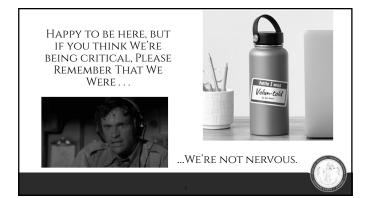


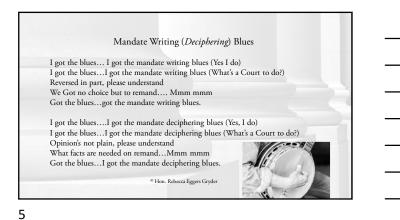
WE ARE
Rebecca Eggers-Gryder
District Court Judge
D



COVER THREE AREAS

- Mandate Rule
- What does it all mean?
- Practical consideration for what we're told to do





Mandate Rule

• At its most basic, the mandate is the device by which an appellate court closes an appeal and transfers jurisdiction to another court.

Rule 32. Mandates of the Courts

(a) In General. Unless a court of the appellate division directs that a formal mandate shall issue, the mandate of the court consists of certified copies of its judgment and of its opinion and any direction of its clerk as to costs. The mandate is issued by its transmittal from the clerk of the issuing court to the clerk or comparable officer of the tribunal from which appeal was taken to the issuing court.



Mandate Rule

- Technically, an appellate decision is directed to the lower court from which the appeal arose so that the court can effectuate the appellate judgment. The mandate, therefore, transfers jurisdiction to the lower court to take that action.
- The mandate's substantive aspects are most noticeable when the appellate court orders further proceedings on *remand*.
- ٠
- The mandate informs the lower court of what it must do to implement the appellate decision on remand and limits further proceedings to the scope of the mandate. As its name suggests, it is "mandatory" that the district court follow the appellate court's •
- The trial court cannot take actions that are contrary to the mandate or revisit the appellate court's conclusions.
- The issues decided by the appellate court and within the scope of the judgment are deemed incorporated within the mandate and precluded from further adjudications unless specifically remanded to the district court to address.

7

Mandate Rule:

IN THE COURT OF APPEALS OF NORTH CAROLINA No. COA15-443

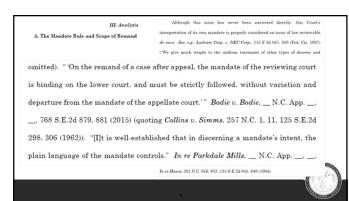
Filed: 5 April 2016

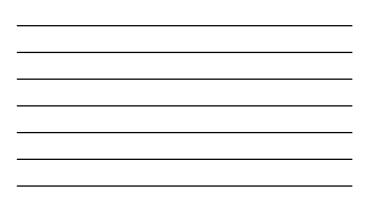
Buncombe County, Nos. 04 CRS 53624; 04 CRS 7096 STATE OF NORTH CAROLINA

v.

RAYMOND WATKINS





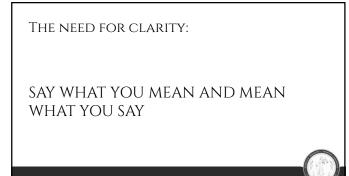


Mandate Rule

- Thus, the issues decided by the appellate court and within the scope of the judgment are deemed incorporated within the mandate and precluded from further adjudication unless specifically remanded to the district court to address.
- Appellate courts can cause confusion when they use general language in ordering remands, remanding for "further proceedings consistent with" or "not inconsistent with" its decision.
- Critical issues, confusion, and additional litigation can arise about the scope of those proceedings.









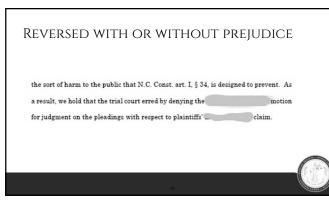
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If reversed and remanded, please specify whether the remand is to dismiss the petition with prejudice (as in Abuse/ Neglect/ Dependency cases)

If vacated, please specify whether another petition may be filed again.





REVERSED WITH OR WITHOUT PREJUDICE III. Conclusion Thus, for the reasons set forth above, we conclude that the trial court did not

err by granting judgment on the pleadings in favor of the with respect to plaintiffs' Chapter 75 restraint of trade and monopolization claims. On the other hand, however, we further conclude that the trial court did err by denying the motion for judgment on the pleadings with respect to plaintiffs' claim pursuant to N.C. Const. art. I, § 34. As a result, the challenged order is affirmed, in part, and reversed, in part.

AFFIRMED, IN PART; REVERSED, IN PART.



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Reversed with or without prejudice

- On remand, parties disagreed on the dismissal.
- Was the trial court:
 - Required to enter a dismissal as to all claims?
 OR
 - $\circ~$ Could the trial court entertain a motion to amend?

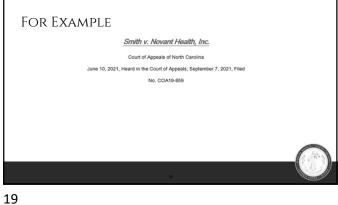


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NEW EVIDENCE VS. EVIDENCE ALREADY IN THE RECORD

Please specify and give direction if the lower court is to receive additional evidence or if the lower court is to make the additional findings from the evidence already in the record.





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testimony. **[*P15]** If the trial court determines that Moore is not instructions qualified under <u>Rule 702</u> to testify to the standard of which Smi administratic care for any of Smith's purported administrative claims, court deter the court's existing judgment on these claims can stand. care or clir If the court determines that Moore is qualified to testimony testify **[**9]** with respect to any of these claims, the concerns o testimony fourt should set aside its judgment with respect to those then asses claims under Rule 54(b) and conduct further to offer exi proceedings. claims.

20

If the issue in the Order was an omission or lack of findings, please specify if the hearing is for an amended order to include those findings or if a whole new trial is necessary. It would be helpful if it is clear in the mandate that a new hearing is required.



Cite the legal principles that the lower court is to make the findings.

When an Order is vacated, please specify if the entire Order is void or if only part is void, please specify the specific portions that need to be addressed by the lower court.



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A/N/D CASES

Making a clear mandate that the trial court must address the issue on remand before proceeding with any other hearing in the action. An example is an initial disposition is remanded and the trial court conducts a Permanency Planning Hearing (PPH) because the case has moved to that stage while the appeal was pending.

Specify which issues and evidence are to be received and whether the entire Order has to be re-entered on remand or if only certain issues.



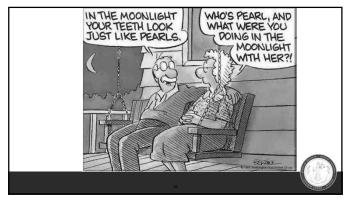
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It would be helpful to the trial court if the appellate court would give specific instructions in the last paragraph(s) of each opinion.

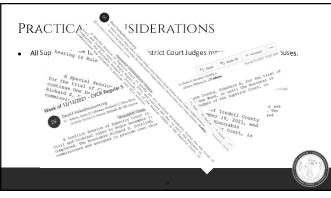


Is it permissible to have the opinion from the appellate mailed or emailed to the trial court judge when the opinions are issued?











PRACTICAL CONSIDERATIONS

- All Superior Court Judges and many District Court Judges rotate between courthouses.
 - $\circ~$ Can be difficult to keep up with files, notes, and transcripts.
- May be years between trial court's order and appellate court's ruling.
 - \circ $\,$ Require special commission to return to address
- Many trial court judges would like the opportunity to fix their mistakes, but practical considerations can make it a difficult and slow process.

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