

CIVIL SUPERIOR
ADMINISTRATIVE SCHEDULING SESSION

BURKE COUNTY SUPERIOR CIVIL COURT
Burke County Courthouse • Courtroom #1
Morganton, NC

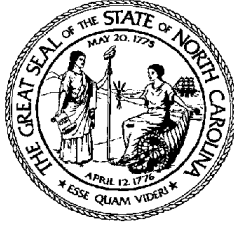
MONDAY, November 23, 2009

11:00 O’CLOCK A.M.

HONORABLE BEVERLY T. BEAL, Judge Presiding

SESSIONS

January 25, 2010
February 15, 2010
March 22, 2010
April 12, 2010



BEVERLY T. BEAL
SENIOR RESIDENT SUPERIOR COURT JUDGE

PO BOX 1376
LENOIR, NC 28645
TEL: 828/759-8411
FAX: 828/757-1479

October 21 2009

TO: Attorneys with Civil Cases in the Superior Court Division, Judicial District 25A

FROM: Beverly T. Beal, Senior Resident Superior Court Judge, Judicial District 25A

SUBJECT: Burke County Superior Civil Calendars for January 25, 2010; February 15, 2010; March 22, 2010; and, April 12, 2010.

The attached is a Civil Administrative Scheduling Session calendar. At the time and date indicated on the calendar, at the Burke County Courthouse, Morganton, NC, a pre-trial conference will be held to review the status of the cases listed. All pending motions will be calendared. Discovery orders will be entered.

All attorneys should bring their personal calendar of commitments to the conference. Attorneys shall make prior inquiry of their clients and key witnesses (including medical witnesses) so that the cases can be calendared at a time which will not conflict with appellate courts, vacations, or other conflicts.

Cases calendared for trial will not be continued because of the unavailability of witnesses if prior inquiry has not been made.

Approximately twelve (12) cases will be calendared for trial at each of the sessions of court.

About four (4) weeks prior to each session, the trial clerk will prepare and publish the final trial calendar. All motions and trial cases not disposed of prior to the publication of the final trial calendar will be included, together with any other appropriate cases calendared by the Trial Court Coordinator, and other cases required by statute to be calendared.

Attorneys of record will deal directly with Virginia Robinson, Trial Court Coordinator, PO Box 796, Morganton, NC 28680; telephone (828) 432-2826; FAX (828) 433-4035.

Your cooperation is essential to the proper functioning of our court system and we want to work with you and make your job as easy and convenient as possible; and likewise, we expect you to respond by being punctual and prepared at the scheduled time.



BEVERLY T. BEAL
SENIOR RESIDENT SUPERIOR COURT JUDGE

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LENOIR, NC 28645
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MEMORANDUM

TO: Attorneys appearing in Judicial District 25A

FROM: Virginia Robinson
Trial Court Coordinator

DATE: October 21 2009

SUBJECT: Civil Case Management

In accordance with the Local Rules for Judicial District 25A, the following date has been set for calendaring of cases for trial:

Friday, April 23, 2010	Set cases for sessions in May, June, July, and August
Friday, August 6, 2010	Set cases for September, October, November, and December
Monday, November 22, 2010	Set cases for sessions in January, February, March, and April 2011

The Administrative Scheduling Calendar will be forwarded to each of you approximately 30 days prior to the session. In addition to cases being set for trial, any pending motions will be calendared. Discovery orders will be entered. Any available time on these days will be used for pre-trial conferences.

You should make prior inquiry of your clients and key witnesses (including medical witnesses) so that the cases can be calendared at a time which will not conflict with appellate courts, vacations, or other situations. Cases calendared for trial will not be continued because of the unavailability of witnesses if prior inquiry has not been made.

In addition, it is essential that a copy of the notice of hearing for motions should be forwarded to me to be placed on the trial calendar. A copy of the notice of hearing must be received by me in order for the motion to be placed on the calendar. Motions are scheduled for hearing in the order of receipt of notification. The fax number is (828) 433-4035.

If you have any questions, please feel free to contact me at (828) 432-2826.

