



Civil Procedure Basics


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 N.C. Association of District Court Judges
 2010 Summer Conference
 June 23, 2010




N.C. Rules of Civil Procedure
 § 1A-1, Rules 1 to 83



- Pretrial Injunctive Relief – 65
- Service of Process – 4
- Early Dismissals – 12
- Discovery Sanctions – 26, 37
- Pretrial Judgment (12(b)(6) and Summary Judgment) – 12, 56
- Judgment Before Case Goes to Jury (Directed Verdict) – 50
- Judgment Despite What Jury Said (JNOV, New Trial) – 50, 59
- Attorney Fees – G.S. Chap. 6
- Post-Judgment Relief – 60



Injunctions Rule 65



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TROs and Injunctions

Provide a party some relief while the case is pending.

- Temporary Restraining Orders (TROs)
 - Very short-term relief until a hearing
- Preliminary injunctions
 - Relief until the litigation ends

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Little Lamb, Inc. v. Mary Exercise 1



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TROs

- Judge may issue a TRO without notice to the adverse party *if*:
 - Clearly appears from affidavit or verified complaint that movant will suffer immediate and irreparable harm;
 - The movant’s attorney certifies in writing the efforts made to give notice and the reasons notice should not be required;
 - The movant pays bond (as determined by judge) to protect other party against harm.



TROs

- Must contain specific findings and be endorsed, stamped with time and date, and filed with clerk.
- Cannot exceed 10 days.
- Expire automatically unless extended for good cause.
- May not be extended for longer than original duration without consent of other party.




Preliminary Injunction

Hearing:

- After TRO is issued, hearing (*with notice to adverse party*) is calendared “at earliest possible time”.
- Judge can convert the TRO to preliminary injunction or dissolve it.
- Judge may award damages to restrained party if TRO is dissolved. Rule 65(e).



Service of Process Rule 4



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Service of Process

- Action commences upon filing of complaint. Court obtains jurisdiction over the case. Rule 3.
- Court obtains personal jurisdiction over defendant with service of summons. Rule 4; § 1-75.
 - Summons must be issued by clerk within 5 days of filing of complaint. 4(a)

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Service of Process - Methods

- Methods depend on type of defendant:
 - Natural Person, Natural Person Under Disability, the State, Agency of State, County or City, Corporation, Partnership, or Other Association or its Officers.
- Most are variations/adaptations of methods for Natural Person. Rule 4(j).

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Service of Process - Methods

- Service upon Natural Person includes:
 - Personal service by sheriff to the individual or to her home (very common) or to her designated agent (unusual).
 - Registered or certified mail
 - Designated delivery service (Fed Ex or UPS)
 - USPS signature confirmation delivery
 - Publication, if nothing else works after due diligence. (j1)
- Defendant's attorney can accept service per rule 4(j5).



Service of Process

Little Lamb wants to attempt personal service of process upon Mary.

May it hire a private process server to do this?

No, unless sheriff is unavailable or unable to execute service. See 4(h) and (h1).



Deadlines for Service

- **60 days:** Time allowed for service after summons is issued
 - If service cannot be made by the 60th day, the original summons must be extended
 - Alias and pluries summons or endorsement.
 - The summons is just “dormant”, not yet invalid. Can still be extended.



Deadlines for Service

- **90 days:** Time allowed from issuance in which plaintiff must get extension of time to serve summons
 - If not, action DISCONTINUED as to defendant not served;
 - A new alias and pluries can issue, “but, as to such defendant, the action shall be deemed to have commenced on the date of such issuance or endorsement.” Rule 4(e).
 - Important for statute of limitations!



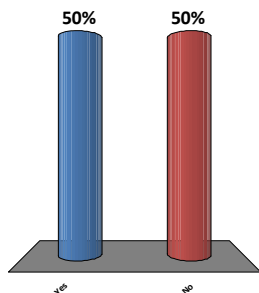
Little Lamb, Inc. v. Mary Exercise 2



Exercise 2, Question 1

Was sheriff's service on August 1st effective?

