

STATE OF NORTH CAROLINA  
COUNTY OF ANSON  
COUNTY OF RICHMOND

IN THE GENERAL COURT OF JUSTICE  
JUDICIAL DISTRICT 20A

**IN RE:** )  
 )  
 )  
**CASE MANAGEMENT PLAN** )  
**JUDICIAL DISTRICT 20A** )  
\_\_\_\_\_ )

**ORDER**

Under and pursuant to Rule 40, North Carolina Rules of Civil Procedure, and Rule 2, General Rules of Practice for the Superior and District Court Supplemental to the Rules of Civil Procedure, the attached Rules for the calendaring of civil actions for trial in the Superior Court of Judicial District 20A are hereby adopted effective for all civil calendaring beginning March 1, 1997.

These rules supersede all previous civil calendar rules of the Superior Court Division of Judicial District 20A.

This the 6<sup>th</sup> day of January, 1997.

\_\_\_\_\_  
**MICHAEL E. BEALE**  
**SENIOR RESIDENT SUPERIOR COURT JUDGE**  
**JUDICIAL DISTRICT 20A**

**CASE MANAGEMENT PLAN  
FOR SUPERIOR CIVIL CASES**

**JUDICIAL DISTRICT 20A  
ANSON AND RICHMOND COUNTIES**

**EFFECTIVE MARCH 1, 1997**

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.

**1. CASE TRACKING SYSTEM:**

1.1 The Clerks of Court shall maintain docket sheets for civil cases pending in Superior Court, keeping a separate index for medical malpractice actions.

1.2 The Judicial Assistant to the Senior Resident Superior Court Judge shall maintain a case tracking system for civil cases pending in the Superior Courts.

1.3 The Clerks' docket sheets and the Superior Court tracking system must record the filing dates for pleadings, a list of pending motions, and a list of trial continuances.

**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.

### **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 Judicial Assistant, 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.

### **4. SUPERIOR COURT TRIAL CALENDARS:**

#### **4.1 TENTATIVE SUPERIOR COURT TRIAL CALENDARS - PUBLICATION/NOTICE:**

Not less than six (6) weeks prior to the first day of each session, the Judicial Assistant to the Senior Resident Superior Court Judge shall prepare a tentative calendar of cases for trial at that session. She shall distribute one copy of the tentative calendar to each law firm with one or more cases listed thereon, and one copy to each party not represented by an attorney if such party's address appears of record. Each attorney and each unrepresented party shall be responsible for seeing that his/her correct mailing address appears in the record. Delivery of the tentative calendar 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 Judicial Assistant on their own initiative.

#### **4.2 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.

#### **4.3 REQUEST 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.

#### **4.4 REQUEST FOR PRE-EMPTORY SETTINGS:**

At any time more than four (4) weeks before the first day of a session, an attorney may request a pre-emptory 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 pre-emptorily set, and should state whether the request is approved by all attorneys in the case. The request should be directed to the Office of the Senior Resident Superior Court Judge. No more than two (2) pre-emptory settings per week shall be made. If a pre-emptorily set case is continued, attorneys in that case shall not be entitled to a second priority setting unless another request is approved. Pre-emptory settings may be allowed in cases involving persons who must travel long distances, cases involving numerous expert witnesses, or cases involving other extraordinary reasons.

#### **4.5 FINAL SUPERIOR COURT CALENDARS - PUBLICATION:**

Not less than three (3) weeks prior to the first day of each civil session, the Judicial Assistant to the Senior Resident Superior Court Judge shall prepare a final calendar of cases for trial at that session. She shall distribute one copy of the final calendar to each law firm with one or more cases listed thereon, and one copy to each unrepresented party whose address appears of record, and one copy to the Presiding Judge.

#### **4.6 FINAL SUPERIOR COURT CALENDARS - ORDER OF LISTING FOR TRIAL:**

The final calendar shall be composed of cases not removed from the tentative calendar and matters requested by agreement of counsel or parties. Pre-emptorily 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.

