

COURT SCHEDULING ISSUES

North Carolina Courts Commission
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There are a number of ways in which a court calendar may be disrupted, resulting in cases being delayed for parties and lawyers who thought they were to be heard. Below are some of the more common circumstances when that may occur.

- I. **Lawyers' scheduling conflicts in state court** — Lawyers may have cases scheduled in two different courts at the same time, involving different clients. Rule 3.1 of the General Rules of Practice for the Superior and District Courts describes how such conflicts are to be resolved by setting out the priorities the lawyer is to follow. The basics of the priorities are:
 - Appellate courts prevail over trial courts.
 - Within the trial courts, these proceedings have priority over others:
 - Trials and hearings in capital cases
 - Trials of Rule 2.1 exceptional civil cases and complex business cases
 - Trials of peremptorily set civil cases in superior court
 - Superior court criminal cases in which the defendant is in jail or charged with a Class A through E felony and the trial is expected to last more than a week
 - Proceedings in district court involving termination of parental rights, child custody, abuse or neglect, equitable distribution or alimony or post-separation support
 - If no other priority applies, superior court has priority over district court and district court has priority over magistrate's court.
 - Among proceedings with the same priority, the judges are to confer and decide on priority based on factors such as the age of the case, its complexity, the number of lawyers and parties involved, estimated trial times, etc.
- II. **Lawyers' scheduling conflicts with federal court** — Lawyers sometimes may have cases scheduled in state court and federal court at the same time. The federal Fourth Circuit Court of Appeals, whose jurisdiction includes North Carolina, in 1985 adopted Guidelines for Resolving Scheduling Conflicts. The guidelines provide generally that:
 - Appellate cases prevail over trial cases
 - The first case in which trial date has been set prevails over others
 - Criminal felony trials prevail over civil trials
 - Trials prevail over motions hearings

- Otherwise, in setting priority consideration should be given to the ages of the case, complexity, estimated trial time, number of lawyers and parties, whether there will be a jury, and the difficulty of rescheduling.

III. **Statutory priorities** — A number of statutes specify that particular kinds of proceedings are to have priority on the court calendar. The insertion of such a case into a calendar can cause other cases to be moved back or not heard. There is no comprehensive list of statutes designating cases for priority, but here are ones that are known:

GS 1A-1, Rule 65(b) — When a temporary restraining order is entered without notice to the other side, the hearing on a preliminary injunction is to be “set down for hearing at the earliest possible time and takes precedence over all matters except older matters of the same character. . . .”

GS 7B-302(e) — If the custodian of criminal investigation records believes that release of information on abuse or neglect of a juvenile to the director of social services will jeopardize potential prosecutions, the custodian may seek a court order to prevent disclosure, and such action “shall be set down for immediate hearing, and subsequent proceedings in the actions shall be accorded priority by trial and appellate courts.”

GS 7B-2902(e) — If a public agency refuses to release information about the death or near death of an abused or neglected child, the person who wants the information may seek an order compelling disclosure, and such action “shall be set down for immediate hearing, and subsequent proceedings in such actions shall be accorded priority by the appellate courts.”

GS 15A-1441 — Capital cases “shall be given priority on direct appeal and in State postconviction proceedings.”

GS 45-21.16(e) — Appeals in foreclosure proceedings may be appealed to court and either party “may demand that the matter be heard at the next succeeding term of court . . . and such hearing shall take precedence over the trial of other cases except cases of exceptions to homesteads and appeals in summary ejectment actions”

GS 50B-2(c)(5) — When a domestic violence protective order is issued ex parte a hearing is to be set within ten days and “shall have priority on the court calendar.”

GS 90-21.8(d) — A hearing on the waiver of parental consent for a minor’s abortion “shall be given precedence over other pending matters necessary to ensure that the court shall reach a decision promptly.”

GS 115C-431(c) — When a jury trial is demanded in a dispute between a school board and county commissioners over school funding the case is to be set for the next term of superior court “and shall take precedence over all other business of the court.”

GS 132-1.4(d) and (e) — When a law enforcement agency refuses to release the identity of a complaining witness, or otherwise refuses to release criminal investigation records considered public records under the statute, the person denied access may seek a court order compelling disclosure, and such action “shall be set down for immediate hearing, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.”

GS 132-9(a) — Actions to compel disclosure of public records “shall be set down for immediate hearing, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.”

GS 143-318.16C — Actions to enjoin violations of the open meetings law or for declaratory judgment of a violation “shall be set down for immediate hearing, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.”