- 1. Yes
- ✓ 2. No



Motions to Dismiss Rules 12



Motions to Dismiss – 12(b)

- (1) Lack of subject matter jurisdiction
- (2) Lack of personal jurisdiction
- (3) Improper venue
- (4) Insufficiency of process
- (5) Insufficiency of service of process
- (6) Failure to state a claim upon which relief can be granted.
- (7) Failure to join a necessary party.

Motions to Dismiss - Timing

Motion Must Be Filed Prior to (or within) Answer

- Lack of personal jurisdiction (b)(2)
- Improper venue (b)(3)
- Insufficiency of process (b)(4)
- Insufficiency of service of process (b)(5)

Motion May Be Made After Answer

- Lack of subject matter jurisdiction (b)(1) – May be asserted *any time*
- Failure to state a claim upon which relief may be granted (b)(6)
- Failure to join a necessary party (b)(7)

Motions to Dismiss - Consolidation

- If a party makes a 12(b) motion, it must include in that motion all other 12(b) defenses available to it at the time or it waives those defenses. 12(g).
- Not:
 - Rule 12(b)(6),
 - 12(b)(7) (necessary party); or
 - 12(b)(1) (subject matter jurisdiction). 12(h).



QUESTION

- After receiving the complaint, Mary's attorney files a motion asserting lack of personal jurisdiction (12(b)(2)).
- Prior to the hearing, Mary's attorney files another motion asserting insufficiency of service of process (12(b)(3)).
- Both are calendared for hearing. Will you hear the second motion? 12(g), (h)



Discovery Sanctions Rules 26, 37



Discovery Parameters

Rule 26 allows discovery of information:

- Relevant to the subject matter of the case;
- Admissible or “reasonably calculated to lead to the discovery of admissible evidence”;
- Not privileged;
 - All traditional privileges: spousal, confessional, attorney-client
- Not attorney work product.



Discovery Methods

- Depositions (Rules 30-32)
- Interrogatories (Rule 33)
- Requests for Production of Documents (Rule 34)
- Physical and Mental Examination of Persons (Rule 35)
- Requests for Admission (Rule 36)



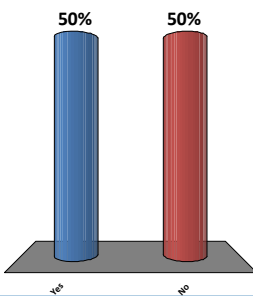
QUESTION

- Little Lamb wants discovery of documents from Mary. He decides that 30 days is too long to wait on a request for production, so he decides to subpoena Mary under Rule 45 to deliver them in 10 days.
- Mary’s attorney objects to the subpoena.
- After 20 days, Mary has not provided the documents, and Little Lamb files a motion to compel compliance with the subpoena.



Should you order Mary to comply with the subpoena?

- 1. Yes
- ✓ 2. No



Response	Percentage
Yes	50%
No	50%

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Discovery: Tools for the Court

Rule 26: Protecting the Process and the Parties

- Court has power to:
 - Limit discovery to prevent abuse and undue burdens on parties. (b)(2)
 - Issue protective orders to prevent unnecessary disclosure of sensitive information. (c)
 - Order a discovery conference to set the parameters and plan of discovery. (f)
 - Issue sanctions for violations of obligation to certify that requests made without improper intent. (g)

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Discovery: Tools for the Court

Rule 37: Enforcing the Rules

- Orders to compel
- Sanctions. Two types:
 1. Sanctions available upon a party's failure to comply with a rule; and
 2. Sanctions available only upon violation of a prior order to compel.

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Discovery: Tools for the Court

Sanctions Immediately Available

Failure of party to:

- Attend deposition after proper notice
- Respond to interrogatories after proper service
- Respond to request for inspection under Rule 34

Order to Compel Required First

• Failure of party to:

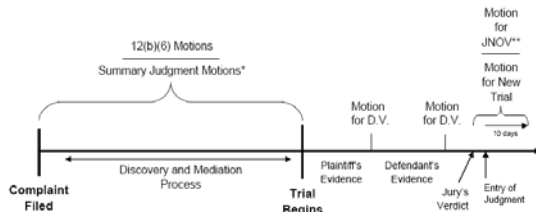
- Respond to deposition question (partly or fully)
- Designate representatives
- Comply with prior order to submit to physical or mental examination (Rule 35)
- Comply with prior order of court entered after discovery conference (Rule 26(f))



Rules 12(b)(6) & Summary Judgment (56)




Dispositive Motions Diagram



* Defendant may move at any time. Plaintiff must wait until 30 days after commencement of action.
 **Movant must have moved for d.v. after close of evidence.




