

Substantive Law Checklist

**– North Carolina Trial Judges' Bench Book
for Superior Court Third Edition
Volume 2 Civil Trial Procedure**

**■ Chapter 3: Motions in Civil Cases -- a
Checklist; Updated (5/98)**

- SECTION II: MOTIONS IN CIVIL CASES: Chapter 3:
Motions in Civil Cases -- a Checklist

(There is a similar listing in the District Court Benchbook)

Chapter 3: Motions in Civil Cases – a Checklist; Updated (5/98)

North Carolina Trial Judges' Bench Book for Superior Court Third Edition, Volume 2 Civil Trial Procedure
SECTION II: MOTIONS IN CIVIL CASES: Chapter 3: Motions in Civil Cases -- a Checklist

I. MOTIONS HEARINGS, GENERALLY

A. WHEN HEARD

Motions may be heard and determined at pre-trial conference or on motions calendar as directed by presiding judge. *N.C.G.S. Annotated Rules*, General Rules of Practice for the Superior and District Courts, Rule 6.

B. FORM OF MOTION; EVIDENCE

1. All motions must state rule number(s) under which movant is proceeding. *N.C.G.S. Annotated Rules*, General Rules of Practice for the Superior and District Courts, Rule 6; N.C. R. Civ. P. 7. Failure to do so is not fatal, however, when judge is aware of grounds for motion. *Wood v. Wood*, 297 N.C. 1 (1979).

2. When motion is based on facts not in the record, judge may hear matter on parties' affidavits, but may also direct that matter be heard wholly or partly on oral testimony or depositions. N.C. R. Civ. P. 43(e).

C. DECISION ON ANY MOTION OR ORDER *EX MERO MOTU*

Findings of fact and conclusions of law are helpful to the appellate court, but necessary only when requested by a party. N.C. R. Civ. P. 52(a)(2); *Campbell v. Pitt County Mem. Hosp.*, 321 N.C. 260 (1987) (on motion to set aside verdict and award new trial on damages).

II. PRETRIAL MOTIONS

Lack of subject matter jurisdiction	Rule 12(b)(1)
Lack of personal jurisdiction	Rule 12(b)(2)
Improper venue or division	Rule 12(b)(3)
Insufficient process	Rule 12(b)(4)
Insufficient service of process	Rule 12(b)(5)
To dismiss for failure to state claim upon which relief can be granted (set out grounds)	Rule 12(b)(6)
Failure to join necessary party	Rule 12(b)(7)
To remove to federal district court (copy to state court)	Rule 12(a)(2)
For judgment on the pleadings	Rules 12(c); 84(9)
For more definite statement	Rules 12(e);84(10)
To strike	Rule 12(f)
To dismiss on grounds of prior pending action	Rule 13(a)
For protective order	Rule 26(c)
For summary judgment	Rule 56
For dismissal of counterclaim, crossclaim, or third party claim	Rule 41(c)
For additional parties	Rule 13(h)
To bring in third party defendant	Rule 84(12)
For separate trial	Rules 42(b);13(i)
For consolidation	Rule 42(a)
To terminate or limit examination by deposition	Rule 30(d)
Request for admission of documents	Rule 36(a)
For order compelling discovery	Rule 37(a)
To transfer to different trial division	Rules 7(b)(3);12(b)(3);G.S. 7A-258(f), (g)
For a continuance	Rule 40(b)
For a default judgment	Rule 55
For a default judgment for failure to respond to requested discovery	Rule 37(d)
Demand for jury trial	Rules 38(b);39(b)
To quash process or service of process	Rules 12(b)(4);12(b)(5)
To extend time to file complaint	Rule 3
To extend time to file answer	Rule 6(b)
To extend time in discovery -- deposition proceedings	Rule 6(b)
To extend time to file affidavits	Rule 6(b)
To dismiss for failure of plaintiff to prosecute	Rule 41(b)
For payment of costs	Rule 41(d)

To dismiss for failure to join necessary party Rule 12(b)(7)
To amend the pleadings to conform to pretrial order Rule 16(last sentence)
To dismiss for failure of party to prosecute or to comply with Rules of Civil Procedure Rule 41(b)
To quash subpoena Rule 45(c)
For preliminary injunction Rule 65(a)

