Case Management: The Art of the Pretrial Conference and Hearing

Hon. Paul C. Ridgeway, Senior Resident Superior Court Judge, Tenth Judicial District (Wake County)

Hon. Matthew T. Houston, Special Superior Court Judge $for\ Complex\ Business\ Cases\ (Business\ Court-Raleigh)$

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Effective Case Management



Requires more than showing up to trial



Begins with a practical and realistic case management order

Judge input is expected in Rule 2.1 cases, medical malpractice cases, and other assigned cases (e.g., Business Court, Wake County Rule 2.2 cases, etc.)

Input might be more limited for standard, unassigned cases

• Consult with your TCA's office

• Request to be involved



Involvement at the beginning ensures more efficient and effective pretrial proceedings at the end

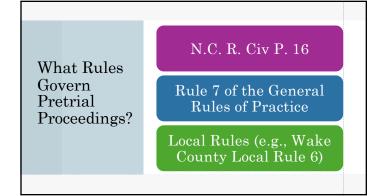
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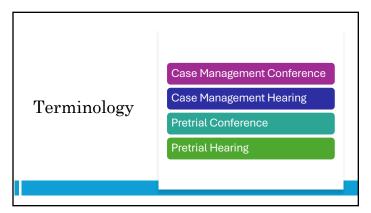
Why does good case management matter? Lowers administrative costs for the court system Minimizes redundant or unreasonable costs of litigation for the parties Cost management Promotes effective decisions by the Court, parties, and counsel

The Judge's Role: Best Practices for Case Management Orders in **Assigned Cases**

- Enter CMOs early to set expectations
- Prepare and provide counsel with a preferred CMO template with:
 presumptive discovery limits
 - judge-specific preferences
- Be willing to confer directly with counsel
 Direct email communication helps maximize efficiency
- CMO provisions help set expectations and ethical guidelines
 Request that attorneys provide notice
- of secured leave directly to the Court (in addition to the TCA's/Clerk's Offices) to allow the Court to promptly address scheduling conflicts

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N.C. R. Civ. P. 16(a)

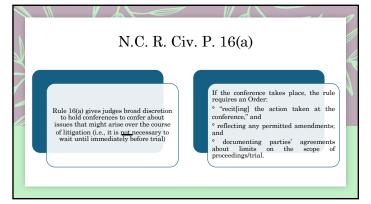
Rule 16. Pre-trial procedure; formulating issues.

- (a) In any action, the court may in its discretion direct the attorneys for the parties to appear before the court for a conference to consider
 (1) The simplification and formulation of the issues;
 (2) The necessity or desirability of amendments to the pleadings;
 (3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;

 - (a) The limitation of the number of expert witnesses;
 (b) The advisability or necessity of a reference of the case, either in whole or in part;
 (c) Matters of which the court is to be asked to take judicial notice;
 (c) Such other matters as may aid in the disposition of the action.

If a conference is held, the judge shall make an order which recites the action taken at the conference, any amendments allowed to the pleadings, and any agreements made by the parties as to any of the matters considered, and which may limit the issues for trial to those not disposed of by admissions or agreements of counsel; and such order when entered controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice. If any issue for trial as stated in the order is not raised by the pleadings in accordance with the provisions of Rule 8, upon motion of any party, the order shall require amendment of the pleadings.

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Rule 7 of the General Rules of Practice

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

There shall be a prestrial 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.

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.

