

**CIVIL RULES OF THE
SUPERIOR COURT DIVISION**

**THIRTEENTH JUDICIAL DISTRICT
BLADEN - BRUNSWICK - COLUMBUS**

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STATE OF NORTH CAROLINA
THIRTEENTH JUDICIAL DISTRICT
BLADEN, BRUNSWICK, COLUMBUS

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

IN RE: LOCAL RULES AND PROCEDURE FOR THE
CALENDARING OF CIVIL CASES IN THE
THIRTEENTH JUDICIAL
DISTRICT SUPERIOR COURT DIVISION.

ORDER

Pursuant to Rule 40(A), North Carolina Rules of Civil Procedure, and Rule 2(A), General Rules of practice for the Superior and District Courts Supplemental to the Rules of Civil Procedure as amended, the attached "Local Rules and Procedure for the Calendaring of Civil Cases in the Thirteenth Judicial District Superior Court Division" are hereby adopted and shall become effective as of August 1, 1995.

IT IS SO ORDERED this the 25nd Day of January 2002.

William C. Gore, Jr.,
Senior Resident Superior Court Judge

**THIRTEENTH JUDICIAL DISTRICT
SUPERIOR COURT DIVISION**

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**THIRTEENTH JUDICIAL DISTRICT
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LOCAL RULES FOR THE CALENDARING OF CIVIL CASES IN THE THIRTEENTH JUDICIAL DISTRICT SUPERIOR COURT DIVISION

RULE 1: GENERAL RULES

- 1.1** The purpose of these Rules is to institute a case management plan in the Superior Court Division of the Thirteenth Judicial District – Bladen, Brunswick, and Columbus counties in compliance with Rule 40(a), Rules of Civil procedure, and Rule 2(a), General Rules of Practice for Superior and District Courts and to provide for the orderly and prompt, and just disposition of civil matters.
- 1.2** These rules shall at all times be construed in a manner as to avoid technical delay.
- 1.3** It is recognized that these Rules are not complete in every detail and will not cover every situation which may arise. In the event that these Rules do not cover a specific matter, the Trial Court Coordinator is authorized to act in his/her discretion, subject to consultation with the Senior Resident Superior Court Judge or Presiding Judge.
- 1.4** The calendar for the disposition of civil cases in the Thirteenth Judicial District, Superior Court Division, shall be set by the Trial Court Coordinator in accordance with these Rules and under the Supervision of the Senior Resident Superior Court Judge.
- 1.5** Where forms are specified to be used by these Rules, counsel may use either the forms provided or a form of their own which substantially corresponds to that specified.
- 1.6** These Rules and procedures, and all amendments hereafter shall be filed with each Clerk of the Superior Court in the Thirteenth Judicial District and may be cited accordingly.
- 1.7** The Clerk of the Superior Court for each county in the Thirteenth Judicial District shall distribute a copy of these Rules and any subsequent amendments hereafter to each member of the bar in their respective counties. The Trial Court Coordinator, shall maintain a supply of printed Rules and Forms to furnish to the Clerks and attorneys upon request.
- 1.8** All pleadings and papers, except wills and exhibits filed with the Clerk of the Superior Court shall comply with the 8 ½ x 11, standards as specified by Rule 5, General Rules of practice for Superior and District Court.
- 1.9** The Clerk of the Superior and District Courts, shall provide a case number at the time of filing and place the number upon the summons. All subsequent pleadings and papers filed with the Clerk and all subsequent communications to opposing counsel, or parties, or court personnel shall contain the case number.

- 1.10** All papers filed in civil actions, to include special proceedings and estates, shall include as the first page of the filing an original plus one copy of the appropriate cover sheet in a format prescribed by the Administrative Office the Courts. The cover sheet shall be fully completed and summarize the critical elements of the filing. The Clerk of Superior Court shall refuse to accept for filing any paper that does not include an original plus one copy of the appropriate cover sheet or conform with GS7A-34.1.

RULE 2: CALENDARING OF CASES FOR TRIAL BY TRIAL SETTING CONFERENCE

(Rule 2 shall be applicable and effective in all cases filed after:

January 1, 1994 - Bladen County
July 1, 1994 - Brunswick County
March 1, 1995 - Columbus County)

- 2.1** When a case has reached at least 120 days of age after filing, a “120 Day Calendar Setting Conference Notice” shall be published and mailed to all attorneys and unrepresented parties in said case by the Trial Court Coordinator notifying them of the date, time, and location of the conference. At the conference;
- A. A date shall be selected for trial of the case agreeable to all parties, from a list of scheduled dates established by the court.
 - B. Within (5) days after the Trial Setting Conference the Trial Court Coordinator shall issue a Mediated Settlement order and discovery scheduling order.
 - C. The parties/counsel shall conform with Rules of Mediation and select a mediator within (21) days of the date the Trial Setting Conference, and submit a “Designation of Mediator” form (AOC-CV-812) to the Trial Court Coordinator for signature.
- 2.2** Once a date for trial has been selected at the 120 Day Calendar Setting Conference, a request for the continuance of the case from the established trial date will not be considered, except for the most dire of circumstances that neither attorneys nor parties have any control.
- 2.3** Should a case not be reached on the session of court requested at the trial setting conference, counsel and unrepresented parties will be given an opportunity to select another date for the trial of their case. Should parties fail to contact the Trial Court Coordinator, the case will automatically be calendared at the next civil session for which a calendar has not been published.
- 2.4** All procedures regarding the mediated settlement order issued at the trial setting conference shall comply with the rules as set forth in the “Revised Rules of Mediated Settlement Conferences” adopted April 1994, by the North Carolina Supreme Court, and as appears in the “Addenda” to these Rules.