#### **4.7 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.

### **5. MOTION CALENDARS:**

#### **5.1 REGULAR MOTION CALENDAR:**

The Judicial Assistant to the Senior Resident Superior Court Judge shall publish and distribute 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 Judicial Assistant, 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 shall constitute notice of hearing for motions calendared by the Senior Resident Superior Court Judge and/or the Judicial Assistant 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 Clerk of Court 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.

## **6. CONTINUANCES:**

6.1 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.

6.2 The Judicial Assistant 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.

6.3 Except in unusual cases, neither the low listing of a case on the calendar nor the “potential” trial conflict of counsel shall be considered as a valid reason for a continuance.

## **7. SETTLEMENT OF CASES:**

### **7.1 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 Judicial Assistant 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 Judicial Assistant 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.

### **7.2 PROCEDURE WHEN SETTLEMENT 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 Judicial Assistant, 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.

## **8. REMOVING INACTIVE CASES FROM TRIAL DOCKETS:**

### **8.1 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.

### **8.2 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.

### **8.3 REMOVING INACTIVE CASES WITHOUT REQUEST:**

The Senior Resident Superior Court Judge or any Presiding Judge may, of his/her own motion, declare a case inactive and remove it from the trial docket if it appears to him/her 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.

## **9. MEDIATION:**

### **9.1 MEDIATED SETTLEMENT CONFERENCES:**

Judicial District 20A is subject to the Rules of the North Carolina Supreme Court governing the operation of Mediated Settlement Conferences and they are hereby adopted by reference.

### **9.2 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.

**9.3 CASES FILED PRIOR TO THE EFFECTIVE DATE OF MEDIATED SETTLEMENT CONFERENCE:**

Any case filed prior to the effective date of mandatory Mediated Settlement Conference may be calendared for mediation upon written consent of all attorneys of record or unrepresented parties or for good cause shown upon request by any attorney of record or unrepresented party.

**10. PRE-TRIAL ORDERS:**

10.1 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.

**11. PROCEDURES FOR SESSIONS OF COURT:**

**11.1 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 2:00 p. m. on Monday unless otherwise ordered by the Presiding Judge or the Senior Resident Superior Court Judge.

**11.2 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.

**11.3 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.

#### **11.4 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.

#### **11.5 CASES NOT REACHED:**

Cases not reached during the session shall be re-calendared according to Rule 4.7.

### **12. OBLIGATIONS OF ATTORNEYS AND UNREPRESENTED PARTIES:**

12.1 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. When an attorney of record is notified to appear for the setting of a calendar, pre-trial conference, hearing of a motion, or for trial, he/she must, consistent with ethical requirements, appear or have a partner or associate present and prepared to proceed with the business before the Court, unless the attorney has been excused in advance by the Presiding Judge and has given notice to all other attorneys and unrepresented parties or unless the case has been continued in accordance with these rules. Likewise, unrepresented parties who are notified to appear shall be present and ready to proceed unless they have been excused in advance by the Presiding Judge and have given notice to all other attorneys or unrepresented parties or unless the case has been continued in accordance with these rules.

### **13. ADMINISTRATIVE SESSIONS:**

13.1 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.

13.2 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 Judicial Assistant in preparing tentative calendars in accordance with these rules.

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.

Adopted this the \_\_\_\_\_ day of January, 1997.

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Michael E. Beale  
Senior Resident Superior Court Judge  
Judicial District 20A  
Post Office Box 1064  
Wadesboro, North Carolina 28170  
704/694-2037

## 14. VIDEO DEPOSITIONS:

14.1 Effective for all trials beginning on or after March 6, 2000, in Judicial District 20A, no *video* deposition shall be presented to a jury unless the party seeking to present the said video deposition to the jury has prepared and served upon all opposing counsel, not later than 12:00 o'clock noon on the Wednesday preceding the term of court in which the case is tried, a written, certified, true and accurate verbatim transcript of the said video deposition which is prepared by a *Certified Court Reporter*.

14.2 Any objections based on relevancy, materiality, or other rules of evidence to any portions of the deposition must be made prior to the playing of the video deposition to the jury, and the Court shall rule on said objections based on the written verbatim transcript so that the video deposition can be stopped or muted by the Court or by the Bailiff, at the direction of the Court, to avoid the presentation to the jury of any inadmissible evidence.

