**. The attorney must submit his or her designation of a secure-leave period to the office of the district

attorney for each prosecutorial district in which the attorney's criminal actions are pending.

(2) **In Civil Actions**. The attorney must submit his or her designation of a secure-leave period to the office of the senior resident superior court judge for each superior court district and to the office of the chief district court judge for each district court district in which the attorney's civil actions are pending.

(3) **In Special Proceedings and Estate Proceedings**. The attorney must submit his or her designation of a secure-leave period to the office of the clerk of the superior court of the county in which the attorney's special proceedings or estate proceedings are pending.

(4) **In Juvenile Proceedings**. The attorney must submit his or her designation of a secure-leave period to the juvenile case calendaring clerk in the office of the clerk of the superior court of the county in which the attorney's juvenile proceedings are pending.

(f) **When to Submit Designation**. An attorney must submit his or her designation of a secure-leave period:

(1) at least ninety days before the secure-leave period begins; and

(2) before a proceeding in any of the attorney's cases is scheduled for a time that conflicts with the secure-leave period.

But because of the uncertainty of a child's birth or adoption date, the superior court or district court scheduling authority must make reasonable exception to these requirements so that an attorney may enjoy leave with the child.

(g) **Depositions**. A party may not notice a deposition for a time that conflicts with a secure-leave period that another party's attorney has designated according to this rule.

(h) **Other Leave**. Nothing in this rule limits the inherent power of the superior courts or the district courts to allow an attorney to enjoy leave that has not been designated according to this rule.

History Note.

350 N.C. 861; 372 N.C. 896; Order Dated 14 May 2020.

Forms

Form 1. Certificate of Readiness

NORTH CAROLINA
_____ COUNTY

IN THE GENERAL COURT OF JUSTICE
_____ COURT DIVISION

FILE #: _____

FILM #: _____

PLAINTIFF

-v-

DEFENDANT

CERTIFICATE OF READINESS

As counsel of record for _____ (name the party you represent), who is a plaintiff, defendant, third party, (underline one) I hereby certify that:

A. I know of no procedural matters which would delay the trial of the case when called for jury trial;

B. All motions existing of record this date have been heard or otherwise disposed of;

C. I know of no parties or witnesses desired that will not be available on the trial date;

D. I know of no current reason that would cause me to move for a continuance;

E. I am ready for trial.

This the _____ day of _____.

_____
Attorney

History Note.

276 N.C. 735.

Editor's Note.

The "Certificate of Readiness" form is referenced in the original version of Rule 2, 276 N.C. 735. A subsequent amendment to Rule 2, 300 N.C. 751, eliminated the reference to the form, but the Court has never eliminated the form itself. Accordingly, the form appears in this codification.

Form 2. Order on Final Pre-Trial Conference

IN THE GENERAL COURT OF JUSTICE
_____ COURT DIVISION

Plaintiff(s)	)	
	)	FILE #: _____
-v-	)	
	)	FILM #: _____
Defendant(s)	)	

ORDER ON FINAL PRE-TRIAL CONFERENCE

Pursuant to the provisions of Rule 16 of the State Rules of Civil Procedure, and Rule 7, General Rules of Practice, a final pre-trial conference was held in the above-entitled cause on the _____ day of _____, 19___. _____, Esquire, appeared as counsel for the plaintiff(s); _____, Esquire, appeared as counsel for the defendant(s).

(1) It is stipulated that all parties are properly before the court, and that the court has jurisdiction of the parties and of the subject matter.

Note: If the facts are otherwise they should be accurately stated.

(2) It is stipulated that all parties have been correctly designated, and there is no question as to misjoinder or nonjoinder of parties.

Note: If the facts are otherwise, they should be accurately stated.

(3) If any of the parties is appearing in a representative capacity, it should be set out whether there is any question concerning the validity of the appointment of the representatives. Letters or orders of appointment should be included as exhibits.

(4) Any third-party defendant(s) or cross-claimant(s) should follow the same procedure as set out in paragraphs (4) and (5) for plaintiff(s) and defendant(s).

(5) In addition to the other stipulations contained herein, the parties hereto stipulate and agree with respect to the following undisputed facts:

(a)

(b)

Note: Here set out all facts not in genuine dispute.*

(6) The following is a list of all known exhibits the plaintiff(s) may offer at the trial:

(a)

(b)

Note: Here list the pre-trial identification numbers and a brief description of each exhibit.