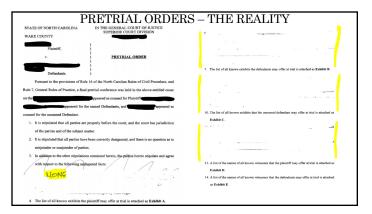
At least twenty-one days prior to trial date, the plaintiff's attorney shall arrange a pre-trial conference with the defendant is such conference belief to the trial date. At the such confere a pre-trial order shall be prepared and signed by the attorneys.

the attorneys. If, after due diligence, plaintiff's attorney cannot arrange a conference with defendant's attorney, he may apply to the prescription of the state of the state

Form 2 – General Rules of Practice					
Form 2. Order on Final Pre-Trial Conference	Note: Here set out all facts not in genuine dispute."				
IN THE GENERAL COURT OF JUSTICE COURT DIVISION	(6) The following is a list of all known exhibits the plaintiff(s) may offer at the trial: (a)				
Plaintiff(s) FILE #:v. FILM #: Defendant(s)	Note: Here list the pre-trial identification numbers and a brief description of each exhibit. This significated and agreed that opposing counsel has been furnished a core of each exhibit identified by the habitatified.				
ORDER ON FINAL PRE-TRIAL CONFERENCE	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				
Personate to the previsions of fulls if of the State Bulls of Crit Phoedure, and Bulk 7. Greural Bulks of Pacelles, and Bulk 7. Greural Bulks of Pacelles, and Bulk 17. Greural Bulks of Pacelles, and Bulk 18. Bu	*DE CONTENET CAUSE, the periors may required upon or state their constitution with support to, the contract of the contract of the contract of their contract of the contract of their contract of the				
stipulate and agree with respect to the following undisputed facts: (a) (b)	semings for five years before due of death, the espectacy under nativary table, and general physical confining numeratority gives to not of death. IN THE EVENT THIS CASE DOES NOT FALL WITHIN ANY OF THE CATEGORIES EVENESTED ASSOCIATION OF THE CATEGORIES EVENESTED BY THIS FORM, COUNSEL SHOULD, NOVERTHELESS, SET FORTH THESE FORTHOOS WITH AS MUCH DEPAIL, AND FORSITELE.				

impractical their rescoduction, and (c) any waiver of the requirement to	by a party be used, and the court may after satisfactory explanation, in his discretion, permit the use of a witness not listed.				
impractical their reproduction, and (c) any waiver of the requirement to furnish opposing counsel with a copy of exhibits.	The trial judge may, for good cause made known to him, relieve a party				
(8) It is stipulated and agreed that each of the exhibits identified by the plaintiff(s) is remains and, if relevant and material, may be received in evidence	of the requirement of disclosing the name of any witness.				
plaintiff(s) is genuine and, if relevant and material, may be received in evidence without further identification or proof, except:	(14) The following is a list of the names and addresses of all known witnesses				
Note: Here set out with particularity the basis of objection to specific exhibits.	the defendant(s) may offer at the trial: (15) Any third-party defendant(s) and cross-claimant(s) should follow the				
It is permissible to generally reserve the right to object at the trial on grounds of relevancy and materiality.	same procedure with respect to witnesses as above outlined for plaintify and defendant(s). Counsel shall immediately notify conosing counsel if the names of				
(9) The following is a list of all known exhibits the defendant(s) may offer at the trial:	additional witnesses are discovered after the preparation of this order.				
(A)	(16) There are no pending motions, and neither party desires further amendments to the pleadings, except:				
(b)	Note: Here state facts regarding pending or impending motion. If any motions				
Note: Here list the pre-trial identification numbers and a brief description of each exhibit.	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.				
(10) It is stipulated and agreed that opposing counsel has been furnished a copy of each exhibit identified by the defendant(s), except:	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				
Note: Here set out stipulations with respect to (a) the exhibits that have been furnished opposing counsel, (b) the arrangements made for the	pre-trial order. The same procedure should be followed with respect to any desired amendments to pleadings.				
inspection of exhibits of the character which prohibits or makes impractical their reproduction, and (c) any swiree of the requirement to furnish opposing counsed with a copy of exhibits.	(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.				
(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:	(18) The plaintiff(s) contends (contend) that the contested issues to be tried by the court (jury) are as follows:				
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	(19) The defendant(s) contends (contend) that the contested issues to be tried by the court (jury) are as follows:				
grounds of relevancy and materiality. (12) Any third-party defendant(s) and cross-claimant(s) should follow the	(20) Any third-party defendant(s) and cross-claimant(s) contends (contend)				
same procedure with respect to exhibits as required of plaintiff(s) and defendant(s).	that the contested issues to be tried by the court (jury) are as follows:				
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.	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.				
(1.3) The following is a list of the names and addresses of all known witnesses the plaintiff(s) may offer at the trial:	(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				
Note: If either plaintiffs or defendant's attorney discorrers additional witnesses after this listing attention is called to obligation to notify opposing counsel. There shall be no requirement that all witnesses listed	to bedays. (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 chance in settlement prospects.				

