

MEDICAL MALPRACTICE PRE-TRIAL MANAGEMENT

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SENIOR RESIDENT SUPERIOR COURT JUDGE

PITT COUNTY (3A)

HOW DO YOU GET ASSIGNED TO A MED
MAL CASE?

§ 7A-47.3. Rotation and assignment; sessions

(e) The senior resident superior court judge, in consultation with the parties to the case, shall designate a specific resident judge or a specific judge assigned to hold court in the district to preside over all proceedings that occur 150 days after the case was filed in cases subject to G.S. 90-21.11(2).

YOU GET ASSIGNED TO A MED
MAL CASE

NOW WHAT?

INITIAL CONTACT WITH LAWYERS

- OPPORTUNITY TO ACQUAINT YOURSELF WITH THE LAWYERS
 - OUT OF STATE COUNSEL – PRO HOC VICE
 - SPECIAL CIRCUMSTANCES
- OPPORTUNITY TO ACQUAINT YOURSELF WITH THE CASE
 - TYPES OF DAMAGES
 - LENGTH OF TRIAL
- OPPORTUNITY TO SET EXPECTATIONS

MEDICAL MALPRACTICE DISCOVERY SCHEDULING ORDER (DSO)

MEDICAL MALPRACTICE DISCOVERY CONFERENCE RULE 26(F1)

“upon the case coming at issue or the filing of a responsive pleading or motion requiring a determination by the court, the judge shall, within 30 days, direct the attorneys for the parties to appear for a discovery conference.”

THE COURT MAY/SHALL:

- RULE ON ALL MOTIONS
- ESTABLISH A SCHEDULE FOR DESIGNATING EXPERT WITNESSES
- ESTABLISH BY ORDER AN APPROPRIATE DISCOVERY SCHEDULE
- APPROVE ANY CONSENT ORDER RELATING TO THESE SUBJECTS
(Unless the Court finds that the terms of the consent order are unreasonable)

HOW LONG DO THE PARTIES HAVE FOR DISCOVERY?

RULE 26(f1)

(3) Establish by order an appropriate discovery schedule designated so that, unless good cause is shown at the conference for a longer time, and subject to further orders of the court, discovery shall be completed within 150 days after the order is issued

COMMON PROVISIONS IN DSOs

- SCHEDULE FOR DISCLOSURE OF EXPERT WITNESSES
- FORM OF EXPERT DISCLOSURE
- DISCOVERY DEADLINE
- DISPOSITIVE MOTIONS DEADLINE
- SELECTION OF MEDIATOR AND DATE FOR MEDIATION
- TRIAL DATE

OTHER PROVISIONS IN DSOs

- LENGTH OF DEPOSITIONS
- EXPERT WITNESS FEES FOR BEING DEPOSED
- PROTECTIVE ORDERS
- TRIAL PREPERATION SCHEDULE (Witness lists, exhibits, deposition designations)
- BRIEFING SCHEDULES AND LIMITS ON LENGTH OF BRIEFS

WHO PREPARES THE ORDER?

THERE IS A KNOWLEDGE GAP

- AS A JUDGE YOU MAY HAVE READ THE FILE AND SOME PLEADINGS
- THE PARTIES HAVE SEEN ALL THE MEDICAL RECORDS, HAVE TALKED WITH WITNESSES, HAVE RETAINED EXPERTS AND KNOW ABOUT THE POTENTIAL DAMAGES IN THE CASE

LET THE PARTIES ATTEMPT TO DRAFT A DSO AND IF
THEY CAN'T, THEN BRING THEIR DIFFERENCES TO YOU
FOR RESOLUTION

BE CAREFUL

MAKE SURE THE DSO MEETS YOUR EXPECTATIONS

- EXPERT DISCLOSURES
- LIMITS ON THE NUMBER OF EXPERTS
- TIMING OF EXPERT DISCLOSURES AND DEPOSITIONS
- CLOSE OF DISCOVERY
- PRETRIAL MOTIONS
- TRIAL DATE

ISSUES THAT ARISE AT TIMES IN DSOs

- SIMULTANEOUS DISCLOSURE OF EXPERTS vs. SEQUENTIAL DISCLOSURE
- ROLLING EXPERT DISCOVERY DEADLINES vs. A FIRM DATE TO COMPLETE EXPERT DISCOVERY (“within 60 days of the last deposition of the plaintiff’s experts, the defendants shall designate their expert witness....”)
- SEPARATE STAGES FOR EXPERT DISCLOSURE (standard of care, causation, damages)
- LIMITS ON THE NUMBER OF EXPERTS

ARE TREATING PHYSICIANS EXPERT WITNESSES??

- RULE 26(b)(4)
- CAN TREATING PHYSICIANS OFFER OPINIONS AS AN EXPERT

WATCH OUT FOR THESE!!!!