14.3 Unless counsel seeking the admission of the video deposition also simultaneously serves upon all opposing counsel a copy of the video deposition for review, there shall be no waiver of a Motion to Suppress the deposition in whole or in part for errors and irregularities between the written and the video deposition prior to the actual presentation to the jury of the video deposition.

14.4 If the written verbatim transcript is not a true and accurate copy of the video deposition, the Court may exclude the deposition in whole or in part upon a timely Motion to Suppress.

14.5 A Motion to Suppress for inaccuracy of the written verbatim transcript shall not be timely unless made prior to jury selection if counsel was provided with the written verbatim transcript and the video deposition in accordance with this rule. Otherwise, a Motion to Suppress may be made at any time prior to or during the presentation of the video deposition to the jury.

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.

Adopted this the \_\_\_\_\_ day of \_\_\_\_\_, 2000.

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Michael E. Beale  
Senior Resident Superior Court Judge  
Judicial District 20A  
Post Office Box 1064  
Wadesboro, North Carolina 28170  
4/694-2037

**STATE OF NORTH CAROLINA  
JUDICIAL DISTRICT 20-A  
SUPERIOR COURT CONTINUANCE POLICY**

**Rule 1: Motions for Continuance -- Civil Cases**

**1.1 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 the judicial district in which the case is filed, or his/her 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 court in which the case is calendared.

*[This rule is created to minimize the confusion inherent in the Superior Court Rotation system and to place the decision making authority in the hands of the judicial official most likely to have access to accurate information concerning the status of the trial calendar as a whole and the history of individual cases thereon.]*

**1.2 Form of Motion**

All applications for continuance shall be by written motion made on state form AOC-CV-1997.

**1.3 Notification of Opposing Counsel/Unrepresented Parties**

A copy of the completed form AOC-CV-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.

*[Timely notification of all parties is essential to provide an opportunity for hearing. Allowing distribution of the motion by as many ways possible will ensure the earliest possible notification.]*

**1.4 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/her designee. Objections not raised within this time period are deemed waived.

## **1.5 Evaluation of Motion 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 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 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.**

*[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.]*

## **1.6 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/her designee, should reschedule the trial of the case after receiving scheduling input from all counsel.

## **Rule 2: Motions for Continuance -- Criminal Cases**

### **2.1 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 the judicial district in which the case is filed, or his/her 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 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/her designee. This does not abridge the trial judge's right to hear motions made the day of court or during a session.]*

### **2.2 Form of Motion**

All applications for continuance shall be by written motion made on state form AOC-CR-1997.

### **2.3 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 defense counsel, the motion must be presented to the District Attorney prior to presentation to the appropriate judicial official.**

### **2.4 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.

**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 motions is presumed.**

*[This rule recognizes the District Attorney's current statutory right to calendar cases. Motions which have the consent of the District Attorney do not require presentation to a judicial official but are deemed "allowed".]*

## 2.5 Evaluation of Motions 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 which 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.]*

**GENERAL RULES OF PRACTICE FOR THE  
SUPERIOR COURT/JUDICIAL DISTRICT 20-A**  
(Supplemental to the Rules of Civil Procedure)

**Rule 3: Continuances**

**An application for a continuance shall be made to the presiding judge of the court in which the case is calendared.**

When an attorney has conflicting engagements in different courts, priority shall be as follows: Appellate Courts, Superior Court, District Court, Magistrate's Court.

At mixed sessions, criminal cases in which the defendant is in jail shall have absolute priority.

**AMENDMENT**

**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 the judicial district in which the case is filed, or his/her 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 or the court in which the case is calendared.**

**All applications for continuance shall be by written motion made on state form AOC-CV-410.**

**December 17, 1997**

**TO: Members of the Bar of Judicial District 20-A**

**FROM: Michael E. Beale, Senior Resident Superior Court Judge,  
Judicial District 20-A**

**RE: Model Continuance Policy**

As you may recall, on May 1, 1996, the Supreme Court submitted a Caseflow Management Plan to the North Carolina General Assembly pursuant to legislative mandate. The Court's plan directed that every Senior Resident Superior Court Judge and each Chief District Court Judge promulgate written continuance policies, as local rules, to reduce delay and ensure the fair administration of justice. In response to the mandate from the Court, a Superior Court Model Continuance Policy Committee was formed, chaired by the Honorable Coy Brewer, and composed of Superior Court Judges, District Attorneys, and private attorneys.

