

ONE TRIAL JUDGE OVERRULING ANOTHER

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- I. 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.

II. Typical Statements of the Rule:

“The power of one judge of the superior court is equal to and coordinate with another.’ *Michigan Nat’l Bank v. Hanner*, 268 N.C. 668, 670, 151 S.E.2d 579, 580 (1960). 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.’ *Calloway v. Ford Motor Co.*, 281 N.C. 496, 501, 189 S.E.2d 484, 488 (1972).” *State v. Woodridge*, 357 N.C. 544, 549 (2003).

“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. *Stone v. Martin*, 69 N.C. App. 650, 652, 318 S.E.2d 108, 110 (1984). 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. See *Calloway v. Motor Co.*, 281 N.C. 496, 505, 189 S.E.2d 484, 490 (1972).” *First Fin. Ins. Co. v. Commercial Coverage Inc.*, 154 N.C. App. 504, 507 (2002).

- III. The Rule is Relevant Only to Interlocutory Orders.**
- A. Generally.** 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. 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.
- B. Loss of Trial Court Jurisdiction When an Interlocutory Order is Appealed.** Although interlocutory orders generally are not subject to appeal, 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, and therefore a second trial judge would have no opportunity to modify the order.
- C. Modification of Final Order by Trial Court.** There are instances in which a trial court may modify a final order.
- 1. Civil Procedure Rule 60(b).** In a civil case, the court may relieve a party from a final judgment or order for the reasons stated in Rule 60(b) of the Rules of Civil Procedure. The motion under Rule 60(b) may be heard by a different judge than the one who entered the judgment or order. *Duplin County DSS ex rel. Pulley v. Frazier*, ___ N.C. App. ___, 751 S.E.2d 621, 623 (2013).
 - 2. Civil Procedure Rule 59(a).** In a civil case tried without a jury a judgment may be later modified by the trial court through a motion under Rule 59(a) of the Rules of Civil Procedure for a new trial. However, motion under Rule 59 must be heard by the same judge who entered the original judgment. *Sisk v. Sisk*, ___ N.C. App. ___, 729 S.E.2d 68, 70 (2012); *Gemini Drilling & Found., LLC v. Nat'l Fire Ins. Co.*, 192 N.C. App. 376 (2008).
 - 3. Motion for Appropriate Relief in Criminal Case.** In a criminal case, G.S. 15A-1420 provides for a motion for appropriate relief.
- IV. Applicability to Various Courts.** The Rule is Applicable to District Court and the Court of Appeals as well as Superior Court.
- A. District Court.** A district court judge may not overrule another district judge. In *re Royster*, 361 N.C. 560, 563 (2007); *Town of Sylva v. Gibson*, 51 N.C. App. 545 (1981). Nor may a district court judge modify an order of the Court of Appeals. *Ross v. Ross (now Osborne)*, 194 N.C. App. 365, 369 (2008).
- B. Court of Appeals.** One panel of the Court of Appeals may not overrule another panel. *North Carolina Nat'l Bank v. Virginia Carolina Builders*, 307 N.C. 563 (1983).
- V. The Same Legal Issue.** If the legal issue is the same, it does not matter that the motion heard by the second judge is different than the one decided by the first judge, the second judge still is barred from overruling the first.
- A. Examples Regarding Same Legal Issue.**

- The second judge's decision on summary judgment was void because it was based on the same legal issue as the first judge's decision denying a motion to dismiss. *Adkins v. Stanly County Board of Education*, 203 N.C. App. 642, 647-48 (2010). Although the two motions differed, the linchpin legal issue for each was whether the dismissed public employee had been speaking on a matter of public concern so as to raise First Amendment protections.
- A second judge's order of summary judgment in a medical malpractice case was void because, even though the judge said he was not overruling the first judge, the legal issue being determined — whether negligence might be established by *res ipsa loquitur* and thus avoid the need to have the pleadings reviewed by an expert — was the same as decided by the first judge in denying a motion to dismiss. *Robinson v. Duke University Health Systems, Inc.*, ___ N.C. App. ___, 747 S.E.2d 321, 327-28 (2013).