When is it appropriate to issue judgment on the merits without a trial?



12(b)(6) and Summary Judgment Comparison

Motion to Dismiss for Failure to State a Claim (12(b)(6))	<ul style="list-style-type: none">• Only tests whether complaint states a claim "upon which relief can be granted"• Assumes allegations of complaint are true; does not look beyond complaint
Motion for Summary Judgment (56)	<ul style="list-style-type: none">• Looks to all the materials before the court to determine if there "is any issue of material fact." (Will there be anything for a jury to decide?)• Examines the evidence in light most favorable to non-movant



Little Lamb, Inc. v. Mary
Exercise 3



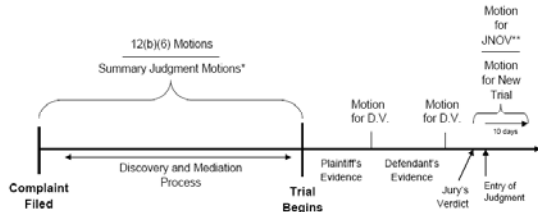
Directed Verdict, JNOV, and New Trial Rules 50, 59



When is it appropriate to take the case away from the jury once trial is underway?



Dispositive Motions Diagram



* Defendant may move at any time. Plaintiff must wait until 30 days after commencement of action.
 **Movant must have moved for d.v. after close of evidence.



Directed Verdict and New Trial

Standard: Evidence of plaintiff provides no basis for jury to decide in plaintiff's favor.

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Directed Verdict and New Trial

Standard: After all evidence, no basis in evidence for jury to decide in favor of non-movant.

May be made by either party, but rarely granted for plaintiff.

Necessary in order to preserve right to move for JNOV.

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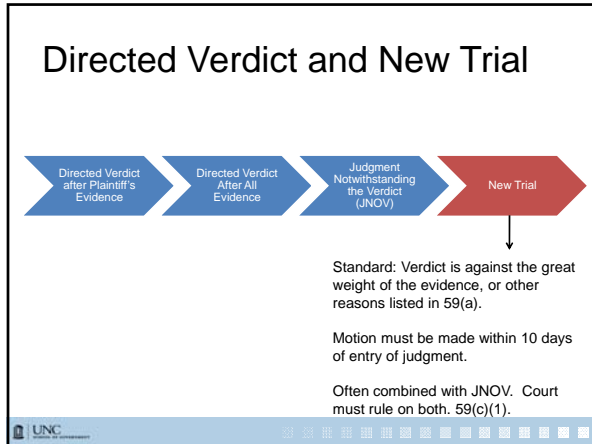
Directed Verdict and New Trial

Standard: Jury verdict is unsupported by the evidence.

Can only be granted if the movant moved for directed verdict after all evidence.

Must be made within 10 days of entry of judgment.

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Decision Chart

Court's Conclusion	Evidence insufficient to support a verdict for plaintiff.	Evidence strongly favors defendant, but some evidence for plaintiff.	Evidence does not clearly weigh in favor of either party.	Evidence strongly favors plaintiff, but some evidence for defendant.	Evidence for plaintiff is uncontested (met burden as a matter of law).
Court's Action	Court should grant d.v. for defendant. (Should grant JNOV for defendant if verdict is for plaintiff.)	Court should deny d.v. and JNOV motions.* May consider granting new trial for defendant if verdict is for plaintiff.	Court should deny d.v. and JNOV motions.	Court should deny d.v. and JNOV motions. May consider granting new trial for plaintiff if verdict is for defendant.	Court should grant d.v. for plaintiff.** (Should grant JNOV for plaintiff if verdict is for defendant.)