(7) It is stipulated and agreed that opposing counsel has been furnished a copy of each exhibit identified by the plaintiff(s), except:

Note: Here set out stipulations with respect to (a) the exhibits that have been furnished opposing counsel, (b) the arrangements made for the inspection of exhibits of the character which prohibits or makes

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* IN CONTRACT CASES, the parties may stipulate upon, or state their contentions with respect to, where applicable (a) whether the contract relied on was oral or in writing; (b) the date thereof and the parties thereto; (c) the substance of the contract, if oral; (d) the terms of the contract which are relied upon and the portions in controversy; (e) any collateral oral agreement, if claimed, and the terms thereof; (f) any specific breach of contract claimed; (g) any misrepresentation of fact claimed; (h) if modification of the contract or waiver of covenant is claimed, what modification or waiver, and how accomplished, and (i) an itemized statement of damages claimed to have resulted from any alleged breach, the source of such information, how computed, and any books or records available to sustain such damage claimed.

IN MOTOR VEHICLE NEGLIGENCE CASES, the parties may stipulate upon, or state their contentions with respect to, where applicable (a) the owner, type and make of each vehicle involved; (b) the agency of each driver; (c) the place and time of accident, conditions of weather, and whether daylight or dark; (d) nature of terrain as to level, uphill or downhill; (e) traffic signs, signals and controls, if any, and by what authority placed; (f) any claimed obstruction of view; (g) presence of other vehicles, where significant; (h) a detailed list of acts negligence or contributory negligence claimed; (i) specific statutes, ordinances, rules, or regulations alleged to have been violated, and upon which each of the parties will rely at the trial to establish negligence or contributory negligence; (j) a detailed list of nonpermanent personal injuries claimed, including the nature and extent thereof; (k) a detailed list of permanent personal injuries claimed, including nature and extent thereof; (l) the age of any party alleged to have been injured; (m) the life and work expectancy of any party seeking to recover for permanent injury; (n) an itemized statement of all special damages, such as medical, hospital, nursing, etc., with the amount and to whom paid; (o) if loss of earnings is claimed; (p) a detailed list of any property damages, and (q) in death cases, the decedent's date of birth, marital status, employment for five years before date of death, work expectancy, reasonable probability of promotion, rate of earnings for five years before date of death, life expectancy under mortuary table, and general physical condition immediately prior to date of death.

IN THE EVENT THIS CASE DOES NOT FALL WITHIN ANY OF THE CATEGORIES ENUMERATED ABOVE, OR ANY OF THE CATEGORIES SUGGESTED BY THIS FORM, COUNSEL SHOULD, NEVERTHELESS, SET FORTH THEIR POSITIONS WITH AS MUCH DETAIL AS POSSIBLE.

impractical their reproduction, and (c) any waiver of the requirement to furnish opposing counsel with a copy of exhibits.

(8) It is stipulated and agreed that each of the exhibits identified by the plaintiff(s) is genuine and, if relevant and material, may be received in evidence without further identification or proof, except:

Note: Here set out with particularity the basis of objection to specific exhibits.

It is permissible to generally reserve the right to object at the trial on grounds of relevancy and materiality.

(9) The following is a list of all known exhibits the defendant(s) may offer at the trial:

(a)

(b)

Note: Here list the pre-trial identification numbers and a brief description of each exhibit.

(10) It is stipulated and agreed that opposing counsel has been furnished a copy of each exhibit identified by the defendant(s), except:

Note: Here set out stipulations with respect to (a) the exhibits that have been furnished opposing counsel, (b) the arrangements made for the inspection of exhibits of the character which prohibits or makes impractical their reproduction, and (c) any waiver of the requirement to furnish opposing counsel with a copy of exhibits.

(11) It is stipulated and agreed that each of the exhibits identified by the defendant(s) is genuine, and, if relevant and material, may be received in evidence without further identification or proof, except:

Note: Here set out with particularity the basis of objection to specific exhibits. It is permissible to generally reserve the right to object at the trial on grounds of relevancy and materiality.