1) 07 SP 204 Ridgeline Investment Group LLC Daniel Kuehnert
Caroline M Spencer, James D Spencer
Alice Dean Browing
Katherine B Yates, Kenneth E Yates
Vs
Ronald G. Murphy, Margaret Rebecca Murphy Sam Aycock

Petition to Sell

2) 09 SP 181 Yvette R. St. John Sarah White
Vs
Earl Mayfield Wayne Clontz

Appeal of Partition

3) 04 CVS 1291 Donna S Ray Estate Kent Crowe
Thomas D Ray, Admr.; Robert A Wilson IV, Admr Oliver Noble
Vs C. Michael Bee
C. Sue Holvey
B. Keith Forgy MD PA Matthew Allen
Mountain View Surgical Assoc. Daniel Kuehnert
Grace Hospital Inc.; Grace Healthcare System Inc.;
Blue Ridge Healthcare System Inc.
Carolinas Healthcare System Inc. (all dismissed previously)

Mediation—Impasse—Set for 12/7/2009, need backup date

4) 06 CVS 1662 Saft America Inc. Anthony Lathrop
Vs Michael Champion
Plainview Batteries Inc. Lawrence McMahon
Energex Batteries Inc.; Bernie R. Erde Cameron Wade Gilbert
Russell J. Bleeker 192 Lackawanna Ave Unit 101
West Patterson NJ 07424

Set for 12/7/2009, need backup date

5) 07 CVS 663 James E. Guy Jr. Robert Gage
Vs
Jose Alfredo Arriaga-Arellana David Hood
Roy Langdon Brewer; Brenda R. Brewer Samuel Aycock
Unnamed Defendant John Spainhour

Mediation—Impasse—Set for 11/9/2009, need backup date

6) 07 CVS 1610 Gilbert McGimpsey et al. James Ayers
Vs
Maggie McGimpsey O’Neal et al.

ORDER NEEDED!!!!

7)	08 CVS 23	George Clayton Justice Estate Geraldine Lindsay Justice Vs Jason Coffey MD; Mountain Emergency Physicians PA Robert Liljeberg Jr., MD; Sladicka Stephen MD Carolina Orthopaedic Specialists PA Frye Regional Medical Center	James Maxwell John Kocher Isaac Northup Travis Martin
Mediation—Impasse—Trial after 1/1/2010 per DSO			
8)	08 CVS 701	Integon National Insurance Corp. Vs Gary Dale Hamby William Andrew Branch Diana Bare; Michael Lee Bare Alan Hamby (dismissed by default previously)	Stephen Thomas Bonnie Cardiff Frank Voler Robert Gage
Mediate by 11/24/2009—Set for 12/7/2009, need backup date			
9)	08 CVS 894	McCombs Oil Co. Inc. Vs Richard M Falls, Jr. Christel S. Falls; Falls Quick Stop	Timothy Rooks Randall Isenhower
Mediate by 11/24/2009—Set for 11/9/2009, need backup date			
10)	08 CVS 1211	Wendy M Clark Vs Charles E Keever	Robert Denton Kenneth Rotenstreich
Mediation—Impasse—Set for 11/9/2009, need backup date			
11)	08 CVS 1269	Dr. Janice Elizabeth Barron Rushing Vs John I Barron; William Ellis Barron	Gary Triggs Forrest Ferrell Stephen Palmer
Mediate by 9/21/2009			
12)	08 CVS 1369	Herbert Construction Vs Denese Kastelic	Gary Corne Michael Thomas
Mediation—Impasse—Set for 11/9/2009, need backup date			
13)	08 CVS 1423	Susan P Ledford Vs Lowes Companies Inc.; Hatteras Hammocks Inc. LJT Tennessee	Louis Vinay James Wood III Mel Garofalo Luke Sbarra
Mediation—Impasse—Set for 12/7/2009, need backup date			

14)	08 CVS 1488	Chiva Enterprises LLC Vs Patrick B Robinson	William Morgan Randall Isenhower
Mediation—Impasse—Set for 11/9/2009, need backup date			

