

**LOCAL RULES OF PRACTICE
CASE MANAGEMENT PLAN FOR SUPERIOR CIVIL CASES
JUDICIAL DISTRICT 20-A
ANSON, RICHMOND, AND STANLY COUNTIES
EFFECTIVE MARCH 1, 1997
REVISED EFFECTIVE JANUARY 1, 2006**

The following case management plan for the calendaring of civil matters in the Superior Court of Judicial District 20A has been adopted by the Senior Resident Superior Court Judge as required by the General Rules of Practice for the Superior and District Courts adopted by the Supreme Court of North Carolina.

RULE 1 - CASE TRACKING SYSTEM:

- 1.1 The Superior Court Trial Court Coordinator for Judicial District 20A shall maintain a ready calendar and a case tracking system for civil cases pending in the Superior Court, keeping a separate index for medical malpractice actions.
- 1.2 The Superior Court tracking system must record the filing dates for pleadings, a list of pending motions, and a list of trial continuances.
- 1.3 All cases on the ready calendar shall be subject to be placed on the trial calendar.

RULE 2 - TIME STANDARDS FOR CALENDARING/DISCOVERY:

- 2.1 A case shall be calendared for trial as soon as practical after the following events:
 - (a) The lapse of 120 days after the filing of the answer or last required pleading. The 120-day period shall be reserved exclusively for discovery, unless otherwise ordered by the Court, but the trial of the case shall not thereafter be delayed for failure to complete discovery unless, for good cause shown, the Senior Resident Superior Court Judge extends the discovery period prior to the expiration of the 120-day period. Motions for limitation or extension of the discovery period in the Superior Court should be mailed to the Office of the Senior Resident Superior Court Judge. All parties shall proceed promptly and expeditiously with any discovery they feel is necessary. Failure to conduct discovery in the early stages will be grounds for denial of extensions for discovery later in the proceedings.
 - (b) The remand of a case on appeal for re-trial.
 - (c) The docketing of any case having statutory priority.
 - (d) The filing of a consent request for calendaring signed by all attorneys of record in the case and all parties not represented by attorneys.

RULE 3 - REQUESTS FOR CALENDARING:

3.1 Procedure

Any attorney or unrepresented party may request that a case be calendared for trial at any scheduled session of court. Requests for calendaring of Superior Court cases should be made in writing to the Office of the Senior Resident Superior Court Judge by mailing the request to the Trial Court Coordinator, Post Office Box 1064, Wadesboro, NC 28170, and by delivering a copy to all attorneys of record and unrepresented parties. This request must be made prior to the publication of the tentative calendar for the session requested.

3.2 Forms/Notice

All calendar requests shall be made on the form attached hereto, which shall be made available by the Clerk of Superior Court. All calendar requests made by use of the said form shall constitute notice of hearing pursuant to Rule 7(b)(1) of the North Carolina Rules of Civil Procedure.

RULE 4 - SUPERIOR COURT TRIAL CALENDARS:

4.1 Tentative Superior Court Trial Calendars

(a) Publication

Not less than six (6) weeks prior to the first day of each session, the Trial Court Coordinator shall prepare a tentative calendar of cases for trial at that session. Distribution of the calendars shall be made by posting on the Internet at www.nccourts.org (<http://www1.aoc.state.nc.us/www/calendars/Civil.html> is the direct link for calendar.) The Trial Court Coordinator shall mail a postcard to each law firm with one or more cases listed thereon and to each party not represented by an attorney if such party's address appears of record, notifying them that the calendar has been posted to the Internet. Each attorney and each unrepresented party shall be responsible for seeing that his correct mailing address appears in the record. Posting the calendar to the web and delivery of the postcard to attorneys of record or unrepresented parties shall constitute notice of hearing as required by Rule 7(b)(1) of the North Carolina Rules of Civil Procedure for cases calendared by the Senior Resident Superior Court Judge and/or the Trial Court Coordinator on their own initiative.

(b) Requests for Removal from Tentative Superior Court Trial Calendars

At any time after the publication of the tentative calendar and before the publication of the final calendar, an attorney or unrepresented party in any case on the tentative Superior Court calendar, after notice to all opposing parties, may request that the case be removed from the tentative calendar. The request shall be directed in writing to the Office of the Senior Resident Superior Court Judge and should state the case number and name, the county and date where tentatively set, the reason for the request, and whether the request is approved by all opposing counsel. If the motion is based on a need

for additional discovery time it must be accompanied by a written motion to extend discovery, which motion shall state the reasons why discovery could not be completed within the time previously reserved for discovery.

(c) **Requests for Additions to Tentative Superior Court Calendars**

At any time after the publication of the tentative calendar and before the publication of the final calendar, attorneys may request that additional cases be added to the calendar for trial. Any such request must have the approval of all opposing attorneys and should be directed to the Office of the Senior Resident Superior Court Judge.

(d) **Request for Peremptory Settings**

At any time more than four (4) weeks before the first day of a session, an attorney may request a peremptory setting for any case listed on the tentative calendar. The request must be served on all attorneys or unrepresented parties, must state the reasons why the case should be peremptorily set, and should state whether all attorneys in the case approve the request. The request should be directed to the Office of the Senior Resident Superior Court Judge. No more than two (2) peremptory settings per week shall be made during any session of court. If a peremptorily set case is continued, attorneys in that case shall not be entitled to a second priority setting unless another request is approved. Peremptory settings may be allowed in cases involving persons who must travel long distances, cases involving numerous expert witnesses, or cases involving other extraordinary reasons.

(e) **Monitoring of Cases**

The Trial Court Coordinator shall continually monitor the tentative trial calendar to determine settlements; conflicts that develop; cases not reached or continued from previous session; motions that are filed; additions, deletions or changes in parties or attorneys; or any other factors affecting the readiness of the case for trial.

4.2 Final Superior Court Calendars

(a) **Publication**

Not less than three (3) weeks prior to the first day of each civil session, the Trial Court Coordinator shall prepare a final calendar of cases for trial at that session. Distribution of the final calendar shall be made by posting on the Internet at www.nccourts.org (<http://www1.aoc.state.nc.us/www/calendars/Civil.htm1> is the direct link for calendar.) The Trial Court Coordinator shall mail a postcard to each law firm with one or more cases listed thereon and to each party not represented by an attorney if such party's address appears of record, notifying them that the calendar has been posted to the Internet. Each attorney and each unrepresented party shall be responsible for seeing that his correct mailing address appears in the record. The final trial calendar shall contain all cases on the tentative trial calendar unless they are removed by the Trial

Court Coordinator or the cases have previously been terminated and, in addition, shall contain any motions that have matured or been requested by an attorney or record and cases for trial not reached or continued at a previous session, after consultation with attorneys of record as to their conflicts and convenience. The final trial calendar shall contain a sufficient number of cases to insure full use of available time but not an excess number of cases that will result in numerous cases being consistently not reached or witnesses being unnecessarily inconvenienced. The final trial calendar shall contain any cases having statutory priority as required by law. Posting the calendar to the web and delivery of the postcard to attorneys of record or unrepresented parties shall constitute notice of hearing as required by Rule 7(b)(1) of the North Carolina Rules of Civil Procedure for cases calendared by the Senior Resident Superior Court Judge and/or the Trial Court Coordinator on their own initiative.

(b) Order of Listing for Trial

Peremptorily set cases shall be calendared at the top of the final calendar and marked accordingly. Thereafter, cases shall be set by date of filing in chronological order unless otherwise ordered by the Senior Resident Superior Court Judge. Cases may be called when reached in the order they are set unless the final calendar notes a date before which or after which a case shall not be tried. The Presiding Judge shall have the authority to call any case out of order as in his discretion he may deem appropriate.

(c) Pre-trial Conferences

The final trial calendar shall schedule motions for final pre-trials for each Monday morning. Non-jury cases shall be calendared for Monday and are to be heard at the pleasure of the Presiding Judge at such time as to avoid imposing on jurors' time with non-jury matters.

(d) Carry-Over Cases Not Tried

If, for any reason, a case is not reached for trial during the session of court for which it is set, the Presiding Judge may, with the consent of all attorneys of record and unrepresented parties, place the case on the final calendar for the next session of court, even though the tentative calendar for that session has been previously published without listing that case for trial. Otherwise, any case not reached shall be re-calendared as provided by these rules.

RULE 5 - MOTION CALENDARS:

5.1 Regular Motion Calendar

The Trial Court Coordinator shall publish and distribute, by posting on the Internet, a regular motion calendar of motions and non-trial matters to be heard at each trial session. It may contain any motions or non-trial matters the court records show are pending at the time the calendar is prepared, as well as others calendared by request. This regular motion calendar shall not contain more non-trial matters than can reasonably

be expected to be heard in the time designated by the Senior Resident Superior Court Judge for the hearing of such matters. Calendar requests for the regular Superior Court motion calendar must be made in writing to the Office of the Senior Resident Superior Court Judge prior to the publication of the final calendar by mailing said request to the Trial Court Coordinator, Post Office Box 1064, Wadesboro, NC 28170, and by delivering a copy to all attorneys of record and unrepresented parties.

5.2 Forms/Notice

All calendar requests for motions and non-trial matters shall be made on the form attached hereto, which shall be made available by the Clerk of Superior Court. All calendar requests made by the use of the said form shall constitute notice of hearing pursuant to Rule 7(b)(1) of the North Carolina Rules of Civil Procedure. Delivery of the final calendar to attorneys of record or unrepresented parties by way of posting the calendar to the Internet shall constitute notice of hearing for motions calendared by the Senior Resident Superior Court Judge and/or the Trial Court Coordinator on their own initiative.

5.3 Supplemental Motion Calendar

Any motion calendar request filed after the publication of the final trial calendar for Superior Court should be filed with the Trial Court Coordinator, who will place the motion on a supplemental motion calendar. Parties with motions on the supplemental motion calendar must give notice of hearing to all opposing parties as required by the Rules of Civil Procedure. The hearing of motions listed on the regular motion calendars shall take precedence over the hearing of motions listed on the supplemental motion calendar unless otherwise ordered by the Presiding Judge.

