


Legal Tools for Case Management


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NC Commission on the Administration of Law and Justice


- Report issued March 2017
 - <https://www.nccourts.gov/documents/publications/north-carolina-commission-on-the-administration-of-law-and-justice-nccalj-final-report>
- “Highlights of Recommendations”
 - Reduce case delays
- Fundamental Principles of Justice
 - Fairness
 - Access
 - Efficiency



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NC Commission on the Administration of Law and Justice

- High Point University Study
 - Majority of NC residents believes that the court system does not resolve cases in a timely manner
 - Final report, p. 33
- “Case management is not glamorous or dramatic like amending the constitution or passing new laws. But when done right, effective case management saves time, promotes good stewardship of taxpayer dollars, and increases the efficiency of the judicial process for all involved. Case management is essential to the success of any 21st century court system.”
 - Final report, p. 21



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ABA STANDARDS RELATING TO COURT DELAY REDUCTION

Standard 2.50

Case flow Management and Delay Reduction: General Principle

*From the commencement of litigation to its resolution, whether by trial or settlement, any elapsed time other than reasonably required for pleadings, discovery, and court events, is unacceptable and should be eliminated. To enable just and efficient resolution of cases, **the court, not the lawyers or litigants, should control the pace of litigation.** A strong judicial commitment is essential to reducing delay and, once achieved, maintaining a current docket.*

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- What is the primary cause of unnecessary delay in resolving custody cases in your district?
- What can you do as a judge to reduce unnecessary delay in custody cases?
- What characteristics and practices make a judge an effective manager of family litigation?

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Calendaring

- “**Five months after a complaint is filed**, the Clerk shall place that case on a ready calendar, unless time is extended by written order of the ... Chief District Court Judge.”
 - Calendars to be published no later than 4 weeks prior to trial
- If a district has a Trial Court Administrator, “ a case tracking system shall be maintained.”
- Rule 2(c) Rules of Superior and District Court

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Continuances

- “No continuance shall be granted except upon application to the court. A continuance may be granted only for good cause shown and upon such terms and conditions as justice may require. Good cause for granting a continuance shall include those instances when a party to the proceeding, a witness, or counsel of record has an obligation of service to the State of North Carolina, including service as a member of the General Assembly or the Rules Review Commission.”
 - **Rule 40(b), Rules of Civil Procedure**

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Continuances

- “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 other attorney familiar with the case present. Unless an attorney has been excused in advance by the judge before the matter is scheduled and has given proper notice to his opponent, a case will not be continued.”
 - **Rule 2(e), Superior and District Court Rules**

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Continuances

- “Continuances are not favored and the party seeking a continuance has the burden of showing sufficient grounds for it.”
 - *Shankle v. Shankle*, 289 NC 473 (1976)
 - *McIntosh v. McIntosh*, 184 NC App 697 (2007)
- But be careful when request is based on last minute withdrawal of counsel
 - *Ruth v. Ruth*, 158 NC App 293 (2003)
 - *Skelly v. Skelly*, 215 NC App 580 (2011)
 - *Shankle*
 - *Cf. Conroy v. Conroy*, 895 SE2d 418 (NC App, Nov. 2023)(no continuance where litigant fired attorney on eve of trial)

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NC Commission on the Administration of Law and Justice

- “The system must make court appearances meaningful. Public trust and confidence suffers a significant blow every time an individual must appear in court only to learn that his or her case is continued to another appearance.”
 - Final Report, p. 22

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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.”
 - **Rule 8, Superior and District Court Rules**

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Civil Procedure Rule 26(b)(1a)

“The frequency or extent of use of the discovery methods ...shall be limited by the court if it determines that:

- (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;
- (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or
- (iii) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation.

The court may act upon its own initiative after reasonable notice or pursuant to a motion under section (c).”

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Discovery Conference

- Civil Procedure Rule 26(f)
 - Party may request, or “**at any time after commencement of an action the court may direct**”, a discovery conference
 - Court is to “consider the nature and basis of the parties claims,” explore possibilities of settlement, and create a discovery plan
 - Discovery conference can be in person, by telephone or by videoconference

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Rule 26(f)(3) Discovery Plan

- Consent plan/order shall contain:
 - Statement of the issues
 - schedule of discovery
 - Address electronically stored evidence
 - Any limitation on discovery
 - Date discovery shall be completed
 - Any protective order the court deems “appropriate under the circumstances”
 - Other matters, including allocation of discovery expenses

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Civil Procedure Rule 37(g)

- “If a party or the party's attorney fails to participate in good faith in the framing of a discovery plan by agreement as is required by Rule 26(f), the court may, after opportunity for hearing, require such party or the party's attorney to pay to any other party the reasonable expenses, including attorney's fees, caused by the failure.”

