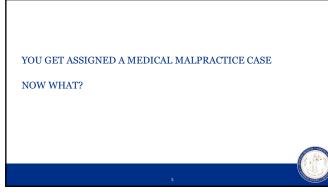
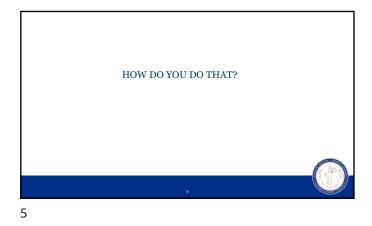


January 28, 2022

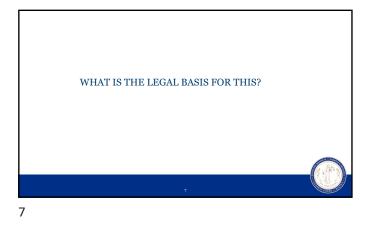
CREDITS	
JUDGES:	Don Bridges, Joe Craig, Richard Gottlieb, Michael O'Foghludha and Mary Ann Tally
ATTORNEYS:	John Beyer, Tom Comerford, Trish Derr, William Goldfarb, Chip Holmes, Sara Lincoln, Charles Monnett, Richard Rivera



GET A CASE MANAGEMENT ORDER ("CMO") OR A DISCOVERY SCHEDULING ORDER ("DSO") ENTERED.

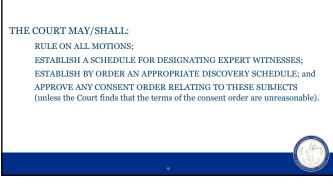


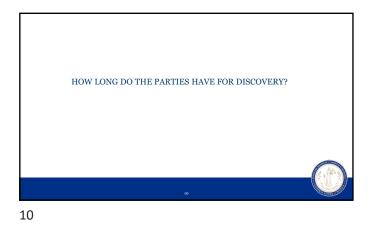


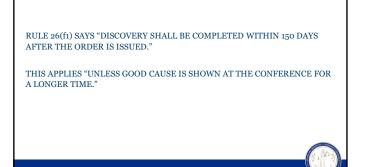


MEDICAL MALPRACTICE DISCOVERY CONFERENCE-RULE 26(f1)

"UPON THE CASE COMING AT ISSUE OR THE FILING OF A RESPONSIVE PLEADING OR MOTION REQUIRING DETERMINATION BY THE COURT, THE JUDGE SHALL, WITHIN 30 DAYS, DIRECT THE ATTORNEYS FOR THE PARTIES TO APPEAR FOR A DISCOVERY CONFERENCE."







COMMON PROVISIONS IN CMOs AND DSOs SCHEDULE FOR DISCLOSURE OF EXPERT WITNESSES FORM OF EXPERT DISCLOSURE—INTERROGATORY ANSWERS OR REPORTS DISCOVERY DEADLINE DISPOSITIVE MOTIONS DEADLINE SELECTION OF MEDIATOR AND DATE FOR MEDIATION TRIAL DATE

OTHER PROVISIONS

designations)

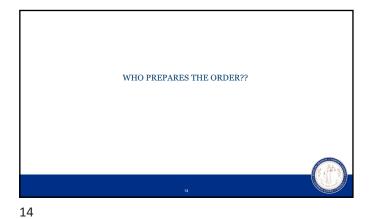
PROTECTIVE ORDERS

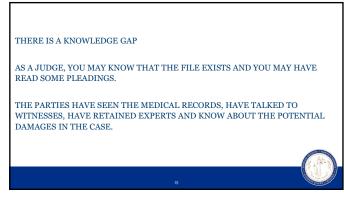
LIMITS ON LENGTH OF DEPOSITIONS EXPERT WITNESS FEES FOR BEING DEPOSED

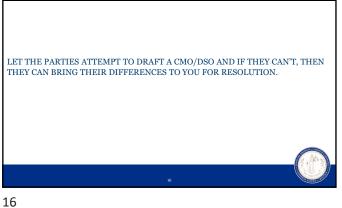
CLAWBACKS FOR PRIVILEGED DOCUMENTS

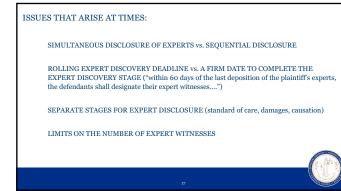
TRIAL PREPARATION SCHEDULE (witness lists, exhibits, deposition

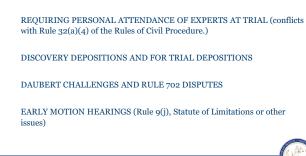
BRIEFING SCHEDULES AND LIMITS ON LENGTH OF BRIEFS



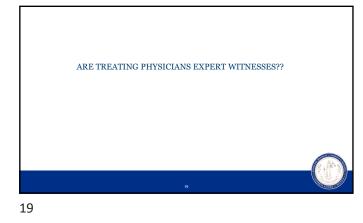












MAYBE YES OR MAYBE NO.

