

GENERAL CIVIL CASE MANAGEMENT PLAN

II. COURT ORDERED ARBITRATION RULES

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RULE 1. COURT ORDERED ARBITRATION

1.1 By order of the Chief District Court Judge all general civil actions to include Magistrate appeals, filed in the District Court for the Twelfth Judicial District in which there is a claim for monetary relief not exceeding \$15,000 total, exclusive of interest, costs and attorney fees, are subject to court-ordered arbitration under these rules.

RULE 2. TIME OF SELECTION

2.1 A civil action shall be designated for a court ordered arbitration once the Trial Court Administrator has made the following determination:

- a. The action has been on file for 120 days or more;
- b. The parties have not previously placed the civil action in binding arbitration;
- c. The action does not involve a:
 - Class action;
 - Substantial claim for injunctive or declaratory relief;
 - Family Law Issue;
 - Title to Real Estate;
 - Wills and decedents' estates;
 - Summary ejection;
 - Claims exceeding \$15,000.

RULE 3. NOTICE TO PARTIES

3.1 Notice of selection for a court ordered arbitration shall be provided by the Trial Court Administrator to all counsel/unrepresented parties on the Notice of Selection for Arbitration.

3.2 Any party noticed of selection for court ordered arbitration has the duty to notify the Trial Court Administrator immediately if that action does not qualify and that the action should be removed from arbitration.

RULE 4. TIME STANDARDS

4.1 Absent exigent circumstances, all cases selected for arbitration shall be scheduled for hearing within sixty (60) days.

4.2 Placement of a case into court ordered arbitration shall not be a basis for the delay of other proceedings including the completion of discovery and the filing of hearing of motions.

RULE 5. CASE EXEMPTION

5.1 A party may move in writing, within 10 days prior to the date of the Arbitration Hearing to exempt a case from arbitration. Such written Motion To Dispense With Arbitration shall state the grounds for the relief sought and shall be provided to the Trial Court Administrator. [The Motion To Dispense With Arbitration shall be on form [CCLF-CV-005](#) as prepared and distributed by the Trial Court Administrator's Office, or in letter form which essentially provides the same information]. Removal of a case from arbitration will only be considered for the following reasons:

- The amount of the claim(s) exceed(s) \$15,000.
- The action does not qualify for arbitration pursuant to [Rule 2.1\(c\)](#) above.
- There is a strong and compelling reason to do so.

Service of the motion on opposing counsel/unrepresented parties shall be indicated on the motion. Any objection to the motion by opposing counsel/unrepresented parties shall be in compliance with [Rule 9.3](#) of the District Court Case Management Plan. Ruling on the motion shall be made without a hearing, and notice of the ruling shall be provided to counsel/unrepresented parties indicated on the notice. A case may not be exempt or removed from arbitration by:

- a. The arbitrator;
- b. The counsel/unrepresented parties by agreement among themselves.

RULE 6. ARBITRATION BY AGREEMENT

6.1 All counsel/unrepresented parties may agree to hold a voluntary arbitration in any other civil action by providing a written motion to the Trial Court Administrator, along with a consent order for signature. Notice of consent to hold voluntary arbitration in other civil actions and the selection of the arbitrator by agreement of parties shall be in compliance with [Rule 7.1](#) set forth below. Said consent order may require the holding of a court ordered arbitration hearing at a time earlier than the time set forth in [Rule 4.1](#) set forth above.

RULE 7. SELECTION OF AN ARBITRATOR

7.1 The parties may elect to select an arbitrator by agreement. The selection of an arbitrator shall be made within 20 days after the date of notice of case selection for arbitration. A list of qualified arbitrators shall be maintained for public inspection in the Office of the Clerk of Superior Court and the Office of the Trial Court Administrator.

7.2 An arbitrator selected by agreement of the parties must be eligible pursuant to Rule 2(b) of the Rules for Court Ordered Arbitration in North Carolina. Stipulation of an arbitrator by agreement of all the parties shall be provided to the Trial Court Administrator, on AOC-CV-912M entitled Arbitration Stipulation And Order or in letter form containing the same information.

