

Secured Leave for Attorneys by Melvin F. Wright, Jr.

Imagine that you are a busy trial lawyer and have not been able to take a vacation for the last five years. You have two children, ages four and seven. Your spouse knows you need time away from your practice, and you have promised him/her that you will take the family to Disney World for two weeks. Nonrefundable airline tickets and reservations have been made, and everyone is extremely excited in anticipation of some much needed quality time together. Thirty days before you are scheduled to leave, a final trial calendar comes out. One of your cases is the first case listed for trial. The case was dismissed once before, and there is no way the opposing attorney or the trial judge will take this matter off the calendar. Is there anything that could have been done to prevent such a nightmare? North Carolina found a way to do so.

In 1999, the North Carolina Supreme Court, by the authority of Article IV of the Constitution of North Carolina, amended the Rules of Appellate Procedure and the Rules of Practice for the Superior and District Courts (N.C.G.S. 7A-33 and 34) to include the Secured Leave Periods for Attorneys. The adoption of this policy was one of the first official acts of the newly created North Carolina Chief Justice's Commission on Professionalism (CJCP). Former Chief Justice Burley B. Mitchell, Jr. gives credit to the members of the CJCP and the North Carolina Bar Association's Quality of Life Committee for input and emphasis on the importance of quality time away from the practice of law. The North Carolina Secured Leave Policy allows attorneys to take up to three weeks of vacation each year.

Prior to Secured Leave

A. Trial Calendar Controlled By Lawyers

Until 1980, the calendaring of litigation cases in North Carolina was controlled in each judicial district by a committee of local lawyers. Lawyers on the committee were usually very accommodating, and if one of the lawyers with a pending case was not ready to try the matter or there was some conflict, the case would be put off until the next term of court. For example, if Uncle Harry's lumbago had continued to be a problem, and his lawyer said he might die at any time (we might all die at anytime but not likely from lumbago), the majority of the committee could vote to continue or put off the case until the next term – even though it had been continued for the same reason for three years. Needless to say, there was a substantial backlog of cases in North Carolina prior to 1980.

B. Trial Calendar Controlled By Judges

In 1980, calendaring cases became the responsibility of the Senior Resident Superior Court Judge and the Chief District Court Judge in each judicial district. Judges were challenged by the Administrative Office of the Courts to reduce the backlog of cases, and statistics were kept reflecting the age of each case. A request such as the one

mentioned above involving Uncle Harry would result in one of the following dispositions:

- (a) a denial of a Motion to Continue
- (b) a voluntary dismissal taken by one or all of the litigants, or;
- (c) a trial of the matter.

Although most North Carolina judges have always been courteous and respectful to litigants and attorneys, prior to the Secured Leave Policy, there was no assurance that a matter appearing on a final trial calendar would not be called for trial.

Secured Leave

The North Carolina Secured Leave Policy is included with this article and contains the following provisions that may be of interest to other states:

- Three (3) weeks of secured leave is allowed without prior court approval, if done in conjunction with the rule.
- An appropriate designation shall be filed with the courts having jurisdiction over the pending matter.
- The designation shall be filed no less than ninety (90) days before the beginning of the secured leave period, and before any argument or other in-court proceeding has been scheduled for a time during the designated secured leave period.

Positive Policy for All Concerned

- Judges and Trial Court Administrators – This policy allows judges and trial court administrators to schedule cases with fewer possible conflicts. There may still be emergencies and conflicts that a judge will have to decide; however, long standing vacation plans should not be one of the problems.
- Lawyers – This policy allows lawyers to plan quality time away from the practice of law; however, it does require lawyers to plan ahead and to place the court on notice.
- “We have had the secured leave policy for lawyers in effect for several years in my district. All busy lawyers need to get away from the frantic pace of the practice of law, and if they do not take time to do that, it will be detrimental to their physical and mental health. I have found that the policy has enhanced efficiency in the operation of the courts as well as the degree of professionalism exhibited by the lawyers who take advantage of it.” - Honorable W. Erwin Spainhour – President, North Carolina Superior Court Judges Conference
- “A balanced personal life is the best strategy to keep attorneys from hurting themselves, their clients and our profession. Time away from work is part of a balanced life, and secured leave helps achieve that balance.” - Honorable Joseph Moody Bucker - President, North Carolina Association of District Court Judges

Conclusion

The North Carolina Secured Leave Policy has been a win-win situation for all concerned. There have been no complaints about this policy to the North Carolina Administrative Office of the Courts. Our judges and lawyers appreciate the policy and believe it has had a positive effect on the practice of law in North Carolina.

This policy is endorsed by the following leaders within the North Carolina legal community:

- Honorable Sarah Parker – Chief Justice, North Carolina Supreme Court
- Honorable Mark Martin – Associate Justice, North Carolina Supreme Court; Contributor to Policy wording; Program Chair, ABA Judicial Division
- Honorable John C. Martin – Chief Judge, North Carolina Court of Appeals
- Honorable James A. Wynn, Jr. – Senior Associate Judge, North Carolina Court of Appeals; Chair, ABA Judicial Division
- Honorable Ralph A. Walker – Director, North Carolina Administrative Office of the Courts
- Honorable W. Erwin Spainhour – President, North Carolina Superior Court Judges Conference
- Honorable Joseph Moody Buckner - President, North Carolina Association of District Court Judges
- Irvin W. Hankins, III, Esq. – President, North Carolina State Bar
- Janet Ward Black, Esq. – President, North Carolina Bar Association
- Joseph B. Cheshire V, Esq. – President, North Carolina Academy of Trial Lawyers
- Kenneth Kyre, Jr., Esq. – President, North Carolina Association of Defense Attorneys