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Custody Mediation

- GS 50-13.1 and Uniform Rules
- Court may waive mediation on own motion or on motion by a party for good cause.
- Good cause includes, but is not limited to:
 - Undue hardship
 - Agreement to mediate privately
 - Allegations of abuse or neglect of child
 - Allegations of alcoholism, drug abuse or spouse abuse
 - Allegations of severe psychological, psychiatric or emotional problems
 - Party resides more than 50 miles away **may be** good cause (Rules continue to say "shall"; statute says "may")

GS 50-13.5: Temporary Orders

- (d) Service of Process; Notice; Interlocutory Orders. –
- (1) Service of process in civil actions for the custody of minor children shall be as in other civil actions. ... Motions for custody of a minor child in a pending action may be made on 10 days notice to the other parties and after compliance with G.S. 50A-205.
 - (2) **If the circumstances of the case render it appropriate**, upon gaining jurisdiction of the minor child the court may enter orders for the temporary custody and support of the child, pending the service of process or notice as herein provided.
 - (3) A temporary order for custody which changes the living arrangements of a child or changes custody shall not be entered ex parte and prior to service of process or notice, unless the court finds that the child is exposed to a substantial risk of bodily injury or sexual abuse or that there is a substantial risk that the child may be abducted or removed from the State of North Carolina for the purpose of evading the jurisdiction of North Carolina courts.

Temporary orders

- No limit on number of temporary orders in a case
 - Changed circumstances is not necessary to modify
 - Long term temporary orders are not favored
 - *Simmons v. Simmons*, 160 NC App 671 (2003)
 - *Tillman v. Jenkins*, 889 SE2d 504 (2023)(order treated as a permanent custody order where trial court was unwilling to set permanent hearing)
- Can order evaluations or treatment per Civ Pro Rule 35
 - See *Jones v. Patience*, 121 NC App 434 (1996)
- Can be heard on affidavits alone
 - *Story v. Story*, 57 NC App 509 (1982)
- Are vacated upon dismissal of custody claim
 - See *Collins v. Collins*, 18 NC App 45 (1973)
 - Discussion in bench book

Temporary orders

- Findings of fact made in temporary orders are not binding; issues must be relitigated at permanent hearing
 - *Wells v. Wells*, 132 NC App 401 (1999)
 - *Duncan v. Transeau and Duncan*, 287 NC App 694 (2023)(unpublished opinion)

Pretrial Conferences

- GS 1A-1, Rule 16(a): Judge *may* order in any case
- Rule 7, Rules of Superior and District Court: There *shall* be a pretrial conference in every civil case

Civil Procedure Rule 16

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

Pretrial Order

- Controls all subsequent court action, unless modified to prevent manifest injustice
 - *Inman*, 136 NC App 707 (2000)
 - *White v. Davis*, 163 NC App 21 (2004)

Duty to Manage

- It is the affirmative duty of the trial judge to supervise and control a trial to prevent injustice to either party and in discharging that duty the trial judge has large discretionary powers.
 - *Hines v. Pierce*, 23 NC App 324 (1974)
- “The fair but expeditious dispatch of litigation remains the duty of the trial courts.”
 - *Ward v. Taylor*, 68 NC App 74 (1984)

Authority to Manage


- “In the absence of a controlling statutory procedure or recognized rule of procedure, the conduct of a trial rests in the discretion of the trial court.”
 - *Frazier v. Glasgow*, 24 NC App 641 (1975)
- The appellate courts “will not interfere with the exercise of the trial court’s duty to control the conduct and course of a trial absent a showing of manifest abuse.”
 - *State v. Covington*, 290 NC 313, 335 (1976)

Controlling Evidence

Evidence Rule 611. Mode and order of interrogation and presentation.

(a) Control by court. - The court **shall exercise reasonable control** over the mode and order of interrogating witnesses and presenting evidence so as to:

1. make the interrogation and presentation effective for the ascertainment of the truth,
2. avoid needless consumption of time, and
3. protect witnesses from harassment or undue embarrassment.




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Controlling Evidence

Evidence Rule 403. Exclusion of relevant evidence on grounds of prejudice, confusion, or waste of time.