RULE 6 - CONTINUANCES:

6.1 Appropriate Judicial Official

Any motion for a continuance from the final Superior Court calendar for reasons arising before the close of business on the Friday preceding the first day of the session shall be made, with notice to all opposing counsel or unrepresented parties, in writing if possible, to the Office of the Senior Resident Superior Court Judge. Motions for continuances may be directed to the Presiding Judge only for reasons arising after the close of the business day on the Friday preceding the first day of the session.

The Trial Court Coordinator to the Senior Resident Superior Court Judge shall rule upon all continuance requests directed to the Office of the Senior Resident Superior Court Judge after giving all attorneys of record and unrepresented parties an opportunity to be heard. Either party may appeal such ruling to the Senior Resident Superior Court Judge. If the continuance request and ruling and appeal are all in writing, the appeal shall be based on such writings and the case-tracking card for that case. Otherwise, the appeal shall be heard upon a conference telephone call initiated by the appealing attorney and including all interested attorneys or unrepresented parties, if possible.

6.2 Form of Motion

All applications for continuance shall be by written motion made on state form AOC-CV-221. A copy of such motion shall be delivered to the Trial Court Coordinator.

6.3 Notification of Opposing Counsel/Unrepresented Parties

A copy of the completed form AOC-CV-221 must be distributed to all counsel of record and/or unrepresented parties prior to presentation of the motion to the appropriate judicial official. Distribution of the motion may be by U. S. Mail, facsimile transmission, e-mail, hand delivery, or distribution by means of attorney distribution boxes maintained in the courthouse facility.

6.4 Objections to Motion for Continuance

Opposing counsel and/or unrepresented parties shall have a period of three (3) working days following completion of distribution to communicate, by any means, objections to the motion for continuance to the moving party and the office of the Senior Resident Superior Court Judge or the office of his designee. Objections not raised within this time period or deemed waived.

6.5 Evaluation of Motions for Continuance

Continuance requests are presumptively disfavored. However, when compelling reasons for continuance are presented which would affect the fundamental fairness of the trial process or when a continuance clearly is in the interest of justice, a continuance may be granted in the exercise of judicial discretion to further the best interest of the fair administration of justice.

In addition to other factors, the appropriate judicial official shall consider the following when deciding whether to grant or deny a motion for continuance.

- the age of the case;
- the status of the trial calendar for the week;
- the order in which the case appears on the trial calendar, including whether the case is preemptorily scheduled;
- the number of previous continuances;
- the extent to which counsel had input into the scheduling of the trial date; the due diligence of counsel in promptly filing a motion for continuance as soon as practicable;
- whether the reason for continuance is a short-lived event which could be resolved prior to the scheduled trial date;
- the length of the continuance requested, if applicable;
- the position of opposing counsel;
- whether the parties themselves consent to the continuance;
- present or future inconvenience or unavailability of witnesses/parties; and
- any other matter that promotes the ends of justice.

Reasons that shall not be considered valid bases for allowing a continuance motion include first time scheduling of the case for trial, potential conflicting scheduling of other trials in other courts and whether counsel of record has received payment.

6.6 Case Rescheduling

Prior to granting a motion for continuance, the appropriate judicial official, in consultation with the office of the Senior Resident Superior Court Judge or his designee, should reschedule the trial of the case after receiving input from all counsel.

RULE 7 – SCHEDULING CONFLICTS:

7.1 Guidelines

The Guidelines for Resolving Scheduling Conflicts in North Carolina Courts were adopted by the State-Federal Judicial Counsel of North Carolina on June 20, 1985. They are found at 315 N.C. 741.

7.2 Procedure

A message, phone call, last minute letter, or Fax to the Clerk of Superior Court of the Trial Court Coordinator is not sufficient to resolve a conflict unless the excuse is a last minute emergency and, with reasonable diligence, contact with the trial judge cannot be made before court convenes. Normally, when an attorney learns of a conflict, that attorney should promptly give written notice to the presiding judges, opposing counsel and the clerks of the courts affected. The circumstances relevant to the resolution of the conflict shall be stated in the writing. Included shall be the case names, docket numbers, the courts, the date on which the other court calendar was published, the comparative age of the cases, their complexity, the estimated trial time, the number of attorneys and parties involved, whether the trial involves a jury, and the difficulty or ease of rescheduling. The judges of the different courts involved will themselves then promptly confer, resolve the conflict, and notify counsel.

RULE 8 – SETTLEMENT OF CASES:

8.1 Notification Required

When any case on a calendar is settled, it shall be the responsibility of the attorneys of record in the case to notify the Clerk of Superior Court and the Trial Court Coordinator to the Senior Resident Superior Court Judge of the settlement by the end of the next business day following the said settlement. If the case is settled on the weekend before the first day of the session, then it shall be the responsibility of the attorneys of record to appear at the calendar call on the first day of the session to announce that the case is settled. When such notice of settlement is given, the Clerk and the Trial Court Coordinator to the Senior Resident Superior Court Judge shall be advised as to who will prepare the judgment or dismissal and when it is to be filed.

8.2 Dismissal of Cases When Documents Not Filed

If the attorney responsible for filing a settlement judgment or dismissal fails to do so within the time indicated to the Clerk and to the Trial Court Coordinator, the case will thereafter be placed on the regular or supplemental motion calendar for inquiry by the Court as to reasons for the failure to file the settlement documents, and for the entry of such orders as the Court deems appropriate. The case may thereafter be placed on the regular or supplemental motion calendar for a later session of court for possible dismissal of the case for failure to timely file the settlement documents. Any attorney or party in the case may appear and show cause why the case should not be dismissed. If no good cause is shown, the case may, in the discretion of the Presiding Judge, be dismissed for failure to timely file settlement judgment or dismissal.

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.
- 9.2** If at the beginning of a 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 Trial Court Coordinator bringing the cases to the Judge's attention.

RULE 10 - REMOVING INACTIVE CASES FROM TRIAL DOCKETS:

10.1 By Request of the Parties

If all parties and attorneys in a case agree that the dispute between the parties is no longer active, that a trial of the case will not be necessary, and that the ends of justice will best be served by declaring the case inactive and removing it from the trial docket, they may prepare a joint motion to that effect and submit it with a proposed order for the approval and signature of the Senior Resident Superior Court Judge.

10.2 Contents of Proposed Order

The proposed order removing a case from the trial docket shall state the reasons why the parties contend justice will be promoted by the order and it shall contain an order that the case be declared inactive and the case file be closed without prejudice to any party's right to have the matter reopened upon a motion in the case. If the Judge allows the motion, he will sign the order and file it with the Clerk. If he does not allow it, he will return it with a notation that the motion is denied.

10.3 Removing Inactive Cases Without Request

The Senior Resident Superior Court Judge or any Presiding Judge may, of his own motion, declare a case inactive and remove it from the trial docket if it appears to him that the controversy between the parties no longer exists or that a trial of the matter will not be required. When a case is declared inactive by the Court's own motion, such ruling shall be without prejudice to any party's right to have the case reopened for further necessary proceedings.

RULE 11 – BANKRUPTCY:

11.1 Civil actions in which one of the parties declare bankruptcy will be dealt with in accordance with the following authority and procedure:

- (a) Rule 401 of the Federal Bankruptcy Act;
- (b) 11 U. S. C. 362;
- (c) 11 U. S. C. 1301;
- (d) Whitehurst v. Virginia Dare Transport Company, 19 N.C. App. 352 (1973);
- (e) N. C. G. S. ¶1-23.

11.2 Any requests to continue, hold, or in any other way delay disposition of a case due to bankruptcy of one of the parties, must be accompanied by certification of the bankruptcy filing or stay of proceeding from the United States Bankruptcy Court having jurisdiction. Attorney for the bankrupt party shall forward notice of the bankruptcy filing to the Trial Court Coordinator. The Senior Resident Superior Court Judge may then place the case on inactive status.

RULE 12 – JUDICIAL ARBITRATION OF SUPERIOR COURT CASES:

12.1 With the consent of all parties to a civil action pending in Superior Court, that case may be set for resolution by Judicial Arbitration before the Senior Resident Superior Court Judge or before any Presiding Judge with his consent. Requests for Judicial Arbitration should be made to the Senior Resident Superior Court Judge or Presiding Judge before whom it is to be heard. Judicial Arbitration cases shall be heard at periodic intervals by the Senior Resident Superior Court Judge on designated administrative days and may be heard before the Presiding Judge at regular sessions of court.

RULE 13 – MEDIATED SETTLEMENT CONFERENCE RULES:

13.1 Mediated Settlement Conference

Judicial District Twenty-A is subject to N. C. G. S. Section 7A-38.1(c), of the Rules of the North Carolina Supreme Court governing the operation of Mediated Settlement Conferences and they are hereby adopted by reference.

All Civil Superior Court cases filed in the 20-A Judicial District must have mediated settlement conferences in accordance with the Supreme Court Rules, 341 NC 746-757 (1995)

EXCEPT:

- (a) Declaratory judgment actions;
- (b) Administrative appeals;
- (c) Actions in which a party is seeking the issuance of an extraordinary writ; and
- (d) Appeals from the revocation of a motor vehicle operator's license.

13.2 All communications with the court concerning mediated settlement conferences in the 20-A Judicial District should be addressed to:

Lynn C. Chewning, Trial Court Coordinator
Post Office Box 1064
Wadesboro, NC 28170
Telephone Number: 704-694-4344
Facsimile Number : 704-694-5501

13.3 Time Standards

A case shall be calendared for mediation as soon as practical after the following events:

- (a) The lapse of 60 days after the filing of the answer or the last required pleading.
- (b) The filing of a consent request for mediation signed by all attorneys of record and all parties not represented by attorneys.
- (c) The filing of a request by one or more of the attorneys or unrepresented parties, with notice to all other attorneys or unrepresented parties, setting forth good cause for an expedited mediation and a finding by the Senior Resident Superior Court Judge of good cause for the expedited mediation.

13.4 Court Appointment of Mediators

Pursuant to Rule 2/C of the Rules of the North Carolina Supreme Court Implementing Mediated Settlement Conferences in Superior Court Civil Actions, the following procedures will govern the appointment of mediators in those cases ordered to mediation in which the parties do not select a mediator.