I	-5	Note: Counsel shall be required to cond	lust a final discussion		
I		settlement possibilities at the time clients shall either be consulted in a settlement figures or be available	of the conference of attorneys, and dvance of the conference concerning for consultation at the time of the uiry at the time of trial as to whether		
I			Counsel for Plaintiff(s)		
I			Counsel for Defendant(s)		
I		Date:	Approved and Ordered Filed.		
I			Judge Presiding		
ı		History Note.			
ı		276 N.C. 735.			
ı		Editor's Note.			
ı		The "Order on Final Pre-Trial Conference" form is			
l		References in the General Rules of Practice to stat been updated in this codification.	tutes, other rule sets, and caselaw have not		
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Key Takeaways - Rule 7 of the General Rules of Practice

Requires a party/attorney-drive pretrial conference (i.e., one with no court involvement) unless the parties stipulate/court approves otherwise

Permits the court to dispense with or limit the scope of both the conference and the corresponding order

Requires parties to confer twenty-one days before trial about arranging the pretrial conference – without material repercussions if (and when) they fail to do so

<u>Requires</u> counsel/self-represented parties to sign the pre-trial order for submission



- Often have various additional pretrial deadlines:
 - Deadline to submit proposed pretrial orders
 - Deadlines to request a "pretrial conference" with the Court
- ullet Specific requirements for exhibit numbering



6.0 PRE-TRIAL ORDERS, PRE-TRIAL CONFERENCES AND EXHIBITS

- 6.1 Pre-Trial Orders Proposed pre-trial orders are due to the Trial Court Administrator's Office no later than 5:00 p.m. on the Friday prior to the session of court in which the case is aleafunder for trial. The per-trial order shall be in substance as shown on the sample from set out in the General Rules of Practice for the Superior and District courts. The pre-trial order shall include a list of the witnesse expected to be called at trial, a list of exhibits, and a list of the issues the parties request be submitted to the jury.
- 6.2 Pre-Trial Conference Any party, or the Court on its own motion, may request a pre-trial conference to address matters relating to final trial preparation or settlement of a case. Any party requesting a conference with the presiding judge pursuant to Rule 7 of the conference of the presiding judge pursuant to Rule 7 of the Court Antihistation of the Court Antihist
- 5.3 Exhibits Exhibits shall be pre-marked with appropriate stickers with sequential numbers. A list of all exhibits in sequential order shall be provided to the courtroom clerk at the beginning of the trial. If publication of hard copies to the jury is intended, counsel are encouraged to provide a sufficient number of copies of exhibits for use by the jury.

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Rule 11. PRE-TRIAL CONFERENCES

The Trial Court Administrator may schedule a pre-trial conference with either the Senior Resident Superior Court Judge or Presiding Judge prior to the week of trial. In addition, an attorney for any party may request of the Trial Court Administrator that a pre-trial conference be scheduled. When practicable, the Pre-trial conference will be conducted by the Judge presiding at the trial.

