

Rule 58 and Entry of Civil Judgments: Statements from the bench are not court orders

Before October 1, 1994, it was not always easy to tell if and/or when a court order or judgment had been entered. The law allowed entry of judgment based on an oral rendition by the judge in certain circumstances and it was not uncommon for disputes to arise over whether a proper notation of the rendition had been made upon the court record as required for an actual entry of judgment to occur. Because it generally is very important for parties and the court to know precisely when an order or judgment is entered and enforceable, [Rule 58 of the Rules of Civil Procedure](#) was amended effective October 1, 1994, to make the moment of entry of judgment more easily identifiable. According to Rule 58, “a judgment is entered when it is reduced to writing, signed by the judge, and filed with the clerk of court.” This means that since October 1, 1994, statements made by the judge from the bench are not enforceable orders or judgments and a judge is not required to enter a written order or judgment that conforms to any statement made from the bench.

Oral “renditions” are not enforceable

A judgment or order cannot be enforced until it is entered, so the court of appeals has held that a trial court has no authority to hold a party in contempt for the violation of an order if the violation occurred before the order was reduced to writing, signed by the judge and filed with the clerk of court. See *Carter v. Hill*, 186 N.C. App. 464 (2007)(order directing the payment of money not enforceable until entered in accordance with Rule 58); and *Onslow County v. Moore*, 129 N.C. App. 376 (1998)(preliminary injunction not enforceable until reduced to writing, signed and filed).

Similarly, orders are not effective until there is a writing signed by the judge and filed with the clerk. In *Dabbondanza v. Hansley*, 791 SE2d 116 (N.C. App. 2016), the trial court years earlier had invoked the authority of Rule 70 of the Rules of Civil Procedure to direct the clerk of court to sign a deed transferring property pursuant to the terms of an equitable distribution judgment. Rule 70 authorizes the court “to direct” another person to sign a deed transferring title when the person ordered to transfer title has not done so. The court of appeals ruled that the trial judge’s oral directive was not sufficient to give the clerk the authority to transfer title and held that the deed executed and recorded with the clerk’s signature was invalid.

In *Carland v. Branch*, 164 N.C. App. 403 (2004), the trial court announced its decision at the end of a custody trial on December 3, 2001. The written custody order was not signed and filed until May 13, 2002. On May 3, 2002, one of the parents filed a motion to modify custody alleging changed circumstances since the end of the custody trial. The trial court eventually entered a new custody order modifying the terms of the May 13, 2002 order. The court of appeals vacated the new order, holding that the motion to modify was not appropriate because it was filed before the custody order itself had been entered. The court of appeals held that “since there was no order “entered” when defendant filed her motion to modify, there was nothing to modify.”

Judges are free to change their minds

In the recent child custody case of [Scoggin v. Scoggin, 791 SE2d 524 \(N.C. App. 2016\)](#), the trial judge announced at the end of a contentious custody trial that primary physical custody would be awarded to mother. However, upon reflection following the conclusion of the hearing and before the decision was reduced to writing, the judge changed his mind and decided that dad should have primary physical custody.

On appeal, mother argued that the trial court lacked the authority to enter an order that did not correspond to its oral statements in court or, in the alternative, that the court lacked the authority to enter a different order without concluding there had been a substantial change in circumstances since the oral rendition of judgment. The court of appeals held that mother's argument was essentially that "as a matter of law, the trial court may not change its mind between the end of trial or hearing and the entry of the order determining the issued raised in that trial or proceeding."

The court in [Scoggin](#) rejected mother's argument, citing another recent opinion, *In re: O.D.S.*, 786 SE2d 410 (N.C. App. 2016), wherein the court of appeals held that the fact that a written order was different from the judge's statements from the bench at the end of trial was not legal error or cause for remand. In *O.D.S.*, the court of appeals stated that while there are numerous older appellate opinions indicating that orders and judgments may be effective upon rendition, the law changed with the 1994 amendment to Rule 58. Because of Rule 58, "entry of judgment based upon oral rendition of judgments is no longer allowed in civil matters; currently, judgments and orders are only 'entered when they are reduced to writing, signed by the judge and filed with the clerk of court.'" *Id.*

See also Hennessey v. Duckworth, 231 N.C. App. 17 (2013)(child support case rejecting as "meritless" defendant's argument that the trial court's findings were invalid because the findings in the written order did not accurately reflect what the court said from the bench during trial).

Memorandum of Judgments (MOJs) are orders

When agreements are reached in court, lawyers frequently use [AOC form CV-220, Memorandum of Judgment](#), to quickly sketch out the general terms of the agreement, sometimes with the intention to draft a more formal judgment later. In *Buckingham v. Buckingham*, 134 N.C. App. 82 (1999), the court of appeals held that a "consent judgment memo" that was signed by the judge and filed with the clerk of court was an enforceable judgment because it complied with the terms of Rule 58 even though the court eventually substituted a more detailed order for the "memo".

The MOJ form is a useful tool when a party or a judge wants to ensure that a directive from the bench will be immediately enforceable. With more simple orders, such as the Rule 70 order at issue in the *Dabbondanza* case, the MOJ may be the final version of the order. More complicated matters such as a custody or support order may require the substitution of a more detailed order.

On the Civil Side

A UNC School of Government Blog

<https://civil.sog.unc.edu>

Take care that the more formal order is entered as soon as possible. See *Ponder v. Ponder*, 786 SE2d 44 (N.C. App. 2016)(trial court lost jurisdiction to sign the formal order after party filed an appeal following the entry of the MOJ).