



LOCAL RULES AND CASE MANAGEMENT PLAN FOR THE CIVIL SUPERIOR COURT OF THE 13B JUDICIAL DISTRICT



Amended July 1, 2009

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**GENERAL RULES OF COURT
AND
CASE MANAGEMENT PLAN**

**FOR THE SUPERIOR COURT, 13B JUDICIAL DISTRICT
NORTH CAROLINA
AS AMENDED EFFECTIVE JULY 1, 2009**

**PROMULGATED PURSUANT TO THE GENERAL RULES OF PRACTICE
FOR THE SUPERIOR AND DISTRICT COURTS OF NORTH CAROLINA**

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Subject to and in compliance with the provisions of Rule 40(a), Rules of Civil Procedure and G. S. 7A-146 and rule 2 of the General Rules of Practice for the Superior and District Courts as adopted by the Supreme Court of North Carolina:

GENERAL RULES OF COURT AND CASE MANAGEMENT PLAN FOR THE SUPERIOR COURT, 13B JUDICIAL DISTRICT NORTH CAROLINA

1.0 GENERAL RULES

1.1 The purpose of these rules is to provide for the orderly, just and prompt disposition of matters to be heard in the Superior Courts of Brunswick County as required by amended Rule 2, General Rules of Practice. They shall be construed in such manner as to avoid technical delay and to insure prompt disposition of pending cases.

1.2 The Clerk of Superior Court and the Trial Court Coordinator shall maintain a supply of the printed rules and also a supply of the required associated forms and furnish same to attorneys upon request. The Trial Court Coordinator shall arrange for these Rules to be available online.

1.3 These rules are not complete in every detail and will not cover all situations. If the rules do not cover a specific situation, the Trial Court Coordinator is authorized to act after consultation with the Senior Resident Superior Court Judge or presiding judge.

2.0 TIME TO TRIAL

2.1 The North Carolina Supreme Court expects 90% of all civil cases in Superior Court to be resolved within a year of filing. See Court Performance Management System at www.nccourts.org. The following goals and expectations are established in an effort to meet the Supreme Court's standards.

2.2 The Court expects simple two or three-party cases to be tried no later than 10-11 months from the filing of the Answer.

2.3 The Court expects relatively simple cases with cross-claims, counter-claims, third-party claims, or unnamed defendants to be tried no later than 12 months from the filing of the first Answer.

2.4 The Court expects virtually all cases to be tried no later than two years from the filing of the first Answer. Medical negligence cases with two sets of attorneys should be tried no later than 12 months from the filing of the first Answer; with three to four sets of attorneys, no later than 18 months from the filing of the first Answer; and with more than four sets of attorneys, no later than 24 months from the filing of the first Answer.

2.5 Any case which cannot feasibly be tried within 12 months of filing should have a Discovery Scheduling Order in place. The burden is on counsel to seek such an Order as set forth in Rule 3.2 *infra*. All Discovery Scheduling Orders shall include a trial date consistent with these rules.

3.0 DISCOVERY and PLEADINGS

3.1 Discovery shall begin promptly as contemplated by Rule 8 of the General Rules of Practice. Third-party complaints, cross-claims, and counterclaims and answers/replies thereto shall be filed promptly. Discovery should be scheduled so as to be completed within 210 days of the filing of the complaint. Unreasonable delay in the closing of the pleadings will not be allowed to delay trial.

3.2 If additional time for discovery, to add additional parties, or to close pleadings is needed, any party may, before the Administrative Hearing, promptly move the Court for a Discovery Conference and a Discovery Scheduling Order. All Discovery Scheduling Orders shall include a trial date. All Motions for Discovery Scheduling Orders and proposed Discovery Scheduling Orders shall be delivered to the Trial Court Coordinator, at or before the Administrative Hearing. The Trial Court Coordinator shall present the motion to a presiding or Resident Judge for consideration and, if needed, a hearing. (See Local Rule 7). No Consent Discovery Scheduling Order may be signed unless it is first reviewed by the Trial Court Coordinator and is presented to the Court through the Trial Court Coordinator, and any such Order entered in violation of this Rule may be vacated by the Senior Resident Superior Court Judge.

3.3 The Court expects counsel to conduct discovery in good faith and to cooperate and be courteous with each other in all phases of the discovery process. Depositions shall be conducted in accordance with the following guidelines.