On December 1, 1997, the Administrative Office of the Courts distributed copies of the Superior Court Model Continuance Policy to all Senior Resident Judges. The model policy, although somewhat more formal, is very similar to our current procedure. For this reason, and in the hopes of uniformity across the State, I have decided to implement the model policy exactly as proposed by the committee.

Please familiarize yourself with these new rules and also with the attached forms. These new rules will be effective as of July 1, 1998, the next publication date of the statewide local rules.

STATE OF NORTH CAROLINA  
COUNTY OF ANSON  
COUNTY OF RICHMOND

IN THE GENERAL COURT OF JUSTICE  
JUDICIAL DISTRICT 20A

**TO: THE CLERKS OF SUPERIOR COURT and  
MAGISTRATES OF JUDICIAL DISTRICT 20A**

**ORDER  
(G. S. 15A-535)**

The undersigned Senior Resident Superior Court Judge for Judicial District 20A and the Chief District Court Judge for the 20th Judicial District, have searched the records and have found no Pretrial Release Policy placed into effect since the advent of Structured Sentencing.

And, the undersigned having met and formulated policies for pretrial release in accordance with G. S. 15A-535, hereby **ORDER** that these policies be used to determine whether and upon what conditions a defendant may be released before trial in Judicial District 20A.

**IT IS ALSO ORDERED** that notwithstanding the focus of these policies on instructions to magistrates, these policies are also applicable to all judicial officials holding office or presiding in this district except as otherwise provided by law.

**IT IS FURTHER ORDERED** that copies of these policies shall be distributed by the Clerks of Superior Court of the counties in this judicial district to all judicial officials of this District, and to the sheriffs, the local State Highway Patrol Commander, and the Chiefs of each police department in these counties. The Clerks of Superior Court shall also cause a copy of this Order to be kept on file with the courtroom clerk in all courts of this district.

This the \_\_\_\_\_ day of January, 1998.

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**MICHAEL E. BEALE  
SENIOR RESIDENT SUPERIOR COURT JUDGE  
JUDICIAL DISTRICT 20A**

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**RONALD W. BURRIS  
CHIEF DISTRICT COURT JUDGE  
20th JUDICIAL DISTRICT**

**STATE OF NORTH CAROLINA  
JUDICIAL DISTRICT 20-A**

**OFFICIAL POLICIES ON PRETRIAL RELEASE**

**I. AUTHORITY.**

A. G. S. 15A-535 provides: “Subject to the provisions of this Article [Article 26, Bail], the senior resident superior court judge of each judicial district in consultation with the chief district court judge, must advise and issue recommended policies to be followed within the district in determining whether, and upon what conditions, a defendant may be released before trial.”

**II. DEFINITIONS. G. S. 15A-531.**

A. **Bail Bond.** An undertaking by the principal to appear in court as required upon penalty of forfeiting bail to the State of North Carolina in a stated amount. Bail bonds include an unsecured appearance bond, an appearance bond secured by a cash deposit of the full amount of the bond, and appearance bond secured by a mortgage pursuant to G. S. 109-25, and an appearance bond secured by at least one solvent surety.

B. **Obligor.** A principal or a surety on a bail bond.

C. **Principal.** A defendant or material witness obligated to appear in court as required upon penalty of forfeiting bail under a bail bond.

D. **Surety.** One who, with the principal, is liable for the amount of the bail bond upon forfeiture of bail.

**III. PURPOSE OF BAIL.**

A. The traditional purpose of bail is to assure the defendant’s appearance in court. The purpose of the law on bail (G. S. Ch. 15A, Article 26) is to impose the least restrictive form of pretrial release that will reasonably assure the defendant’s appearance in court, to end or to minimize stereotyped ex parte bail-fixing policies calling for secured bonds in predetermined amounts in all cases charging certain offenses, and to vest the decision making process as to form of release and amount of bond in the judicial officer who may know the most, or can most readily learn the most, about the defendant.

