

**WAYNE COUNTY
EIGHT-B JUDICIAL DISTRICT
SUPERIOR COURT DIVISION**

**CIVIL CASE MANAGEMENT PLAN
CIVIL CALENDARING RULES**

Adopted July 1, 2009

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**EIGHT –B JUDICIAL DISTRICT
SUPERIOR COURT DIVISION**

CIVIL CASE MANAGEMENT PLAN

GENERAL RULES

The purpose of these rules is to institute a Case Management Plan that will provide for the orderly, prompt, and just disposition of civil matters, special proceedings and estates. These rules are promulgated in compliance with the North Carolina Rules of Civil Procedure, the General Rules of Practice for the Superior and District Courts, and the Rules Implementing Mediated Settlement Conference in Superior Court Civil Actions.

These rules supercede all previous calendar rules and Mediated Settlement Conference rules implemented in the 8-B Judicial District Superior Court Division.

These rules shall, at all times, be construed in such a manner as to avoid technical delay.

It is recognized that these rules are not complete in every detail and will not cover every situation that may arise. In the event that these rules do not cover a specific matter, the Judicial Assistant is authorized to act in his/her discretion, subject to consultation with the Senior Resident Superior Court Judge or the Presiding Judge.

The calendar for the disposition of civil cases in the 8-B Judicial District, Superior Court Division, shall be set and maintained by the Judicial Assistant in accordance with these rules and under the supervision of the Senior Resident Superior Court Judge.

These rules and procedures, and all amendments hereafter, shall be filed with the Clerk of the Superior Court for Wayne County and may be cited accordingly.

These rules and procedures shall be published on the North Carolina Courts website at www.nccourts.org. The Judicial Assistant for the 8-B Judicial District shall distribute a memorandum notifying each member of the Wayne County Bar of these rules and subsequent amendments hereafter. It is the responsibility of the Wayne County Bar members to view and/or print these rules.

COMMUNICATIONS WITH THE COURT

Communications with the Court under this Case Management Plan (CMP) is an informal procedure described below. It does not prevent matters from being addressed by motion and resolved formally, if necessary.

All communications with the court shall be addressed to the attention of the Judicial Assistant (JA) in one of the following means:

Mail: 224 E. Walnut St., Ste. 314, Goldsboro, NC 27530
Email: anita.b.walker@nccourts.org
Telephone: 919-731-2038
Facsimile: 919-734-2122

1. Written communication may be by email, letter, or facsimile.
2. Written communications must be provided contemporaneously to all other parties by the same means used to communicate with the JA. Evidence of such communications must be included with the communications with the Court.
3. Communications must include sufficient detail to permit opposing parties to respond and the Court to address the matter.
4. In its discretion, the Court will determine if any conference call, meeting, or hearing is necessary, or if the matter can be resolved with informal communications.
5. The JA will notify all parties of the Court's determination.
6. Unless requested by a party, the Court will not file the communications in the court file.
7. The Court will enter a written order only when requested by a party and required by law, or where the Court otherwise deems it necessary or appropriate.
8. Alternative to this informal resolution process, any party may file a formal motion.
9. The Court retains jurisdiction to resolve all motions related to application of these Local Rules to administrative review described below, or to direct that another judge presiding in Wayne County hear such motions.

Section I. PRETRIAL PROCEDURES

A. Administrative Review

1. The Court shall review all pending civil cases at least six (6) months old in March and September of each year to determine if there are administrative or scheduling issues the Court should address.
2. Review of civil cases and administrative and scheduling decisions under this CMP is defined comprehensively as "Administrative Review".
3. Administrative Review includes review of the status of the case, execution of a Scheduling Order, scheduling of a mediated settlement conference, or other matters the parties request or the Court deems necessary to promote the prompt and efficient resolution of the case.
4. Unless excused by the JA, each party or an attorney authorized by each party to participate in Administrative Review must appear and resolve pending issues.
5. Failure to provide input at Administrative Review will not justify amendment of deadlines or trial dates set during Administrative Review.

6. Parties or attorneys requesting to be excused from appearing for Administrative Review must correspond with the JA to resolve all outstanding administrative review issues.
7. Failure to appear for Administrative Review without prior excuse from the JA or the Court, whether set by a party or otherwise by the JA, shall be grounds for the imposition of sanctions in the discretion of the Court.