- i. Counsel shall not direct or request that a witness not answer a question, unless counsel has objected to the question on the ground that the answer is protected by a privilege or a limitation on evidence directed by the Court, or unless that counsel has objected to the question on the ground that such objection is necessary to present a motion under subdivision (vi) of this Rule.
- ii. Counsel shall not make objections or statements which might suggest an answer to a witness. Counsels' statements when making objections should be succinct, stating the basis of the objection and nothing more.
- iii. While counsel has the right and duty to prepare a client for a deposition, once the deposition begins counsel and their witness-clients shall not engage in private, off-the-record conferences while the deposition is proceeding in session, except for the purpose of deciding whether to assert a privilege. Counsel may confer with clients over lunch or overnight recesses in the deposition, but counsel may not request such a break when a question is pending or while there continues a line of questioning that may be completed within a reasonable time preceding a scheduled break.
- iv. Deposing counsel shall provide to all counsel present copies of all documents shown to the witness during the deposition. The witness and the witness's counsel do not have the right to discuss documents privately before the witness answers questions about them.
- v. Upon motion, the Court may limit the time permitted for a deposition. If a deponent or other party impedes or delays the examination, the Court shall allow additional time if needed for a fair examination. If the Court finds such an impediment, delay, or other conduct has frustrated the fair examination of the

deponent, it may impose upon the persons responsible an appropriate sanction, including reasonable cost and attorney's fees incurred as a result thereof.

- vi. At any time during the taking of a deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, any Resident Judge, Special Judge, or Presiding Judge may order the person before whom the examination is being taken to cease from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Rule 26(c) of the Rules of Civil Procedure. If the order made terminates the examination, it shall be resumed thereafter only upon the order of a Resident Judge, Special Judge, or Presiding Judge. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of Rule 37(a) (4) of the Rules of Civil Procedure apply to the award of expenses incurred in relation to the motion. Requests for Court intervention pursuant to this Rule shall be directed to the Trial Court Coordinator pursuant to Rule 6 *infra*.
- vii. Counsel shall not make long speeches and shall avoid arguments on the record. Counsel shall not call names, use demeaning, rude, or insulting language, or question the professional competence of other lawyers or judges.

3.4 No party may seek an extension of time from the Clerk to answer discovery which extended date to answer is within 30 days of the date trial is scheduled to begin, or, if a Discovery Scheduling Order has been entered, after the date discovery is scheduled to be completed. All interrogatories, requests to produce documents, and requests for admission should be served at least 70 days before trial.

3.5 Amendments or changes to Discovery Scheduling Orders may only be allowed by the Senior Resident Superior Court Judge. Motions for Discovery Conferences and proposed Discovery Scheduling Orders sought after a case is set for trial may only be allowed by the Senior Resident Superior Court Judge. Requests for either shall be delivered to the Trial Court Coordinator for presentation to the Senior Resident.

3.6 Failure to timely undertake, answer, or otherwise complete discovery is not grounds for delaying trial. Scheduling delays and problems are normal, should be planned for and expected, and are not grounds for delaying trial. If discovery will be needed, it should be initiated as early as possible.

3.7 In any medical negligence case subject to Rule 9(j) of the Rules of Civil Procedure:
(a) No later than ten days after a defendant files Answer, the parties shall exchange copies of all available and relevant medical records. The parties are under a continuing duty to make relevant medical records available to all other parties, and each party is required to comply with this rule even if other parties do not so comply and in the absence of any formal discovery requests. Violations may be brought to the attention of the Senior Resident Judge by Motion to Compel.

- (b) At the time a party discloses its expert witness (es), that party shall on that same date provide to all other parties at least three possible dates and times for the deposition of each expert witness within the time frame allowed by the Discovery Scheduling Order. Counsel shall be prompt in responding to inquiries concerning and cooperative in the scheduling of depositions, consistent with the terms of the Discovery Scheduling Order. Violations may be brought to the attention of the Senior Resident Judge by Motion to Compel.
- (c) To reduce delays and minimize costs, the parties are encouraged to exchange detailed affidavits of expert witnesses, to agree to time limits for expert depositions, such as ninety minutes per deposition, and to take non-local expert depositions via telephone, video conferencing or similar method.

3.8 Absent agreement by all parties or court order, all discovery seeking identification of expert witnesses shall be served at least 100 days before trial and shall be answered at least 60 days before trial. Late requests or disclosures, even if agreed upon, will not delay trial, and absent agreement expert witnesses not timely disclosed upon request shall not be allowed to testify.

3.9 Any party contending that any part of Rule 3.3, 3.4, or 3.7 is inappropriate in a particular case may seek relief from the Senior Resident by filing a Motion to that effect, explaining why the Local Rule should not be applied and offering an alternative plan for promptly moving the case towards resolution.

4.0 MEDIATION

4.1 Upon the filing of a responsive pleading or dispositive motion, all eligible cases shall be ordered into Mediation.

4.2 The Court expects the parties to observe and the Court will enforce the Supreme Court's Rules governing mediated settlement conferences. Counsel/parties shall cooperate with the mediator in scheduling mediated settlement conferences. Sanctions will be imposed if appropriate.

4.3 Any party filing any designation of mediator or any pleading concerning mediation shall file the original in the Superior Court Judges Chambers, where staff will then place the original in the Court file.

