ONE TRIAL JUDGE OVERRULING ANOTHER

Michael Crowell, UNC School of Government (December 2011)

1. General rule

The general rule is that one trial judge may not modify or overrule an order entered by another trial judge on a matter of law. If the order is about a matter of discretion rather than a matter of law, the second judge may modify it, but only if there has been a substantial change in circumstances.

There are exceptions to the general rule. In a few circumstances a statute or rule specifically authorizes modification of an earlier order. Also, some matters of trial procedure are left to the discretion of the trial judge regardless of any earlier rulings by other judges. Those exceptions are discussed below.

2. Typical statements of the rule:

The power of one judge of the superior court is equal to and coordinate with another. Accordingly, it is well established in our jurisprudence “that no appeal lies from one Superior Court judge to another; that one Superior Court judge may not correct another’s errors of law; and that ordinarily one judge may not modify, overrule, or change the judgment of another Superior Court judge previously made in the same action.” State v. Woodridge, 357 N.C. 544, 549 (2003) (internal citations omitted).

One superior court judge may only modify, overrule or change the order of another superior court judge where the original order was (1) interlocutory, (2) discretionary, and (3) there has been a substantial change of circumstances since the entry of the prior order. A substantial change in circumstances exists if since the entry of the prior order, there has been an “intervention of new facts which bear upon the propriety” of the previous order.” First Fin. Ins. Co. v. Commercial Coverage Inc., 154 N.C. App. 504, 507 (2002) (internal citations omitted).

3. The rule is relevant only to interlocutory orders

a. Because final orders are subject to appeal and the trial judge loses jurisdiction once the matter is appealed, the rule about one trial judge overruling another generally is relevant only when the order is interlocutory and still subject to trial court jurisdiction.

b. An interlocutory order is an order that does not finally resolve all issues in controversy. There are still matters to be decided by the trial court.

c. Generally, appeal is the means to correct or overrule a final order, and once a final order is appealed the trial court loses jurisdiction to act further in the case. Bowen v. Hodge Motor Co., 292 N.C. 633 (1977).

One Judge Overruling Another - 1
d. If an interlocutory order affects a substantial right, it may be appealed immediately. G.S. 1-277, 7A-27(d); Lovelace v. City of Shelby, 133 N.C. App. 408 (1999), rev'd on other grounds, 351 N.C. 458 (2000). Upon appeal, the trial court loses jurisdiction to act further, just as with a final order.

e. There are instances in which a trial court may modify a final order.

   i. In a civil case a final decision may be later modified by a trial court through a motion under Rule 59(e) of the Rules of Civil Procedure to amend a judgment or a motion under Rule 60(b) to grant relief from a judgment.

   ii. In a criminal case, G.S. 15A-1420 provides for a motion for appropriate relief.

4. The rule is applicable to district court and the Court of Appeals as well as superior court.


5. Examples of matters of law on which a second trial judge could not overrule or modify an order of a previous judge:

   a. Motion to suppress evidence (although the prosecutor presented a different legal theory for admission of the evidence in the second hearing the legal issue was the same). State v. Woolridge, 357 N.C. 544 (2003).


6. Examples of matters of law in which the legal issue presented to the second judge was different than the issue decided by the first judge, and thus the second judge was free to act:

   a. Motion for summary judgment after motion to dismiss was denied. Barbour v. Little, 37 N.C. App. 686 (1978) (discussing the difference in the questions presented by the two motions).

   b. Motion for permissive intervention after the parties were dismissed from the lawsuit for lack of standing. Bruggeman v. Meditrust Co., LLC, 165 N.C. App. 790 (2004).

7. Examples of matters of discretion for which a second trial judge could overrule or modify the order of a previous judge upon a showing of a substantial change in circumstances:

One Judge Overruling Another - 2

b. Motion to amend answer. *Madry v. Madry*, 106 N.C. App. 34 (1992) (summary judgment should not have been allowed when based on same facts as previously denied motion to amend and no change in circumstances shown).


8. Second motions for summary judgment


   i. A second motion for summary judgment on punitive damages could not be considered because the same legal issue was presented in the first motion. *Carr v. Great Lakes Carbon Corp.*, 49 N.C. App. 631 (1980).

   ii. A motion for summary judgment under G.S. 99B-3, the statute exempting manufacturers from liability when the product was improperly modified or used, could not be considered by a second judge after the first judge had denied the manufacturer's summary judgment based on contributory negligence. The manufacturer had asserted that the child victim was contributorily negligent for engaging in “horseplay” in use of the gate and fence. The contributory negligence legal argument thus was essentially the same as the legal argument in the second motion. *Hastings ex rel. Pratt v. Seegars Fence Co.*, 128 N.C. App. 166 (1997).


c. The rule is the same even if the second motion for summary judgment is made by a different party. If the legal issue in the second motion for summary judgment is essentially the same as in the first motion, the second judge may not consider the motion, regardless of who made each motion. *Call v. Cerwin*, 185 N.C. App. 176 (2007).

d. A second motion for summary judgment, however, may involve a different legal issue and if it does, it may be considered by a second judge.

   i. Denial of summary judgment on the issue of absence of negligence in a medical malpractice case could not be reconsidered in a second motion for summary judgment, but the issue of punitive damages could be considered because it was not presented in the first motion. *Fox v. Green*, 161 N.C. App. 460 (2003).
9. Statutes and rules authorizing a second judge to modify a previous order or action


10. Procedural decisions are within the discretion of the trial judge regardless of previous orders by another judge

   a. The judge presiding at trial could decide to deny individual voir dire of prospective jurors in a capital case even though another judge had earlier stated in a pretrial order that individual voir dire would be allowed. The rule of one judge overruling another does not apply to interlocutory orders which affect the procedure and conduct of trial; those remain subject to the discretion of the trial judge. State v. Stokes, 308 N.C. 634 (1983).

   b. It is within the discretion of the judge presiding at trial whether to consolidate for trial actions that involve common questions of law and fact. Oxendine v. Catawba County Dep’t of Soc. Servs., 303 N.C. 699 (1981).

11. A second judge is not bound by an earlier judge’s order that is void

   a. If the first judge’s order is void ab initio because the first judge did not have jurisdiction to enter the order, then the order is a nullity and may be ignored by a second judge. State v. Sams, 317 N.C. 230 (1986).

   b. If the first judge had jurisdiction to enter an order, even though it is incorrect as a matter of law, the order is merely voidable and remains in effect and must be honored by the second judge until voided by direct challenge to its validity. Able Outdoor Inc. v. Harrelson, 341 N.C. 167 (1995); State v. Sams, 317 N.C. 230 (1986).

For a further discussion of this topic, see Michael Crowell, One Trial Judge Overruling Another, ADMIN. OF JUSTICE BULL. NO. 2008/02, UNC School of Government (May 2008), http://www.sog.unc.edu/pubs/electronicversions/pdfs/aobj0802.pdf