III. TRIAL MOTIONS

For voluntary dismissal Rule 41(a)
For involuntary dismissal Rule 41(b)
For directed verdict Rule 50(a)
For dismissal of counterclaim,
crossclaim, or third party claim Rule 41(c)
For separate trial Rules 42(b);13(i)
For separate judgment Rule 13(i)
For consolidation Rule 42(a)
For a continuance Rule 40(b)
For a default judgment Rule 55
For a default judgment for failure to respond to requested discovery Rule 37(d)
To dismiss for failure of plaintiff to prosecute Rule 41(b)
To dismiss for failure of party
to comply with Rules of Civil Procedure Rule 41(b)

IV. POST-TRIAL MOTIONS

For a new trial Rule 59
To correct clerical errors Rule 60(a)
To grant relief from final judgment or order for mistake,
inadvertence, surprise, excusable neglect,
newly discovered evidence, fraud, void judgment, etc. Rule 60(b)
For separate judgment Rule 13(i)
To stay proceeding to enforce a judgment Rule 62(d)
To alter or amend judgment Rule 59(e)
For judgment n.o.v. Rule 50(b)-(d)
Stay on motion for new trial or judgment Rule 62(b)
Stay upon appeal Rule 62(d)

V. GENERAL REQUIREMENTS OF MOTIONS

Content and form Rule 7 (b)(1),(2)
Notice Rule 7(b)(1)
Signing Rules 7(b)(2);11
Time Rule 6(d)
Consolidation of defenses in the motion Rule 12(g)
Evidence on motions hearings Rule 43(e)
Cite applicable Rule number(s) Rule 7; also N.C. Gen. Prac. R. 6
Findings of fact and conclusions of law on motions Rule 52(a)(2)

Summary Judgment: Affidavits

Wake County Rule is typical: "**3.8** Attorneys and unrepresented parties shall serve briefs or memoranda at least two days prior to the hearing on any motion seeking a final determination of the rights of any party as to any claim or defense, and shall serve affidavits in opposition to motions for summary judgment at least two days before the motion hearing in accordance with G.S. §1A-1, Rule 5, Rule 6 and Rule 56. However, this rule does not preclude an attorney or party from providing to the court copies of cases or statutes relied upon at a hearing."

Calendar Control

- Be aware of local custom and practice
- Be aware that some districts may have local rules that affect calendar calls:

Wake: 3.4 The calendar request for motions and judicial approval of minor settlements shall be filed with the Trial Court Administrator and mailed to all opposing counsel at least six weeks before the beginning of the requested session. In the calendar request, an attorney may ask that a motion be set only on a specified day. Mailing by the Clerk of the calendar as provided in Local Rule 2.5, designating a motion to be heard on a specified day and time, constitutes notice of hearing on the motion and further notice is not required unless the date and time of the hearing is changed. In exigent circumstances, the Trial Court Administrator may set a motion for hearing at any time, so long as notice requirements of G.S. §1A-1, Rule 6(d) are satisfied or all parties consent.

Rules from Nash County:

6. The Clerk of Court in each county shall place matters on the court calendar in the following order:
 - First:** Uncontested matters calendared in the order in which the calendar requests were filed with the clerk.
 - Second:** Cases in which the parties have not agreed upon the court date in the order. This hearing is for the setting of a trial date only.
 - Third:** Motions certified on the calendar request not to require more than ten minutes for hearing.
 - Fourth:** Cases in which a hearing is required within a specified time pursuant to statute or court order including but not limited to Chapter 50B and restraining orders. A motion must be made on the calendar request that this section is applicable.
 - Fifth:** Motions and pre-trial conferences.
 - Sixth:** Small claims appeals and other matters.
 - Seventh:** Peremptory settings.
 - Eighth:** Cases in which the parties have agreed upon the court date, or there was no answer or other appearance made by the opposing party, in the order the calendar requests were filed with the clerk, including cases continued from prior court dates. The earlier court date shall stand as the "filing date" for purpose of place on the calendar unless otherwise ordered.
7. **The presumption shall be that matters will be heard in the order calendared. However, the presiding judge shall determine the order of trial at the calendar call.**

Calendar Control

- Local Rules are now easily accessible at www.nccourts.org:

<http://www.nccourts.org/Courts/CRS/Policies/LocalRules/Default.asp>