4.4 The deadline for completion of the Mediated Settlement Conference will usually be 30 days before trial. Short extensions will be granted for good cause shown so long as trial itself is not delayed. AOC Form AOC-CV-835 should be used for this purpose.

4.5 Requests to dispense with mediation are not favored and will not be allowed absent extraordinary circumstances.

4.6 Litigants are encouraged to timely select a mediator appropriate for the case. This issue will be addressed at the Administrative Hearing, if one is held, and if the parties agree to a mediator at that hearing the Trial Court Coordinator shall memorialize that agreement in an Administrative Order. If the parties do not agree to a mediator, the Trial Court Coordinator will appoint a mediator; thereafter motions to substitute a different mediator will only be allowed if the appointed mediator has a conflict or is otherwise unable to mediate the case.

4.7 If parties wish to delay discovery until after mediation, then the parties should promptly schedule the mediated settlement conference and may ask the Court for an early Order sending the case to mediation. Failure to complete discovery while “waiting on” mediation is not good cause to delay setting a case for trial.

4.8 Mediators who do not live or practice in Brunswick County and who wish to be appointed to mediate cases in which the parties do not select a mediator must annually so advise the Trial Court Coordinator by letter between April 1 and May 1 of each year, for the upcoming Fiscal Year beginning July 1.

5.0 MOTIONS AND NON-JURY MATTERS

5.1 Counsel may request the scheduling of non-jury civil matters by completing a Calendar Request form, **Appendix A**; submitting it to the Trial Court Coordinator; and sending it to all other parties.

5.2 A Calendar Request must be submitted for each motion filed with the Court, including motions contained within other pleadings and preliminary injunctions and other motions scheduled by a Superior Court Judge. Any motion filed is presumed to be ready for hearing.

5.3 No Motion may be calendared until it has been filed. Motions will be scheduled for hearing on Monday mornings and will be heard at that time and at such other times during the session as shall be determined by the presiding judge.

5.4 Any Calendar Request for motions filed within ten (10) days of the first day of the requested session shall be honored only if all parties consent and the presiding judge agree to add the matter on, or if the Court determines that justice requires that the motion be heard on less than ten (10) days notice.

5.4 Motions may be heard by consent out of term and in chambers by any presiding or resident judge, subject to the requirements of Rule 6 herein.

5.5 By agreement of all counsel and the Court, motions may be heard by way of telephone.

5.6 Motion Calendars shall be prepared by the Trial Court Coordinator and shall be posted online at www.nccourts.org no later than ten days before the day the term begins.

5.7 Scheduling within the term of court for motions on a published calendar shall be in the manner prescribed by and in the discretion of the presiding judge.

5.8 All uncontested motions shall be submitted to the Trial Court Coordinator for referral to a presiding or resident judge for review and decision, as set forth in Rule 6 herein.

5.9 A party filing any one or more of the following motions must make a good faith effort to determine whether or not the motion will be opposed: (a) motion to amend a pleading or add a party; (b) motion to transfer to Superior Court; and (c) motion for pro hac vice admission. If the Motion is uncontested or consented to, the procedures set forth in Rule 6 shall apply.

5.10 Motions to withdraw as counsel must include a Notice of Hearing and a certificate of service upon the client. The motion must set forth the name and address of substitute counsel, if known, and the current address of the party from whom representation is being withdrawn. No judicial action will be taken on a motion to withdraw as counsel that does not contain this information.

5.11 Motions for Pro Hac Vice Admission must include a statement under oath that the statutorily required fee has been paid.

5.12 If a party responding to a complaint, counterclaim, cross-claim, or third-party complaint does not file Answer but instead files a dispositive motion, said party must immediately schedule the motion for hearing. A dispositive motion not promptly scheduled for hearing may be deemed abandoned or scheduled for hearing sua sponte by the Trial Court Coordinator or other sanctions or consequences may be imposed. Discovery shall proceed apace regardless of whether the motion is scheduled for hearing.

5.13 Motions shall be filed and scheduled promptly. Delays in scheduling motions for hearing, particularly after a trial date has been set, may be grounds for denial of any motion which will delay trial. Failure to schedule a motion for hearing may result in the motion being denied or deemed withdrawn without a hearing or in the imposition of sanctions such as, *inter alia*, limiting or prohibiting discovery. Any motion filed after a trial date has been set shall include the date of trial in the motion.

5.14 When a filed motion no longer requires a hearing, the party that filed the motion shall file a notice withdrawing said motion.

5.15 Motions to Amend Pleadings or Add Parties

(a) Motions to add parties and to amend pleadings shall be filed promptly so as not to delay trial or scheduling a case for trial, if at all possible. Once a case is set for trial, all Motions to Amend the Pleadings or to Add Parties must include the trial date in the motion and must state whether other parties agree or do not agree to the Motion and whether trial will be delayed if the motion is allowed.

