

Out-of-Term, Out-of-Session, Out-of-County

January 2018



UNC
SCHOOL OF GOVERNMENT

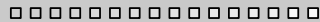
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“Term” and “Session”

“Term” —
6-month assignment
per master calendar

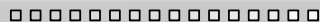
Year	Month	Day	Session
2017	Jan	1	1
2017	Jan	8	1
2017	Jan	15	1
2017	Jan	22	1
2017	Jan	29	1
2017	Feb	5	1
2017	Feb	12	1
2017	Feb	19	1
2017	Feb	26	1
2017	Mar	5	1
2017	Mar	12	1
2017	Mar	19	1
2017	Mar	26	1
2017	Apr	2	1
2017	Apr	9	1
2017	Apr	16	1
2017	Apr	23	1
2017	Apr	30	1
2017	May	7	1
2017	May	14	1
2017	May	21	1
2017	May	28	1
2017	Jun	4	1
2017	Jun	11	1
2017	Jun	18	1
2017	Jun	25	1
2017	Jul	2	1
2017	Jul	9	1
2017	Jul	16	1
2017	Jul	23	1
2017	Jul	30	1
2017	Aug	6	1
2017	Aug	13	1
2017	Aug	20	1
2017	Aug	27	1
2017	Sep	3	1
2017	Sep	10	1
2017	Sep	17	1
2017	Sep	24	1
2017	Sep	30	1
2017	Oct	7	1
2017	Oct	14	1
2017	Oct	21	1
2017	Oct	28	1
2017	Nov	4	1
2017	Nov	11	1
2017	Nov	18	1
2017	Nov	25	1
2017	Dec	2	1
2017	Dec	9	1
2017	Dec	16	1
2017	Dec	23	1
2017	Dec	30	1
2017	Jan	6	2
2017	Jan	13	2
2017	Jan	20	2
2017	Jan	27	2
2017	Feb	3	2
2017	Feb	10	2
2017	Feb	17	2
2017	Feb	24	2
2017	Mar	2	2
2017	Mar	9	2
2017	Mar	16	2
2017	Mar	23	2
2017	Mar	30	2
2017	Apr	6	2
2017	Apr	13	2
2017	Apr	20	2
2017	Apr	27	2
2017	May	4	2
2017	May	11	2
2017	May	18	2
2017	May	25	2
2017	Jun	1	2
2017	Jun	8	2
2017	Jun	15	2
2017	Jun	22	2
2017	Jun	29	2
2017	Jul	6	2
2017	Jul	13	2
2017	Jul	20	2
2017	Jul	27	2
2017	Aug	3	2
2017	Aug	10	2
2017	Aug	17	2
2017	Aug	24	2
2017	Aug	31	2
2017	Sep	7	2
2017	Sep	14	2
2017	Sep	21	2
2017	Sep	28	2
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2017	Oct	12	2
2017	Oct	19	2
2017	Oct	26	2
2017	Nov	2	2
2017	Nov	9	2
2017	Nov	16	2
2017	Nov	23	2
2017	Nov	30	2
2017	Dec	7	2
2017	Dec	14	2
2017	Dec	21	2
2017	Dec	28	2
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2017	Jan	11	3
2017	Jan	18	3
2017	Jan	25	3
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2017	Jul	9	3
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2017	Sep	10	3
2017	Sep	17	3
2017	Sep	24	3
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2017	Oct	7	3
2017	Oct	14	3
2017	Oct	21	3
2017	Oct	28	3
2017	Nov	4	3
2017	Nov	11	3
2017	Nov	18	3
2017	Nov	25	3
2017	Dec	2	3
2017	Dec	9	3
2017	Dec	16	3
2017	Dec	23	3
2017	Dec	30	3

“Session” —
1 week assignment
within the term (typical)



★ When can a judge *enter an order* out-of-term, -session, or -county (after hearing a matter in session)?

• When can a judge *hear* a matter from a county to which the judge is not resident or assigned?





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In-chambers jurisdiction

Non-jury matters arising in judge's *home district* may be heard and ruled on by that judge out of session.

- Resident judge of the district.
- Special who resides in district.

Where heard:

Civil: Anywhere in district (unless by consent).

Criminal: In county in which case arose (unless by consent).

(Order can be entered while the judge is in another county.)



★ When can a judge *enter an order* out-of-term, -session, or -county (after hearing a matter in session)?

- When can a judge *hear* a matter from a county to which the judge is not resident or assigned?



Out of term

Entry of order

Criminal:

No entry of order after the term unless by consent of parties.

(or per in-chambers jurisdiction)



Entry of order

Out of **term**

Civil:

May enter judgment after the term if parties don't object (expressly, on the record) before end of session.

R. Civ. Pro. 58

(or per in-chambers jurisdiction)

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Entry of order

Out of **session** (or out of county)

Criminal:

No entry out of session or county.

Unless:

- *By consent*; or
- Decision was announced in open court during session; or
- Per in-chambers jurisdiction (non-jury).

Exceptions to no-entry rule:

- Sentencing. ("Reasonable time")
- Other statutes: Habeus corpus, MARS

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Entry of order

Out of **session** (or out of county)

Civil:

Entry of order out of session or county typically **allowed**.

Rule 6. Time.

(c) Unaffected by expiration of session. – The period of time provided for the doing of any act or the taking of any proceeding is not affected or limited by the continued existence or expiration of a session of court. The continued existence or expiration of a session of court in no way affects the power of a court to do any act or take any proceeding, but no issue of fact shall be submitted to a jury out of session.

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Entry of order

Out of session (or out of county)

Civil:

Entry of order out of session or county typically **allowed**.

Rule 58. Entry of judgment.
longer than 90 days from the date the judgment is entered. Subject to the provisions of Rule 7(b)(4), consent for the signing and entry of a judgment out of term, session, county, and district shall be deemed to have been given unless an express objection to such action was made on the record prior to the end of the term or session at which the matter was heard.

UNC [Progress Bar]

EXERCISE

UNC [Progress Bar]

- When can a judge *enter an order* out-of-term, -session, or -county (after hearing a matter)?
- ★ When can a judge *hear* a matter from a county to which the judge is not resident or assigned?

UNC [Progress Bar]

Hearings out of term, session, or county

Criminal and civil:

Generally no hearings if out of term, session, or county.

...except per in-chambers jurisdiction.

Where heard:

Civil: Anywhere in district (unless by consent).

Criminal: In county in which case arose (unless by consent).



Hearings out of term, session, or county

Vance Const. Co. v. Duane White Land Corp., 127 N.C. App. 493 (1997).

- Trial, award, appeal in a Dist. 9/Warren County case
- Over a year later, Rule 60(b) motion.
- Original trial judge now assigned to 7BC.
- Original trial judge heard/ruled on motion.
- Ct. App.: Judge had no jurisdiction to rule, *even though parties consented*. Remanded to Warren County.

Solution: Get an assignment/commission.



EXERCISE