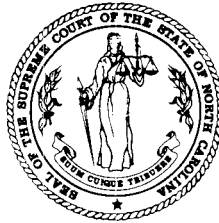


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**ORDER AMENDING THE GENERAL RULE OF
PRACTICE RELATED TO SUMMARY JURY
PROCEEDINGS TO ADD A NEW RULE 23
AND THE CORRESPONDING COMMENT**

Pursuant to the authority of N.C.G.S. § 7A-34, the General Rules of Practice for the Superior and District Courts are amended by the adoption of a new Rule 23, to read as follows:

The senior resident superior court judge of any superior court district or a presiding judge unless prohibited by local rule may upon joint motion or consent of all parties order the use of a summary jury upon good cause shown and upon such terms and conditions as justice may require. The order shall describe the terms and conditions proposed for the summary jury proceeding. Such terms and conditions may include: (1) a provision as to the binding or non-binding nature of the summary jury proceeding; (2) variations in the method for selecting jurors; (3) limitations on the amount of time provided for argument and the presentation of witnesses; (4) limitations on the method or manner of presentation of evidence; (5) appointment of a referee to preside over the summary jury trial; (6) setting the date for conducting the summary jury trial; (7) approval of a settlement agreement contingent upon the outcome of the summary jury proceeding; or (8) such other matters as would in the opinion of the court contribute to the fair and efficient resolution of the dispute. The court shall maintain jurisdiction over the case, and may, where appropriate, rule on pending motions.

The following comment to the new Rule 23 of the General Rules of Practice shall accompany the Rule:

The summary jury trial is a dispute resolution technique pioneered in the federal courts in the early 1980s. Pursuant to reports of its success as a settlement tool, the North Carolina Supreme Court in 1987 authorized the use of summary jury trials in three judicial districts on an experimental basis. Since that time, a number of summary jury trials have been conducted.

In May, 1991, a report prepared by the Private Adjudication Center detailed the North Carolina state courts' experience with the summary jury trial. That report noted that a number of variations in the summary jury trial process had been used successfully. The report concluded with a number of recommendations subsequently endorsed by the Dispute Resolution

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Committee of the North Carolina Bar Association. One of the recommendations was that the North Carolina Supreme Court adopt a General Rule of Practice authorizing the use of summary jury trials throughout the state.

Pursuant to that recommendation, this General Rule provides for the use of summary jury trials based upon the voluntary agreement of the parties, manifested by way of a joint motion to the court. The rule further provides that the authority to approve the request lies with the senior resident superior court judge for the county or judicial district in which the action is pending (or a presiding judge unless prohibited by local rule). The request shall be approved if the court finds that it is in the interest of justice for good cause shown. In this context, good cause relates to a judicial determination that the use of a summary jury trial represents a fair and efficient method for pursuing settlement of the dispute.

The Rule does *not* authorize a court to mandate the use of a summary jury trial. Nothing in the rule, however, prohibits a judge or other court administrator from raising the possibility of using a summary jury trial with the parties during a pre-trial conference or other event and explaining the possible benefits of the process.

The summary jury trials conducted to date in North Carolina have employed a number of innovative techniques. These variations, many of which are detailed in the above-referenced report, have ranged from variations on the methods used to select a jury to limitations on the manner in which evidence is presented. In other cases, the parties have requested that the court appoint a referee to preside over the summary jury proceeding. In addition, the parties in several summary jury trials have agreed that the results would be binding, sometimes pursuant to a "high/low agreement" that limits both parties' risk of an aberrant result. The Rule specifically provides that the court has the power to authorize these practices in appropriate cases.

Adopted by the Court in Conference this 14th day of August, 1991. This amendment, along with the commentary thereto, shall

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be promulgated by publication in the advance sheets of the Supreme Court and the Court of Appeals.

WHICHARD, J.
For the Court

WITNESS my hand and the Seal of the Supreme Court of North Carolina, this the 10th day of September, 1991.

CHRISTIE SPEIR PRICE
Clerk of the Supreme Court