RULE 3: READY CASES

- 3.1** The Trial Court Coordinator shall establish and maintain a case tracking system pursuant to Rule 2(c), General Rules of practice for Superior and District Courts, and in accordance with these Rules. This system shall be used to monitor the number, age, type, and procedural status of all pending cases and provide for the calendaring of the same.
- 3.2** A case shall be ready to set for trial when the Trial Court Coordinator has determined that at least one of the following has occurred:
- A. A case has been on file one hundred and twenty (120) days or more;
 - B. All counsel have filed with the Trial Court Coordinator a Calendar Request form (LGF-CV402) requesting that the case be placed on a trial calendar prior to the expiration of the 120 day period;
 - C. A case has been transferred to the Superior Court Division on appeal from the Clerk of Superior Court;
 - D. A case has been remanded for trial by the Appellate Division;
 - E. A case is entitled to priority hearing by statute.
- 3.3** The Trial Court Coordinator shall place those cases that he/she has determined to be ready for trial on a trial calendar.

RULE 4: CALENDAR REQUESTS BY COUNSEL

- 4.1** Any party desiring to have a civil matter set for trial may file a calendar request as provided by Rule 4.2. The Trial Court Coordinator shall consider all such requests in preparation of trial calendars.
- 4.2** Calendar Requests shall be in writing using Local Form LGF-CV402 in which all appropriate sections shall be completed. The calendar request shall be directed to the Trial Court Coordinator with copies to all opposing counsel and unrepresented parties at least six (6) weeks prior to the requested session.
- 4.3** Responses from opposing counsel or unrepresented parties to a requested trial session must be received by the Trial Court Coordinator within five (5) working days after the mailing date of the calendar request. If no response is received, the Trial Court Coordinator shall presume that all parties are in agreement with the requested setting date.

RULE 5: PEREMPTORY, PRIORITY AND REMANDED CASES

- 5.1** Cases entitled to priority settings by statute shall be brought to the attention of the Trial Court Coordinator in writing, with copies to all counsel of record/unrepresented parties and cite the statutory authority for such setting.

- 5.2** The Trial Court Coordinator may grant a peremptory setting for good cause shown. Requests should be made at the trial setting conference or thereafter in writing with copies to all counsel of record/unrepresented parties. The Trial Court Coordinator may set a case peremptorily on his/her own motion.
- 5.3** Cases entitled to priority setting by statute shall be brought to the attention of the Trial Court Coordinator in writing with copies to all counsel of record and cite the statutory authority for such setting (see form LGF-CV402)
- 5.4** When a case is remanded for trial from the Appellate Division, appellant's counsel shall promptly notify the Trial Court Coordinator in writing, who shall assign the case for trial after all parties have an opportunity to express scheduling preferences.

RULE 6: CONTINUANCE REQUESTS

- 6.1** Requests for continuance will only be granted when compelling reasons are presented which affect the fundamental fairness of the trial and it is clearly in the interest of justice. In addition, consideration will be given to the following factors:
- A. Age of case;
 - B. Status of the trial calendar for the session;
 - C. The order in which the case appears on the calendar, to include peremptory settings;
 - D. Number of previous continuances;
 - E. The reason for continuance.
- 6.2** Reasons that shall not be considered for allowing a continuance motion.
- A. First time setting of the case for trial;
 - B. Failure to calendar a motion;
 - C. Failure to mediate the case;
 - D. Conflicting scheduling of other trials in other courts.
- 6.3** All requests for continuances shall be received by the Trial Court Coordinator by written motion using the Continuance Request form (Local Form LGF-CV604) at least ten (10) days prior to the beginning of the scheduled session and specify with particularity the reason for continuance and state when the case may be rescheduled for trial.
- 6.4** Copies of the request for continuance shall be mailed to all opposing counsel or unrepresented parties unless the response of all opposing counsel or parties is included in the request. Objections by opposing counsel shall be made using form LGF-CV605. If response is not received from opposing counsel or unrepresented parties within five (5) working days of the mailing date of the request, it will be assumed that the opposing party does not desire to be heard on the request.
- 6.5** The Trial Court Coordinator, under the supervision of the Senior Resident Superior Court Judge, has sole authority to continue cases prior to the scheduled trial session. At no time

shall any counsel/unrepresented parties present any motion to continue to the presiding judge prior to the opening of the scheduled trial session.

- 6.6** Any failure to comply with the Rules concerning notice of continuance request to opposing counsel or unrepresented parties shall result in the voiding of any continuance granted should an objection arise upon notification from the Court that a continuance has been granted.
- 6.7** Cases which have been peremptorily set or set by other court order may be continued only by the Senior Resident Superior Court Judge or Presiding Judge.
- 6.8** Continuance Requests made after the time limit specified in Rule 6.3 will be heard at the calendar call preceding the Session scheduled and granted only for good cause shown.
- 6.9** The Trial Court Coordinator shall make a prompt determination in writing of a request for continuance. Any party disagreeing with the ruling shall have the right to appeal the decision to the Senior Resident Superior Court Judge or Presiding Judge by submission of a motion and order for continuance, which motion and order shall set forth that the request was denied by the Trial Court Coordinator. Ex Parte requests for continuance without notice to the opposing party and an opportunity for the opposing party to be heard, will not be considered by the Court.

RULE 7: CALENDARING OF MOTIONS

- 7.1** All motions shall be scheduled for hearing through the Trial Court Coordinator.
- 7.2** Motions may be calendared in one of the following way:
 - A. Before a motion is filed, moving counsel shall contact the Trial Court Coordinator to receive a hearing date for the motion. Such hearing is then confirmed by moving counsel, in writing, to the Trial Court Coordinator and with the service of motion, to opposing counsel. This date certain shall be cited in the Notice of Hearing filed with the Clerk.
 - B. Requests may be made in writing in the form of a calendar request using the Calendar Request Form (Local Form LGF-CV402) at least five (5) working days before the date of publication of the trial calendar as provided for by these rules.
 - C. Moving counsel is responsible for notification to their client of the date, time and location of hearing with respect to Motion to Withdraw as Counsel.
 - D. Moving counsel/party shall serve all counsel/unrepresented parties with the date, time, and location of the hearing.
- 7.3** Failure of counsel to calendar motions for hearing in a timely manner will not delay the trial date assigned.
- 7.4** Prior to the beginning of the scheduled court session, the moving party may remove any motion he/she has noticed for hearing from the calendar by providing the Trial Court

Coordinator with notification of intent to withdraw the notice of hearing and verification that such withdrawal has been communicated to all party(ies).