*“Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or **by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.**”*



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Cases

- *Woody v. Woody*, 127 NC App 626 (1998)
 - Court can limit number of witnesses when it finds witnesses are “incompetent, irrelevant or cumulative”
 - Be careful not to limit rebuttal evidence unfairly
- *Wolgin v. Wolgin*, 217 NC App 278 (2011)
 - Court can impose 2-day time limit on evidence
 - Court can refuse to read 562 email messages
- *Conroy v. Conroy*, 895 S.E.2d 418 (NC App, Nov. 2023)
 - Upheld 2.5-hour limitation on each party in modification trial



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Civil Procedure Rule 43

- Motions may be heard on affidavits or oral testimony

Proceedings by audio and video transmission

- GS 7A-49.6:
 - (a) Except as otherwise provided in this section, judicial officials may conduct proceedings of all types using an audio and video transmission in which the parties, the presiding official, and any other participants can see and hear each other. Judicial officials conducting proceedings by audio and video transmission under this section must safeguard the constitutional rights of those persons involved in the proceeding and preserve the integrity of the judicial process.
 - (d) A party may object to conducting a civil proceeding by audio and video transmission. If the presiding official finds that the party has demonstrated good cause for the objection, the proceeding must not be held by audio and video transmission. If there is no objection, or if there is an objection and good cause is not shown, the presiding official may conduct the proceeding by audio and video transmission.

Alternative Methods of Testifying

50A-111. Taking testimony in another state.

- (a) ...[A] party to a child-custody proceeding may offer testimony of witnesses who are located in another state, including testimony of the parties and the child, by deposition or other means allowable in this State for testimony taken in another state.
- (b) A court of this State may permit an individual residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means before a designated court or at another location in that state.
- (c) Documentary evidence transmitted from another state to a court of this State by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission.

Entry of Judgment

- Civil Procedure Rule 58:
"[A] judgment is entered when it is reduced to writing, signed by the judge, and filed with the clerk of court."
- No more *nunc pro tunc* in civil cases
 - See <https://civil.sog.unc.edu/no-more-nunc-pro-tunc-in-civil-cases/>
 - *Dabbondanza v. Hansley*, 791 SE2d 116 (2016)

NC Commission on the Administration of Law and Justice

- "The system must create a local culture that values effective case management. Research demonstrates that what most distinguishes truly effective court management is not systems, technology or resources, but local legal culture. ... When actors in the local culture expect delays, delays happen."
 - Final report, p. 22

Time Limits in Family Law Cases

Given the ever-increasing number of family law cases in the district courts, it is not surprising that questions frequently arise concerning the court's authority to place limitations on the amount of court time allowed to individual cases. My former colleague Michael Crowell wrote a bulletin titled [Time Limits](#) several years ago thoroughly discussing the law addressing this question. Below are excerpts from his article. The entire bulletin can be found at <https://www.sog.unc.edu/sites/www.sog.unc.edu/files/reports/aojb0902.pdf>.

By Michael Crowell

Appellate cases on restricting trial evidence

Few cases involving a trial judge's restrictions on presentation of evidence have reached the appellate courts in North Carolina, and their guidance is mixed. On the one hand, the panel in *Ange v. Ange*, 54 N.C. App. 686 (1981), easily affirmed the trial court's decision to limit the number of witnesses to testify about the plaintiff's mental ability to make a deed. Five witnesses testified, but another thirteen were excluded because they were going to say essentially the same thing. The decision in *Ange* seems simple enough because of the repetitive and cumulative nature of the testimony. The court stated, "It is clear that a trial judge, in his discretion, may limit the number of witnesses that a party may call so as to prevent needless waste of time." *Id.* at 687. As discussed above, the current North Carolina Rules of Evidence support that authority.

On the other hand, in *Murrow v. Murrow*, 87 N.C. App. 174 (1987), the court of appeals reversed a trial judge who allowed evidence to be presented only by affidavit in an equitable distribution case. The appellate court cited Rule 43(a) of the Rules of Civil Procedure which states, "In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by these rules." In the court's view that meant the trial judge could not exclude oral testimony altogether, but the court did not address whether the judge could limit the testimony in other ways.

One appellate decision, *Woody v. Woody*, 127 N.C. App. 626 (1997), speaks more directly to a party's right to present evidence. As was his standard procedure in child custody cases, the trial judge had informed the parties that each side would be limited to four witnesses. When three of the father's witnesses unexpectedly emphasized the child's lack of cleanliness while in the mother's care, the mother asked to call an additional rebuttal witness. The trial judge refused because she already had called her four witnesses to present her case in chief. The court of appeals reversed the decision, holding that the trial judge had abused his discretion. Agreeing with the general proposition that a trial judge may limit witnesses who will be offering cumulative testimony, the court of appeals found that the judge went too far in sticking to the four-witness limit when the cleanliness issue became more significant than it originally appeared. The best interest of the child is the "polar star" in a custody dispute, and the trial judge should not have shut off important

evidence on that issue.

The important point of *Woody*, although not explained at any length by the court, is that a party has a right to make its own case. Although a trial judge may bar repetitive testimony and otherwise control the presentation of evidence to keep the case moving, efficiency cannot override the need for a full and fair presentation of the case.