- PROVISIONS TO EXTEND DEADLINES BY CONSENT OF THE PARTIES
- PROVISIONS REGARDING TRIAL DATE

TRIAL DATE “AGREED BY ALL PARTIES”

LENGTHY DELAYS

HOW TO SET A TRIAL DATE

TRIAL SCHEDULING

- COMMUNICATION WITH LOCAL TCA/COURT MANAGER/JUDGE
- LARGE COUNTY vs. SMALLER COUNTY
- PEREMPTORY SETTING

COUNSEL ISSUES REGARDING TRIAL SCHEDULING

- MULTIPLE PARTIES AND LAWYERS
- SECURED LEAVE
- TRIAL CONFLICTS
- OUT OF STATE COUNSEL

WHAT IS THE STANDARD FOR SETTING A TRIAL DATE

WHAT IS NOT THE STANDARD....

“COLLECTIVE AVAILABILITY OF COUNSEL”

“LEAD COUNSEL IS NOT AVAILABLE”

“TRIAL COUNSEL IS NOT AVAILABLE”

NORTH CAROLINA GENERAL RULES OF PRACTICE FOR SUPERIOR AND DISTRICT COURTS

Rule 2 - Calendaring of Civil Cases

(e) “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 another attorney familiar with the case present...”

WHAT IF THERE IS A TRIAL CONFLICT(S)

NORTH CAROLINA GENERAL RULES OF PRACTICE FOR SUPERIOR AND DISTRICT COURTS

- Rule 3.1 - Guidelines for Resolving Scheduling Conflicts

Rule 3.1 - Guidelines for Resolving Scheduling Conflicts

(b) When an attorney learns of a scheduling conflict between matters in the same priority category, the attorney shall promptly give written notice to opposing counsel, the clerk of all courts and the appropriate judges in all cases, stating therein the circumstances relevant to resolution of the conflict under these guidelines.

The appropriate judges should promptly confer, resolve the conflict, and notify counsel of the resolution.

ETHICAL CONSIDERATIONS?

NC RULES OF PROFESSIONAL CONDUCT

RULE 1.1 COMPETENCE

A lawyer shall not handle a legal matter that the lawyer knows or should know he or she is not competent to handle without associating with a lawyer who is competent to handle the matter. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

NC RULES OF PROFESSIONAL CONDUCT

RULE 1.1 COMPETENCE

Thoroughness and Preparation

[5] Competent handling of a particular matter includes inquiry into, and analysis of, the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined, in part, by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity or consequence. An agreement between the lawyer and the client regarding the scope of the representation may limit the matters for which the lawyer is responsible. See Rule 1.2(c).

NC RULES OF PROFESSIONAL CONDUCT

RULE 1.3 DILIGENCE

A lawyer shall act with reasonable diligence and promptness in representing a client.

NC RULES OF PROFESSIONAL CONDUCT

RULE 1.3 DILIGENCE

Comment

[2] A lawyer's work load must be controlled so that each matter can be handled competently.

[3] Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions. In extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness. A lawyer's duty to act with reasonable promptness, however, does not preclude the lawyer from agreeing to a reasonable request for a postponement that will not prejudice the lawyer's client.

NC RULES OF PROFESSIONAL CONDUCT

RULE 1.7 CONFLICT OF INTEREST: CURRENT CLIENTS

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(2) the representation of one or more clients may be materially limited by the lawyer's responsibilities to another client, a former client, or a third person, or by a personal interest of the lawyer.

NC RULES OF PROFESSIONAL CONDUCT

RULE 3.2 EXPEDITING LITIGATION

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

PREPARING FOR TRIAL

PRETRIAL TIMELINE

MEDIATION DEADLINE

CLOSE OF DISCOVERY

DEADLINE TO FILE DISPOSITIVE MOTIONS

DEADLINE TO FILE RULE 702 MOTIONS

DEADLINE FOR MOTIONS IN LIMINE

PRETRIAL TIMELINE (CON'T)

HEARING ON DISPOSITIVE MOTIONS.

WHEN? WHY?

HEARING ON RULE 702 MOTIONS.

WHEN? WHY?

HEARING ON MOTIONS IN LIMINE.

WHEN? WHY?

PRETRIAL TIMELINE (CON'T)

2-3 WEEKS BEFORE TRIAL

PRETRIAL HEARING

HOW LONG?

WHAT?

PRETRIAL TIMELINE (CON'T)

7 DAYS BEFORE TRIAL

- TRIAL BRIEF (IF ANY)
- PROPOSED JURY INSTRUCTIONS
- JOINT STATEMENT OF STIPULATED FACTS

OTHER HELPFUL CONSIDERATIONS

HELPFUL PHONE NUMBERS