- 7.5** Add on motions: motions added to a published calendar for hearing, shall not be added unless the Trial Court Coordinator has received notice of hearing of the motion. To calendar add on motions, the moving counsel/unrepresented party shall deliver a copy of the Notice of Motion Hearing to the office of the Trial Court Coordinator by U.S. Mail, hand deliver, or fax, no later than 5:00 p.m. on the Tuesday prior to the scheduled Monday court session. Motions not appearing on the printed calendar, may only be added for hearing in the discretion of the Trial Court Coordinator

RULE 8: CALENDAR CALLS, ATTORNEY'S PRESENCE

- 8.1** The call of the Superior Court Calendar shall be at 10:00 am on the first day of the session.
- 8.2** Cases will be called in the order on which they appear on the trial calendar unless counsel are otherwise instructed by the presiding Judge or the Trial Court Coordinator.
- 8.3** Pursuant to Rule 2(e), General Rules of Practice for Superior and District Courts, counsel for all parties in an action, when notified to appear at a pre-trial conference, hearing on motions or at trial, must, consistent with ethical requirements, appear or have a partner, associate, or other attorney present. Unless an attorney has been excused in advance by the Judge before whom the matter has been scheduled and has given prior notice to his opponent, a case will not be continued.

RULE 9: DELINQUENT ORDERS OR JUDGMENTS

- 9.1** Cases or motions scheduled on trial calendars and removed due to consent or settlement shall be considered delinquent if the Order or Judgment of Disposition is not filed within fifteen (15) working days after the case was last calendared Order of Judgment.
- 9.2** If at the beginning of the session for which delinquent cases identified pursuant to Rule 9.1 are calendared, counsel have not filed the required Order or Judgment, the delinquent case may be dismissed at the discretion of the Senior Resident Superior Court Judge or Presiding Judge; or, the Presiding Judge shall order such sanctions or impose such penalties as he deems appropriate and are allowed by law.
- 9.3** Cases or motions scheduled on trial calendars and heard by the Judge or by Jury shall be considered delinquent if the Order or Judgment of disposition is not filed within fifteen (15) working days after the hearing, unless otherwise directed by the Presiding Judge.

- 9.4** Cases so delinquent in Rule 9.3 may be dismissed by the Senior Resident Superior Court Judge, either upon motion by the party against whom the Judgment or Order was to be taken, or by the Clerk bringing the cases to the Judge's attention.

RULE 10: PRE-TRIAL ORDERS

- 10.1** There shall be a pre-trial conference and order in every civil case, unless counsel for all parties stipulate in writing to the contrary and the Court has approved the stipulation. The purpose of the conference is to explore settlement possibilities, define and narrow the issues for trial, and to generally review the case scheduled to ensure a firm trial calendar.
- 10.2** The plaintiff attorney shall, at least three (3) weeks prior to the trial session, arrange the pre-trial conference with the defendant attorney, which conference shall be held and a pre-trial order prepared and signed by all attorneys of record and filed with the court at least one (1) week prior to the trial session.
- 10.3** The pre-trial order shall substantially conform with Rule 7, General Rules of Practice for Superior and District Courts.
- 10.4** If, after due diligence, plaintiff's attorney cannot arrange a conference with the defendant attorney, he may apply to the Senior Resident Superior Court Judge or Presiding Judge who shall make an appropriate order.
- 10.5** The defense attorney may initiate pre-trial under the same rules applicable to the plaintiff attorney. A party who has not requested a pre-trial conference may not move for a continuance on the ground that it has not been held.
- 10.6** If counsel fails to file a pre-trial order within the time allowed by Rule 10.2, the Presiding Judge, in his discretion, may order the exclusion of certain evidence, enter an order of dismissal, or order other sanctions he deems appropriate and are allowed by law.

RULE 11: ANSWERS, OBJECTIONS TO INTERROGATORIES

- 11.1** The Clerk of the Superior Court shall not extend the time for answering any complaint or filing any pleading beyond the thirty (30) days allowed pursuant to IA-1, Rule 6, North Carolina General Statutes, by consent, or otherwise.
- 11.2** An objection to any interrogatory, deposition, request, or application shall be written and shall be filed within thirty (30) days of the service of interrogatory, deposition, request, or application, except that a defendant may serve objections, within forty-five (45) days after service of the summons and complaint upon that defendant, or unless otherwise ordered by the Court. Any objection shall be specific and the reasons for the objection shall be stated. Any such objection shall not extend the time within which the objecting

party must otherwise answer or respond to any discovery matter not specifically objected to.

- 11.3** Failure to comply with these orders shall result in objections to interrogatories, depositions, requests or application being sustained. Failure to comply with orders relating to objections shall result in objections being denied.

RULE 12: ADMINISTRATIVE AND SUPPLEMENTAL CALENDARS

- 12.1** The Trial Court Coordinator may, as necessary, set supplemental calendars during administrative weeks, during other scheduled non-jury terms, or with motion calendars for the purpose of judicial review of case status where cases appear to be delinquent in some respect or have been continued for reasons such as extended discovery, or for complex cases, and at which the Presiding Judge may dispose of pending motions and set dates for ending discovery, pre-trial orders, and trial.

Addenda to Local Rules

RULES OF THE NORTH CAROLINA SUPREME COURT IMPLEMENTING STATEWIDE MEDIATED SETTLEMENT CONFERENCES IN SUPERIOR COURT CIVIL ACTIONS

RULE 1: INITIATING MEDIATED SETTLEMENT CONFERENCES

A. PURPOSE OF MANDATORY SETTLEMENT CONFERENCES

Pursuant to G.S. 7A-38.1, these Rules are promulgated to implement a system of settlement events which are designed to focus the parties' attention on settlement rather than on trial preparation and to provide a structured opportunity for settlement negotiations to take place. Nothing herein is intended to limit or prevent the parties from engaging in settlement procedures voluntarily at any time before or after those ordered by the Court pursuant to these Rules, including binding or non-binding arbitration as permitted by law [see, for example, N.C.G.S 7A-37.1, Arb. Rule 1(b)].