15)	08 CVS 1555	Holly A. Berry Vs NC Department of Health & Human Services	Michael Byrne Elizabeth Guzman
Motion to Dismiss needs to be heard			

16)	08 CVS 1613	David S. Abernathy Vs Scott W. Murphy DMD PA Scott W. Murphy; SMURF LLC	Daniel Kuehnert Kevin Donaldson
Mediation—Voluntary Dismissal—Need order			

17)	08 CVS 1742	Citicorp Vendor Finance Inc.; Copelco Capital Inc. Vs Cordium Links; Kurian Abraham Elizabeth Randall; Diaa E Hussein	Rebecca Leigh
DEFAULT???			

18)	08 CVS 1792	Edward McClough Vs Lyle Kirby Powell	Charles Bostian Keith Rigsbee
Mediate by 11/24/2009			

19)	08 CVS 1799	Ice River Springs Morganton LLC Vs Meridian Food & Beverage Co. Inc. Meridian Beverage Co. Inc. Tiny Town Mfg LLC	James Hogan Scott Tyler
Mediate by 12/24/2009			

20)	08 CVS 1841	Mt. Pleasant Methodist Church Vs Herbert Ronald Chester; Doris Irene Chester	John Ervin Robert Denton Alan LeCroy
Mediation—Impasse			

21)	08 CVS 1873	BB&T Co. Vs Morganton Petroleum Cyriac Kurien Kalarickal; Alice Cyriac Kalarickal	James Hogan Jason White
Mediate by 11/24/2009			

22)	08 CVS 1939	Zizette Gabriel Vs Stanley Weber; Papa's Use Cars & Trucks et al.	Cecil Jenkins
DEFAULT???			
23)	08 CVS 2137	Lumber Specialists LLC Vs Farkash Ltd. Partnership LLP Jay Sweeney; Christy Sweeney	John Ervin Lawrence McMahon Jeff Dunham Martha Sacrinty
Mediation—Impasse—Set for 11/9/2009, need backup date or order			
24)	09 CVS 87	Jeffrey B Kuhlman; Natalie K Kuhlman Vs Honeycutt Contractors Inc. Bobby Dean Honeycutt	William Cannon Alan LeCroy
Mediate by 12/1/2009			
25)	09 CVS 91	PMD Partnership Vs Alisa Mace; Hartley Lumber Co.	Marcus Mitchell Timothy Rooks
Mediate by 9/7/2009			
26)	09 CVS 196	Maria A. McIntosh Vs Christina M. Trump; Peter C. Trump	Elizabeth Grimes Kenneth Rotenstreich
Mediate by 12/1/2009			
27)	09 CVS 230	Builders Firstsource-Southeast Group Vs Carolina Shelter Construction Co. Inc.	Paul Sheridan Robert Denton
Settled in Mediation—need order to close case			
28)	09 CVS 244	Daniel J. Huffman Vs Jeremias C. Castillo Innovative Vegetation Services Inc. Wausau Underwriters	William Holman Joseph Murray
Mediate by 3/9/2010			
29)	09 CVS 287	Grace Hospital Inc. Vs Medark LLC Medark Clinical Research	Phillip Jackson James Ayers
Mediate by 11/3/2009			

30)	09 CVS 293	Holman Lazo Vs Oscar Zelaya	Douglas Hall PRO SE 2814 Secrest Shortcut Rd-Monroe 28110-8753
Mediation—Impasse			

31)	09 CVS 294	Mark Yambor; Cynthia I Yambor Vs Damon Bollin	Alan LeCroy Paul Culpepper
Mediation—Voluntary Dismissal—Set for 11/9/2009, need backup date			

32)	09 CVS 419	Jennifer L. Faulkner; Roy T. Faulkner Vs Earl David Ray; Shirley Kay Ray Jeffrey A. Brinkley; Kim Brinkley	James Hogan Gary Triggs
Mediate by 11/24/2009—Set for 12/7/2009, need backup date			

33)	09 CVS 606	Jimmy L Stewart; JL Stewart Construction Vs Larry M Tallent; Crystal R Tallent	Samuel Aycock Richard Beyer
Mediate by 12/11/2009			

34)	09 CVS 612	Wall Lumber Co. Inc. Vs Ben Korte; Debbie Korte	Wayne Martin
DEFAULT???			