#### **IV. FORMS OF PRETRIAL RELEASE. G. S. 15A-534.**

- A. Release on a written promise to appear.
- B. Release on unsecured bond.
- C. Release to the custody of a designated person or organization agreeing to supervise the defendant.
- D. Release on a secured appearance bond secured by a cash deposit, mortgage, or at least one solvent surety.
- E. Use of Conditions: Restrictions may be imposed on travel, associations, conduct, or place of abode, no matter what type of pretrial release set.
  - 1. Any restrictions imposed should be *reasonable* and *related to the purposes* of the pretrial release provisions. Conditions should not be used as punishment. [*Note:* G. S. 15A-534.4 sets out specific conditions that may be imposed on a defendant who is charged with certain sex offenses and crimes of violence against child victims.]
  - 2. The conditions should relate to reasons listed under 15A-534(b):
    - a. assure defendant's appearance (travel);
    - b. danger of injury (conduct/association);
    - c. destroy evidence (conduct/travel/association);
    - d. intimidate witnesses (conduct/association).

**Note.** The magistrate will observe that a citation is now a criminal process, G. S. 15A-302. It is not a form of release.

#### **V. SELECTION OF FORM OF PRETRIAL RELEASE. G. S. 15A-534**

- A. **Written promise to appear.**
  - 1. The written promise to appear is the recommended form of pretrial release except in cases in which the defendant is charged with a violation under G. S. 20 (Motor Vehicles).
  - 2. The written promise to appear may be selected by the magistrate as the form of pretrial release upon the magistrate's finding that such form will reasonably assure the defendant's court appearance after the magistrate has taken into account the release criteria set out in G. S. 15A-534(c), namely:
    - (1) the nature and circumstances of the offense charged,
    - (2) the weight of the evidence,
    - (3) the defendant's family ties,
    - (4) employment,
    - (5) financial resources,

- (6) character,
- (7) mental condition,
- (8) degree of intoxication, if any,
- (9) length of residence in the community,
- (10) record of convictions,
- (11) history of flight to avoid prosecution or failure to appear at court proceedings, and
- (12) any other evidence relevant to the issue of pretrial release.

**B. Unsecured bond in a specific amount.**

1. The unsecured bond in a specified amount is the recommended form of pretrial release in cases arising under G. S. 20 (Motor Vehicles), and upon the magistrate's finding that this form of release will reasonably assure the defendant's court appearance on the basis of the release criteria set out above.

**C. Release to the custody of a designated person or organization agreeing to supervise the defendant.**

1. This form of release may be selected in cases other than motor vehicle offenses if the magistrate finds: (1) that by reason of defendant's age or mental condition a custodial release is most likely to assure defendant's court appearance, and (2) such custodian and the defendant are both before the magistrate, and both agree in writing to the terms of release.
2. Pretrial release form D, below, must be selected if the defendant objects to the custodial form of release.

**D. Release on a secured appearance bond in a specified amount secured by a cash deposit, mortgage, or at least one solvent surety.**

1. This form of release must not be selected by the magistrate unless he first determines that release forms A, B, or C above will not reasonably assure the appearance of the defendant as required, will pose a danger of injury to any person, or is likely to result in destruction of evidence, subordination of perjury, or intimidation of potential witnesses. Upon making such determination, the magistrate must impose this form of release.

**Note.** The magistrate (judicial official) authorizing pretrial release under this section must issue an appropriate order containing a statement of the conditions imposed, if any; inform the defendant in writing of the penalties applicable to violations of the conditions of his release; and advise him that his arrest will be ordered immediately upon any violation. The order of release must be filed with the clerk and a copy given the defendant. *See Forms AOC-CR-200,201.*

## **VI. SUGGESTED BAIL BONDS.**

A. If after considering the above criteria the judicial official believes a written promise is not appropriate, then a bond should be set if a custody release is not chosen.