B. INITIATING THE MEDIATED SETTLEMENT CONFERENCE IN EACH ACTION BY COURT ORDER

- (1) **Order by Senior Resident Superior Court Judge.** The Senior Resident Superior Court Judge of any judicial district may, by written order, require all persons and entities identified in Rule 4 to attend a pre-trial mediated settlement conference in any civil action except an action in which a party is seeking the issuance of an extraordinary writ or is appealing the revocation of a motor vehicle operator's license.
- (2) **Timing of the Order.** The Senior Resident Superior Court Judge shall issue the order requiring a mediated settlement conference as soon as practicable after the time for the filing of answers has expired. Rules 1.B.(3) and 3.B. herein shall govern the content of the order and the date of completion of the conference.
- (3) **Content of Order.** The court's order shall (1) require that a mediated settlement conference be held in the case; (2) establish a deadline for the completion of the conference; state clearly that the parties have the right to select their own mediator as provided by Rule 2; (4) state the rate of compensation of the court appointed mediator in the event that the parties do not exercise their right to select a mediator pursuant to Rule 2; and (5) state that the parties shall be required to pay the mediator's fee at the conclusion of the settlement conference unless otherwise ordered by the court. The order shall be on an A.O.C. form.

(4) **Motion for Court Ordered Mediated Settlement Conference.**

In cases not ordered to mediated settlement conference, any party may file a written motion with the Senior Resident Superior Court Judge requesting that such conference be ordered. Such motion shall state the reasons why the order should be allowed and shall be served on non-moving parties. Objections to the motion may be filed in writing with the Senior Resident Superior Court Judge within 10 days after the date of the service of the motion. Thereafter, the Judge shall rule upon the motion without a hearing and notify the parties or their attorneys of the ruling.

(5) **Motion to Dispense With Mediated Settlement Conference.**

A party may move the Senior Resident Superior Court Judge, to dispense with the mediated settlement conference ordered by the Judge. Such motion shall state the reasons the relief is sought. For good cause shown, the Senior Resident Superior Court Judge may grant the motion.

(6) **Motion to Authorize the Use of Other Settlement Procedures.**

A party may move the Senior Resident Superior Court Judge to authorize the use of some other settlement procedure in lieu of a mediated settlement conference. Such motion shall state the reasons the authorization is requested and that all parties consent to the motion. The Court may order the use of any agreed upon settlement procedure authorized by Supreme Court or local rules. The deadline for completion of the authorized settlement procedure shall be as provided by rules authorizing said procedure or, if none, the same as ordered for the mediated settlement conference.

C. INITIATING THE MEDIATED SETTLEMENT CONFERENCE BY LOCAL RULE

(1) **Order by Local Rule.** In judicial districts in which a system of scheduling orders or scheduling conferences is utilized to aid in the administration of civil cases, the Senior Resident Superior Court Judge of said districts may, by local rule, require all persons and entities identified in Rule 4 to attend a pre-trial mediated settlement conference in any civil action except an action in which a party is seeking the issuance of an extraordinary writ or is appealing the revocation of a motor vehicle operator's license.

(2) **Scheduling Orders or Notices.** In judicial districts in which scheduling orders or notices are utilized to manage civil cases and for all cases ordered to mediated settlement conference by local rule, said order or notice shall (1) require that a mediated settlement conference be held in the case; (2) establish a deadline for the completion of the conference; (3) state clearly that the parties have the right to select their own mediator and the deadline by which that selection should be made; (4) state the rate of compensation of the court appointed mediator in the event that the parties do not exercise their right to select a mediator; and (5) state that the parties shall be required to pay the mediator's fee at the conclusion of the settlement conference unless otherwise ordered by the Court.

- (3) **Scheduling Conferences.** In judicial districts in which scheduling conferences are utilized to manage civil cases and for cases ordered to mediated settlement conferences by local rule, the notice for said scheduling conference shall (1) require that a mediated settlement conference be held in the case; (2) establish a deadline for the completion of the conference; (3) state clearly that the parties have the right to select their own mediator and the deadline by which that selection should be made; (4) state the rate of compensation of the court appointed mediator in the event that the parties do not exercise their right to select a mediator; and (5) state that the parties be required to pay the mediator's fee at the conclusion of the settlement conference unless otherwise ordered by the court.
- (4) **Application of Rule 1.B.** The provisions of Rule 1.C.(4),(5) and (6) shall apply to Rule 1.C. except for the time limitations set out therein.
- (5) **Deadline for Completion.** The provisions of Rule 3.B. determining the deadline for completion of the mediated settlement conference shall not apply to mediated settlement conferences conducted pursuant to Rule 1.C. The deadline for completion shall be set by the Senior Resident Superior Court Judge or designee at the scheduling conference or in the scheduling order or notice, whichever is applicable. However, the completion deadline shall be well in advance of the trial date.
- (6) **Selection of Mediator.** The parties may select and nominate, and the Senior Resident Superior Court Judge may appoint, mediators pursuant to the provisions of Rule 2., except that the time limits for selection, nomination, and appointment shall be set by local rule. All other provisions of Rule 2 shall apply to mediated settlement conferences conducted pursuant to Rule 1.C.

RULE 2: SELECTION OF MEDIATOR

A. SELECTION OF CERTIFIED MEDIATOR BY AGREEMENT OF THE PARTIES.

The parties may select a mediator certified pursuant to these Rules by agreement within 21 days of the court's order. The plaintiff's attorney shall file with the court a Notice of Selection of Mediator By Agreement within 21 days of the court's order, however, any party may file the notice. Such notice shall state the name, address and telephone number of the mediator selected; state the rate of compensation of the mediator; state that the mediator and opposing counsel have agreed upon the selection and rate of compensation; and state that the mediator is certified pursuant to these Rules. The notice shall be on an A.O.C. form.