35)	09 CVS 678	Cale Allen Knopf Vs Robbie David Ford	Steven Brackett Alan LeCroy
Mediate by 12/24/2009			

36)	09 CVS 696	Clyde Small Jr. Vs Robert E. Helms Anita H. Helms (dismissed previously)	Louis Vinay Jeffrey Mackie
Mediate by 12/16/2009			

37)	09 CVS 726	Glenda Hendrix Smith Vs Burke Co.; John T. McDevitt, Sheriff David Charles South Town of Connelly Springs John Doe Surety Co.	Charles Brady Gregory Horner Louis Vinay
Mediate by 1/13/2010			

- 38) 09 CVS 757 Jada Lynne Herman Isenhour
Vs
Wal-Mart Stores Inc. (dismissed previously)
Wal Mart Stores East LP
Wayne Martin
K. Neal Davis
Mediate by 12/1/2009
-
- 39) 09 CVS 862 James E. Brand; Phyllis B. Brand
Vs
Jerry VanHorn
Jonathan Jones
James Hogan
Mediate by 12/16/2009
-
- 40) 09 CVS 885 Keith Allen Scott Jr. et al.
Vs
Jerry Dale Shelton; Brenda Ann Whitener Fowler
Andrew B. Bowman
Clair Campbell
William Lipscomb
Mediate by 1/21/2010
-
- 41) 09 CVS 906 Herbert L. Phillips
Vs
Gerald H. Ganyer
Frank Voler
Heather Connor
Mediate by 1/14/2010
-
- 42) 09 CVS 952 Bettina Crisp
Vs
Western Piedmont Council of Governments
Kimberly Sheek
Samuel Gorham
Mediate by 1/27/2010
-
- 43) 09 CVS 953 ADM Builders Inc.
Vs
Keith R. Payne; Natalie S. Payne
A-1 Recycling
James Hogan
Richard Beyer
Mediate by 1/27/2010
-
- 44) 09 CVS 1016 The Standard Fire Insurance Co.
Vs
Jeffrey Patton; Patton Plumbing
Miller Sigmon
Douglas Hall
Mediate by 12/11/2009
-
- 45) 09 CVS 1102 James F. Canterbury Jr.
Vs
Kenneth Duane Staten
Gary Triggs
PRO SE
4877 Ruby Lane—Morganton
Mediate by 1/13/2010
-

46)	09 CVS 1177	Daniel Scott Rash Vs NC Division of Motor Vehicles Commissioner of Motor Vehicles	John Cagle
Administrative Appeal			

47)	09 CVS 1237	Melissa R. Suttles Vs NC State Dept of Health & Human Services Employment Security Comm. Of NC Moses Carey, Jr.	Douglas Hall
Administrative Appeal			

48)	09 CVS 1380	Lorrie Patton Harris Wendy Patton Houk; Dana Patton Hensley Vs Debbie Denise Patton	Richard Beyer Blair Propst
Mediate by 3/9/2010			

49)	09 CVS 1410	State of NC; Dee A Freeman NC Dept. of Environment & Natural Resources Vs Harold Winkler	Phillip T. Reynolds
DEFAULT???			

50)	09 CVS 1511	Billy Joe Hicks Vs William D Robertson, Commissioner	Victor Yamouti Katheryn Hathcock
Administrative Appeal—Set for 12/72009, need back-up			

51)	09 CVS 1516	Fred Stephen Jenkins; Linda Jenkins Vs David Alvin Cole; Michelle Cole	Keith Rigsbee PRO SE 985 Enola Rd—Morganton
Mediate by 3/9/2010			

52)	09 CVS 1539	Donna Blanche Smith Vs Jimmie W Chavis, Cheryl Lynn Chavis	James Hogan Richard Beyer
Submitted to mediation			

53)	09 CVS 1686	Crop Production Services Inc. Vs Christopher N. Ross	Luther Starling, Jr.
DEFAULT???			