B. The bond amounts set out below are applicable to both secured and unsecured bonds. These bond amounts are suggested minimums. They are merely suggested bonds. The actual bond may be more or less than those suggested herein. The circumstances of each individual case will govern each decision; and the judicial official will select a bond amount that is appropriate and indicated by using the release criteria set out in V. above, using those criteria for determination of amount of bond in the same manner as they are used to determine the form of release.

1. For offenses defined as Class III misdemeanor - \$100.00;
2. For offenses defined as Class II misdemeanor - \$200.00;
3. For offenses classified as Class I misdemeanor - \$350.00;
4. For offenses classified as Class AI misdemeanor - \$500.00;
5. For Class I felonies - \$1,000.00;
6. For Class H felonies - \$2,000.00;
7. For Class G felonies - \$3,000.00;
8. For Class F felonies - \$4,000.00;
9. For Class E felonies - \$5,000.00;
10. For Class D felonies - \$10,000.00;
11. For Class C felonies - \$20,000.00;
12. For Class B2 felonies - \$50,000.00;
13. For Class B1 felonies - \$100,000.00.

## **VII. CAPITAL OFFENSES.**

A. A magistrate does not have authority to grant pretrial release to a defendant charged with a capital offense.

B. A district court judge or a superior court judge may fix bail in all capital cases.

## **VIII. GUIDELINES.**

A. A magistrate should not, except under extraordinary circumstances, grant pretrial release by personal recognizance, unsecured bond or custodial release to any person who is not a resident of North Carolina.

B. On misdemeanor charges a magistrate may -- but is not required to -- accept the defendant's oral and unconfirmed answers to the release criteria.

C. A magistrate should not, except under exceptional circumstances, grant pretrial release by written promise to appear, unsecured bond or custodial release to any defendant who has already failed to appear in court and is then in custody by a warrant for failure to appear on citation or an order for arrest.

D. A magistrate should not grant pretrial release by written promise to appear, unsecured bond, or custodial release where the defendant is under arrest for violation of G. S. 15A-534, failure to appear pursuant to pretrial release under Article 26.

E. A magistrate should not grant pretrial release contrary to the order of any judge except as authorized under XIV, below.

## **IX. REQUIRED WRITTEN FINDINGS IN ACCORDANCE WITH 15A-53(b).**

A. That in all charges involving felonies designated A, B, B2, C, D, E, F, G, H, or in Class AI misdemeanors wherein a defendant is subject to an active sentence in all grids under Structured Sentencing, it may be presumed that release under G. S. 15A-534a(1)(2) or (3) will not reasonably assure the appearance of the defendant and the judicial official may set a secured bond without giving any specific reason in writing, under G. S. 15A-534(b).

B. That in regards to all Class I, II, or III misdemeanors or Class I felonies, conditions of release must be one of those set forth in G. S. 15A-534(a)(1)(2) or (3) unless the (judicial official) records in writing, or directs the clerk to record in writing, the reasons for setting of a secured bond in accordance with G. S. 15A-534(4), **except when a bond is being set pursuant to a failure to appear. In such case, no written findings need be made and it may be presumed that release under G. S. 15A-534(a)(1)(2) or (3) will not reasonably assure the defendant's appearance.**

C. Examples of such reasons including:

1. the defendant has a sufficient criminal record such that he is subject to an active sentence upon conviction;
2. that the defendant poses a danger of injury to any person;
3. the defendant's release without a secured bond is likely to result in destruction of evidence, subordination of perjury, or intimidation of potential witnesses;
4. a specific finding of why the judicial official believes that conditions (1)(2) or (3) of G. S. 15A-534(a) would not reasonably assure a defendant's appearance.

D. That in regards to defendants charged with DWI, the judicial official may presume that any defendant who has registered at least a 0.08% on the intoxilyzer poses a danger of injury to other persons if not placed under a secured bond and the judicial official may set a secured bond without giving any written reason therefor, pursuant to G. S. 15A-534(b).

**E.** That in DWI cases in which there is an alleged willful refusal to submit to an intoxilyzer, a judicial official who has observed the defendant and finds probable cause that the defendant is impaired at that time may presume that the defendant poses a risk of injury to persons and may place the defendant under secured bond without giving any written reason therefore, pursuant to G. S. 15A-53(b).