B. NOMINATION AND COURT APPROVAL OF A NON-CERTIFIED MEDIATOR.

The parties may select a mediator who does not meet the certification requirements of these Rules but who, in the opinion of the parties and the Senior Resident Superior Court

Judge, is otherwise qualified by training or experience to mediate the action and who agrees to mediate indigent cases without pay.

If the parties select a non-certified mediator, the plaintiff's attorney shall file with the court a Nomination of Non-Certified Mediator within 21 days of the court's order. Such nomination shall state the name, address and telephone number of the mediator; state the training, experience or other qualifications of the mediator; state the rate of compensation of the mediator; and state that the mediator and opposing counsel have agreed upon the selection and rate of compensation.

The Senior Resident Superior Court Judge shall rule on said nomination without a hearing, shall approve or disapprove of the parties' nomination and shall notify the parties of the court's decision. The nomination and approval or disapproval of the court shall be on an A.O.C. form.

C. APPOINTMENT OF MEDIATOR BY THE COURT.

If the parties cannot agree upon the selection of a mediator, the plaintiff or plaintiff's attorney shall so notify the court and request, on behalf of the parties, that the Senior Resident Superior Court Judge appoint a mediator. The motion must be filed within 21 days after the court's order and shall state that the attorneys for the parties have had a full and frank discussion concerning the selection of a mediator and have been unable to agree. The motion shall be on an A.O.C. form. The motion shall state whether any party prefers a certified attorney mediator, and if so, the Senior Resident Superior Court Judge shall appoint a certified attorney mediator. The motion may state that all parties prefer a certified non-attorney mediator, and if so, the Senior Resident Superior Court Judge shall appoint a certified non-attorney mediator if one is on the list of certified mediators desiring to mediate cases in the district. If no preference is expressed, the Senior Resident Superior Court Judge may appoint a certified attorney mediator or a certified non-attorney mediator.

Upon receipt of a motion to appoint a mediator, or in the event the plaintiff's attorneys has not filed a notice of Selection or Nomination of Non-Certified Mediator with the court within 21 days of the court's order, the Senior Resident Superior Court Judge shall appoint a mediator certified pursuant to these Rules, under a procedure established by said Judge and set out in Local Rules or other written document. Only mediators who agree to mediate indigent cases without pay shall be appointed. The Dispute Resolution Commission shall furnish for the consideration of the Senior Resident Superior Court Judge of any district where mediated settlement conferences are authorized to be held, the names, addresses and phone numbers of those certified mediators who want to be appointed in said district.

D. MEDIATOR INFORMATION DIRECTORY.

To assist the parties in the selection of a mediator by agreement, the Senior Resident Superior Court Judge having authority over any county participating in the mediated settlement conference program shall prepare and keep current for such county a central directory of information on all certified mediators who wish to mediate cases in that

county. Such information shall be collected on loose leaf forms provided by the Dispute Resolution Commission and be kept in one or more notebooks made available for inspection by attorneys and parties in the office of the Clerk of Superior Court in such county.

E. DISQUALIFICATION OF MEDIATOR.

Any party may move the Senior Resident Superior Court Judge of the district where the action is pending for an order disqualifying the mediator. For good cause, such order shall be entered. If the mediator is disqualified, a replacement mediator shall be selected or appointed pursuant to Rule 2. Nothing in this provision shall preclude mediators from disqualifying themselves.

RULE 3 THE MEDIATED SETTLEMENT CONFERENCE

A. WHERE CONFERENCE IS TO BE HELD.

Unless all parties and the mediator otherwise agree, the mediated settlement conference shall be held in the courthouse or other public or community building in the county where the case is pending. The mediator shall be responsible for reserving a place and making arrangements for the conference and for giving timely notice of the time and location of the conference to all attorneys, unrepresented parties and other persons and entities required to attend.

B. WHEN CONFERENCE IS TO BE HELD.

As a guiding principle, the conference should be held after the parties have had a reasonable time to conduct discovery but well in advance of the trial date.

The court's order issued pursuant to Rule 1.B.(1) shall state a deadline for completion of the conference which shall be not less than 120 days nor more than 180 days after issuance of the court's order.

C. REQUEST TO EXTEND DEADLINE FOR COMPLETION.

A party, or the mediator, may request the Senior Resident Superior Court Judge to extend the deadline for completion of the conference. Such request shall state the reasons the extension is sought and shall be served by the moving party upon the other parties and the mediator. If any party does not consent to the request, said party shall promptly communicate its objection to the office of the Senior Resident Superior Court Judge.

The Senior Resident Superior Court Judge may grant the request by setting a new deadline for completion of the conference, which date may be set at any time prior to trial. Notice of the Judge's action shall be served immediately on all parties and the mediator by the person who sought the extension and shall be filed with the court.

D. RECESSES.

The mediator may recess the conference at any time and may set times for reconvening. If the time for reconvening is set before the conference is recessed, no further notification is required for persons present at the conference.

E. THE MEDIATED SETTLEMENT CONFERENCE IS NOT TO DELAY OTHER PROCEEDING.

The mediated settlement conference shall not be cause for the delay of other proceedings in the case, including the completion of discovery, the filing or hearing of motions, or the trial of the case, except by order of the Senior Resident Superior Court Judge.

RULE 4: DUTIES OF PARTIES, ATTORNEYS AND OTHER PARTICIPANTS IN THE MEDIATED SETTLEMENT CONFERENCES.

A. ATTENDANCE.

(1) The following persons shall attend a mediated settlement conference:

(a) **Parties.**

(i) All individual parties.

(ii) Any party that is not a natural person or a governmental entity shall be represented at the conference by an officer, employee or agent who is not such party's outside counsel and who has been authorized to decide on behalf of such party whether and on what terms to settle the action;

(iii) Any party that is a governmental entity shall be represented at the conference by an employee or agent who is not such party's outside counsel and who has authority to decide on behalf of such party whether and on what terms to settle the action; provided, if under law proposed settlement terms can be approved only by a board, the representative shall have authority to negotiate on behalf of the party and to make a recommendation to that board.