- IV. **Short deadlines for hearing matters** — For any number of matters a statute may set a short deadline for a hearing or other proceeding. Such a deadline can have the same effect as a statute declaring that the matter is to be given priority, because the matter will have to be moved up on the calendar, and other matters moved back, to satisfy the deadline. There is no comprehensive list of such deadlines, but here is a sampling:

GS 1A-1, Rule 65 — A temporary restraining order expires ten days after issued, necessitating a hearing on preliminary injunction within that time.

GS 5A-17(c) — A defendant who has been found in criminal contempt and appealed may not be held in custody more than 24 hours without bail being set.

GS 7B-303(d) — If a social services director obtains an ex parte order prohibiting interference with an assessment of child abuse or neglect, a hearing on the matter must be held within ten days.

GS 7B-506(a), (e) — If an abused or neglected juvenile is held under a nonsecure custody issued by someone other than a judge, the hearing on the need for continued custody is to be held at next regularly scheduled session of district court in the county, and if that session will not be within seven days the hearing may be at a regularly scheduled session elsewhere in the district. When continued custody is ordered, a subsequent hearing must be within seven business days and later hearings at intervals of no more than 30 days.

GS 7B-1105(a) — If the identity of a parent is unknown in a proceeding to terminate parental rights, a hearing on the identity is to be held within ten days of the filing of the petition, or at the next term of court if it is not within ten days.

GS 7B-1808(a), -2202(a) — The first appearance of a juvenile aged 13-15 charged with a felony must be within ten days of the filing of the petition. A probable cause hearing must be held within 15 days of the first appearance.

GS 7B-1906(a) — A first hearing on the need for continued secure custody of a delinquent juvenile must be held within five days of the juvenile being taken into custody; for nonsecure custody, the hearing must be within seven days.

GS 15A-601(c) — A criminal defendant not released on bail must have a first appearance within 96 hours after being taken into custody, or at the first session of criminal district court, whichever occurs first.

GS 20-28.3(m) — District court trials involving forfeiture of vehicles are to be scheduled on the arresting officer's next court date or within 30 days, whichever comes first.

GS 50B-2(c)(5) — After an ex parte domestic violence protective order has been issued the hearing must be held within ten days.

GS 50B-2(c)(6) — When a self-represented party seeks an ex parte domestic violence protective order the clerk is to schedule an ex parte hearing in district court within 72 hours or by the end of the next day in which district court is in session, whichever is first.

GS 50C-8(a) — When a civil no-contact order is issued ex parte a hearing is to be scheduled within ten days.

GS 130A-145(d) — A person affected by a quarantine or isolation order issued by the state or local health director may bring an action in superior court to contest the restrictions, and a hearing must be held within 72 hours of such a request.

GS 130A-475(b) — A person affected by restrictions on freedom of movement imposed by an order of the state health director in response to a terrorist incident may bring an action in superior court to challenge those restrictions, and a hearing must be held within 72 hours.

GS 163-182.14(b) — After the State Board of Elections has decided an election protest, the appealing party must obtain a stay from Wake County superior court within ten days or the board may certify the election results and the other party will be seated.

V. **The effect of local rules** — Local court rules also may affect the priority in which cases are heard. Local rules often incorporate the criminal case docketing plan for administrative settings the district attorney is required by GS 7A-49.4 to prepare in consultation with the superior court judges. Local rules also may include the civil case management plan the senior resident superior court judge and chief district judge are directed to prepare by Rule 2 by the General Rules of Practice for the Superior and District Courts. In some districts the local rules are lengthy and detailed; in other districts, they are minimal. Some of the ways in which local rules may affect the order in which cases are heard include:

- The local rules may require lawyers to alert the trial court administrator or other court official when a case is entitled to a priority setting by statute. Typically such a rule sets a deadline for such notification and requires the lawyer to cite the statutory authority and notify the other parties.
- The local rules may specify that, as provided in Rule 2 of the General Rules of Practice, a peremptory setting will be granted only for good cause and compelling reasons. Sometimes the authority to set a case peremptorily may be exercised by the trial court administrator, sometimes only by the senior resident superior court judge or chief district judge. The judge may set the case peremptorily on the judge's own motion as well.
- The local rule may specify factors to be considered in whether to grant a peremptory setting to a case, such as the age of the case, the number of times the case previously has been set for hearing, the availability of expert witnesses, and the distance parties and witnesses must travel.
- The local rules may specify some categories for priority or special handling. At least one local rule provides, for example, that will caveat cases (appeals from the clerk) will be placed on the next available motions calendar to align parties and hear motions. Other local rules require the submission of discovery schedules in medical malpractice cases and require a hearing within a specified deadline if the parties cannot agree. Other local rules specify that juvenile cases have priority and that cases remanded from the appellate courts have priority.