**F.** That in DWI cases wherein the defendant registers less than 0.08% on the intoxilyzer, the judicial official shall impose conditions set forth in G. S. 15A-534(a)(1)(2) or (3) unless he makes written findings as required by G. S. 15A-534(b).

**G.** Examples of such reasons include:

1. the defendant has committed acts which constitute grossly aggravating factors and is subject to mandatory imprisonment and conditions (1)(2) and (3) of G. S. 15A-534(a) will not assure the defendant's appearance;
2. that the defendant poses a danger of injury to persons;
3. the defendant's release without a secured bond is likely to result in destruction of evidence, subordination of perjury, or intimidation of potential witnesses;
4. a specific finding of why the judicial official believes that release under G. S. 15A-534(a)(1)(2) or (3) would not reasonably assure the appearance of the defendant.

## **X. RECOMMENDATION OR ORDERS.**

**A.** Magistrates in this district will observe the following procedure:

1. In transmittal forms from judges the word "*recommendation*" will be treated as an order unless the judge clearly indicates a different purpose.
2. Recommended disposition on transmittal forms from other magistrates and from superior court clerks will be viewed as recommendations only, to be given due weight, but subject to a different form of release or a different amount of bond if the receiving magistrate's information about the defendant on the release criteria clearly indicates a form of a release or amount of bond that differs from the transmittal recommendation.
3. Any magistrate in transmitting warrants out-of-county for service will avoid making any recommendation as to conditions of release unless:
  - a. the magistrate expects the defendant to be arrested in a county where he is not known, or
  - b. the magistrate's prior knowledge of the defendant's record and standing as to the release criteria is sufficient to justify a recommendation, or
  - c. experience with the release practices of a particular county has been unsatisfactory when recommendations are not given.

## **XI. DETENTION OF IMPAIRED DRIVERS. G. S. 15A-534.2.**

A. A defendant charged with impaired driving has the right to pretrial release when the judicial official (magistrate) determines that:

1. the defendant's physical and mental faculties are no longer impaired to the extent that he presents a danger of physical injury to himself or others or of damage to property; or
2. a sober, responsible adult is willing and able to assume responsibility for the defendant until his physical and mental faculties are no longer impaired. If the defendant is released to the custody of another, the judicial official may impose any other condition of pretrial release authorized by G. S. 15A-534, including a requirement that the defendant execute a secured bond.

B. The defendant may be denied pretrial release under this section for a period no longer than 24 hours, but the conditions under which he is to be released must be set at the time of initial appearance.

C. In making the determination whether a defendant remains impaired, the judicial official may request that the defendant submit to periodic tests to determine the defendant's alcohol concentration. Unless there is evidence that the defendant is still impaired from a combination of alcohol and some other impairing substance, a judicial official must determine that a defendant with an alcohol concentration less than 0.05 is no longer impaired.

## **XII. PRETRIAL RELEASE FOR CRIMES OF DOMESTIC VIOLENCE. G. S. 15A-534 - 534.1.**

A. In all cases in which the defendant is charged with assault on or communicating a threat to a spouse or former spouse or a person with whom the defendant lives or has lived as if married, with domestic criminal trespass, or with violation of an order entered pursuant to G. S. Ch. 50B (Domestic Violence), the following provisions shall apply in addition to the provisions of G. S. 15A-534:

1. Upon arrest by warrant for crimes of domestic violence, a district court judge is the only judicial official authorized to set conditions of release for the initial 48 hours following arrest.
2. Upon a determination by the judicial official that the immediate release of the defendant will pose a danger of injury to the alleged victim or to any other person or is likely to result in intimidation of the alleged victim and upon a determination that the execution of an appearance bond as required by G. S. 15A-534 will not reasonably assure that such injury or intimidation will not occur, a judicial official may retain the defendant in custody for a reasonable period of time while determining the conditions of pretrial release.
3. A judicial official may impose the following condition on pretrial release:
  - a. that the defendant stay away from the home, school, business or place of employment of the alleged victim;

- b. that the defendant refrain from assaulting, beating, molesting, or wounding the alleged victim;
- c. that the defendant refrain from removing, damaging or injuring specifically identified property;
- d. that the defendant may visit his or her child or children at times and places provided by the terms of any existing order entered by a judge.