The extent of a trial court's discretion to control court time was emphasized in *Roberson v. Roberson*, 40 N.C. App. 193 (1979), when the defendant in a civil contempt proceeding objected to being denied the opportunity to make a closing argument to the court. After finding that "the power of the trial judge to maintain absolute control of his courtroom is essential to the maintenance of proper decorum and the effective administration of justice," the court of appeals found it wholly within the discretion of the trial judge whether to allow argument in a nonjury trial (a statute provided a right to counsel to argue to the jury).

In *Keene v. Wake County Hosp. Systems*, 74 N.C. App. 523 (1985), the court found no abuse of discretion in the trial judge limiting lawyers' opening statements to five minutes each in a medical malpractice case in light of the provision in Rule 9 of the General Rules of Practice, which states, "Opening statements shall be subject to such time and scope limitations as may be imposed by the court." Given the inherent authority of the trial judge to control courtroom proceedings, as demonstrated by *Roberson*, the five-minute time limit certainly would have been upheld even if there were no Rule 9.

Guidance on Time Limits in State Court

Judges may set time limits on trials and hearings, but they must be careful in how they do so. The authority comes from the inherent authority of trial judges in North Carolina to control the flow of a case, the state constitutional provision promising justice "without delay," the state rules of evidence and practice stressing the importance of efficiency, the case management responsibility given to senior resident superior court judges and chief district judges, and the deference afforded local rules by the appellate courts.

Based on the general state law on management of cases, and the federal case law on time limits, the following advice is offered.

1. A trial judge has the authority to control the presentation of evidence to crisply move a case along, whether it be by forbidding duplicative evidence, limiting lawyers' arguments, or setting reasonable time limits.
2. When imposing any restriction on the presentation of evidence, whether it be limiting witnesses or setting time limits, a trial judge must balance the need for efficiency and preservation of limited court resources against the need for a full presentation of the case.

3. When setting time limits for a specific case, a judge should first learn enough about the case to be sure that the limits are appropriate and then be flexible when implementing them.
4. Local courts have broad discretion to set rules, including time limits, on case management and can expect considerable deference from the appellate courts.
5. Time limits set by local rules for particular categories of domestic cases seem to be a reasonable response to the large volume of cases in need of processing and quick resolution.
6. Local time-limit rules should be applied flexibly to accommodate the circumstances of individual cases that may make the time allotment inappropriate.
7. The overriding concern in each case is for a judge to hear all the evidence necessary to make a fully informed decision, and time limits should never be applied so as to exclude critical information.

§ 7A-49.6. Proceedings conducted by audio and video transmission.

(a) Except as otherwise provided in this section, judicial officials may conduct proceedings of all types using an audio and video transmission in which the parties, the presiding official, and any other participants can see and hear each other. Judicial officials conducting proceedings by audio and video transmission under this section must safeguard the constitutional rights of those persons involved in the proceeding and preserve the integrity of the judicial process.

(b) Each party to a proceeding involving audio and video transmission must be able to communicate fully and confidentially with his or her attorney if the party is represented by an attorney.

(c) In a civil proceeding involving a jury, the court may allow a witness to testify by audio and video transmission only upon finding in the record that good cause exists for doing so under the circumstances.

(d) A party may object to conducting a civil proceeding by audio and video transmission. If the presiding official finds that the party has demonstrated good cause for the objection, the proceeding must not be held by audio and video transmission. If there is no objection, or if there is an objection and good cause is not shown, the presiding official may conduct the proceeding by audio and video transmission.

(e) Except as otherwise permitted by law, when the right to confront witnesses or be present is implicated in criminal or juvenile delinquency proceedings, the court may not proceed by audio and video transmission unless the court has obtained a knowing, intelligent, and voluntary waiver of the defendant's or juvenile respondent's rights.

(f) Proceedings conducted by audio and video transmission shall be held in a manner that complies with any applicable federal and State laws governing the confidentiality and security of confidential information.

(g) If the proceeding is one that is open to the public, then the presiding official must facilitate access to the proceeding by the public and the media as nearly as practicable to the access that would be available were the proceeding conducted in person.

(h) If the proceeding is required by law to be recorded, then the audio and video transmission must be recorded in accordance with G.S. 7A-95, G.S. 7A-198, and other laws, as applicable.

(i) This section is not intended to limit the court's authority to receive remote testimony pursuant to statutes that otherwise permit it, including G.S. 15A-1225.1, 15A-1225.2, 15A-1225.3, 20-139.1, 8C-1, Rule 616, 50A-111, and 52C-3-315(f).

(j) All proceedings under this section shall be conducted using videoconferencing applications approved by the Administrative Office of the Courts.

(k) As used herein, the term "judicial official" has the same meaning as in G.S. 15A-101(5). (2021-47, s. 9(a).)