RULE 7. PRE-TRIAL CONFERENCES

- 7.1 There shall be a pre-trial conference and order in every civil case. The purpose of the conference is to define and narrow the issues for trial and explore carefully the prospects of settlement.
- 7.2 The pre-trial conference shall be held by the parties at least twenty-one (21) days prior to the trial date and a pre-trial order prepared and signed by all attorneys of record shall be filed with the Clerk of Superior Court. A copy of the pre-trial order shall be presented to the Trial Court Administrator no later than Wednesday proceeding the session on which the case is set for trial.
- 7.3 The pre-trial order shall substantially conform to Rule 7, General Rules of Practice for Superior and District Court.
- 7.4 Failure to comply with these provisions may result in the Presiding Judge, in his/her discretion, entering an order to exclude certain evidence, an order of dismissal, or order such other sanctions deemed appropriate and allowed by law.

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The Judge's Role: Setting the Final Pretrial Hearing



Timing Requirements

Variation among counties: weeks before trial, a week before trial, and even the morning of trial.



Discretionary Tips

The presiding judge has discretion on whether there is a pre-trial conference and when it is held. The benefit of holding an earlier conference is that it ensures all pretrial motions are adequately resolved, which will save everyone's time at the start of trial.

The Judge's Role: Suggestions for the Final Pretrial Hearing Require counsel to address exhibits (and marking exhibits) in advance

Encourage compromises about how to handle exhibit binders and publishing exhibits to the

- E.g., The Court should not have to constantly ask whether there is an objection to publication

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The Judge's Role: Pretrial Filing and Hearing Deadlines

- Best Practice: Have a deadline to have motions filed and heard:

 Standard evidentiary motions in limine

 - Expert motions in limine Dispositive motions
- Deadlines for Dispositive Motions

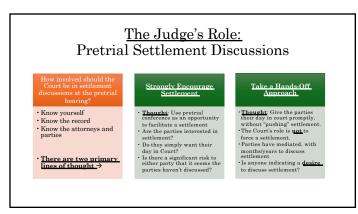
 Many counties have local rules requiring that dispositive motions be filed and heard at least 30 days before trial.
- $\overline{Consider}$ whether you will hear late-filed motions, particularly if they are otherwise likely to resolve the case without the need for a trial
- Deadlines for Motions in Limine.
 Counsel often agree on much (if not all) of the evidence/arguments to be excluded anecdotally, more than 80% is common
 - Set an early deadline to give counsel an opportunity to review the objection. *Otherwise*, they will:
 - not address the issues in advance; or
 exchange objections or know that they (likely) agree on many of the matters to be excluded
 Last-minute motions in limine often result in a heated hearing where only one or two issues are in dispute

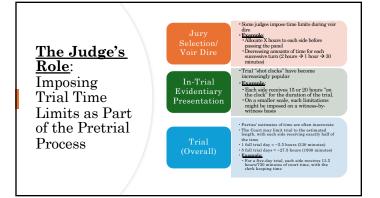
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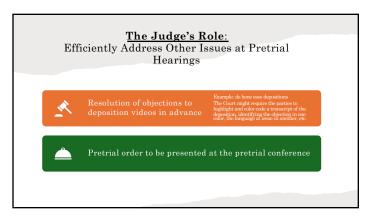
The Judge's Role: Respecting the Jury's Time

- Avoid Last-Minute Efforts to Work in Dispositive Motions or Motions in Limine
 - Counsel and the Court should respect the jury's time
- · How Do We Respect the Jury's Time?
- Don't wait until the morping of trial, with prospective jurors incoming (or having arrived, to have pretrail hearings
 Some counties bring in jurors later in the day/week
 This does not resolve 6-8 hours of pretrial motions
 Consider. Juror pay is \$12 for one day, \$20 for days 2-5, and \$40 daily thereafter
 Each day sitting in a trial resolving a dispute that could/should be resolved outside of court is a full day's pay that each juror is losing
 Be cognizant of jurors' time

 - Be cognizant of jurors' time
 Ensure the <u>attorneys and parties know</u> of the time being devoted by jurors







BETTER IDEAS/PRACTICES? QUESTIONS?