(12) Any third-party defendant(s) and cross-claimant(s) should follow the same procedure with respect to exhibits as required of plaintiff(s) and defendant(s).

Note: Attention is called to the provisions of the pre-trial rule with respect to the obligation to immediately notify opposing counsel if additional exhibits are discovered after the preparation of this order.

(13) The following is a list of the names and addresses of all known witnesses the plaintiff(s) may offer at the trial:

Note: If either plaintiff's or defendant's attorney discovers additional witnesses after this listing, attention is called to obligation to notify opposing counsel. There shall be no requirement that all witnesses listed

by a party be used, and the court may after satisfactory explanation, in his discretion, permit the use of a witness not listed.

The trial judge may, for good cause made known to him, relieve a party of the requirement of disclosing the name of any witness.

(14) The following is a list of the names and addresses of all known witnesses the defendant(s) may offer at the trial:

(15) Any third-party defendant(s) and cross-claimant(s) should follow the same procedure with respect to witnesses as above outlined for plaintiff(s) and defendant(s). Counsel shall immediately notify opposing counsel if the names of additional witnesses are discovered after the preparation of this order.

(16) There are no pending motions, and neither party desires further amendments to the pleadings, except:

Note: Here state facts regarding pending or impending motion. If any motions are contemplated, such as motion for the physical examination of a party, motion to take the deposition of a witness for use as evidence, etc., such motions should be filed in advance of the final pre-trial conference so that they may be ruled upon, and the rulings stated in the final pre-trial order. The same procedure should be followed with respect to any desired amendments to pleadings.

(17) Additional consideration has been given to a separation of the triable issues, and counsel for all parties are of the opinion that a separation of issues in this particular case would (would not) be feasible.

(18) The plaintiff(s) contends (contend) that the contested issues to be tried by the court (jury) are as follows:

(19) The defendant(s) contends (contend) that the contested issues to be tried by the court (jury) are as follows:

(20) Any third-party defendant(s) and cross-claimant(s) contends (contend) that the contested issues to be tried by the court (jury) are as follows:

Note: In all instances possible, the parties should agree upon the triable issues and include them in this order in the form of a stipulation, in lieu of the three preceding paragraphs.

(21) Counsel for the parties announced that all witnesses are available and the case is in all respects ready for trial. The probable length of the trial is estimated to be _____ days.

(22) Counsel for the parties represent to the court that, in advance of the preparation of this order, there was a full and frank discussion of settlement possibilities. Counsel for the plaintiff will immediately notify the clerk in the event of material change in settlement prospects.

Note: Counsel shall be required to conduct a frank discussion concerning settlement possibilities at the time of the conference of attorneys, and clients shall either be consulted in advance of the conference concerning settlement figures or be available for consultation at the time of the conference. The court will make inquiry at the time of trial as to whether this requirement was strictly observed.

_____
Counsel for Plaintiff(s)

_____
Counsel for Defendant(s)

Date: _____

Approved and Ordered Filed.

_____
Judge Presiding

History Note.

276 N.C. 735.

Editor's Note.

The "Order on Final Pre-Trial Conference" form is referenced in Rule 7.

References in the General Rules of Practice to statutes, other rule sets, and caselaw have not been updated in this codification.

Reporter Volume	Page(s)	Rules Affected	Key Dates*
276 N.C.	735–47	Complete Rule Set	Adopted 14 May 1970 Effective 1 July 1970
282 N.C.	737	Rule 3	Adopted 13 February 1973
300 N.C.	751–52	Rule 2	Adopted 3 June 1980
304 N.C.	743	Rule 5	Ordered 5 May 1981 Effective 1 July 1982
304 N.C.	744	Rule 21	Adopted 15 September 1981
304 N.C.	745	Rule 22	Adopted 21 September 1981
306 N.C.	797–801	Rule 15	Adopted 21 September 1982 Order suspends Rule 15 from 18 October 1982 through 18 October 1984 and implements a temporary rule
307 N.C.	741	Rule 15	Adopted 10 November 1982 Order amends the temporary rule that the Court adopted on 21 September 1982
311 N.C.	774	Rule 6	Ordered 28 August 1984 Effective 1 January 1985
311 N.C.	775	Rule 15	Adopted 1 October 1984 Order extends the effective date of the temporary rule, as amended, through 31 December 1984
319 N.C.	681–82	Rule 15	Adopted 24 June 1987 Order further amends the temporary rule and makes the temporary rule, as amended, effective from 1 July 1987 to 30 June 1988