IT SHOULD BE NOTED THAT THE SUBSECTION (Rule 26(b)(4)) DOES NOT ADDRESS ITSELF TO THE EXPERT WHOSE INFORMATION WAS NOT ACQUIRED IN PREPARATION FOR TRIAL BUT RATHER BECAUSE HE WAS AN ACTOR OR VIEWER WITH RESPECT TO TRANSACTIONS OR OCCURRENCES THAT ARE PART OF THE SUBJECT MATTER OF THE LAWSUIT. SUCH AN EXPERT SHOULD BE TREATED AS AN ORDINARY WITNESS.

COMMENT TO RULE 26(b)(4).

BIFURCATION OF THE TRIAL

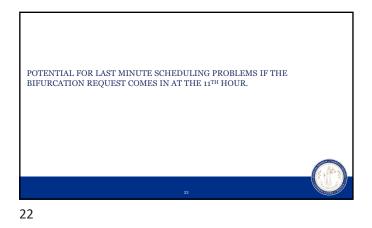
IT IS POSSIBLE FOR A TREATING PHYSICIAN TO BE A FACT WITNESS AND OFFER OPINIONS AS AN EXPERT

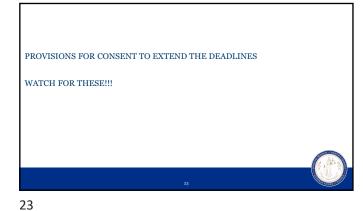
20

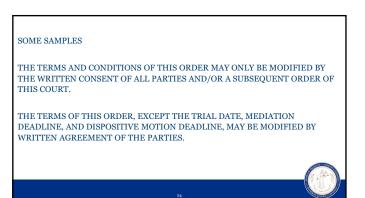
RULE 42(b)(3) PROVIDES THAT: UPON MOTION OF ANY PARTY IN AN ACTION IN TORT WHEREIN THE PLAINTIFF SEEKS DAMAGES EXCEEDING ONE HUNDRED FIFTY THOUSAND (\$150,000), THE COURT SHALL ORDER SEPARATE TRIALS FOR THE ISSUE OF LIABILITY AND THE ISSUE OF DAMAGES, UNLESS THE COURT FOR GOOD CAUSE SHOWN ORDERS A SINGLE TRIAL. EVIDENCE RELATING SOLELY TO COMPENSATORY DAMAGES SHALL NOT

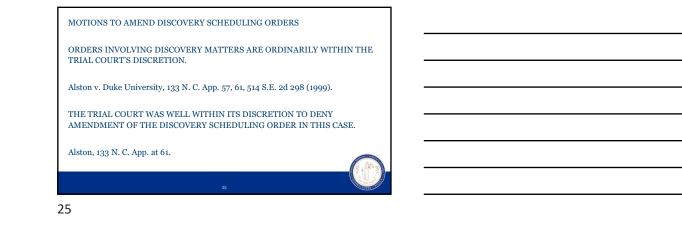
EVIDENCE RELATING SOLELT TO COMPENSATORY DAMAGES SHALL NOT BE ADMISSIBLE UNTIL THE TRIER OF FACT HAS DETERMINED THAT THE DEFENDANT IS LIABLE.

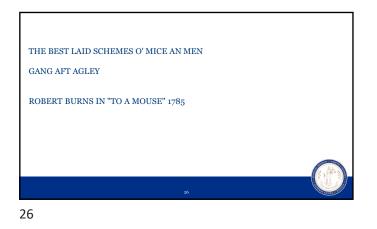
THE SAME TRIER OF FACT THAT TRIES THE ISSUES RELATING TO LIABILITY SHALL TRY THE ISSUES RELATING TO DAMAGES.

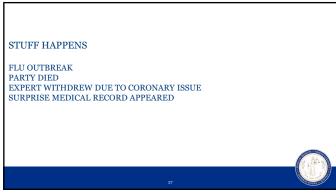












TECHNICALITIES AND FORM ARE TO BE DISREGARDED IN FAVOR OF THE MERITS OF THE CASE. ONE OF THE PURPOSES OF THE RULES WAS TO TAKE THE SPORTING ELEMENT OUT OF LITIGATION.

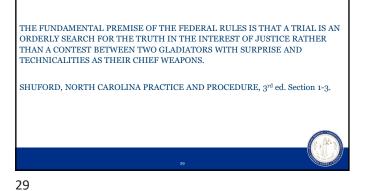
LEMONS v. OLD HICKORY COUNCIL, 322 N. C. 271, 367 S. E. 2d 655 (1988).

THE RULES ARE DESIGNED TO ELIMINATE LEGAL SPARRING AND FENCING AND SURPRISE MOVES OF LITIGANTS. THE AIM IS TO ACHIEVE SIMPLICITY, SPEED AND FINANCIAL ECONOMY IN LITIGATION.