B. Scheduling Orders

1. Scheduling Orders must be entered in all cases, except driver's license revocation hearings and administrative appeals.
2. Scheduling Orders must provide deadlines for mediation and a designated civil session for trial. If a case is not reached during the designated civil session, the Court in its discretion will reset such cases for trial at the next regular session. Such cases shall be placed on the calendar for every regular session of court thereafter until they are tried or dismissed. Generally, the consent of all the parties for continuance of a matter from a civil calendar should constitute "good cause" under Rule 40 (b), where the parties request continuance in advance of the beginning of the term. An example of a Scheduling Order meeting these minimum requirements is attached and marked as Exhibit "A". Scheduling Orders may provide other deadlines for designation of experts, hearing of dispositive motions, or other deadlines or schedules necessary for the prompt and efficient administration of the cases.
3. Except as specifically provided otherwise in Scheduling Orders, the terms and schedules in this CMP shall apply.
4. Scheduling Orders may be modified only by an Amended Scheduling Order entered by the Court. Parties submitting Scheduling Orders reached by consent shall submit those to the JA. The Court retains the ultimate authority to accept or reject all tendered modifications and Amended Scheduling Orders.
5. Violations of Scheduling Orders shall be grounds for the imposition of sanctions in the discretion of the Court.
6. If a Scheduling Order is not entered within six (6) months of filing of a complaint and the case is not otherwise set for administrative review as provided in Section I-A, the JA, in consultation with the Court, shall enter a Scheduling Order.
7. Parties seeking preemptory or favorable trial settings or requesting special sessions must, through "communications with the Court", submit a detailed request to the JA in writing. Within five (5) business days after the request, all objections to or comments about the request must likewise be submitted to the JA and copied to all parties. The Court will, through the JA, advise all parties of the trial setting. This provision does not prevent the JA or the parties from pursuing administrative review as provided in Section I-A.
8. Cases provided preemptory or priority settings which are not tried as scheduled are not automatically entitled subsequent to any priority setting thereafter. Absent extraordinary circumstances which prevented trials at the priority settings, the

C. Administrative Removal from Civil Issue Docket

1. Cases deemed to be not pending for trial shall be eligible for removal by order prepared by attorney(s) or the JA and signed by the Senior Resident Superior Court Judge. Removal in these cases shall be without prejudice and if necessary, the case may be returned to active status by motion. Listed below are the types of cases eligible for administrative disposition.
 - a. Cases in bankruptcy (accompanied by a copy of either a stay order or the Notice of Bankruptcy from the Bankruptcy Court);
 - b. Defendants making payments;
 - c. Service not perfected and time expired;
 - d. Answers not filed and time expired;
 - e. Removal to United States District Court; or
 - f. Removal for any other reason.
2. An example of an Order removing for Bankruptcy is attached as Exhibit “B”.
3. An example of an Order removing for Defendant making payments is attached as Exhibit “C”.

D. Motions

1. Motions filed for consideration by the Court when no date is requested, shall be set for hearing by the JA on the next available motion calendar.
2. Motions not calendared by parties filing them or by the Court, may be calendared by other parties. A copy of the Calendar request or Notice of Hearing must be provided to the JA.
3. If proper notice under the North Carolina Rules of Civil Procedure is provided, motions need not be printed on calendars. Absence from the printed calendar is not a valid objection to hearing such motions.
4. Motions shall contain adequate notice of the basis for the relief sought. For example, motions for dismissal or for summary judgment shall state specific reasons in such motions to provide fair notice to opposing parties to prepare for hearings. Upon request by opposing parties, parties failing to provide sufficient detail must cure such failure immediately after the request is made. Parties must make a good faith effort to focus motions on the substantive issues involved to avoid confusion and unnecessary efforts by responding parties. Upon finding a violation of this Local Rule, the presiding judge may continue the motion or, as a sanction, deny it.
5. Motions that may require immediate hearing and cannot be otherwise scheduled, or for other reasons must be heard by the Court in an expedited manner, may be heard