(b) **Insurance Company Representatives.** A representative of each liability insurance carrier, uninsured motorist insurance carrier, and underinsured motorist insurance carrier which may be obligated to pay all or part of any claim presented in the action. Each such carrier shall be represented at the conference by an officer, employee or agent, other than the carrier's outside counsel, who has the authority to make a decision on behalf of such carrier or who has been authorized to negotiate on behalf of the carrier and can promptly communicate during the conference with persons who have such decision-making authority.

(c) **Attorneys.** At least one counsel of record for each party or other participant, whose counsel has appeared in the action.

- (2) Any party or person required to attend a mediated settlement conference shall physically attend until an agreement is reduced to writing and signed as provided in Rule 4.C. or an impasse has been declared. Any such party or person may have the attendance requirement excused or modified, including the allowance of that party's or person's participation without physical attendance.
- (a) By agreement of all parties and persons required to attend and the mediator; or
 - (b) By order of the Senior Resident Superior Court Judge, upon motion of a party and notice to all parties and persons required to attend and the mediator.

B. NOTIFYING LIEN HOLDERS.

Any party or attorney who has received notice of a lien or other claim upon proceeds recovered in the action shall notify said lien holder or claimant of the date, time, and location of the mediated settlement conference and shall request said lien holder or claimant to attend the conference or make a representative available with whom to communicate during the conference.

C. FINALIZING AGREEMENT.

If an agreement is reached in the conference, parties to the agreement shall reduce its terms to writing and sign it along with their counsel. By stipulation of the parties and at their expense, the agreement may be electronically or stenographically recorded. A consent judgment or one or more voluntary dismissals shall be filed with the court by such persons as the parties shall designate.

D. PAYMENT OF MEDIATOR'S FEE.

The parties shall pay the mediator's fee as provided by Rule 7.

E. RELATED CASES.

Upon application by any party or person, the Senior Resident Superior Court Judge may order that an attorney of record or a party in a pending Superior Court Case or a representative of an insurance carrier that may be liable for all or any part of a claim pending in Superior Court shall, upon reasonable notice, attend a mediation conference that may be convened in another pending case, regardless of the forum in which the other case may be pending, provided that all parties in the other pending case consent to the attendance ordered pursuant to this rule. Any such attorney, party or carrier representative that properly attends a mediation conference pursuant to this rule shall not be required to pay any of the mediation fees or costs related to that mediation conference. Any disputed issues concerning an order entered pursuant to this rule shall be determined by the Senior Resident Superior Court Judge who entered the order.

DRC COMMENTS TO RULE 4

DRC Comment to Rule 4.C.

N.C.G.S. 7A-38.1(1) provides that no settlement shall be enforceable unless it has been reduced to writing and signed by the parties. When a settlement is reached during a mediated

settlement conference, the mediator shall be sure its terms are reduced to writing and signed by the parties and their attorneys before ending the conference.

DRC Comment to Rule 4.E.

Rule 4.E. was adopted to clarify a Senior Resident Superior Court Judge’s authority in those situations where there may be a case related to a Superior Court case pending in a different forum. For example, it is common for there to be claims asserted against a third-party tortfeasor in a Superior Court case at the same time that there are related workers’ compensation claims being asserted in an Industrial Commission case. Because of the related nature of such claims, the parties in the Industrial Commission case may need an attorney of record, party, or insurance carrier representative in the Superior Court case to attend the Industrial Commission mediation conference in order to resolve the pending claims in that case. Rule 4.E. specifically authorizes a Senior Resident Superior Court Judge to order such attendance provided that all parties in the related Industrial Commission case consent and the persons ordered to attend receive reasonable notice. The Industrial Commission’s Rules for Mediated Settlement and Neutral Evaluation Conferences contain a similar provision which provides that persons involved in an Industrial Commission case may be ordered to attend a mediation conference in a related Superior Court Case.

RULE 5: SANCTIONS FOR FAILURE TO ATTEND MEDIATED SETTLEMENT CONFERENCES.

If a party or other person required to attend a mediated settlement conference fails to attend without good cause, the Senior Resident Superior Court Judge may impose upon the party or person any appropriate monetary sanction including, but not limited to, the payment of fines, attorneys fees, mediator fees, expenses and loss of earnings incurred by persons attending the conference.

A party seeking sanctions against another party or person shall do so in a written motion stating the grounds for the motion and the relief sought. Said motion shall be served upon all parties and on any person against whom sanctions are being sought. If the court imposes sanctions, it shall do so, after notice and a hearing, in a written order, making findings of fact supported by substantial evidence and conclusions of law. (See also Rule 7.F. and the Comment to Rule 7.F.)

RULE 6: AUTHORITY AND DUTIES OF MEDIATORS

A. AUTHORITY OF MEDIATOR.

- (1) **Control of Conference.** The mediator shall at all times be in control of the conference and the procedures to be followed.
- (2) **Private Consultation.** The mediator may communicate privately with any participant or counsel prior to and during the conference. The fact that private

communications have occurred with a participant shall be disclosed to all other participants at the beginning of the conference.

- (3) **Scheduling the Conference.** The mediator shall make a good faith effort to schedule the conference at a time that is convenient with the participants, attorneys and mediator. In the absence of agreement, the mediator shall select the date for the conference.