- (a) 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 AOC 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.
- (b) Upon receipt of a motion to appoint a mediator, or in the event the plaintiff's attorney 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 certified mediator from a list provided by the Dispute Resolution Commission of certified mediators who have agreed to mediate cases in the Judicial District 20-A. Only mediators who agree to mediate indigent cases without pay shall be appointed.
- (c) The general procedure for judicial appointment shall be to appoint the next certified mediator on the appropriate list who currently resides or maintains an office in this Judicial District or a contiguous Judicial District or who certifies in writing annually to the Senior Resident Superior Court Judge that he or she wishes to mediate in this judicial district, is familiar with these Local Mediation Rules, and will comply with them and the Supreme Court Rules. The Senior Resident Superior Court Judge shall retain discretion to depart from the general procedure in particular circumstances such as the appointment of one mediator to multiple related cases, the appointment of a mediator who is especially suited for a particular type of case, the appointment of a newly certified mediator, or to withhold a mediator who has not followed Local or Supreme Court Rules for appointment.

RULE 14 - PRE-TRIAL ORDERS:

- 14.1** There shall be a written pre-trial order filed in every case on the trial calendar before the trial begins. Pre-trial orders are to be reduced to writing and signed by a Superior Court Judge, all of the attorneys, and any unrepresented parties before the trial begins. All parties are responsible for seeing that pre-trial conferences are held if necessary to get a pre-trial order completed. The pre-trial conference and the pre-trial order shall be done in accordance with the provisions of Rule 7 of the General Rules of Practice for Superior and District Courts as they appear in the North Carolina General Statutes.

RULE 15 - PROCEDURES FOR SESSIONS OF COURT:

15.1 Time

Superior Court will convene at 10:00 a. m. on Monday or the opening day of each session and thereafter on each day at 9:30 a. m. unless changed by the Presiding Judge for good cause. The Jury shall be summoned to report at 1:30 p. m. on Monday unless otherwise ordered by the Presiding Judge or the Senior Resident Superior Court Judge.

15.2 Calendar Call

There will be a calendar call at 10:00 a. m. on the first day of each civil session. The purpose of this call will be:

- (a) To notify attorneys with cases scheduled of dispositions made since the publication of the final calendar.
- (b) To consider any requests for continuance.
- (c) To give attorneys an indication of when their case is expected to be reached.

15.3 Motions

Motions shall be set for hearing as the first order of business on Monday morning. Motions not heard on Monday may be heard at any time during the term in the discretion of the Presiding Judge.

15.4 Trials

Unless otherwise directed by the Presiding Judge or noted on the final calendar, cases will be called for trial in the order in which they appear on the calendar. Cases not reached on the day on which they are set will be carried over from day to day during the term, and it will be called when reached any day thereafter unless the final calendar notes a date before which or after which a case shall not be tried, or the Presiding Judge, in his/her discretion at calendar call, notes a date before which or after which a case shall not be tried.

15.5 Cases Not Reached

Cases not reached during the session shall be re-calendared according to Rule 4.2(d).

RULE 16 - OBLIGATIONS OF ATTORNEYS AND UNREPRESENTED PARTIES:

16.1 It is expected that all attorneys of record or unrepresented parties with cases calendared for motion or trial will be present at the convening of Court for the calendar call and will remain in the courtroom or its general area unless excused by the Presiding Judge.

16.2 The only legitimate excuses for not being in court when a case is calendared are death or serious illness, or conflicts with appellate courts. The Trial Court Coordinator, when the excuse can be determined in advance, should be notified to avoid calendaring such cases. Nothing else should take priority over an attorney's punctual appearance in Court.

16.3 Attorneys residing outside the 20-A Judicial District accepting employment to represent clients in the 20-A Judicial District must arrange their schedules to be present when their cases are calendared. Conflicts such as seminars, appellate courts, and vacations must be worked out with the Trial Court Coordinator and the Senior Resident Superior Court Judge before the case is calendared for trial and the calendar published. Attorney cooperation is essential to the proper functioning of our court system. The Court wants to work with the attorneys and make their jobs as easy and convenient as possible and the Court expects the attorneys to respond by being punctual and prepared at the scheduled time. Attorneys representing insurance companies should either have a representative of the company with settlement authority available or have prior authority or immediate access to someone possessing settlement authority without undue delay. Plaintiff's attorney should have clients available or prior settlement authority or immediate access to clients regarding settlements.

16.4 Attorneys residing outside the 20-A Judicial District and who are part of a firm or partnership in which more than one attorney is a part of that firm or partnership **SHALL make available to the Court someone in their office to try any cases that may be scheduled on any particular week of Court.** This district has had problems with attorneys who reside outside of the 20-A Judicial District having conflicts in their home counties and causing the continuance or delay of cases in the 20-A Judicial District. Lawyers from outside the 20-A Judicial District shall be present for the trial of their cases when called by the Presiding Judge or have a representative from their firm present for the trial of that case. Otherwise the Presiding Judge SHALL proceed with the trial of that case in the absence of the attorney who has failed to appear or have some member of his firm to appear. The 20-A Judicial District does not have many weeks of Civil Superior Court and for that reason cases cannot be continued except for the most compelling of reasons.

RULE 17 - ADMINISTRATIVE SESSIONS:

17.1 At such weeks as the Senior Resident Superior Court Judge shall designate, that are agreeable to the Chief Justice, Administrative Terms may be held. During such Administrative Terms, the Senior Resident Superior Court Judge may review all cases in which the time for discovery has expired and take appropriate actions to insure prompt disposition of any motions or other matters necessary to move the cases toward conclusion.

17.2 During the said Administrative Session the Senior Resident Superior Court Judge may also schedule for hearing pending motions in any active case. The Senior Resident Superior Court Judge may also inquire of the attorneys or unrepresented parties as to

possible trial dates for active cases in order to assist the Trial Court Coordinator in preparing tentative calendars in accordance with these rules.

RULE 18 – MOTIONS FOR CONTINUANCE – CRIMINAL CASES IN SUPERIOR COURT IN JUDICIAL DISTRICT 20-A:

18.1 Appropriate Judicial Official

Prior to the opening of court for the session in which the case is calendared, all applications for continuance shall be made to the Senior Resident Superior Court Judge of Judicial District 20-A, or his designee. Following the opening of court for the session in which the case is calendared, any application for continuance shall be made to the Presiding Judge of the Superior Court in which the case is calendared.

[This rule is created to minimize the confusion by the Superior Court Rotation system. The authority to decide all continuances prior to the opening of court rests with the Senior Resident or his designee. This does not abridge the trial judge's right to hear motions made the day of court or during a session.]

18.2 Form of Motion

All applications for continuance shall be by written motion made on state form AOC-CR-1997, or any revised version of the form as provided by the Administrative Office of the Courts.

18.3 Notification of Opposing Counsel/Unrepresented Parties

A copy of the completed form AOC-CR-1997 must be distributed to all counsel of record and/or unrepresented parties prior to presentation of the motion to the appropriate judicial official. Distribution of the motion may be by U. S. Mail, facsimile transmission, hand delivery, or distribution by means of attorney distribution boxes maintained in the courthouse facility.

If the motion is filed by the District Attorney, or a member of the staff of the District Attorney, or by defense counsel, the motion must be presented to opposing counsel prior to presentation to the appropriate judicial official.

18.3 Objections to Motion for Continuance

The Senior Resident Superior Court Judge or his designee shall establish an appropriate method of obtaining information from all counsel concerning positions on the motion to continue. Generally, a written statement of the reasons for the motion is to be attached to the form or may be included within the form.

If the District Attorney consents to the continuance and such consent is indicated by signature of the District Attorney on the continuance form, the continuance is allowed and the continuance form shall be filed in the court file. If no District Attorney's signature appears on the continuance form, the District Attorney's opposition to the motion is presumed. If defense counsel consents to a motion for continuance by the District Attorney and such consent is indicated by the

signature of the defense attorney on the continuance form, the continuance is allowed and the continuance form shall be filed in the court file. If no defense counsel's signature appears on the continuance form, defense counsel's opposition to the motion is presumed.

This rule recognizes the District Attorney's current statutory right to calendar cases. Motions that have the consent of the District Attorney and defense counsel do not require presentation to a judicial official, but are deemed "allowed".

If there is opposition to the motion, the same is to be heard in open court on the first day of the session in which it is calendared unless otherwise stipulated in writing by the parties.

18.4 Evaluation of Motion for Continuance

When compelling reasons for continuance are presented which would affect the fundamental fairness of the trial process or when a continuance clearly is in the interest of justice, a continuance may be granted in the exercise of judicial discretion to further the best interest of the fair administration of justice.

In addition to other factors, the appropriate judicial official shall consider the following when deciding whether to grant or deny a motion for continuance:

- the age of the case;
- the pre-trial detention status of the defendant;
- the status of the trial calendar for the week;
- the order in which the case is designated for trial, including whether the case has a priority designation;
- the number of previous continuances;
- the number of times the case has been designated for trial and not reached;
- the extent to which counsel had input into the scheduling of the trial date;
- the due diligence of counsel in promptly filing a motion for continuance as soon as practicable;
- whether the reason for continuance is a short-lived event that could resolve prior to the scheduled trial date;
- the length of the continuance requested, if applicable;
- the position of opposing counsel;
- whether the motion has been considered by another judge (Senior Resident or designee) on the same grounds;
- whether the parties themselves consent to the continuance;
- present or future inconvenience or unavailability of witnesses/parties; and
- any other matter that promotes the ends of justice.

Reasons that shall not be considered valid bases for allowing a continuance motion include first time scheduling of the case for trial, potential conflicting scheduling of other trials in other courts and whether counsel of record has received payment.

[The factors to be considered by the appropriate judicial official are set forth as guidelines to ensure consistent, rational decision making while not restricting a judge's inherent power to grant requests in the interest of justice.]

RULE 19 – JUDICIAL DISTRICT 20-A SECURED LEAVE POLICY

The following secured leave policy shall apply in the Judicial District 20-A.