Note. The conditions set forth above may be imposed in addition to requiring that the defendant execute a secured appearance bond.

### **XIII. OVERCROWDING OF JAIL FACILITIES.**

A. Magistrates will be mindful of the jail capacity and the number of persons being detained therein, and shall make such reductions in bond requirements as he shall deem necessary, including use of unsecured bonds, to avoid overcrowding.

1. In this connection, the magistrate will begin bond reductions with the lesser offenses, but the magistrate may not make a reduction in a bond previously set by a judge except as authorized under XIV, below. This procedure should be executed with care.

### **XIV. ERRORS AND EMERGENCIES.**

A. Magistrates are not authorized to modify pretrial release orders or recommendations of judges of the superior court.

B. Magistrates are not authorized to modify pretrial release orders or recommendations of district court judges outside their county.

C. Magistrates are authorized to modify pretrial release orders of district court judges in their respective counties in misdemeanor cases involving process for service only after and pursuant to the direction of the district court judge. Magistrates exercising such authority to modify a district court judge's pretrial release order will staple an attachment to the process setting out the reasons for his actions along with the date and his signature.

D. If at any time subsequent to release of a defendant, in accordance with a magistrate's pretrial release order, it should appear to any magistrate that the defendant is going to violate the conditions of release or abscond, the magistrate may issue an order for arrest under G. S. 15A-305(b)(5), and make such new pretrial release order as may be appropriate.

## **XV. TERMINATION. G. S. 15A-534(h).**

A. A bail bond posted pursuant to this section is effective and binding upon the obligor throughout all stages of the proceeding in the trial division of the General Court of Justice until the entry of judgment in the district court from which no appeal is taken or the entry of judgment in the superior court. The obligation of an obligor, however, is terminated at an earlier time if:

1. a judge authorized to do so releases the obligor from his bond; or
2. the principal is surrendered by a surety in accordance with G. S. 15A-540; or
3. the proceeding is terminated by voluntary dismissal by the State before forfeiture is ordered under G. S. 15A-544(b); or
4. prayer for judgment has been continued indefinitely in the district court.

## **XVI. FURTHER STATEMENT OF GENERAL POLICIES.**

A. Law enforcement officers are encouraged to use citations in those misdemeanor cases in which they feel confident that the defendant will appear in court on the day he is due to appear.

B. Clerks and magistrates are encouraged to use the criminal summons instead of warrants in non-support and other appropriate misdemeanor cases. G. S. 15A-303.

C. An arresting officer has no authority to fix the amount of the bond, but he should furnish any information he has available to assist the judicial official in determining the amount of the bond. In setting the amount of the bond the clerk or magistrate acts as an independent judicial official who has the duty to the defendant to see that the bond is not excessive.

D. When there are several charges against one defendant, one bond may be set for all charges.

## **XVII. RELEASE AFTER CONVICTION IN SUPERIOR COURT. G. S. 15A-536.**

A. There is no constitutional right to release at this stage. Defendant whose guilt has been established and who is awaiting sentence or has filed an appeal may be released, in judge's discretion. State v. Sparks, 297 N.C. 314 (1979).

1. In addition to usual conditions, superior court judges may impose supervisory custody, or restrictions on travel, associations, conduct, or place of abode, or both. See IV and V, above, and State v. Cooley, 50 N.C. App. 544 (1981).
2. Judge's release order must specify conditions, inform defendant of penalty for violation, and advise him violation will result in arrest.

3. Release order may be modified or revoked by judge who has ordered release, or, if that judge is out of district, by any other superior court judge. Defendant whose release is revoked is entitled to immediate hearing.
4. Judge may consider any reliable evidence, including hearsay, under this section.

This the 13th day of January, 1998.

s/Michael E. Beale

**MICHAEL E. BEALE**  
**SENIOR RESIDENT SUPERIOR COURT JUDGE**  
**JUDICIAL DISTRICT 20A**