**NORTH CAROLINA
SUPERIOR COURT JUDICIAL DISTRICT 25A**

**ORDER
Civil Case Management Plan**

Pursuant to the provisions of Rule 2 of the General Rules of Practice for the Superior Court, IT IS ORDERED that the following local rules are adopted for Judicial District 25A, effective September 1, 2003. The following references apply: "TCC": Trial Court Coordinator; "N.C.R.C.P.": North Carolina Rules of Civil Procedure; "Rules of Practice": General Rules Of Practice For The Superior And District Courts.

1. Ready Calendar.

The Trial Court Coordinator in Judicial District 25A shall maintain a Ready Calendar of civil cases pending in each county. Five months after the filing of a complaint, the TCC shall place each case on the Ready Calendar, unless the time is extended for good cause by written order of the Senior Resident Judge.

2. Administrative Scheduling Sessions.

At designated times, the Senior Resident Judge will conduct an Administrative Scheduling Session for each case pending on the Ready Calendar, and will, in cooperation with the Bar of each county, assign the case to a specific session of the Court. Upon notification to appear for the Administrative Scheduling Session, an attorney must, consistent with ethical requirements, appear at the Administrative Scheduling Session, or have present a partner, associate or another attorney familiar with the case, unless excused in advanced with prior notice to the opponent.

3. Certificate of Readiness.

In addition to the maintenance of the Ready Calendar, an attorney for a party may file a certificate of readiness at any time requesting that the case be placed on the trial calendar.

4. Peremptory Settings.

A request for peremptory setting for cases involving extraordinary reasons must be made in writing to the Senior Resident Judge.

5. Re-scheduling Cases Not Reached.

Cases scheduled for trial not reached at a session shall be re-scheduled as additional cases for trial at another regularly scheduled session before the Administrative Scheduling Session if feasible considering the availability of counsel, parties and witnesses. Re-scheduled cases have no priority over scheduled cases. For good cause shown, the TCC may remove a case from re-scheduling. When an Administrative Scheduling Session occurs before the next trial session, cases not reached at a prior session shall be re-scheduled at the Administrative Scheduling Session.

If a case is scheduled for trial, but attorneys announce that it is settled prior to the session or at the opening of the session, and no voluntary dismissal nor memorandum of judgment is filed during the session in which it is set, then the case will appear on the calendar of the next trial session of court after sixty (60) days, or the next administrative session, whichever occurs first.

If the case has not been dismissed by that time, the case shall be considered for trial, or, in the discretion of the Court, the presiding judge or the Senior Resident Superior Court Judge may take such other administrative action as appears appropriate to give the case prompt disposition, including dismissal pursuant to Rule 41.

6. Motions Practice.

Movant's counsel shall notify the TCC of desired dates for hearing motions. Pending motions shall be scheduled for hearing by the TCC in the order of receipt of notification. Notice of hearing shall be filed and served as provided in Rule 6 (d) of the N.C.R.C.P. The number of motions scheduled for a session shall be based on the nature of the motions filed, the anticipated time required for hearings, and the time available for hearing of motions at each particular session.

Pending pre-trial motions may be scheduled at the administrative scheduling session. Counsel who intend to file pre-trial motions in cases being scheduled for trial shall inform the Court at the administrative scheduling session.

A copy of any briefs or memoranda in support or opposition of pre-trial motions shall be delivered to the Hearing Judge at least five days before the hearing of the motion. For the purpose of this five-day requirement only, service shall mean personal delivery, facsimile transmission, or other means such that the Hearing Judge actually receives the brief or memoranda within the required time. A Hearing Judge shall not be obliged to consider briefs or memoranda not received as required by this Rule.

7. Preliminary Injunction Hearings

The evidence in a preliminary injunction hearing shall be presented in the form of affidavits in support of or in opposition to the injunction. The presentation of testimony from witnesses will be received only in exceptional circumstances, or when the party offering the witnesses' testimony has been unable to obtain an affidavit from the witnesses in advance of the hearing.