19.1 Attorneys may designate three (3) weeks each calendar year as secured leave/vacation periods during which they shall not be required to appear before the Superior Court in Judicial District 20-A.

19.2 That each attorney practicing in the Judicial District 20A may designate such times either consecutively or at intervals ninety (90) days or more in advance of such vacation periods unless a trial or other matter has already been set by a Presiding Judge. Thus, the designation of vacation time shall precede such setting and the attorney may be assured that the designated time shall be available for vacation periods.

19.3 Attorneys may designate periods by filing in the office of the Clerk of Superior Court of Anson, Richmond, or Stanly County a letter designating such weeks, and providing a file-stamped copy to the offices of the District Attorney and the Trial County Coordinator. A copy of the letter shall be retained by the attorney marked "filed" which may be provided to judges and opposing counsel to reserve the weeks designated as necessary.

19.4 The policy and procedures described herein are not exclusive. In extraordinary circumstances, the time limitation for notification of designated weeks may be waived by the court as have been done in the past when attorneys have been faced with particular or unusual situations and further, attorneys shall be able to make other requests to be excused from appearing before a tribunal for personal and other reasons as has been the custom in the past.

This policy is adopted in recognition of the need for time away from the demands of professional responsibilities to improve the overall professional performance of the bar as well as the quality of life of members of the profession and their families and this policy is adopted for that purpose.

RULE 20 – CODE OF PRETRIAL CONDUCT

The following Code of Pretrial Conduct and Code of Trial Conduct developed by the American College of Trial Lawyers (*Copyright © 2002 American College of Trial Lawyers*) is hereby made a part of the Local Rules for Judicial District 20A.

20.1 Scheduling

- (a) Scheduling a Pretrial Event
 - (1) Before noticing or scheduling a deposition, hearing, or other pretrial event, a lawyer should consult and work with opposing counsel to accommodate the needs and reasonable requests of all witnesses and participating lawyers. In scheduling a pretrial event, lawyers should strive to agree upon a mutually convenient time and place, seeking to minimize travel expense and to allow adequate time for preparation.
 - (2) Depositions, hearings, and other pretrial event should be scheduled early enough during the pretrial phase to avoid the difficult scheduling problems that often result from last-minute requests.
- (b) Rescheduling a Pretrial Event
 - (1) If a lawyer needs to reschedule a deposition or other pretrial event, the lawyer should give prompt notice to all other counsel, explaining the conflict or other compelling reason for rescheduling.
 - (2) A lawyer who receives a reasonable request for rescheduling should strive to accommodate the request.
 - (3) If the conflict or other reason for rescheduling is later resolved or eliminated, then the lawyer who rescheduled the event should give notice as soon as practicable to all other counsel. The lawyers should then decide which of the two possible schedules is more convenient.
- (c) Seeking and Granting Extensions of Time
 - (1) Courts expect lawyers to grant other lawyers' requests for reasonable extensions of time to respond to discovery, pretrial motions, and other pretrial matters. Opposing such requests wastes resources and needlessly inconveniences courts, which are likely to grant such requests, even if opposed. Lawyers should explain these principles to their clients and should insist on adhering to them, unless the clients' legitimate interests will be adversely affected.
 - (2) A lawyer should request an extension only when additional time is actually needed, and never merely for purposes of delay. In requesting an extension of time, a lawyer should explain to opposing counsel the reasons for the requests.
 - (3) A lawyer who receives a reasonable request for extension – especially an initial request – should grant the request unless it is clearly inconsistent with the legitimate interest of the lawyer's client.

20.2 Service of Process, Pleadings, and Proposed Orders

- (a) The timing, manner, and place of serving process should not be calculated to disadvantage or embarrass the party being served.
- (b) Unless applicable procedural rules require otherwise, papers should not be filed in a court before being delivered to opposing counsel. For example, if papers are hand-delivered or faxed to the court, then they should be hand-delivered or faxed to opposing counsel on the same day and at about the same time.
- (c) Papers should not be served in a manner deliberately designed to shorten an opponent's time for response or to take other unfair advantage or an opponent. This may include service:
 - (1) when the opponent is known to be absent from the office;
 - (2) late on a Friday afternoon;
 - (3) the day before a secular or religious holiday;
 - (4) shortly before a hearing; or
 - (5) when the timing of service does not afford the opponent adequate time to respond to the paper or to prepare for the relevant pretrial event.
- (d) Even if service by mail to opposing counsel does not technically violate the rules, such service sometimes prejudices the opposing party. If such prejudice is likely, then service should be made by hand or by facsimile, followed, if the applicable rules so require, by service by mail.
- (e) Except when expressly ordered by a court, a proposed order on any substantive matter should not be delivered to the court without assurance that tendering counsel has complied with paragraph 6(e) of this Code.

20.3 Written Submissions to a Court

- (a) Written briefs and memoranda should not refer to or rely on facts that are not properly a part of the record. A lawyer may, however, present historical, economic, or sociological data if the applicable rules of evidence support the data's admissibility.
- (b) Neither written submissions nor oral presentations should disparage the integrity, intelligence, morals, ethics, or personal behavior or an adversary unless such matters are directly relevant under the controlling substantive law.
- (c) When legal opinions are highlighted and presented to the court, identical highlighting should be included on copies of the opinions furnished to opposing counsel.

20.4 Communications with Adversaries

- (a) In their practice, lawyers should remember that their role is to zealously advance the legitimate interests of their clients, while maintaining appropriate standards of civility and decorum. In dealing with others, counsel should not

reflect any ill feelings that clients may have toward their adversaries. Lawyers should treat all other lawyers, all parties, and all witnesses courteously, not only in court, but also in other written and oral communication. Lawyers should refrain from acting upon or manifesting bias or prejudice toward any person based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status.

- (b) Lawyers should avoid hostile, demeaning, or humiliating words in written and oral communication with adversaries.
- (c) Letters intended only to make a record should be used sparingly and only when thought to be necessary under all the circumstances. Letters should not be written to ascribe to an adversary a position that he or she has not taken or to create a “record” of events that have not occurred.
- (d) Unless specifically permitted or invited by the court, letters between counsel should not be sent to judges.
- (e) Lawyers should strictly adhere to all express promises and agreements with opposing counsel, whether oral or in writing, and should adhere in good faith to all agreements implied by the circumstances or by local custom.
- (f) When practicable, lawyers should agree to reasonable requests for the waiver of procedural formalities.

20.5 Discovery Practice

(a) Discovery in General

In discovery, as in all other professional matters, a lawyer’s conduct should be honest, fair, and courteous. In general, a lawyer should adhere to the following guidelines in conducting all forms of discovery:

- (1) A lawyer should strictly follow all applicable rules in drafting and responding to written discovery and in conducting depositions.
- (2) A lawyer should conduct discovery to elicit relevant facts and evidence, and not for an improper purpose, such as to harass, intimidate, or unduly burden another party or a witness.
- (3) A lawyer should respond to written discovery in a reasonable manner and should not interpret requests in a strained or unduly restrictive way in an effort to avoid responding to them or to conceal relevant, non-privileged information.
- (4) Objections to interrogatories, document requests, and requests for admissions should be made in good faith and should be adequately explained and limited.
- (5) When a discovery dispute arises, opposing lawyers should attempt to resolve the dispute by working cooperatively together. Lawyers should refrain from filing motions to compel or for sanctions unless they have genuinely tried, but failed, to resolve the dispute through all reasonable avenue of compromise and resolution.

- (6) Lawyers should claim a privilege only under appropriate circumstances. They should not assert a privilege solely to withhold or suppress non-privileged information or to limit or delay their response.
 - (7) Requests for additional time to respond to discovery should be made as far in advance of the due date as reasonably possible and should not be used for tactical or strategic reasons.
 - (8) Unless there are compelling reasons to deny a request for additional time to respond to discovery, an opposing lawyer should grant the request without necessitating court intervention. Compelling reasons to deny such a request exist only if the client's legitimate interests would be materially prejudiced by the proposed delay.
- (b) Interrogatories
- (1) Lawyers should avoid "boilerplate" interrogatories. Instead, they should carefully tailor interrogatories to elicit information that is relevant to the issues in the pending case or that is otherwise necessary to discover or understand those issues.
 - (2) Lawyers should not assert objections solely to avoid answering an appropriate interrogatory. If only part of an interrogatory is objectionable, then the responding lawyer should object only to that part and should answer the remainder of the interrogatory.
- (c) Document Requests
- (1) Lawyers should carefully tailor document request to obtain documents that are relevant to the issues in the pending case or that are otherwise necessary to discover or understand those issues.
 - (2) Lawyers should not assert objections solely to avoid producing relevant documents. If only part of a request is objectionable, then the responding lawyer should object only to that part and should timely produce all documents responsive to the remainder of the request.
 - (3) In responding to document request, lawyers should make reasonable accommodations for review and copying by opposing counsel. Documents being produced should be organized in a manner consistent with the applicable rules or procedure. A group of documents should never be arranged in a manner calculated to hide or obscure the existence of particular document or discoverable information.
 - (4) If any responsive documents are withheld, then at the time of production, the producing lawyer should give notice of that fact and should explain the reason for withholding them. The producing lawyer should timely provide, in accordance with applicable rule, a log of all documents withheld, including, for each document: (a) its date; (b) the author's name; (c) a general description; (d) the addressee, if any; (e) its current location; (f) the basis for withholding it; and (g) any other information that may be required by applicable rules of procedure.

(d) Requests for Admissions

- (1) Lawyers should use requests for admissions only to ascertain the truth of matters within the scope of the pending case. Such requests should be carefully drafted to inquire only about matters of fact or opinion or the application of law to fact, including the genuineness of any documents properly described in the requests.
- (2) Lawyers should not assert objections solely to avoid admitting or denying an appropriate request. If only part of a request is objectionable, then the responding lawyer should object only to that part and should admit or deny the remainder of the request or set forth in detail the reasons why the answering party cannot truthfully admit or deny the request.