LEMONS, 322 N. C. at 275.



28



"A SUIT AT LAW IS NOT A CHILDREN'S GAME, BUT A SERIOUS EFFORT ON THE PART OF ADULT HUMAN BEINGS TO ADMINISTER JUSTICE AND THE PURPOSE OF PROCESS IS TO BRING PARTIES INTO COURT. IF IT NAMES THEM IN SUCH TERMS THAT EVERY INTELLIGENT PERSON UNDERSTANDS WHO IS MEANT...IT HAS FULFILLED ITS PURPOSE: AND COURTS SHOULD NOT PUT THEMSELVES IN THE POSITION OF FAILING TO RECOGNIZE WHAT IS APPARENT TO EVERYONE ELSE."

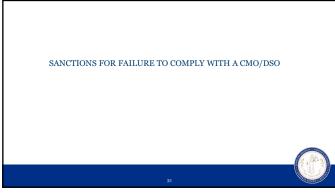
WILES v. WELPARNEL CONSTRUCTION CO., 295 N. C. 81, 243 S. E. 2d 756 (1978)



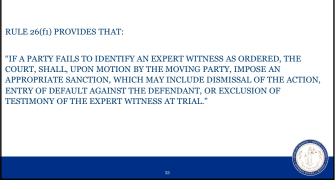


MANGUM v. SURLES, 281 N. C. 91, 99, 187 S. E. 2d 697 (1972).









IN CLARK v. PERRY, 114 N. C. App. 297, 442 S. E. 2d 57 (1994), THE TRIAL COURT JUDGE EXCLUDED AN EXPERT'S OPINION TESTIMONY ON THE STANDARD OF CARE BECAUSE THE WITNESS WAS NOT DESIGNATED AS A STANDARD OF CARE EXPERT BY THE PLAINTIFF.

"WE FIND NO ABUSE OF DISCRETION IN THE COURT'S CHOICE OF SANCTION." 114 N. C. App. at 310.



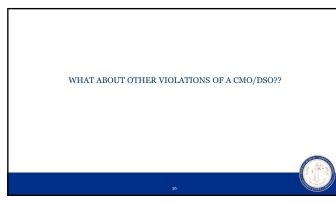
34

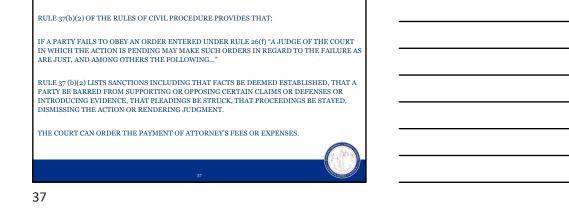
A JUDGE MAY ALLOW ENLARGEMENT OF TIME AFTER THE EXPIRATION OF A COURT-ORDERED DEADLINE ONLY UPON A SHOWING OF EXCUSABLE NEGLECT.

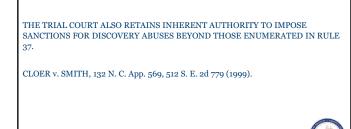
SUMMEY v. BARKER, 357 N. C. 492, 496, 586 S. E. 2d 247 (2003).

(SUMMARY JUDGMENT GRANTED DUE TO PLAINTIFF'S LACK OF EXPERT TESTIMONY.)











COURTS OF JUSTICE ARE UNIVERSALLY ACKNOWLEDGED TO BE VESTED, BY THEIR VERY CREATION, WITH POWER TO IMPOSE SILENCE, RESPECT AND DECORUM IN THEIR PRESENCE, AND SUBMISSION TO THEIR LAWFUL MANDATES.

"THE POWER TO PUNISH FOR CONTEMPT IS INHERENT IN ALL COURTS; ITS EXISTENCE IS ESSENTIAL TO THE PRESERVATION OF ORDER IN JUDICIAL PROCEEDINGS, AND TO THE ENFORCEMENT OF THE JUDGMENTS, ORDERS AND WRITS OF THE COURT, AND CONSEQUENTLY TO THE DUE ADMINSTRATION OF JUSTICE."

EX PARTE McCOWN, 139 N. C. 95, 51 S. E. 957 (1905).



"WITHOUT IT (THE POWER TO PUNISH FOR CONTEMPT) THE MAGISTRATE WOULD BE IN A PITIABLE CONDITION, COMPELLED TO HOLD COURT, TO INVESTIGATE CONTROVERSIES, EXAMINE WITNESSES AND LISTEN TO ARGUMENTS AND YET POWERLESS TO SECURE ORDER IN HIS PROCEEDINGS, TO ENFORCE OBEDIENCE TO HIS DECISIONS, TO REPRESS TURBULENCE OR EVEN TO PROTECT HIMSELF FROM INSULT."

McCOWN, 139 N. C. at 103.