(b) If the trial is more than two months distant, the moving party shall promptly schedule the Motion for hearing in the usual way or, if it is a consent motion, present it to the Trial Court Coordinator pursuant to Rule 6.

(c) If the trial date is within two months, the Motion will be decided by the Senior Resident Superior Court Judge; typically such motions will be decided without a hearing. The moving party shall deliver a copy of the motion to the Trial Court Coordinator. All other parties are allowed five business days to respond in writing. Any objection to the motion shall be filed with the Clerk and a copy delivered to the Trial Court Coordinator. Consent may be communicated by letter or email to the Trial Court Coordinator.

(d) If a motion to add parties or to amend pleadings is allowed and any party contends that the trial date therefore needs to be changed, that party shall immediately file a Motion to Continue pursuant to Local Rule 12.

5.16 When a party has been served and has not filed answer or otherwise responded, the party seeking relief shall seek entry of default and default judgment promptly, but in no event longer than four months from service. Failure to so act may result in dismissal for failure to prosecute.

6.0 Off Calendar Matters: Consent, Uncontested, and Purported Emergencies

6.1 All consent or uncontested matters requiring judicial action or judicial approval and all matters an attorney believes require expedited or emergency hearing shall be submitted to the Trial Court Coordinator for scheduling and for assignment to a resident or presiding judge. Attorneys and litigants may not submit matters directly to a judge for ruling or approval. Litigants or attorneys who write or approach individual judges about such matters should expect to be scolded and rejected.

6.2 Counsel filing uncontested or consent motions shall so state in the motion and shall include with the filing a proposed Order which shall recite that the motion is consented to or otherwise unopposed. Signatures on the proposed Order are not required, except that the signature of a party is required before counsel representing that party can withdraw without a hearing.

6.3 If a party believes a matter requires expedited or emergency hearing, that party must make a written request for such a hearing to the Trial Court Coordinator, except for requests pursuant to Rule 3.3(vi) *supra*.

6.4 The Trial Court Coordinator is responsible for promptly submitting uncontested, consent, and purported emergency matters to the presiding judge and for working with that judge to resolve any scheduling issues therein arising.

6.5 While the Trial Court Coordinator and the Court will make reasonable efforts to deal with uncontested and emergency matters promptly, counsel should be aware that judges have courtroom duties and other office responsibilities that may take priority. Counsel should allow sufficient time for the Court to give these matters appropriate consideration and should make every effort not to wait until the last minute to seek the Court's assistance.

6.6 Motions for continuances of trials, to amend pleadings or add parties if trial is within 2 months, or for modifications to Discovery Scheduling Orders, even if by consent, will be heard only by the Senior Resident Superior Court Judge.

7.0 SCHEDULING CASES FOR TRIAL/CASES READY FOR TRIAL

7.1 All Cases Reviewed at 120 Days Post Filing. Approximately four months after filing, all cases will either be set for trial/hearing or placed on a clean-up calendar for review. The Trial Court Coordinator will use his/her discretion in determining whether a case is appropriate for (a) entry of an Administrative Order setting a trial/hearing date without an Administrative Hearing; (b) scheduling an Administrative Hearing; (c) placing on a clean-up calendar for review if service has not been obtained; or (d) placing on a non-jury calendar for hearing and disposition.

7.2 Entry of Administrative Orders Setting a Case for Trial. In simpler cases or in cases not requiring a jury or the taking of evidence, the Trial Court Coordinator may send to all parties/counsel of record a Tentative Administrative Order which will set the case for trial/hearing and, if appropriate, will initiate the mediation process. If this date is inconvenient or causes scheduling difficulties for any party or lawyer, or is for any reason inappropriate for a particular case, within 10 days of the date of the Administrative Order, a) any party or lawyer may file a calendar request for an earlier trial/hearing date, or b) the parties may submit a Joint Consent Order rescheduling trial/hearing for a date within 3 weeks either way of the originally scheduled date, or c) any party or lawyer may request an Administrative Hearing. If no such action is taken by any party, the Tentative Administrative Order will become final and will be entered by the Court.

7.3 Administrative Hearings.

(a) The Trial Court Coordinator may schedule any case more than four months old for an Administrative Hearing.

(b) All pro se parties and at least one attorney for each party shall receive notice of the hearing at the address in the file. Attorneys should determine in advance of appearing at the Administrative Hearing the availability of witnesses and any potential court or personal scheduling conflict.

(c) At the hearing, the parties shall discuss with the TCC an appropriate trial date, an appropriate mediator, whether expedited trial is appropriate per **Appendix C**, and any other scheduling matters requiring attention. Non-jury trials shall be scheduled for trial within four months and jury trials within six months; medical malpractice cases shall be scheduled for trial as set forth in Rule 2.4.