(e) Depositions

- (1) Lawyers should limit depositions to those that are necessary to develop the claims or defenses in the pending case or to perpetuate relevant testimony.
- (2) In appearing for deposition, lawyers should arrive punctually at the time and place stated in the notice or subpoena or agreed upon by counsel. If a lawyer is unavoidably delayed, other participating lawyers should be promptly notified, should be told the reason for the delay, and should be advised when to expect the delayed lawyer's arrival.
- (3) If a scheduled deposition must unavoidably be cancelled, the other participating lawyers should be notified as soon as possible and should be told the reason for the cancellation. The canceling lawyer should promptly seek to reschedule the deposition in a way that will minimize any inconvenience and expense caused by the cancellation.
- (4) During a deposition, lawyers should conduct themselves with decorum and should never verbally abuse or harass the witness or unnecessarily prolong the deposition.
- (5) During a deposition, lawyers should strictly limit objections to those allowed by the applicable rules. In general, lawyers should object only to preserve the record, to assert a valid privilege, or to protect the witness from unfair, ambiguous, or abusive questioning. Objections should not be used to obstruct questioning, to improperly communicate with the witness, or to disrupt the search for facts or evidence germane to the case.

(f) Exceptions to the General Guidelines Regarding Discovery

- (1) A lawyer who has attempted to comply with these guidelines is justified in setting a hearing or deposition without agreement from opposing counsel if opposing counsel fails or refuses to promptly accept or reject a time offered for the hearing or deposition.

- (2) If opposing counsel raises an unreasonable number of calendar conflicts, a lawyer is justified in setting a hearing or deposition without agreement from opposing counsel.
- (3) If opposing counsel has consistently failed to comply with these guidelines, a lawyer is justified in setting a hearing or deposition without agreement from opposing counsel.
- (4) When an action involves so many lawyers that compliance with these guidelines appears to be impracticable, a lawyer should nonetheless make a good-faith attempt to comply with their terms to the extent practicable.
- (5) If a case involves an extraordinary remedy and the time associated with a scheduling agreement could harm a client's case, then a lawyer is justified in setting a hearing or deposition without agreement from opposing counsel, giving notice as prescribed in paragraph 8(b) of this Code.

20.6 Motion Practice

- (a) Before setting a motion for hearing, a lawyer should make a reasonable effort to resolve the issue without involving the court.
- (b) A lawyer who has no valid objection to an opponent's proposed motion should promptly make this position known to opposing counsel. Depending on the nature of the motion, such candor will enable opposing counsel either to file an unopposed motion or to avoid filing a motion altogether.
- (c) If, after opposing a motion, a lawyer recognizes that the movant's position is correct based on the facts or the law, then the lawyer should promptly advise opposing counsel and the court of this change in position. Such candor will prevent the court and opposing counsel from participating in an unnecessary hearing and from addressing issues unnecessarily.
- (d) After a hearing, the lawyer charged with preparing the proposed order should draft it promptly, striving to fairly and accurately articulate the court's ruling. The lawyer should submit the proposed order in compliance with the court's instructions. If no specific schedule is imposed by the court, the lawyer should strive either to tender a copy to opposing counsel, in accordance with paragraph 6(e), below, no later than the following day, excluding Saturdays, Sundays, and legal holidays, or to inform opposing counsel when he or she may expect such a tender.
- (e) Before submitting a proposed order to a court, a lawyer should provide a copy to opposing counsel, who should promptly voice any objections. If the lawyers cannot resolve all objections, then the drafting lawyer should promptly submit the proposed order to the court, stating any unresolved objections.

20.7 Communication with Nonparty Witnesses

- (a) In dealing with a nonparty who is a witness or potential witness, a lawyer must: (1) be truthful about the material facts and the applicable law; (2) disclose his or her interest or role in the pending matter; (3) correct any misunderstanding expressed by the nonparty; (4) treat the nonparty courteously; and (5) avoid unnecessarily embarrassing, inconveniencing, or burdening the nonparty.
- (b) If a lawyer knows that counsel in the pending matter represents a nonparty witness, then the lawyer should not contact the witness without permission from that counsel.
- (c) If a lawyer knows that a nonparty witness is an employee or agent of an organization represented by counsel in the pending matter, then the lawyer should scrupulously follow the rules of the applicable jurisdiction governing such contacts. Absent such rules, the lawyer should not contact the witness without permission from that counsel if: (1) the witness has the power to compromise or settle; (2) the witness regularly consults with the organization's lawyers; (3) the witness's acts may be imputed to the organization for liability purposes; or (4) the witness's statements would bind the organization.
- (d) Lawyers should show courtesy and civility to all nonparty witnesses.
- (e) A lawyer should not obstruct another party's access to a nonparty witness or induce a nonparty witness to evade or ignore process.
- (f) A lawyer should not issue a subpoena to a nonparty witness except to compel, for a proper purpose, the witness's appearance at a deposition, hearing, or trial or to obtain necessary documents in the witness's possession.
- (g) If a lawyer issues a deposition subpoena for a nonparty witness, then the lawyer should simultaneously send all counsel in the pending matter a notice of the deposition and a copy of the subpoena.
- (h) If a lawyer obtains documents through a deposition subpoena, the lawyer should, as soon as reasonably practicable, make copies of the documents available to all counsel at their expense, even if the deposition itself is cancelled or adjourned after the documents are produced.

20.8 Communication with the Court

- (a) A lawyer should make no attempt to obtain an advantage in a pending case through ex parte communication with the presiding judge. A lawyer must avoid such communication on any substantive matter and on any matter that could reasonably be perceived as a substantive matter. Ex parte communication of this type is detrimental to the administration of justice and reflects adversely on the entire legal profession. Therefore, when a lawyer informally communicates with a court, the highest degree of professionalism is demanded.

- (b) Even if the applicable law permits an ex parte communication with the court under certain circumstances, a lawyer – before approaching the court – should promptly and diligently attempt to notify opposing counsel, if known, and if not, the opposing party directly unless there is a bona fide emergency that threatens to materially prejudice the client’s rights if regular notice is given. When giving such notice, the lawyer should advise the opponent of the basis for seeking immediate relief and should make reasonable efforts to accommodate the opponent’s schedule so that the party affected may be represented.
- (c) For communications with the court that are related to a pending case, a lawyer should provide opposing counsel with copies of all written communications and should notify opposing counsel of all oral communications.
- (d) Any proposed order containing findings of fact or conclusions of law should be provided to opposing counsel for comment and objection before being submitted to the court. Local rules often govern whether other types of proposed orders must be provided to opposing counsel before submission to the court. In general, however, routine orders that merely reflect a particular ruling need not be provided to opposing counsel in advance. Similarly, if the contents of an order would be entitled to no deference on review, then the proposed order generally need not be furnished to opposing counsel in advance. Once an order has been submitted, there should be no ex parte communication with the court regarding the entry or the contents of the order.
- (e) A lawyer should always show courtesy to and respect for a presiding judge. While a lawyer may be cordial in communicating with a presiding judge in court or in chambers, the lawyer should never exhibit inappropriate informality.
- (f) A lawyer should avoid taking any action that is or appears to be calculated to gain any special personal consideration or favor from a presiding judge in a pending case.

20.9 Settlement and Alternative Dispute Resolution

- (a) Lawyers should educate their clients early in the legal process about various methods of resolving disputes without trial, including mediation, arbitration, and neutral case evaluation.
- (b) Lawyers should advise clients of the benefits of settlement, including savings to the client, greater control over the process and the result, and a more expeditious resolution of the dispute. The lawyer and the client should work together in formulating a settlement strategy designed to accomplish the client’s realistic goals and expectations.
- (c) At the earliest practicable time, a lawyer should provide the client with a realistic assessment of the potential outcome of the case so that the client may effectively assess various approaches to resolving the dispute. As new

information is obtained during the pretrial phase, the lawyer should revise the assessment as necessary.

- (d) When enough is known about the case to make settlement negotiations meaningful, a lawyer should explore settlement with the client and opposing counsel.
- (e) Throughout the representation of a client in a case, the lawyer should pursue the possibility of settlement and should use all reasonable measures to engage opposing counsel in the settlement process.
- (f) A lawyer should enter into settlement negotiations in good faith, should make proposals that are designed to achieve a resolution, and should recommend reasonable compromises consistent with the client's best interest.
- (g) When request by opposing counsel and authorized by the client, a lawyer should informally provide documents and other information that will promote and expedite settlement efforts.
- (h) A lawyer should never make settlement proposals that are designed to antagonize or further polarize the parties.
- (i) A lawyer should never engage in settlement negotiations for the purpose of delaying discovery or gaining an unfair advantage.
- (j) In participating in settlement negotiations and alternative methods of resolving disputes, lawyers should practice the same courtesy, candor, and cooperation expected of them during other pretrial proceedings.

20.10 Pretrial Conferences

- (a) A lawyer should carefully read and comply with an order setting pretrial deadlines or scheduling a pretrial conference. The lawyer should complete any required statement in full, seeking to reach agreement with opposing counsel when possible and thus to limit the issues to be addressed before and during trial.
- (b) In advance of a final pretrial conference, it is desirable for discovery to be completed, for discovery responses to be supplemented, for discovery exhibits to be furnished, for evidentiary depositions to be concluded, and for settlement negotiations to be exhausted.
- (c) A lawyer should determine in advance of a pretrial conference the trial judge's custom and practices in conducting such conferences.
- (d) A lawyer should satisfy all directives of the court set forth in the order setting a pretrial conference and should consult and comply with all local rules and with any specific requirements of the trial judge.
- (e) Before the initial pretrial conference, a lawyer should ascertain the client's willingness to participate in alternative dispute resolution

- (f) Unless unavoidable circumstances prevent it, a lawyer representing a party at a pretrial conference should be thoroughly familiar with each aspect of the case, including the pleadings, the evidence, and all potential procedural and evidentiary issues.
- (g) Unless unavoidable circumstances prevent it, a lawyer who will actually try the case should attend the pretrial conference, and, in any event, by a lawyer who is familiar with the case.
- (h) A lawyer should alert the court as soon as practicable to scheduling conflicts and travel considerations of clients, experts, and other essential witnesses.
- (i) If stipulations are possible for uncontested matters, a lawyer should propose specific stipulations and work with opposing counsel to obtain an agreement in advance of the pretrial conference.
- (j) At or before a final pretrial conference, a lawyer should alert the court to the need for any pretrial rulings or hearings on matters such as motions in limine and Daubert-type motions on expert-witness qualifications or expert testimony.
- (k) At the final pretrial conference, a lawyer should be prepared to advise the court of the status of settlement negotiations and the likelihood of settlement before trial.
- (l) During the final pretrial conference, a lawyer should confirm the trial judge's practices in the voir dire of potential jurors, the exercise of peremptory strikes, and the selection of replacement jurors.