A. DUTIES OF MEDIATOR.

- (1) The mediator shall define and describe the following at the beginning of the conference:
 - (a) The process of mediation;
 - (b) The differences between mediation and other forms of conflict resolution;
 - (c) The costs of the mediated settlement conference;
 - (d) That the mediated settlement conference is not a trial, the mediator is not a judge, and the parties retain their right to trial if they do not reach settlement;
 - (e) The circumstances under which the mediator may meet communicate privately with any of the parties or with any other person;
 - (f) Whether and under what conditions communications with the mediator will be held in confidence during the conference;
 - (g) The inadmissibility of conduct and statements as provided by G.S. 7A-38.1(1);
 - (h) The duties and responsibilities of the mediator and the participants; and
 - (i) That any agreement reached will be reached by mutual consent.
- (2) **Disclosure.** The mediator has a duty to be impartial and to advise all participants of any circumstances bearing on possible bias, prejudice or partiality.
- (3) **Declaring Impasse.** It is the duty of the mediator timely to determine that an impasse exists and that the conference should end.
- (4) **Reporting Results of Conference.** The mediator shall report to the court on an A.O.C. form within 10 days of the conference whether or not an agreement was reached by the parties. If an agreement was reached, the report shall state whether the action will be concluded by consent judgment or voluntary dismissal and shall identify the persons designated to file such consent judgment or dismissals. The mediator's report shall inform the court of the absence of any party, attorney, or insurance representative known to the mediator to have been absent from the mediated settlement conference without permission. The Dispute Resolution Commission or the Administrative Office of the Courts may require the mediator to provide statistical data for evaluation of the mediated settlement conference program.
- (5) **Scheduling and Holding the Conference.** It is the duty of the mediator to schedule the conference and conduct it prior to the conference completion deadline

set out in the court's order. Deadlines for completion of the conference shall be strictly observed by the mediator unless said time limit is changed by a written order of the Senior Resident Superior Court Judge.

RULE 7: COMPENSATION OF THE MEDIATOR

- A. BY AGREEMENT.** When the mediator is stipulated by the parties, compensation shall be as agreed upon between the parties and the mediator.
- B. BY COURT ORDER.** When the mediator is appointed by the court, the parties shall compensate the mediator for mediation services at the rate of \$125 per hour. The parties shall also pay to the mediator a one-time, per case administrative fee of \$125, which is due upon appointment.
- C. CHANGE OF APPOINTED MEDIATOR.** Pursuant to Rule 2.A., the parties have twenty-one (21) days to select a mediator. Parties who fail to select a mediator within that time frame and then desire a substitution after the court has appointed a mediator, shall obtain court approval for the substitution. If the court approves the substitution, the parties shall pay the court's original appointee the \$125 one time, per case administrative fee provided for in Rule 7.B.
- D. INDIGENT CASES.** No party found to be indigent by the court for the purposes of these rules shall be required to pay a mediator fee. Any mediator conducting a settlement conference pursuant to these rules shall waive the payment of fees from parties found by the court to be indigent. Any party may move the Senior Resident Superior Court Judge for a finding of indigence and to be relieved of that party's obligation to pay a share of the mediator's fee.

Said motion shall be heard subsequent to the completion of the conference or, if the parties do not settle their case, subsequent to the trial of the action. In ruling on such motions, the Judge shall apply the criteria enumerated in G.S. 1-110(a), but shall take into consideration the outcome of the action and whether a judgment was rendered in the movant's favor. The court shall enter an order granting or denying the party's request.

- E. POSTPONEMENT FEES.** As used herein, the term "postponement" shall mean reschedule or not proceed with a settlement conference once a date for the settlement conference has been agreed upon and scheduled by the parties and the mediator. After a settlement conference has been scheduled for a specific date, a party may not unilaterally postpone the conference. A conference may be postponed only after notice to all parties of the reason for the postponement, payment of a postponement fee to the mediator, and consent of the mediator and the opposing attorney. If a mediator is postponed within seven (7) business days of the scheduled date, the fee shall be \$125. If the settlement conference is postponed within three (3) business days of the scheduled date, the fee shall be \$250. Postponement fees shall be paid by the party requesting the postponement

unless otherwise agreed to between the parties. Postponement fees are in addition to the one time, per case administrative fee provided for in Rule 7.B.

- F. PAYMENT OF COMPENSATION BY PARTIES.** Unless otherwise agreed to by the parties or ordered by the court, the mediator's fee shall be paid in equal shares by the parties. For purposes of this rule, multiple parties shall be considered one party when they are represented by the same counsel. Parties obligated to pay a share of the fees shall pay them equally. Payment shall be due upon completion of the conference.
- G. SANCTIONS FOR FAILURE TO PAY MEDIATOR'S FEE.** Willful failure of a party to make timely payment of that party's share of the mediator's fee (whether the one time, per case, administrative fee, the hourly fee for mediation services, or any postponement fee) or willful failure of a party contending indigent status to promptly move the Senior Resident Superior Court Judge for a finding of indigency, shall constitute contempt of court and may result, following notice, in a hearing and the imposition of any and all lawful sanctions by a Resident or Presiding Superior Court Judge.

DRC COMMENTS TO RULE 7

DRC Comment to Rule 7.B.

Court-appointed mediators may not be compensated for travel time, mileage, or any other out-of-pocket expenses associated with a court-ordered mediation.

DRC Comment to Rule 7.E.

Though MSC Rule 7.E. provides that mediators "shall" assess the postponement fee, it is understood there may be rare situations where the circumstances occasioning a request for a postponement are beyond the control of the parties, for example, an illness, serious accident, unexpected and unavoidable trial conflict. When the party or parties take steps to notify the mediator as soon as possible in such circumstances, the mediator, may, in his or her discretion, waive the postponement fee.

Non-essential requests for postponements work a hardship on parties and mediators and serve only to inject delay into a process and program designed to expedite litigation. As such, it is expected that mediators will assess a postponement fee in all instances where a request does not appear to be absolutely warranted. Moreover, mediators are encouraged not to agree to postponements in instances where, in their judgment, the mediation could be held as scheduled.

DRC Comment to Rule 7.F.

If a party is found by a Senior Resident Superior Court Judge to have failed to attend a mediated settlement conference without good cause, then the Court may require that party to pay the mediator's fee and related expenses.

DRC Comment to Rule 7.G.