(d) At the conclusion of the hearing, the TCC shall issue an Administrative Order over the Court's signature setting the trial date, appointing a mediator or noting the parties' selection of a mediator, and otherwise dealing with any scheduling issues requiring attention. The TCC has full authority to act for the Senior Resident Superior Court Judge in issuing Administrative Orders and his/her decisions concerning scheduling are binding just as if issued by the Court.

(e) Before the hearing, the parties may agree to a Consent Response to Administrative Hearing Notice in the form as **Appendix D** and upon submission to the Trial Court Coordinator are excused from appearing at the Administrative Hearing so long as the trial date is within the framework set forth herein in Rule 7.3(c).

(f) A party/attorney may complete a Response to Administrative Hearing Notice in the form as **Appendix D** and submit it to the Trial Court Coordinator before the date of the Administrative Hearing, in lieu of attending the hearing. While the preferences of a non-attending party/attorney will be considered, it may not be possible to accommodate those preferences.

7.4 To the extent feasible, the Trial Court Coordinator will make reasonable but not superhuman efforts to set cases consistent with each attorney's schedule and the schedules of parties and key witnesses. Cases may be set despite attorney trial conflicts, given that most cases settle; such conflicts shall be noted in the Administrative Order upon request.

7.5 A party who fails to appear at the Administrative Hearing or sent in the Response to Administrative Hearing Notice when required by these rules will be considered by the Court to have waived any conflicts or problems with the trial date and will be bound by the trial date as if counsel had been present and consented to the date.

7.6 Because trial dates are set far in advance, the Trial Court Coordinator has some authority to reschedule trial dates, so long as the requirements of Rule 2 concerning time-to-trial are met. Up to six weeks before trial the Trial Court Coordinator may, upon written request with consent of all parties, reschedule a trial date one or two terms before or after the date set at the Administrative Hearing. All applications for rescheduling shall cite this Rule and shall be by written motion made on state form AOC-CV-221, available online at www.nccourts.org. Once a case is within six weeks of trial, or if more than a two-term delay is sought, of if the rescheduled date would take the trial outside the confines of Rule 2, then Rule 12 applies.

7.7 Once a case is set for trial by Administrative Order, a continuance will not be granted except for (a) extraordinary compelling reasons arising after the setting of the trial date, or (b) amendment of the pleadings or addition of parties if justice requires a delay. Failure to complete discovery is not an extraordinary compelling reason.

8.0 TRIAL CALENDARS

8.1 At least three weeks before the beginning of the session, the Trial Court Coordinator shall prepare the Trial Calendar and post it online at www.nccourts.org. Cases will be placed on the trial calendar in the order in which they are scheduled for trial.

8.2 Attorneys shall proceed on the assumption that all cases on the Trial Calendar will be tried at the scheduled session unless resolved by consent order or dismissal. If there is more than one civil session of court, a case may be called for trial by any presiding judge.

8.3 When a case on a published calendar is settled, all attorneys of record **MUST** notify the Trial Court Coordinator within twenty-four (24) hours of the settlement and must, before the time the case is to be called for trial or hearing, complete and file with the Trial Court Coordinator a Case Settlement Report similar to that as **Appendix B** which informs the Court of the way the case will be closed. Failure to file the Case Settlement Report may result in a court order establishing dates as the Court sees fit or in dismissal of all claims.

8.4 Failure to present such pleadings as are necessary to close a case reported as settled may result in summary dismissal without further notice.

9.0 CALENDAR CALL AND WEEKS OF COURT

9.1 On the first day of each civil trial session, (Monday, unless it is a holiday), the business of the court shall be conducted in the following manner:

- (a) Morning-Afternoon session - 10:00 A.M.
 - 1. Calendar shall be called
 - 2. Motions will be heard
 - 3. Pre-trial conferences will be conducted
- (b) The next day – 9:30 A.M.
 - 1. Jury selection for the first case will be conducted

All motions not reached or conferences not conducted during the morning-afternoon session shall remain on a stand-by status and shall be disposed of at other times during the week in the discretion of the Presiding Judge.

9.2 Generally cases shall be called for trial in the order in which they appear on the Trial Calendar. However, after the first case is tried or resolved, cases may be called for trial in such order as appears appropriate to the presiding judge.

9.3 Counsel must submit a signed Pre-Trial Order to the Trial Court Coordinator on the Tuesday before trial. If any party does not cooperate, the cooperating party or parties shall submit a proposed Order leaving the witnesses and exhibits of the non-cooperating party blank and shall include a cover letter reciting efforts made to obtain the information from the non-cooperating party or parties. The presiding judge may impose appropriate sanctions for failure to comply with this Rule.

9.4 If a case is not reached for trial or mistried, it will be placed on the next civil calendar, ordinarily the next month.

10.0 PEREMPTORY OR PRIORITY SETTINGS

10.1 When the North Carolina General Statutes provide for a priority setting, all counsel are mutually and individually responsible for bringing this fact to the attention of the Trial Court Coordinator within 30 days.