20.11 Communication with Consultants and Expert Witnesses

- (a) In retaining consultants for expert opinions, a lawyer should be familiar with the qualifications necessary for an expert witness to give opinion evidence at trial, as set forth in the Daubert decision in federal court and in state-court opinions establishing similar guidelines.
- (b) In retaining an expert witness, a lawyer should respect the integrity of the expert's professional practices and procedures, and should refrain from asking or encouraging the expert to violate the integrity of those practices and procedures for purposes of the particular matter for which the expert has been retained.
- (c) In general, an expert must be qualified based on the expert's specialized knowledge or expertise going beyond the general knowledge of laypersons. In retaining an expert witness, a lawyer should provide the expert with information that is believed to be relevant and material to the subject matter of the expert's proposed written report.
- (d) In retaining an expert witness, a lawyer should respect the expert's integrity, knowledge, conclusions, and opinions. A retained expert should be fairly compensated for all work on behalf of the client. But a lawyer must not make compensation, or the amount of compensation, contingent in any way upon

the substance of the expert's opinions or written report or upon the outcome of the matter for which the expert has been retained.

- (e) A lawyer should not purposefully delay designating an expert witness or delivering an expert's report in an effort to postpone a trial setting or to preclude the taking of the expert's deposition at a reasonable time before trial.

20.12 Scope of the Code of Pretrial Conduct

This Code of Pretrial Conduct is intended to provide guidance for a lawyer's professional conduct except to the extent that any applicable law, code, rules of procedure, or rules of professional conduct under North Carolina Law require or permit otherwise. Any violation of these rules shall not constitute the basis for a disciplinary proceeding, but may constitute basis for reprimand by the Court or sanctions under Rule 37 of the North Carolina Rules of Civil Procedure when substantial violations occur.

RULE 21 – CODE OF TRIAL CONDUCT

21.2 Employment in Civil Cases

It is the right of a lawyer to accept employment in any civil case unless such employment is likely to result in violation of the rules of professional conduct or other law. The lawyer should decline to prosecute a cause or assert a defense obviously devoid of merit, or which is intended merely to inflict harassment or injury, or to procure an unmerited settlement, or in which the lawyer or the lawyer's firm or associates have conflicting interests. Otherwise it is the lawyer's right and duty to take all proper action and steps to preserve and protect the legal merits of the client's position and claims and he or she should not decline employment in any case because of the unpopularity of the client's cause or position.

21.2 Continuance of Employment in and Conduct of Civil Cases

After acceptance of employment a lawyer, unless discharged, should diligently pursue the matter to an expeditious conclusion. Subject to the rules of the tribunal, a lawyer may withdraw at any time with the consent of the client but if the client's consent cannot be obtained then the lawyer should obtain the approval of the tribunal to withdraw. A lawyer should withdraw from any litigation for reasons which would require refusing employment under paragraph 1 of this Code, or when differing or conflicting interests with the client arise or if continued representation of the client will involve participation in client conduct which the lawyer reasonably believes is criminal or fraudulent, and the lawyer may withdraw if continuing representation of the client will involve participation in client conduct which has as its objective a goal which the lawyer considers repugnant or imprudent. The lawyer shall take reasonable and practicable steps to protect the client's interests from the consequences of withdrawal, such as giving reasonable notice to the client, allowing time for employment of other counsel, conveying to the client papers and property to which the client is entitled and refunding any advance fee which has not been earned. When the lawyer withdraws he or she

should render a prompt accounting of all the client's funds and other property in the lawyer's possession.

21.3 Court Appointments and Employment in Criminal Cases

A lawyer should not seek to avoid appointment by a tribunal to represent a person except for good cause. Nor should a lawyer decline to undertake the defense of a person accused of a crime merely because of either the lawyer's personal or the community's opinion as to the guilt of the accused or the unpopularity of the accused's position, because every person accused of a crime has a right to a fair trial, including persons whose conduct, reputation or alleged violations may be the subject of public unpopularity or clamor. This places a duty of service on the legal profession and, even though a lawyer is not bound to accept particular employment, requests for services in criminal cases should not lightly be declined or refused merely on the basis of the lawyer's opinion concerning the guilt of the accused, or his or her repugnance to the crime charged or to the accused.

21.4 Pro Bono Publico

A lawyer should render public interest legal service personally and by supporting organizations that provide services to persons of limited means.

21.5 Continuance of Employment in and Conduct of Criminal Cases

- (a) Having accepted employment in a criminal case, a lawyer's duty, regardless of his or her personal opinion as to the guilt of the accused, is to invoke the basic rule that the crime must be proved beyond a reasonable doubt by competent evidence. The lawyer should raise all valid defenses and, in case of conviction, should present all proper grounds for probation, or in mitigation of punishment. A confidential disclosure of guilt alone does not require a withdrawal from the case, but the lawyer should never offer testimony that the lawyer knows to be false.
- (b) The crime charged should not be attributed to another identifiable person unless evidence introduced or inferences warranted therefrom raise at least a reasonable suspicion of such person's probable guilt.
- (c) The prosecutor's primary duty is not to convict, but to see that justice is done. A public prosecutor or other government lawyer should not institute or cause to be instituted criminal charges when he or she knows or it is obvious that the charges are not supported by probable cause, and shall make timely disclosure to counsel for the defendant, or to the defendant if the defendant has not counsel, of the existence of evidence, known to the prosecutor or other government lawyers or agencies, that tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the punishment.

21.6 Confidentiality of Information

- (a) It is the duty of a lawyer to preserve his or her client's confidences and secrets and this duty outlasts the lawyer's employment. The obligation to represent the client with undivided fidelity and not to divulge the client's confidences or secrets forbids also the subsequent acceptance of employment from other in matters adversely affecting any interests of the former client and concerning which he or she has acquired confidential information, unless the consent of all concerned is obtained.
- (b) A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraph (c).
- (c) A lawyer may reveal such information to the extent the lawyer reasonably believes necessary:
 - (1) to prevent the client from committing a criminal act that the lawyer believes is likely to result in imminent death or substantial bodily harm;
or
 - (2) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client.

21.7 Differing Interests-Conflicts

- (a) "Differing interests" include every interest that will adversely affect the judgment or the loyalty of the lawyer to a client, whether it be a conflicting, inconsistent, diverse or other interest.
- (b) A lawyer should not represent clients with differing interest, nor should a lawyer represent a client in a matter as to which the client's interests are materially adverse to the interests of a former client whom the lawyer represented in the same or a substantially related matter, unless the clients involved consent after consultation.
- (c) A lawyer should not accept or continue multiple employment if the exercise of the lawyer's independent professional judgment in behalf of a client will be or is likely to be adversely affected by representation of another client, except that a lawyer may represent multiple clients with respect to the same matter if:
 - (1) it is obvious that the lawyer can adequately represent the interests of each client;
 - (2) the lawyer reasonably believes that the matter can be resolved on terms compatible with the clients' best interests, that each client will be able to make adequately informed decisions in the matter and that there is little

risk of material prejudice to the interests of any of the clients if the contemplated resolution is unsuccessful;

- (3) the lawyer consults with each client concerning the implications of the common representation, including the advantages and risks involved, and the effect on the attorney-client privilege, and obtains each client's consent to the common representation; and
 - (4) the lawyer reasonably believes that the common representation can be undertaken impartially and without improper effect on other responsibilities the lawyer has to any of the clients.
- (d) If a lawyer is required to decline employment or to withdraw from employment under this rule, no partner or associate of the lawyer or the lawyer's firm should accept or continue such employment.
 - (e) When a lawyer has left one firm and joined another, the lawyer and the lawyer's new firm are disqualified from representing a client in a matter adverse to a client of the former firm if the lawyer acquired confidential information material to the matter while with the former firm.
 - (f) When a lawyer has terminated an association with a firm, the lawyer's former firm is not prohibited from thereafter representing a client with interests materially adverse to those of a client represented by the departed lawyer and not currently represented by the firm, unless:
 - (1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and
 - (2) any lawyer remaining in the firm has confidential information material to the matter.
 - (g) The affected client may waive any conflict arising under subparagraphs (e) and (f) (1) and (2) next above.
 - (h) Generally judges, arbitrators, or other adjudicative officers should not seek employment with parties or attorneys with matters pending before them, and a former judge, arbitrator, or other adjudicative officer should not represent any person in connection with a matter in which the judge or arbitrator formerly participated personally and substantially as a judge or arbitrator.

21.8 Professional Colleagues and Conflicts of Opinion

- (a) A client's proffer of assistance of additional counsel should not be regarded as evidence of want of confidence, but the matter should be left to the determination of the client. Either the original counsel or additional counsel may decline association as colleagues if it is objectionable to either, but if the lawyer first retained is relieved, another may come into the case.
- (b) When lawyers jointly associated in a cause cannot agree as to any matter vital to the interests of a client, the conflict of opinion should be frankly stated to the client for final determination. The client's decision should be accepted unless the nature of the difference makes it impracticable or inappropriate for

the lawyer whose judgment has been overruled to cooperate effectively; in this event it is the lawyer's duty to ask to be relieved.

- (c) Efforts, direct or indirect, in any way to interfere with the professional employment of another lawyer are improper. However, a lawyer should not decline to pursue a claim against another lawyer on a client's behalf merely because the prospective defendant is a member of the same profession.

21.9 Fees

No division of fees for legal services is proper except with other lawyers. Division of legal fees among lawyers not in the same firm is proper only if:

- (a) The division complies with, and is permitted by, the applicable law or rules governing the lawyer's conduct; and
- (b) The client is informed in writing and does not object to the participation of all the lawyers involved; and
- (c) The total fee charged is reasonable and, unless the additional lawyer adds value to the representation, not more than the client would have been charged if such division of legal fees had not occurred.

