

COMPLETING ANOTHER JUDGE'S WORK

Michael Crowell, UNC School of Government (August 2015)

Contents

I.	The Problem	1
II.	Determining Whether A Decision Already Has Been Made.	1
III.	Recalling A Judge.....	2
IV.	When The Original Judge Is Not Available: Civil Cases	2
V.	When The Original Judge Is Not Available: Criminal Cases	2
VI.	Summary	3

- I. The Problem.** A judge dies while in office, or otherwise becomes disabled — and leaves behind unsigned orders. Or a judge retires or resigns in the middle of a term; or becomes sick in the middle of a trial; or loses reelection and leaves office — and leaves behind some unfinished business, either a trial or hearing to complete or orders still to be written or signed or decisions still to be made on a matter taken under advisement.

Who may complete that judge's work?

- II. Determining Whether A Decision Already Has Been Made.** Before becoming disabled or otherwise leaving office, the judge may have stated in court or otherwise informed the parties how the judge intended to rule. Generally that oral decision will not be considered final and is not binding, and must be followed up with a written decision.

Rule 58 of the Rules of Civil Procedure provides that a judgment in a civil case is not entered until it is put in writing, signed by the judge, and filed with the clerk of court. The announcement of a decision, even if in open court, is a mere rendering of the judgment and is not binding until reduced to writing and filed. *In re Thompson*, ___ N.C. App. ___, 754 S.E.2d 168, 171-72 (2014); *State v. Collins*, ___ N.C. App. ___, 761 S.E.2d 914, 916 (2014); *In re Pittman*, 151 N.C. App. 112, 114 (2002); *Worsham v. Richbourg's Sales and Rentals*, 124 N.C. App. 782, 784 (1996). Consequently, in civil cases no one should rely on the original judge's announced decision and there should be a written decision entered.

The criminal statutes do not include a provision comparable to Rule 58, but in the past the supreme court has relied upon the civil rule in determining when an order is entered in a criminal case. *State v. Boone*, 310 N.C. 284, 290-91 (1984) (decided when Rule 58 allowed civil judgment to either be announced or written, which is no longer true). The safer course in criminal cases, therefore, is to assume that the oral announcement of a decision is not final, that a written order still should be filed. In at least one instance, however, the supreme court, has said that announcement in court is sufficient to make a criminal order final and subject to appeal: when the judge is ruling on a motion to suppress and written findings are not required. *State v. Oates*, 366 N.C. 264, 266-67 (2012). Thus a second judge need not enter a written order suppressing evidence when findings of fact were not required (because there was no material conflict in the evidence) and the first judge, who is no longer available, announced from the bench the rationale for the decision. *State v. Bartlett*, ___ N.C. App. ___, 752 S.E.2d 237, 239 (2013), *review allowed*, 367 N.C. 783 (Dec. 18, 2014).

If the now departed judge was busily trying to complete work before leaving office, there may be issues whether orders entered by that judge were entered out of session or out of county and thus may not be valid. For discussion of those issues, see the “Out-of-Term, Out-of-Session, Out-of-County” section of this Benchbook.

- III. Recalling A Judge.** If the original judge is still around and eligible to be recalled, the judge may be commissioned to return to court and complete whatever was left hanging. A judge who has retired but not yet reached the mandatory retirement age may be commissioned as an emergency judge by the governor pursuant to G.S. 7A-53 and then assigned by the chief justice to a session, or multiple sessions, of court to complete the judge’s work. A judge who has passed the mandatory retirement age may be recalled and assigned by the chief justice under G.S. 7A-57.

A former judge may not return to sign uncompleted orders, etc., without being recalled as an emergency or retired judge. A district judge who has been appointed or elected to superior court may not return to district court to complete business left pending when the judge took the new position.

For a judge to return and complete business as an emergency or retired judge the judge needs a commission. As explained in the section of this Benchbook entitled “[The Judge’s Commission](#),” an emergency judge — someone who has retired but not yet reached the mandatory retirement age — first needs to be approved as an emergency judge by the governor and then needs a commission from the chief justice to hold a particular session, or sessions, of court. A retired judge — someone who has reached the mandatory retirement age — needs an order of recall from the chief justice and a commission assigning the judge to a session or sessions.

- IV. When The Original Judge Is Not Available: Civil Cases.** Having one judge complete the work of another in civil cases is addressed by Rule 63 of the Rules of Civil Procedure. The rule says that when a superior court judge is unable to perform the judge’s duties “after a verdict is returned or a trial or hearing is otherwise concluded” the remaining duties — say, entering and filing the written order — may be performed by “the judge senior in point of continuous service on the superior court regularly holding the courts of the district.” Almost always that will be the senior resident superior court judge, but there could be a circumstance when someone other than the senior resident will be the most senior in service. If there is only one resident judge in the district, the chief justice may designate a superior court judge from another district to perform the remaining duties.

Rule 63 applies whenever the original judge cannot complete the case, whether it be because of death, disability, resignation, retirement, removal or the end of the judge’s term.

The Rule also says that if the new judge feels unable to finish the case satisfactorily because of not presiding at the hearing or trial, or for any other reason, then the new judge is to order a new hearing or trial. In short, if the new judge is being asked to prepare and sign an order representing the original judge’s announced decision, the new judge must be satisfied that indeed the order is supported by the record and truly represents the first judge’s decision.

- V. When The Original Judge Is Not Available: Criminal Cases.** For criminal cases, the

loss of the original judge is addressed by G.S. 15A-1224. The statute says, first, that whenever the judge before whom a case is being tried is unable to continue presiding without a continuance the judge may order a mistrial. It goes on to say that when a judge before whom a case is being or has been tried is unable to complete the judge's duties before entry of judgment the judge's work may be completed by any other judge assigned to the court. The statute applies whenever the original judge is unable to preside because of sickness or other disability; "other disability" would include the situation where the original judge has retired or otherwise left office.

Although the statute does not say so, it would seem to be the duty of the senior resident superior court judge to designate which other judge is going to complete the first judge's work.

As with civil cases, the new judge may order a new hearing or trial if the new judge does not feel able to complete the case satisfactorily because of not presiding at the original hearing or trial, or for any other reason does not consider it appropriate to just pick up where the original judge left off.

- VI. Summary.** If a judge has retired or otherwise left office with orders still waiting to be signed or other unfinished business, the optimal solution is for the judge to be recalled and commissioned to complete that work. When that is not possible because of budget constraints or because the judge is not available, Rule 63 and G.S. 15A-1224 provide procedures for other judges to complete civil and criminal cases, respectively. The key in both instances is for the new judge to be satisfied that the record clearly shows and supports the decision the original judge said was going to be made, and that any order entered reflects accurately the original judge's decision. When in doubt, the new judge should order a new hearing or trial.