* This diagram assumes a jury trial. In a non-jury trial, the court, as finder of fact, may grant a Rule 41(b) dismissal for defendant at close of plaintiff's evidence even where the plaintiff has presented evidence that would be sufficient to take to a jury.
 ** This is a rare occurrence. A court should take extra caution when granting directed verdict or JNOV for the party with the burden of proof.

Combined JNOV/New Trial Motions

- When court grants JNOV, court must also rule conditionally on the new trial motion:
 - If new trial conditionally granted, and court of appeals reverses JNOV, new trial will proceed unless court of appeals rules otherwise.
 - If new trial conditionally denied, movant may appeal that denial.

Rule 50(c)(1).

Little Lamb, Inc. v. Mary
Exercise 4




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What about bench trials?
Rule 41(b)

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Bennett v. Yellowhouse Services
Exercise 5



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Bench Trials – Rule 41(b)

- In a non-jury trial, the judge may render a decision against plaintiff after the plaintiff rests, even if the evidence would be sufficient to go to a jury.
 - Very different than the standard for directed verdict in jury trials.
 - Court must make written findings of fact and conclusions of law. Rule 52(a)(1).



Attorney Fees



The Rule

- Attorney fees may only be awarded if a statute authorizes them.
- A common example:
 - § 6-21.1: Small-verdict tort and insurance cases.



G.S. 6-21.1

- Attorney fees may be awarded in the following cases where the “judgment for the recovery of damages” is \$10,000 or less:
 - Personal injury or property damage suit (e.g., car accident, slip and fall); or
 - Suit by insured/beneficiary *against insurer* where court finds that the insurer made an unwarranted refusal to pay the claim that is the basis of the suit.



Bennett v. Yellowhouse Services Exercise 6



G.S. 6-21.1

- “Judgment for the recovery of damages”:
 - Add together:
 - Amount of verdict for compensatory damages; and
 - Prejudgment interest on amount of verdict (G.S. 24-5).
 - If sum is \$10,000 or less, attorney fees may be awarded.
 - Do *not* include in the calculation:
 - Statutory costs.
 - Punitive damages.



Relief from Judgment Rule 60



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Rule 60

- Relief from a “final judgment, order, or proceeding” for reasons relating to circumstances:
 - (1) Mistake, inadvertence, surprise, or excusable neglect;
 - (2) Newly discovered evidence which by due diligence could not have been discovered in time for new trial motion;
 - (3) Fraud, misrepresentation, or other misconduct of an adverse party;

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Rule 60

- (4) Judgment is void;
- (5) Judgment has been satisfied, released or discharged, or a prior judgment upon which it is based has been reversed or vacated, or it is no longer equitable that the judgment have prospective application; or
- (6) Any other reason justifying relief from the operation of the judgment.

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Rule 60

KEY POINTS:

Rule 60 is NOT to be used to correct errors of law. Even basis (6)! *See, e.g., Hagwood v. Odom, 88 N.C. App. 513 (1988).*

Rule 60 is NOT a substitute for appellate review or motions for new trial. *See, e.g., Jenkins v. Richmond County, 118 N.C. App. 166 (1995).*



Rule 60 - Timing

- For bases (1), (2), and (3), motion must be made within one year of entry of judgment.
- For all other bases, “within a reasonable time.”



Bennett v. Yellowhouse Services Exercise 7



Exercise 7, Question 1
Which basis(es) appropriate under Rule 60?

1. Neither
- ✓ 2. (a) only
3. (b) only
4. Both are appropriate

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Rule 60 – Effect of Appeal

- Once appeal is filed, trial court divested of jurisdiction to decide Rule 60(b) motion.
– *Sink v. Easter*, 288 N.C. 183 (1975)
- If an appeal withdrawn, jurisdiction regained.
– *York v. Taylor*, 79 N.C. App. 653 (1986).
- If appeal pending, trial court may conditionally determine how it would rule. Appeals court should be notified so that it may delay the appeal. – *Hall v. Cohen*, 177 N.C. App. 456 (2006).

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