21.10 Relations with Clients

- (a) A lawyer should not purchase or otherwise acquire a proprietary interest in the cause of action or subject matter of the litigation the lawyer is conducting for a client, except that the lawyer may acquire a lien granted by law to secure the lawyer's fee or expenses and contract with a client for a reasonable contingent fee in those civil cases in which a contingent fee is permitted.
- (b) While representing a client in connection with contemplated or pending litigation, a lawyer should not advance or guarantee financial assistance to the client, except that the lawyer may advance or guarantee the expenses of litigation, including court costs, expenses of investigation, expenses of medical examination, and costs of obtaining and presenting evidence the repayment of which may be contingent on the outcome of the matter.
- (c) A lawyer representing an indigent client may pay the court costs and litigation expenses on behalf of such client.
- (d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.
- (e) (1) A lawyer who represents two or more clients should not make or participate in the making of an aggregate settlement of the claims of or against his clients, unless each client has consented to the settlement after being advised of the existence and nature of all the claims involved in the proposed settlement, or the total amount of the settlement and of the participation of each client in the settlement.

- (2) A lawyer who represents two or more criminal defendants should not participate in an aggregated plea agreement as to guilty pleas unless each defendant is informed about the existence and nature of all the pleas being offered and the participation of each defendant in each plea agreement and each defendant consents to such an aggregated plea agreement.

21.11 Upholding the Honor of the Profession

- (a) It is the duty of every lawyer to protect the Bar against the admission to the profession of persons who are unfit because of morals, character, education or traits of character. A lawyer should affirmatively assist courts and other appropriate bodies in promulgating, enforcing and improving the requirements for admission to the Bar.
- (b) Lawyers should strive at all times to uphold the honor and dignity of the profession and to improve the administration of justice, including the method of selection and retention of judges.
- (c) Every lawyer has the duty to protest by all proper means the appointment or election to the bench of persons whom the lawyer believes are not fully qualified by character, temperament, ability and experience. If the lawyer is unable to reach a considered and informed judgment about the person's qualifications for appointment or election to the bench, the lawyer must then refrain from writing, speaking or taking any other action in favor of or in opposition to that individual's appointment or election to the bench.
- (d) A lawyer cannot knowingly condone perjury or subornation of perjury before any tribunal. A lawyer should report such perjury or subornation of perjury to the tribunal in which such conduct occurred.
- (e) Subject only to applicable law governing disclosure of confidential information between lawyer and client, a lawyer having information that another lawyer has violated the applicable disciplinary rules must report such wrongful conduct to the appropriate professional disciplinary authority.

21.12 Lawyer as a Witness

- (a) A lawyer should not act as advocate at a trial in which the lawyer is likely to be a necessary witness except where:
 - (1) the testimony relates to an uncontested issue;
 - (2) the testimony relates to the nature and value of legal services rendered in the case; or
 - (3) disqualification of the lawyer would work substantial hardship on the client.
- (b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing

so because subject to a conflict of interest prohibited by Rule 1.7 and Rule 1.9 of the ABA Model Rules of Professional Responsibility.

- (c) A lawyer should never conduct or engage in experiments involving any use of the lawyer's own person or body except to illustrate in argument what has been previously admitted in evidence.

21.13 Relations with Opposing Counsel

- (a) The lawyer, and not the client, has the sole discretion to determine the accommodations to be granted opposing counsel in all matters not directly affecting the merits of the cause or prejudicing the client's rights, such as extensions of time, continuances, adjournments, and admission of facts. Consequently, the lawyer need not accede to a client's demand that the lawyer act in a discourteous or uncooperative manner toward opposing counsel.
- (b) A lawyer should adhere strictly to all express promises to, and agreements with, opposing counsel, whether oral or in writing, and should adhere in good faith to all agreements implied by the circumstances or by local custom. When a lawyer knows the identity of a lawyer representing an opposing party, the lawyer should not take advantage of the opposing lawyer by causing any default or dismissal to be entered without first inquiring about the opposing lawyer's intention to proceed.
- (c) A lawyer should not participate in offering or making an agreement in which a restriction on a lawyer's right to practice is part of the settlement of a controversy between private parties.
- (d) A lawyer should avoid disparaging personal remarks or acrimony toward opposing counsel, and should remain wholly uninfluenced by any ill feeling between the respective clients. The lawyer should abstain from any allusion to personal peculiarities and idiosyncrasies of opposing counsel.
- (e) A charge of impropriety by one lawyer against another in the course of litigation should never be made except when relevant to the issues of the case; provided, however, that if the impropriety amounts to a violation of applicable disciplinary rules, the lawyer should report such wrongful conduct to the appropriate professional disciplinary authority. *See* paragraph 21.11(e) hereof.

21.14 Relations with Witnesses

- (a) A lawyer should thoroughly investigate and marshal the facts. Subject to the provisions of paragraph 21.15 hereof and to constitutional requirements in criminal matters, a lawyer may properly interview any person, because a witness does not "belong" to any party. A lawyer should avoid any suggestion calculated to induce any witness to suppress evidence or deviate from the truth. However, a lawyer may tell any witness that he or she does not have any duty to submit to an interview or to answer questions propounded by opposing counsel unless required to do so by judicial or legal process.

- (b) A lawyer should not suppress any evidence that the lawyer or the client has a legal obligation to reveal or produce. A lawyer should not advise or cause a person to secrete himself or herself or to leave the jurisdiction of a tribunal for the purpose of becoming unavailable as a witness. However, except when legally required, it is not a lawyer's duty to disclose any evidence or the identity of any witness.
- (c) A lawyer should not pay, offer to pay, or acquiesce in the payment of compensation to a witness contingent upon the content of the witnesses' testimony or the outcome of the case. A lawyer, however, may advance, guarantee or acquiesce in the payment of:
 - (1) expenses reasonably incurred by a witness in attending or testifying;
 - (2) reasonable compensation to a witness for the witness's loss of time in attending or testifying;
 - (3) a reasonable fee for the professional services of an expert witness.
- (d) A lawyer may advertise for witnesses to a particular event or transaction but not for witnesses to testify to a particular version thereof.
- (e) A lawyer should never be unfair or abusive or inconsiderate to adverse witnesses or opposing litigants, or ask any question intended not legitimately to impeach but only to insult or degrade the witness. A lawyer should never yield in these matters to contrary suggestions or demands of the client or allow any malevolence or prejudices of the client to influence the lawyer's action.

21.15 Communicating with One of Adverse Interest

During the course of representation of a client, a lawyer should not:

- (a) Communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in that matter, unless the lawyer has the prior consent of the lawyer representing such other party or is authorized by law to do so. Opposing parties themselves may communicate directly with each other without the consent of their lawyers, and a lawyer may encourage the client to do so, although the lawyer may not use the client as a surrogate to engage in misconduct.
- (b) In case of an organization represented by a lawyer in the matter, the lawyer should not communicate concerning the matter with persons presently having a managerial responsibility on behalf of the organization, or with any persons whose act or omission in connection with the matter may be imputed to the organization for purposes of civil or criminal liability, or whose statement may constitute an admission on the part of the organization. Unless otherwise provided by law, this rule does not prohibit communications with former employees of the organization, but during such communications the lawyer should be careful not to cause the former employee to violate the privilege attaching to attorney-client communications.

- (c) In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that he or she is disinterested, but should identify the lawyer's client. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding.

21.16 Relations with the Judiciary

- (a) A lawyer should be courteous and may be cordial to a judge but should never show marked attention or unusual hospitality to a judge, uncalled for by their personal relations. A lawyer should avoid anything calculated to gain or having the appearance of gaining special personal consideration or favor from a judge.
- (b) Subject to the foregoing and to the provisions of paragraph 21.23 hereof, a lawyer should defend or cause to be defended judges who are subjected to unwarranted and slanderous attacks, for public confidence in our judicial system is undermined by such statements concerning the character or conduct of judges. It is the obligation of lawyers, who are also officers of the court, to correct misstatements and false impressions, especially where the judge is restrained from defending himself or herself.

21.17 Courtroom Decorum

- (a) A lawyer should conduct himself or herself so as to preserve the right to a fair trial, which is one of the most basic of all constitutional guarantees. This right underlies and conditions all other legal rights, constitutional or otherwise. In administering justice, trial lawyers should assist the courts in the performance of two difficult tasks: discovering where the truth lies between conflicting versions of the facts, and applying to the facts as found, the relevant legal principles. These tasks are demanding and cannot be performed in a disorderly environment. Unless order is maintained in the courtroom and disruption prevented, reason cannot prevail and constitutional rights to liberty, freedom and equality under law cannot be protected. The dignity, decorum and courtesy which have traditionally characterized the courts of civilized nations are not empty formalities. They are essential to an atmosphere in which justice can be done.
- (b) During the trial, a lawyer should always display a courteous, dignified and respectful attitude toward the judge presiding, not for the sake of the judge's person, but for the maintenance of respect for and confidence in the judicial office. The judge, to render effective such conduct, has reciprocal responsibilities of courtesy to and respect for the lawyer who is also an officer of the court. A lawyer should vigorously present all proper arguments against rulings or court demeanor the lawyer deems erroneous or prejudicial, and see to it that a complete and accurate case record is made. In this regard, the lawyer should not be deterred by any fear of judicial displeasure or punishment.

- (c) In advocacy before a court or other tribunal, a lawyer has the professional obligation to represent every client courageously, vigorously, diligently and with all the skill and knowledge the lawyer possesses. It is both the right and duty of the lawyer to present the client's cause fully and properly, to insist on an opportunity to do so and to see to it that a complete accurate case record is made without being deterred by any fear of judicial displeasure or punishment. But it is steadfastly to be borne in mind that the great trust of the lawyer is to be performed within and not without the bounds of the law. The office of the attorney does not permit, much less does it demand of a lawyer for any client, violation of law or any manner of fraud or chicanery. The lawyer must obey his or her conscience and not that of the client.
- (d) In performing these duties, a lawyer should conduct himself or herself according to law and the standards of professional conduct as defined in codes, rules and canons of the legal profession and in such a way as to avoid disorder or disruption in the courtroom. A lawyer should advise the client appearing in the courtroom of the kind of behavior expected and required of the client there, and prevent the client, so far as lies within the lawyer's power, from creating disorder or disruption in the courtroom.