6. Memoranda must be provided to opposing parties as required by the Rules of Civil Procedure.

E. Supporting Authority for Motions

1. Neither memoranda of law nor briefs are required to be submitted in support of any motion filed in District 8-B, but may be submitted by the moving party if deemed necessary to the Court's understanding of the issues involved or if requested by the Court.
 - (a) Memoranda of Law and Briefs of Moving Parties: Ten (10) business days prior to the hearing, case and statutory authority upon which the motion is founded may be either presented to the Court in the form of a memorandum of law or brief, copies of the authorities presented to the Court, or both, if such will facilitate the Court's understanding of the issues involved or if requested by the Court. Additional case and statutory authority not initially cited in the brief or memorandum of law may be relied upon by the moving party at the hearing; however, a list of such additional authorities shall be provided to the opposing party at least five (5) business days prior to the date of the hearing in order to facilitate an expeditious hearing on the merits of the motion and avoid delay.
 - (b) Responses to Motions: No formal response is required to any motion, but may be filed if necessary to the Courts understanding of the issues involved or if requested by the Court. The rules applicable to the moving party for submission of memoranda of law or briefs, and disclosure of additional authority, are also applicable to any opposing party. Briefs or memoranda of law filed in opposition to a motion shall be filed not less than five (5) business days prior to the hearing.
 - (c) Motions in Pleadings: The requirements for supporting memoranda shall also apply to motions that are contained in an answer, reply or other pleading filed with the Court.
 - (d) Length of Supporting and Opposing Memoranda: No brief or memorandum of law submitted in support of, or in opposition to, a motion shall exceed 20 pages in length without leave of the Court.
 - (e) Motions Decided on Memoranda: By written consent of all counsel of record and unrepresented parties, and subject to the approval of the appropriate judge, motions may be decided by the presiding judge or the Senior Resident Superior Court Judge, solely upon written memoranda without personal appearance.

- (f) Sanctions for Failure to Comply with Rules: The Court, in its discretion, may impose any appropriate sanction against counsel of record or any unrepresented party for failure to comply with these rules. Any objections for non-compliance with these rules may be made in advance to the JA at least three (3) business days in advance of the hearing date or else be deemed as having been waived.

F. Discovery

These local rules discourage routine and reflexive objections to discovery, and provide mechanisms for expeditious and consistent resolution of disputes. The emphasis of the discovery process should not be on gamesmanship but rather the orderly disclosure of factual information.

1. This CMP does not regulate the nature, timing or extent of discovery.
2. Unless otherwise provided in Scheduling Orders or as may be specifically set forth herein, there is no close of discovery. Parties may engage in discovery as permitted by the Rules of Civil Procedure. In cases not tried when scheduled, discovery otherwise appropriate under the Rules of Civil Procedure and this CMP may continue thereafter.
3. As a standing order of the Court, parties may take depositions by telephone. Court reporters before whom depositions are taken shall be where witnesses are located. Other parties may attend depositions in the presence of deponents.
4. Parties may not notice discovery depositions to be taken within ten (10) days of scheduled trials. Violation of this rule shall be grounds for the issuance of a protective order and imposition of sanctions.
5. Whenever a party claims a privilege other than attorney-client privilege, the party must at that time and with that response describe the information or document for which privilege is asserted to a degree sufficient to allow the Court to rule, if necessary, on such claim of privilege or on a motion to compel discovery (i.e., produce a “privilege log”). Whenever a party objects to discovery on the ground that doing so is unduly burdensome, the party must at the time and with that response describe the burden compliance or production will impose. If a party objects on the ground that the information or document is “confidential”, “trade secret”, etc. the party must accompany the response with a motion for a protective order attaching the material under seal for *in camera* review.
6. There shall be no “general objections” broadsided to every interrogatory or request for production, as the Rules of Civil Procedure do not provide for such broadside objections. A party objecting on any ground who then provides material or information “subject to and without waiving the objection” shall state at that time and with that response if any other information or material is being withheld on the basis of the objection, and if so shall describe the information or document to a degree sufficient to allow the Court to rule on a motion to compel discovery.