Reporter Volume	Page(s)	Rules Affected	Key Dates*
319 N.C.	683	Rule 2.1	Ordered 5 January 1988 Effective 5 January 1988
322 N.C.	841	Rule 2.1	Reprint of Order Dated 5 January 1988
322 N.C.	842	Rules 2, 8	Ordered 16 May 1988 Effective 1 July 1988
322 N.C.	868	Rule 15	Adopted 30 June 1988 Order further amends the temporary rule and makes the temporary rule, as amended, effective from 1 July 1988 to 30 June 1990
327 N.C.	664–69	Rule 15	Adopted 13 June 1990
327 N.C.	670	Rule 7.1	Adopted 26 July 1990 Effective 1 October 1990
329 N.C.	805–07	Rule 23	Adopted 14 August 1991
336 N.C.	789–90	Rule 24	Adopted 7 April 1994 Effective 1 June 1994
341 N.C.	737–44	Rules 2.1, 2.2, 23.1	Adopted 28 August 1995
344 N.C.	743	Rule 5	Adopted 5 September 1996 Effective 1 October 1996
346 N.C.	805	Rule 5	Adopted 25 June 1997 Effective 1 August 1997
346 N.C.	805	Rule 5	Adopted 24 July 1997 Order delays the effective date of the Court's 25 June 1997 order until 1 October 1997

A Publication Record of the General Rules of Practice

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Reporter Volume	Page(s)	Rules Affected	Key Dates*
348 N.C.	709	Rule 25	Adopted 7 May 1998 Effective 1 June 1998
350 N.C.	861–64	Rule 26	Adopted 6 May 1999 Effective 1 January 2000
356 N.C.	703–05	Rules 3, 3.1	Adopted 15 August 2002
356 N.C.	710–11	Rule 25	Adopted 19 December 2002
357 N.C.	669–70	Rule 25	Adopted 1 May 2003
358 N.C.	746–49	Rule 3.1	Adopted 4 March 2004 Effective 4 March 2004
372 N.C.	896–901	Rule 26	Ordered 4 September 2019 Effective for secure-leave periods designated on or after 11 September 2019

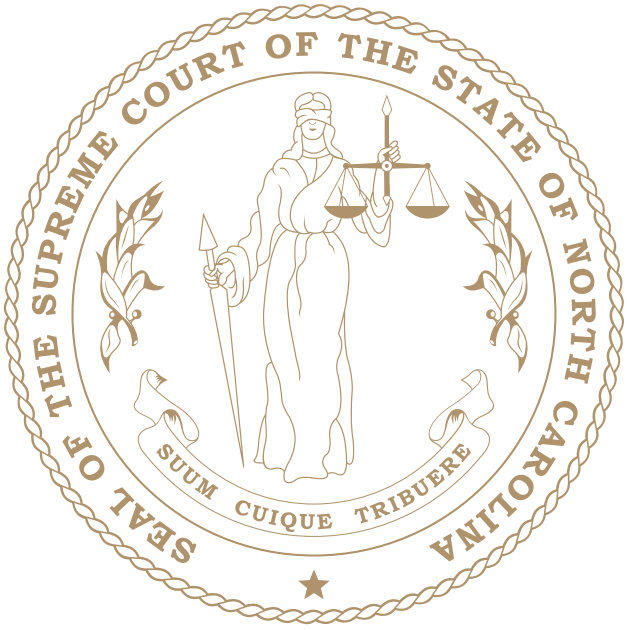
***** The type of date provided for each published entry (e.g., "Adopted," "Effective," "Ordered") reflects the information that was preserved in the North Carolina Reports.

Current Slip Orders	Rules Affected	Key Dates
Order Dated 14 May 2020	Rule 2, 26**	Ordered 14 May 2020
Order Dated 23 September 2020	Rule 5	Ordered 23 September 2020 Effective 1 October 2020

****** Order granted emergency relief in response to the COVID-19 pandemic.

Document ID

General Rules of Practice for the Superior and District Courts – Codified 6 October 2020



Rules@sc.nccourts.org
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