21.18 Trial Conduct

- (a) In appearing in a professional capacity before a tribunal, a lawyer should not:
 - (1) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;
 - (2) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;
 - (3) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;
 - (4) in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;
 - (5) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or
 - (6) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:
 - (i) the person is a relative or an employee or other agent of a client; and

- (ii) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.
- (7) fail to comply with known local customs of courtesy or practice of the bar or a particular tribunal without giving to opposing counsel timely notice of the lawyer's intent not to comply;
- (8) engage in undignified or discourteous conduct that is degrading to a tribunal.
- (b) A lawyer shall not in an adversary proceeding communicate ex parte with a judge or other official before whom the proceeding is pending except as permitted by law.
- (c) A question should not be interrupted by an objection unless the question is then patently objectionable or there is reasonable ground to believe that matter is being included that cannot properly be disclosed to the jury.
- (d) A lawyer should not engage in acrimonious conversations or exchanges involving personalities with opposing counsel. Objections, requests and observations should be addressed to the court. A lawyer should not engage in undignified or discourteous conduct that is degrading to a court procedure.
- (e) Where a court has already made a ruling in regard to the inadmissibility of certain evidence, a lawyer should not seek to circumvent the effect of that ruling and get the evidence before the jury by repeated questions relating to the evidence in question, although a lawyer is at liberty to make a record for later proceedings of the basis for urging the admissibility of the evidence in question.
- (f) Examination of jurors and of witnesses should be conducted from the counsel table or from some other suitable distance except when handling documentary or physical evidence, or when a hearing impairment or other disability requires that the lawyer take a different position.
- (g) A lawyer should not attempt to get before the jury evidence that is improper. In all cases in which a lawyer has any doubt about the propriety of any disclosures to the jury, a request should be made for leave to approach the bench and obtain a ruling out of the jury's hearing, either by propounding the question and obtaining a ruling or by making an offer of proof.
- (h) A lawyer should arise when addressing or being addressed by the judge except when making brief objections or incident comments. A lawyer should be attired in a proper and dignified manner in the courtroom, and abstain from any apparel or ornament calculated to call attention to himself or herself.

21.19 Relations with Jurors

- (a) Before the trial of a case, a lawyer connected therewith should not communicate with or cause another to communicate with anyone the lawyer knows to be a member of the venire from which the jury will be selected for the trial of the case.

- (b) Before the jury is sworn to try the cause, a lawyer may investigate the prospective jurors to ascertain any basis for challenge, provided there is no communication with them, direct or indirect, or with any member of their families. But a lawyer should not conduct or cause, by financial support or otherwise, another to conduct a vexatious or harassing investigation of either a venireman or a juror.
- (c) A lawyer should disclose to the judge and opposing counsel any information of which the lawyer is aware that a juror or a prospective juror has or may have any interest, direct or indirect, in the outcome of the case, or is acquainted or connected in any manner with any lawyer in the case or any partner or associate or employee of the lawyer, or with any litigant, or with any person who as appeared or is expected to appear as a witness, unless the judge and opposing counsel have previously been made aware thereof by voir dire examination or otherwise.
- (d) During the trial of a case a lawyer connected therewith should not communicate with or cause another to communicate with any member of the jury, and a lawyer who is not connected therewith should not communicate with or cause another to communicate with a juror concerning the case.
- (e) The foregoing rules do not prohibit a lawyer from communicating with veniremen or jurors in the course of official proceedings.
- (f) Subject to any limitations imposed by law, it is the lawyer's right, after the jury has been discharged, to interview the jurors to determine whether their verdict is subject to any legal challenge. After discharge of the jury from further consideration of a case with which the lawyer was connected, the lawyer should not ask questions or make comments to a member of that jury that are calculated merely to harass or embarrass the juror or to influence the juror's actions in future jury service.
- (g) All restrictions imposed herein upon a lawyer should also apply to communications with or investigation of members of a family of a venireman or a juror.
- (h) A lawyer should reveal promptly to the court improper conduct by a venireman or a juror or by another toward a venireman or a juror or a member of the juror's family of which the lawyer has knowledge.
- (i) A lawyer should scrupulously abstain from all acts, comments and attitudes calculated to curry favor with any juror, such as fawning, flattery, actual or pretended solicitude for the juror's comfort or convenience or the like.

21.20 Diligence and Punctuality

- (a) Every effort consistent with the legitimate interests of the client should be made to expedite litigation and to avoid unnecessary delays, and no dilatory tactics should be employed for the purpose of harassing an adversary or of exerting economic pressure on an adversary or to procure more fees.

- (b) A lawyer should be punctual in fulfilling all professional commitments, including all court appearances and, whenever possible, should give prompt notice to the court and to all other counsel in the case of any circumstances requiring his tardiness or absence.
- (c) A lawyer should make every reasonable effort to prepare thoroughly prior to any court appearance
- (d) A lawyer should comply with all court rules and see to it that all documents required to be filed are filed promptly. A lawyer should, in civil cases, stipulate in advance with opposing counsel to all non-controverted facts; should give opposing counsel, on reasonable request, an opportunity in advance to inspect all non-impeaching evidence of which the law permits inspection; and in general, should do everything possible to avoid delays and to expedite the trial.
- (e) A lawyer should promptly inform the court of any settlement, whether partial or entire, with any party, or the discontinuance of any issue.

20.21 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. A lawyer should never attempt to handle a legal matter without preparation adequate in the circumstances nor neglect a legal matter entrusted to him or her. Similarly, if a lawyer knows or should know that he or she is not competent to handle a legal matter, the lawyer should not attempt to do so without associating with a lawyer who is competent to handle it.

20.22 Honesty, Candor and Fairness

The conduct of a lawyer before the court and with other lawyers should at all times be characterized by honesty, candor and fairness.

A lawyer should never knowingly misquote the contents of a paper, the testimony of a witness, the language or the argument of opposing counsel, or the language of a decision or a textbook. A lawyer should not in argument assert as a fact that which has not been proved, or, in those jurisdictions in which a side has the opening and closing arguments, mislead an opponent by concealing or withholding positions in an opening argument upon which the lawyer's side then intends to rely.

In presenting a matter to a tribunal a lawyer should not cite authorities known to have been vacated or overruled or cite a statute that has been repealed without making a full disclosure to the tribunal and counsel, and the lawyer should disclose legal authority in the controlling jurisdiction known to be directly adverse to the position of the client and which is not disclosed by opposing counsel, and, the identities of the clients the lawyer represents and, when required by court rule, of the persons who employed him or her.

A lawyer should be extraordinarily careful to be fair, accurate and comprehensive in all ex parte presentations and in drawing or otherwise procuring affidavits.

A lawyer should never attempt to place before a tribunal, jury, or public evidence that the lawyer knows is clearly inadmissible, nor should the lawyer make any remarks or statements which are intended improperly to influence the outcome of any case.

A lawyer should not propose a stipulation in the jury's presence unless the lawyer knows or has reason to believe the opposing lawyer will accept it.

A lawyer should never file a pleading or any other document known to be false in whole or in part.

A lawyer should not disregard or circumvent or advise a client to disregard or circumvent a standing rule of a tribunal or a ruling of a tribunal made in the course of a proceeding, but a lawyer may take appropriate steps in good faith to test the validity of such rule or ruling.

A lawyer who receives information clearly establishing that the client has, in the course of the representation, perpetrated a fraud upon a tribunal, should promptly call upon the client to rectify the same, and if the client refuses or is unable to do so, the lawyer should reveal the fraud to the affected tribunal. If a lawyer receives information clearly establishing that a person other than the client perpetrated a fraud upon a tribunal, the lawyer should promptly reveal the fraud to the tribunal.

21.23 Publicity Regarding Pending Litigation

Because a lawyer should try the case in court and not in the newspapers or through other media, a lawyer should not make an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding.

21.24 The Trial Lawyer's Duty in Summary

No client, corporate or individual, however powerful, nor any cause, civil or political, however important, is entitled to receive, nor should any lawyer render, any service or advise encouraging or inviting disrespect of the law, whose ministers we are, or of the judicial office, which we are bound to uphold. Much less should a lawyer sanction or invite corruption of any person or persons exercising a public office or private trust, nor should a lawyer condone in any way deception or betrayal of the public. When indulging in any such improper conduct, the lawyer invites stern and just condemnation. Correspondingly, a lawyer advances the honor of the profession and the best interests of the client when he or she encourages an honest and proper respect for the law, its institutions and ministers. Above all, a lawyer will find the highest honor in a deserved reputation for fidelity to private trust and to public duty, as an honest person and as a patriotic and loyal citizen.

21.25 Scope of the Code of Trial Conduct

This Code of Trial Conduct is intended to provide guidance for a lawyer's professional conduct except insofar as the applicable law, code or rules of professional conduct of North Carolina requires or permits otherwise. Any violations of these rules

shall not constitute the basis for a disciplinary proceeding, but may constitute basis for reprimand by the Court or sanctions under Rule 37 of the North Carolina Rules of Civil Procedure when substantial violations of these rules occur.

A copy of this Case Management Plan is being distributed to each attorney maintaining an office within the 20-A Judicial District as of December 1, 2005, and every Clerk of Court therein, and the Chief Justice of North Carolina. Each Clerk of Court shall reproduce and mail a copy of this Case Management Plan to any attorney of record not maintaining an office within the 20-A Judicial District or any unrepresented party having a case pending as reflected by the Civil Superior Court VCAP system no later than January 1, 2006.

This plan may be modified or amended by the Senior Resident Superior Court Judge by subsequent modification orders. Suggested changes or amendments may be addressed to the Senior Resident Superior Court Judge of the 20-A Judicial District.

Adopted this the 1st day of December, 2005.

Michael E. Beale
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