Section II. TRIAL PROCEDURES

A. Pretrial Orders

1. Unless excused by the Court, parties shall prepare pretrial orders in every case.
2. It is the joint responsibility of all parties to participate in good faith to present to the Court after the call of the calendar a consolidated pretrial order. If the parties cannot present a consolidated pretrial order, they must present their own version of a proposed pretrial order to be discussed in a pretrial conference with the presiding judge.
3. Any party may initiate the pretrial process by providing a proposed pretrial order with schedules of witnesses and exhibits to opposing parties. No later than three (3) days thereafter, opposing parties shall provide their schedules of witnesses and exhibits and propose corrections or additions to the pretrial order. All parties are obligated to cooperate in a prompt, complete good faith effort to disclose witnesses and exhibits, and make exhibits available for inspection and copying if requested.
4. Violation of these obligations may be grounds, in the discretion of the presiding Judge, for the exclusion of witnesses and exhibits not identified, or exhibits not produced for inspection and copying upon reasonable request.
5. Motions *in limine* shall be heard prior to selecting a jury.

B. Trial Calendars

1. Where Scheduling Orders establish trial dates, parties need not file calendar requests.
2. Although the Court will ordinarily set trial dates through Scheduling Orders, the Court retains the right to set cases for trial pursuant to calendar requests filed by parties or as the Court may otherwise determine is appropriate.
3. The Court or the JA shall resolve any dispute as to the requested date or trial setting.
4. All attorneys will be required to provide the JA with a valid e-mail address and shall include this address with the attorney's signature on all pleadings. An attorney entering a notice of appearance in an existing lawsuit shall provide a copy to the JA.
5. Trial calendars will be prepared and published by the JA four (4) weeks prior to a scheduled term of court.
6. Trial calendars will be published by the JA electronically and shall be available for viewing and/or printing at the North Carolina Courts website (www.nccourts.org).
7. Attorneys shall obtain calendars from the website. Printed calendars will not be distributed to attorneys by U.S. mail or by e-mail, and will not be placed in attorney mailboxes in the Clerk of Superior Court's office. The JA will mail printed calendars to parties appearing *pro se*.

8. It shall be the responsibility of counsel and *pro se* parties to be aware of cases appearing on any calendars. Failure to obtain calendars will not be grounds for continuance of motions (provided proper notice of hearing was provided for the motions) or for continuance of trial that was set in the Scheduling Order.

C. Continuances

1. Parties moving for continuances or objections to calendaring shall, by communication with the court, detail the basis of the request or objections.
2. If the basis is an unexpected event or development, parties must communicate the facts and the request to the JA immediately.
3. If the Court is not available to consider the motion or objection, or if the motion or objection is based upon events arising after 5:00 p.m. on the last business day before the first day of the trial session, the JA will present the motion or objection to the judge presiding for the session.
4. After publication of trial calendar, the Court will grant continuances only for compelling reasons.
5. In addition to other factors which may be considered, the appropriate judicial official shall consider the following when deciding whether to grant or deny a Motion for Continuance:
 - a. The age of the case;
 - b. The status of the trial calendar for the week;
 - c. The order in which the case appears on the trial calendar, including whether the case is peremptorily scheduled;
 - d. The previous number of continuances;
 - e. The due diligence of counsel in promptly filing a Motion for Continuance as soon as practicable;
 - f. The length of the continuance requested, if applicable;
 - g. The position of opposing counsel; or
 - h. Any other matter that promotes the ends of justice which shall include but not be limited to trials set in other jurisdictions.

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, whether counsel of record has received payment, completion of mediation, failure to timely file motions and calendar motions, failure to complete discovery, including obtaining depositions for trial.

D. Failure to Prosecute

1. If 120 days after a complaint is filed there is documented service on parties but answers are not timely filed, the JA may calendar the case on “matters for the court” for default or other action. When parties do not obtain a default judgment thereafter or appear to address the case status satisfactorily, the case may be dismissed without prejudice for failure to prosecute.