If the Mediated Settlement Conference Program is to be successful, it is essential that mediators, both party-selected and court-appointed, be compensated for their services. MSC Rule 7.G. is intended to give the court express authority to enforce payment of fees owed both court-appointed and party-selected mediators. In instances where the mediator is party-selected, the court may enforce fees which exceed the caps set forth in 7.B. (hourly fee and administrative fee) and 7.E. (postponement/cancellation fee) or which provide for payment of services or expenses not provided for in Rule 7 but agreed to among the parties, for example, payment for travel time or mileage.

RULE 8: MEDIATOR CERTIFICATION AND DECERTIFICATION

The Dispute Resolution Commission may receive and approve applications for certification of persons to be appointed as mediators. For certification, a person shall:

- A. Have completed a minimum of 40 hours in a Trial Court Mediation Training Program certified by the Dispute Resolution Commission:

- B. Have the following training, experience and qualifications:
 - (1) An attorney may be certified if he or she:
 - (a) is either:
 - (i) a member in good standing of the North Carolina State Bar, pursuant to Title 27, N.C. Administrative Code, The N.C. State Bar, Chapter 1, Subchapter A. Section .0201(b) or Section .0201(c)(1), as those rules existed January 1, 2000.
 - or
 - (ii) a member similarly in good standing of the Bar of another state; demonstrates familiarity with North Carolina court structure, legal terminology and civil procedure; and provides to the Dispute Resolution Commission three letters of reference as to the applicant's good character, including at least one letter from a person with knowledge of the applicant's practice as an attorney; and
 - (b) has at least five years of experience as a judge, practicing attorney, law professor or mediator, or equivalent experience.

Any current or former attorney who is disqualified by the attorney licensing authority of any state shall be ineligible to be certified under this Rule 8.B.(1) or Rule 8.B.(2).

- (2) A non-attorney may be certified if he or she has completed the following:
 - (a) a six hour training on North Carolina court organization, legal terminology, civil court procedure, the attorney-client privilege, the unauthorized practice of law, and common legal issues arising in Superior Court cases, provided by a trainer certified by the Dispute Resolution Commission;

- (b) provide to the Dispute Resolution Commission three letters of reference as to the applicant's good character, including at least one letter from a person with knowledge of the applicant's experience claimed in Rule 8.B.(2)(c);
 - (c) one of the following:
 - (i) a minimum of 20 hours of basic mediation training provided by a trainer acceptable to the Dispute Resolution Commission; and after completing the 20 hour training, mediating at least 30 disputes, over the course of at least three years, or equivalent experience, and either a four year college degree or four years of management or administrative experience in a professional, business, or governmental entity; or
 - (ii) ten years of management or administrative experience in a professional, business, or governmental entity.
 - (d) Observe three mediated settlement conferences meeting the requirements of Rule 8.C. conducted by at least two different certified mediators, in addition to those required by Rule 8.C.
- C.** Observe two mediated settlement conferences conducted by a certified Superior Court mediator:
- (1) at least one of which must be court ordered by a Superior Court,
 - (2) the other may be a mediated settlement conference conducted under rules and procedures substantially similar to those set out herein, in cases pending in the North Carolina Industrial Commission, the North Carolina Office of Administrative Hearings, North Carolina Superior Court or the US District Courts for North Carolina.
- D.** Demonstrate familiarity with the statute, rules, and practice governing mediated settlement conferences in North Carolina;
- E.** Be of good moral character and adhere to any ethical standards hereafter adopted by this Court;
- F.** Submit proof of qualifications set out in this section on a form provided by the Dispute Resolution Commission;
- G.** Pay all administrative fees established by the Administrative Office of the Court; upon the recommendation of the Dispute Resolution Commission and
- H.** Agree to mediate indigent cases without pay.

Certification may be revoked or not renewed at any time it is shown to the satisfaction of the Dispute Resolution Commission that a mediator no longer meets the above qualifications or has not faithfully observed these rules or those of any district in which he or she has served as a mediator.

RULE 9: CERTIFICATION OF MEDIATION TRAINING PROGRAMS

- A.** Certified training programs for mediators of Superior Court civil actions shall consist of a minimum of 40 hours instruction. The curriculum of such programs shall include:
- (1) Conflict resolution and mediation theory;
 - (2) Mediation process and techniques, including the process and techniques of trial court mediation;
 - (3) Standards of conduct for mediators including, but not limited to the Standards of Professional Conduct adopted by the Supreme Court;
 - (4) Statutes, rules, and practice governing mediated settlement conferences in North Carolina;
 - (5) Demonstrations of mediated settlement conferences;
 - (6) Simulations of mediated settlement conferences, involving student participation as mediator, attorneys and disputants, which simulations shall be supervised, observed and evaluated by program faculty; and
 - (7) Satisfactory completion of an exam by all students testing their familiarity with the statutes, rules and practice governing mediated settlement conferences in North Carolina.
- B.** A training program must be certified by the Dispute Resolution Commission before attendance at such program may be used for compliance with Rule 8.A.

Training programs attended prior to the promulgation of these rules or attended in other states may be approved by the Dispute Resolution Commission if they are in substantial compliance with the standards set forth in this rule.

- C.** To complete certification, a training program shall pay all administrative fees established by the Administrative Office of the Courts upon the recommendation of the Dispute Resolution Commission.

RULE 10: LOCAL RULE MAKING

The Senior Resident Superior Court Judge of any district conducting mediated settlement conferences under these Rules is authorized to publish local rules, not inconsistent with these Rules and G.S. 7A-38.1, implementing mediated settlement conferences in that district.

RULE 11: DEFINITIONS

- A.** The term, Senior Resident Superior Court Judge, as used throughout these rules, shall refer both to said judge or said judge's designee.
- B.** The phrase, AOC forms, shall refer to forms prepared by, printed, and distributed by the Administrative Office of the Courts to implement these Rules or forms approved by local rule which contain at least the same information as those prepared by the Administrative

Office of the Courts. Proposals for the creation or modification of such forms may be initiated by the Dispute Resolution Commission.

RULE 12: TIME LIMITS

Any time limit provided for by these Rules may be waived or extended for good cause shown. Service of papers and computation of time shall be governed by the Rules of Civil Procedure.