10.2 Once a case has received a preemptory setting as first for trial and so ordered by the Court with the consent of all parties and attorneys, it should rarely, if ever, be continued from the session at which it is ordered to trial.

10.3 When a case has been preemptorily set first for trial with the consent of all parties and attorneys, and the case is continued from the Session at which it was ordered for trial for any reason other than (1) counsel being in trial in another case which carried over from the previous week; (2) a conflict with the North Carolina Supreme Court, North Carolina Court of Appeals, or a United States federal court; or (3) serious medical emergency involving counsel or a party, then the case should not again be granted a priority setting. Rather, the case will be set, in the discretion of the Court, at any subsequent session without any designated priority.

11.0 CLEAN-UP CALENDARS

11.1 At any appropriate time, the Trial Court Coordinator may prepare a Clean-Up Calendar for cases in which no progress has been noted. The Clean-Up Calendar may contain any cases which in the opinion of the Senior Resident Judge or Trial Court Coordinator may be a proper subject of inquiry as to their status, including, *inter alia*, cases in which no service has been obtained; cases in which settlement has been reported but pleadings sufficient to close the case have not been filed; and any other case which is not moving towards disposition.

11.2 The Judge Presiding during a Clean-Up Calendar shall determine if a trial will be required and if so, whether any impediments exist. If there are impediments to trial, the Presiding Judge shall resolve such impediments as are ready for disposition or otherwise ascertain when they will be resolved, and shall enter an appropriate Order.

11.3 If the case is dormant without discernable activity, no summons appears to have been issued, the summons has expired, or the case has abated or appears to have been abandoned or discontinued, the Judge Presiding shall take any necessary actions to remove the case from the active calendar, including dismissal for failure to prosecute or other appropriate reason. Counsel and pro se parties are obligated to attend hearings on clean-up calendars, and failure to attend subjects a case to dismissal for failure to prosecute without further notice. Calendar notice is available at www.nccourts.org.

12.0 CONTINUANCE POLICY

12.1 Continuance requests are presumptively disfavored, except under the circumstances set forth in Rule 7.6. 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 interests of justice, a continuance may be granted in the exercise of judicial discretion. 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 peremptorily 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 resolve before 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;
- whether the Court has recently allowed an amendment to the pleadings or the addition of a party, which change requires additional discovery;
- 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 a valid basis for allowing a continuance motion include: first time scheduling of the case for trial; potential conflicting scheduling of other trials in other courts; failure to complete discovery; failure to obtain depositions or evidence needed for trial; whether counsel of record has received payment; and voluntarily switching counsel on the eve of trial. Late disclosure of experts is not a reason to delay trial but may be a basis for sanctions. See Local Rule 3.8.

12.2 Motions to continue shall be filed as soon as the need for the continuance becomes clear.

12.3 Before the opening of court for the session in which the case is calendared, all applications for continuance shall be directed to the Trial Court Coordinator, who will bring them to the attention of the Senior Resident Superior Court Judge, or his/her designee for decision. 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 court in which the case is calendared; only matters which arose after the close of business on Friday before trial shall be grounds for continuance by the presiding judge.

12.4 All applications for continuance shall be by written motion made on state form AOC-CV-221, available at www.nccourts.org. A party seeking a continuance must make all reasonable efforts to confer with all other parties before seeking the Motion to Continue and the Motion must state explicitly the position of all other parties as to the Motion to Continue. Motions which are not explicitly consented to by all other parties shall provide at least two dates within the next two months at which the case could be rescheduled. Consent or unopposed motions shall provide at least one date within the next two months at which the case can be rescheduled. Consent of all parties does not mean the motion will be granted.

12.5 A copy of the completed form AOC-CV-221 must be served on all counsel of record and/or unrepresented parties before presentation of the motion to the Court and must be served by hand, by facsimile, or electronically, or such other method as insures receipt on the day the motion is filed.

12.6 Opposing counsel and/or unrepresented parties shall have a period of three (3) working days following service of the motion to communicate in writing objections to the motion for continuance to the moving party and the Trial Court Coordinator. Objections not raised within this time period are deemed waived. If the Motion is filed in the week immediately preceding trial, opposing counsel/parties may communicate the fact of an objection orally to the Trial Court Coordinator and shall file a written objection as soon as practicable.

12.7 Once a case has been set for trial, no party or attorney will thereafter schedule any vacation, secured leave, or business trip which would be advanced as a basis to seek a continuance. All parties and attorneys have a continuing duty to take affirmative steps to obtain the testimony by deposition or otherwise of any party or witness who becomes unavailable subsequent to the Order of the Court setting a trial date and have an affirmative duty to respect the Order of the Court setting the date for trial and not to undertake to schedule any matter or event which would conflict with or abort the Court Ordered trial date. Should any attorney choose to undertake employment in any matter or engage in any activity which will conflict with his or her availability for trial as ordered by the Court, another member of the firm must be ready, willing and able to carry on in the case without delay and appear for trial at the scheduled time. Cases may be rescheduled by consent pursuant to Rule 7.6.