E. Notice of Settlement

1. Pursuant to Rule 2(g) General Rules of Practice for Superior and District Courts, when a case is settled, all attorneys of record must notify the JA within 24 hours of a settlement and advise who will prepare and present the judgment or dismissal, and when. Judgments or dismissals must be filed in accordance with Rule II-F below.
2. For cases appearing on a published trial calendar, whether settled via mediation or otherwise, counsel for plaintiff must immediately notify the JA. The JA will attempt to notify other counsel appearing on the trial calendar of settlements, but it is the responsibility of counsel to verify their position on any calendar by maintaining contact with the JA. If a settlement is announced for the first time at trial, counsel must immediately file a written agreement of the settlement signed by counsel, or file a voluntary dismissal, or dictate the terms of the settlement to the Court Reporter, pending preparation of a voluntary dismissal or consent order. Attorneys of record and/or parties should forthwith, and without unnecessary delay, take all steps necessary to close the file, and are under an affirmative order to file all necessary documents within ten (10) working days. If no final disposition of a case announced as settled has been filed within forty-five (45) days, an order will be entered dismissing the case with prejudice for failure to prosecute unless good cause to the contrary is shown.

F. Delinquent Orders

1. Trials or motions scheduled on the trial calendar and removed due to consent or settlement shall be considered delinquent if the order of judgment or dismissal is not filed within fifteen (15) business days after the matter was announced as settled.
2. Trials or motions scheduled on the trial calendar and heard by the Judge or by jury shall be considered delinquent if the order of judgment or disposition is not filed within fifteen (15) business days after the hearing, unless otherwise directed by the Presiding Judge.
3. In those cases identified as delinquent pursuant to Rule F-2 above, upon motion of the party against whom the judgment or order was to be taken, may be dismissed by the Senior Resident Superior Court Judge or Presiding Judge with or without prejudice.
4. The JA shall identify those cases which are delinquent, pursuant to F-1 and F-2 above, and bring them to the attention of counsel/unrepresented parties by placing the case on the next "matters for the court" calendar. At the close of that session, cases remaining delinquent may be dismissed with or without prejudice at the discretion of the Senior Resident Superior Court Judge or Presiding Judge. The Court may alternatively order such sanctions or impose such penalties as deemed appropriate and allowed by law.

G. Sanctions

1. Failure to comply with any section of these rules shall subject an action to dismissal, or such other sanctions allowed by law and deemed appropriate in the discretion of the Senior Resident Superior Court Judge or Presiding Judge.

Section III. ALTERNATIVE DISPUTE RESOLUTION PROGRAM

Pursuant to G.S. §7A-38.1 and Rule 10 of the Rules Implementing Mediated Settlement Conferences in Superior Court Civil Cases adopted by the N.C. Supreme Court (the Supreme Court Rules), the Court adopts these additional Local Rules that apply to all mediated settlement conferences (mediation) in Judicial District 8-B. Except as expanded by these Rules, G.S. §7A-38.1 and the Supreme Court Rules are incorporated by reference and shall control. All future amendments to the Supreme Court Rules are incorporated by reference as of their effective date.

A. Procedures

1. The Court orders that all persons or entities identified under Supreme Court Rule 4, in all cases in Judicial District 8-B, shall participate in a pretrial mediation.
2. This order replaces AOC-CV-811 (Order for Mediated Settlement Conference and Trial Calendar Notice). When a complaint is filed, AOC-CV-811 shall be deemed entered by the Court. All its terms are incorporated in Judicial District 8-B.
3. Within 90 days after an attorney first enters an appearance on behalf of any defendant, or a defendant appears pro se, the plaintiff shall provide an appropriate order to the JA designating the mediator selected by the parties.
4. Alternatively, the plaintiff shall by letter request the Court to extend the time, make a designation in the absence of consent, or take other action the plaintiff contends is appropriate.
5. Otherwise, the Court will select and designate a mediator without further notice to the parties.
6. Unless extended by scheduling order of the Court, the parties shall complete their mediation within one (1) year after the complaint is filed.

B. Extensions & Exceptions

1. A party requesting an extension or exception must make such requests prior to the passing of the mediation deadline or prior to the occurrence of the issue about which an exception is requested. The Court will extend the deadline for completion of mediation only upon a showing of compelling circumstances that the parties by due diligence could not have avoided. Trial dates will not be extended due to extensions on mediation deadlines.

C. Substitutions

1. Parties who fail to select a mediator within the above time frame and then desire a substitution after the Court has appointed a mediator, shall obtain Court approval for the substitution. The substitution will only be allowed for good cause shown. If the Court approves the substitution, the parties shall pay the Court's original appointee the one time, per case administrative fee provided for in Rule 7.B. of the North Carolina Supreme Court Implementing Mediated Settlement Conferences in Superior Court Civil Actions.