VI. Examples Where Second Judge Could Not Overrule. Examples of matters of law on which a second trial judge could not overrule or modify an order of a previous judge:

- 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).
- Decision on whether a statute authorizes an award of attorney's fees. *Able Outdoor Inc. v. Harrelson*, 341 N.C. 167 (1995).
- Exclusion of time from calculation for Speedy Trial Act. *State v. Sams*, 317 N.C. 230 (1986).
- Dismissal of case for failure to complete service. *Bumgardner v. Bumgardner*, 113 N.C. App. 314 (1994).

VII. Examples Where Second Judge Could Overrule. 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 permissive intervention was proper following the first judge's decision to dismiss the parties from the lawsuit for lack of standing. *Bruggeman v. Meditrust Co., LLC*, 165 N.C. App. 790 (2004).
- A motion for summary judgment on the issue of punitive damages in a medical malpractice case was proper following the first judge's denial of summary judgment on negligence, because the damages issues had not been presented in the first motion. *Fox v. Green*, 161 N.C. App. 460 (2003).

VIII. Examples of Matters of Discretion. 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:

- Motion for special jury venire. *State v. Duvall*, 304 N.C. 557 (1981) (but the prosecutor failed to show a substantial change in circumstances from the time of the earlier ruling).

- Motion to amend answer. *Madry v. Madry*, 106 N.C. App. 34 (1992) (summary judgment should not have been allowed when the motion was based on the same facts as the previously denied motion to amend and there was no change in circumstances shown).
- Class certification. *Dublin v. UCR, Inc.*, 115 N.C. App. 209 (1994).
- Sealing of documents in domestic case. *France v. France*, ___ N.C. App. ___, 738 S.E.2d 180, 186 (2012) (change in circumstance justifying second judge's unsealing of documents was appellate ruling that courtroom had to be opened for proceedings in case).

IX. Second Motions for Summary Judgment. A decision on summary judgment is a decision on a matter of law and may not be overruled by a second trial judge on the same legal issue. *Taylorsville Fed. Sav. & Loan Ass'n v. Keen*, 110 N.C. App. 784 (1993).

- 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).
- 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).

A. Forecast of Additional Evidence Does Not Change Rule. An additional forecast of evidence does not entitle a party to a second motion for summary judgment. *Metts v. Piver*, 102 N.C. App. 98 (1991). The presentation of additional affidavits and depositions transcripts does not allow consideration of a second motion for summary judgment on the same legal issue. *Great Lakes Carbon Corp.*, 49 N.C. App. 631 (1980).

B. Motion by a Different Party Does Not Change Rule. 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. *Cail v. Cerwin*, 185 N.C. App. 176 (2007).

C. Second Judge May Act When Second Motion Presents Different Legal Issue. 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.

- 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).

- X. Example Statutes and Rules Authorizing Second Judge to Act.** Examples of statutes and rules authorizing a second judge to modify a previous order or action include:
- Rule 55(d) of the Rules of Civil Procedure specifically authorizes the setting aside of an entry of default “for good cause shown.” See *Stone v. Martin*, 69 N.C. App. 650, 653 (1984).
 - As mentioned above, Rule 60(b) of the Rules of Civil Procedure authorizes a grant of relief from a judgment for the reasons stated in the rule.
 - G.S. 84-4.2 authorizes the summary revocation of a *pro hac vice* admission of an out-of-state lawyer on the court’s own motion and in its discretion. Thus a second judge could revoke an admission allowed by an earlier judge. *Smith v. Beaufort County Hosp. Ass’n, Inc.*, 141 N.C. App. 203 (2000).
 - As mentioned above, G.S. 15A-1420 provides for motions for appropriate relief in criminal cases.
- XI. The Second Judge May Control Certain Procedural Matters.** Some procedural decisions are within the discretion of the trial judge regardless of previous orders by another judge.
- 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).
 - 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).
- XII. A Second Judge is Not Bound by an Earlier Judge’s Order that is Void.** 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). 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).