12.8 The Court recognizes that occasionally parties will be added or pleadings will be amended such that a trial date needs to be changed. When the Court has allowed such an amendment, any party who contends the trial date needs to be changed shall immediately file a Motion to Continue in the manner otherwise set forth in this Rule. Amendment of the pleadings or addition of a party does not guarantee a new trial date, as many amendments do not in fact raise new issues. If allowed, the continuance will be for the shortest time fairness allows.

12.9 The Senior Resident Superior Court Judge will not continue a case without setting another trial date. When a presiding judge grants a motion for continuance, the parties shall immediately consult with the Trial Court Coordinator concerning available trial dates. Within three days of the date the case was continued, the presiding judge or the Trial Court Coordinator will enter an Order rescheduling the case for trial. Failure to communicate with the Trial Court

Coordinator constitutes a waiver of any scheduling problems with the new trial date. Parties who were first for trial and whose case is continued should not expect to receive another first setting.

13.0 BANKRUPTCY

13.1 When a defendant files bankruptcy while his/her/its case is pending, the defendant or, if represented, counsel for the defendant shall immediately provide a certified copy of the bankruptcy filing to the Trial Court Coordinator and to the Clerk; upon receipt, plaintiff or plaintiff's counsel shall insure the Trial Court Coordinator has a copy. 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 of stay of proceeding from the United States Bankruptcy Court having jurisdiction.

13.2 The Trial Court Coordinator will refer the case to the Senior Resident Judge for evaluation of whether execution of an injunction/stay/inactive order is appropriate.

13.3 Cases in which a defendant is in bankruptcy ordinarily will be placed on inactive status and the file closed. Upon completion of the bankruptcy proceedings or the lifting of the stay, any party may seek to reopen the case by filing an appropriate motion.

14.0 EXPEDITED TRIAL PROCEDURE

14.1 Parties are encouraged to consider and use an expedited or alternative trial procedure in appropriate cases. A form order is **Appendix C** for the consideration of litigants, but parties are not limited to this form order. The Court will entertain other proposals which are designed to reduce delays and speed resolution of cases. Expedited trial agreements may be presented at the Administrative Conference for consideration by the Trial Court Coordinator; all other such requests shall be heard by the Senior Resident Superior Court Judge or her designee.

15.0 INACTIVE STATUS

Cases which have been ordered or are undergoing binding arbitration; which are on appeal or otherwise have long-term issues which prevent final resolution; or which have other circumstances which prevent trial, may be placed on inactive status and closed by Order of the Senior Resident Judge. Such cases may be reopened by the Senior Resident Judge upon motion of any party for good cause shown.

16.0 SANCTIONS

16.1 Should counsel or a pro se litigant fail to comply in good faith with any provision of these local rules, or the General Rules of Practice, the Court may, in its discretion, impose appropriate sanctions.

16.2 An order entered in substantial violation of these rules is subject to modification or vacation by the Senior Resident Judge without notice to the parties.

17.0 NOTICE

17.1 All calendars will be posted online at www.nccourts.org :

- (a) Trial Calendars – no later than 14 days before the first day of the court session
- (b) Motion Calendars – no later than 10 days before the first day of the court session

17.2 No case shall be placed on a calendar as a result of a calendar request unless that calendar request has been served on all parties. If a case is placed on a calendar for trial by the Court, then a copy of the scheduling order shall be provided by the Clerk to all parties. Administrative Orders, Notices of Administrative Hearings, and Mediation Orders shall be provided by the Clerk to all parties/counsel of record. Paper copies of calendars will not be provided in hard copy to attorneys with cases on the calendar. Attorneys should sign up for email calendar notification at www.nccourts.org.

17.3 Clean-up Calendars occur regularly throughout the year. Parties and counsel should sign up for email calendar notification available at www.nccourts.org to insure notice, or may avoid clean-up calendars by promptly moving the case towards disposition and complying with all promises to the court regarding paperwork.

18.0 MISCELLANEOUS

18.1 Pro Hac Vice. Motions to be admitted Pro Hac Vice must be accompanied by the fee required by the North Carolina General Statutes. Motions not accompanied by the fee will be denied without notice. Should a motion not accompanied by the fee be inadvertently allowed, the Order allowing the admission will be revoked without notice.

18.2 Business Court. Cases subject to statutory removal to the Business Court will not be transferred without payment of the fee required by the North Carolina General Statutes. Efforts to remove such cases without paying the required fee will be denied without notice, and should such an effort be inadvertently allowed, the Order allowing the removal will be revoked without notice.

18.3 Removal to Federal Court. When a party removes a case to Federal Court, counsel for that party shall contemporaneously provide a copy of the pleading to that effect to the Trial Court Coordinator.