8. Motions for Summary Judgment.

Motions for Summary Judgment must be scheduled and heard prior to the week of trial.

9. Settlement Notification.

Upon the settlement of a case on the printed trial calendar, attorneys of record must notify the TCC within twenty-four (24) hours of the settlement and advise who will prepare and present a judgment or dismissal, and do so immediately.

10. Continuances.

Upon the calendaring of a case on the final trial calendar, such case will not be continued except for compelling reasons addressed to the Senior Resident Judge before the session, or the Presiding Judge during the session.

11. Will Caveats.

Cases involving caveats to Wills shall be ordered into the mediation process within 60 days of filing, and will not be placed on a trial calendar until a mediated settlement conference is conducted or the matter has been removed from mediation by order of the Court. It shall be the responsibility of the attorney for the Caveator(s) to notify the TCC of the filing of the case and the names and addresses of all parties or attorneys to whom notices should be sent.

12. Mediation Management.

The TCC is assigned the responsibility of managing and enforcing the mediation process.

13. Inquiries.

Inquiries concerning the civil calendar shall be addressed to Virginia Robinson, TCC, P.O. Box 796, Morganton, NC, telephone (828) 432-2826, fax number (828) 433-4035, e-mail address Virginia.R.Robinson@nccourts.org.

**NORTH CAROLINA
JUDICIAL DISTRICT 25A
BURKE AND CALDWELL COUNTIES**

**IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION**

**IN RE:
ADOPTION OF NORTH CAROLINA
SUPREME COURT RULES AND
LOCAL RULES FOR
MEDIATED SETTLEMENT CONFERENCES
IN SUPERIOR COURT CIVIL ACTIONS**

O R D E R

WHEREAS, the North Carolina Supreme Court, pursuant to section 7A-38.1 of the North Carolina General Statutes adopted and published rules and amendments to rules establishing a statewide system of court ordered mediated settlement conferences to facilitate the settlement of Superior Court civil actions as ordered October 1, 1995, and as amended January 26, 2006.

NOW, THEREFORE, IT IS ORDERED that the Local Rules shall remain in effect in Judicial District 25A as amended.

1.0. The rules for court ordered mediated settlement conferences as adopted and published by the North Carolina Supreme Court shall be observed in this district as amended herein.

2.0. Pursuant to Rule 2.C, when the parties do not timely select a mediator, the procedure for judicial appointment shall be to appoint the next certified mediator on the list of certified mediators, provided by the Dispute Resolution Commission through its website, who have expressed a willingness to mediate actions within Judicial District 25A, and who certify in writing annually to the Senior Resident Judge that he or she wishes to mediate in this judicial district, is familiar with the Local Mediation Rules, and will comply with them and the Supreme Court Rules. The list shall be arranged alphabetically and appointments shall be made in consecutive order, without regard to race, gender, religious affiliation, or whether the mediator is a licensed attorney. The Senior Resident Judge shall retain discretion to depart from a strict rotation when there is good cause to do so, such as the appointment of one mediator to multiple related cases, appointment of a newly certified mediator, or to withhold a mediator who has not followed Local or Supreme Court Rules from appointment.

3.0. Cases involving caveats to wills shall be ordered into the mediation process within sixty (60) days of filing, and will not be placed on a trial calendar until a mediated settlement conference is conducted or the matter has been removed from mediation by order of the court. It shall be the responsibility of the attorney for the caveator(s) to notify the Judicial Assistant of the filing of the case and the names and addresses of all parties or attorneys to whom notices should be sent.

4.0. Pursuant to Rule 5 and 7.G of the State rules, the following policy is adopted. Upon failure of the parties in a case to meet mediation deadlines, the Senior Resident Superior Court Judge will notify counsel to immediately come into compliance. Upon failure to come into compliance, a contempt citation to show cause why sanctions should not be imposed will be issued.

This the 31st day of March, 2006.

BEVERLY T. BEAL
Senior Resident Superior Court Judge
25A Judicial District