D. Sanctions for Violation of Mediation Rules

1. Supreme Court Rule 5 is incorporated, but is expanded to apply to any violation of these Rules.
2. As a sanction for any violation of these Mediation Rules, including the Court's ruling on any tardy application for an extension or exception, the Court, in its discretion, may impose any one or more of the following sanctions: Payment of attorney's fees and costs of the adverse party(s) harmed by the violation; payment of mediator's fees and expenses caused by the violation; civil contempt with appropriate sanctions; or, any other sanction authorized by Rule 37(b) of the Rules of Civil Procedure.
3. Before entering any sanctions, the Court shall set a hearing at which all parties may present evidence and argument relevant to the violation(s) at issue. The Court shall enter an Order in compliance with Supreme Court Rule 5.

This the 22nd day of June, 2009.

Arnold O. Jones II
Senior Resident Superior Court Judge
Judicial District 8-B

EXHIBIT "A"

NORTH CAROLINA
WAYNE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO: ___ CVS _____

_____,
Plaintiff,

VS

SCHEDULING ORDER

_____,
Defendant

In order to promote the efficient, prompt and fair administration of this case, the Court **Orders** that:

- 1: Discovery:** Discovery deadline shall be _____, 20_____.
- 2: Experts:** PLAINTIFF shall designate all experts by _____, 20_____.
DEFENDANT shall designate all experts by _____, 20_____. PLAINTIFF shall designate any REBUTTAL experts by _____, 20_____. "Designate" shall mean written communication which lists the full name and address of the expert, the subject matter on which the expert will testify, and the qualifications of the expert.
- 3: Motions:** All dispositive motions with specific grounds for the relief sought shall be filed by _____, 20_____.
- 4: Pre-Trial:** The parties shall file a pre-trial order prior to trial. All parties shall make all substantive exhibits available for inspection and copying, and shall provide witness lists at least 7 days prior to trial.
- 5: Trial Calendar:** This case is calendared for trial during the Civil Superior Session beginning _____, 20_____.
- 6: Mediation:** The mediation will be conducted on or before _____, 20_____.

This the _____ day of _____, 20_____.

The Honorable Arnold O. Jones II
Senior Resident Superior Court Judge

CONSENTED TO:

Attorney for the Plaintiff

Attorney for the Defendant

EXHIBIT "B"

NORTH CAROLINA
WAYNE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO: ___ CVS _____

_____,
Plaintiff,

VS

_____,
Defendant

**ORDER OF REMOVAL FROM
CIVIL ISSUE DOCKET**

THIS CAUSE comes on for hearing administratively before the undersigned Senior Resident Superior Court Judge for Wayne County. It appears to the Court that defendant(s) are involved in a Federal bankruptcy proceeding and therefore this cause cannot proceed while defendant(s) are involved in such proceedings. Counsel for the parties have advised the Court that they will actively pursue the lifting of the Stay in Bankruptcy. In the meantime, this case will be inactive unless reopened by motion of either party.

IT IS, THEREFORE, ORDERED that the above-captioned cause be and the same is hereby administratively closed subject to being reopened on motion of either party after such time as the Stay in Bankruptcy has been lifted.

This the ____ day of _____, 20_____.

Arnold O. Jones II
Senior Resident Superior Court Judge
Judicial District 8-B

EXHIBIT "C"

NORTH CAROLINA
WAYNE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO: ___ CVS _____

_____,
Plaintiff,

VS

ORDER CLOSING FILE

_____,
Defendant

THIS CAUSE comes on for hearing administratively before the undersigned Senior Resident Superior Court Judge for Wayne County. It appears from the record that the parties hereto have reached an out of court settlement that is reflected in a written memorandum of record. The settlement allows for extensive payments over time to allow the defendant to make the required payments. In the meantime, the case will be inactive unless reopened by motion of either party.

IT IS, THEREFORE, ORDERED that this action be and the same is hereby administratively closed subject to being reopened on motion of either party in the event issues arises as to the execution of the settlement.

This the ____ day of _____, 20_____.

Arnold O. Jones II
Senior Resident Superior Court Judge
Judicial District 8-B