18.4 Cases Initiated Other Than By Complaint. Upon initiating any matter in civil Superior Court by the filing of any pleading which is not a Complaint, (i.e, Will Caveat, Administrative Appeal, Certiorari), said party/counsel shall provide a copy of this pleading to the Trial Court Coordinator. Upon refileing a case previously dismissed pursuant to Rule 41, the plaintiff shall provide a copy of the new complaint to the Trial Court Coordinator, along with a reference to the first case number.

18.5 Notice of Appearance. Any attorney filing a Notice of Appearance, Substitution of Counsel, or similar document, shall provide a copy to the Trial Court Coordinator

18.6 Service. A party filing a lawsuit is expected to promptly undertake reasonable efforts to obtain service. If personal service is not obtained within five months after undertaking reasonable efforts, the party shall seek service by publication. Failure to undertake reasonable efforts to obtain service or to keep summonses alive will result in dismissal for failure to prosecute.

18.7 Rule 2.1 Requests. All requests for complex case designation pursuant to Rule 2.1 of the General Rules of Practice shall be determined by the Senior Resident Judge or his/her designee. Any party filing a pleading with the Business Court asserting jurisdiction there shall provide a copy to the Trial Court Coordinator.

18.8 Remands from Appellate Courts. Upon remand of a case from an appellate court, the prevailing party before the appellate court shall notify the Trial Court Coordinator of the remand within thirty days.

18.9 Voluntary Dismissals. If a party files a voluntary dismissal of a case, claim, or party and the case is on a calendar within the next ten days, the party/counsel filing the dismissal shall deliver a filed copy to opposing counsel/parties and to the appropriate Trial Court Coordinator on the date the dismissal is filed, by facsimile, hand-delivery, or electronic transmission.

18.10 Conflicts. If the Senior Resident Superior Court Judge has a conflict in a case and a matter required by these Rules to be heard by her needs a decision, she will designate another judge to handle that case in her stead.

18.11 Matters for the Senior Resident Judge. To Summarize, matters which must be heard by the Senior Resident Judge include:

- (a) Motions for Discovery Scheduling Orders filed after a case is set for trial. (Rule 3.5)
- (b) Amendments or changes to Discovery Scheduling Orders (Rule 3.5)
- (c) Violations of Rule 3.7 and Motions to Dispense with Rules 3.3, 3.4, and 3.7 (Rules 3.7 and Rule 3.9)

- (d) If trial is within 2 months, all Motions to Amend the Pleadings or to Add Parties (Rule 5.15).
- (e) Motions to continue trials, except on the day of trial. (Rule 6.6, 12.3)(Please deliver to Trial Court Coordinator)
- (f) All motions for expedited trial filed after the Administrative Hearing (Rule 14.1)
- (g) All matters concerning scheduling of trials, inactive orders, and mediation orders.
- (h) Rule 2.1 Recommendations (Rule 18.7)

18.12 Copies to Trial Court Coordinator. To Summarize, copies of the following pleadings must be delivered to the Trial Court Coordinator:

- (a) Requests for Discovery Scheduling Conferences and proposed Discovery Scheduling Orders (Rule 3.2) and amendments thereto (Rule 3.5).
- (b) Designation of Mediator or any pleading concerning mediation (Rule 4.3)
- (c) Calendar Requests (Rule 5.1)
- (d) Motions to Amend the Pleadings or Add a Party if trial is within two months and objections and consents thereto (Rule 5.15).
- (e) Uncontested Motions (Rule 5.8 and Rule 6)
- (f) Consent Motions (Rule 6)
- (g) Consent Responses to Administrative hearing Notices (Rule 7.3)
- (h) Individual Party Responses to Administrative Hearing Notices (Rule 7.3)
- (i) Requests to move a trial date one or two weeks either way, up to six weeks before trial (Rule 7.6)
- (j) Case Settlement Reports (Rule 8.3)
- (k) PreTrial Orders on Tuesday before Trial (Rule 9.3)
- (l) Motions to Continue (Rule 12.3)
- (m) Certified Copies of Initial Bankruptcy Filings (Rule 13.1)
- (n) Removal to Federal Court Petitions (Rule 18.3)
- (o) Will Caveats, Petitions, Administrative Appeals, and any other pleading initiating a Superior Court case which is not a complaint (Rule 18.4)
- (p) Copies of complaints refiled cases dismissed per Rule 41 (Rule 18.4)
- (q) Notice of Appearance by Counsel, Substitution of Counsel, or other similar pleadings (Rule 18.5).
- (r) Pleadings seeking mandatory Business Court Jurisdiction (Rule 18.7)
- (s) Decisions remanding a case from an appellate court to the Superior Court (Rule 18.8)
- (t) Voluntary Dismissals filed within ten days of a scheduled court date (Rule 18.9)