- a. Any request to select an arbitrator who is not on the list of certified arbitrators, but otherwise qualified pursuant to Rule 2(a)(2) of the Rules for Court Ordered Arbitration in North Carolina, shall be provided by the parties to the Trial Court Administrator. The content of the request shall be in compliance with Rule 2(a)(2) of the Rules for Court Ordered Arbitration in North Carolina and shall further contain the names and addresses of all parties. Ruling on the nomination shall be made without a hearing, and provided to the parties as indicated on the Notice of Hearing.
 - Requests to select an arbitrator pursuant to this rule shall also contain the consent of the requested arbitrator.

7.3 If the parties cannot agree, an arbitrator shall be selected by the Trial Court Administrator and notice of the arbitrator so selected shall be provided to the parties on the Notice of Hearing.

- a. Court selection of an arbitrator shall be made at random from the list of qualified arbitrators;
- b. If an arbitrator is unable, or unwilling to serve on the date and time of the hearing, the Trial Court Administrator shall replace the arbitrator selected.

7.4 Any party may move for the disqualification of the appointed arbitrator for good cause. The motion to disqualify an arbitrator shall be in written form, and provided to the Trial Court Administrator no later than ten (10) days after date of the Notice of Hearing.

- a. Disqualification of an arbitrator shall not be a basis to delay the hearing date and time already established. Upon the disqualification of the arbitrator, another arbitrator shall be selected by the court pursuant to [Rule 7.3\(a\)](#) above.

RULE 8. MOTIONS FOR CONTINUANCE

8.1 All requests for continuance shall be directed to the Trial Court Administrator by written motion on a Motion for Continuance form and shall set forth with particularity the reason for the continuance, and consent if given by opposing party(ies). [The Motion for Continuance shall be on form [CCLF-CV-002](#) as prepared and distributed by the Trial Court Administrator's Office, or in letter form which essentially provides the same information.]

- a. Motions shall be presented as soon as counsel/unrepresented parties become aware of the reason for the motion for continuance.

8.2 Opposing counsel/unrepresented parties must be notified of the motion for continuance prior to the delivery of the request to the Trial Court Administrator. The manner and date of notice to opposing counsel/unrepresented parties shall be indicated on the motion.

8.3 Opposing counsel/unrepresented parties shall thereafter have three (3) working days to file an objection to the motion for continuance with the Trial Court Administrator. All objections shall be made by written motion on the Objection to Motion for Continuance form setting forth the particular reasons for objection and served on opposing counsel/unrepresented parties. [The Objection to Motion for Continuance shall be on form [CCLF-CV-003](#) as prepared and distributed by the Trial Court Administrator's Office, or in letter form which essentially provides the same information.] If a response is not received from the opposing counsel/parties within three (3) working days of the receipt of the motion to continue, it will be assumed that the opposing counsel/ parties do not object.

8.4 Motions for continuance shall be ruled upon by the Trial Court Administrator provided all provisions of [Rule 8](#) are met, and all parties and the arbitrator may be notified of the ruling prior to the scheduled arbitration hearing.

8.5 Absent a strong and compelling reason to so do, the continuance of an arbitration hearing will only be granted when the trial date established on the Notice of Hearing will not be delayed.

8.6 Should an objection arise, any failure on the part of the moving party to comply with the rules concerning written motion and notice to opposing counsel/ unrepresented parties shall result in the voiding of any continuance granted.

8.6 The Trial Court Administrator, under the supervision of the Chief District Court Judge, has sole authority to continue the arbitration hearing.

RULE 9. ARBITRATION HEARINGS

9.1 The Arbitration Hearing shall be held on a date, time and place established by the Trial Court Administrator. Hearing time shall be limited to one hour.

- a. All applications for enlargement of time for the hearing shall be filed with the Trial Court Administrator no later than ten (10) days prior to the hearing date.
- b. Copies of the application shall be provided to the arbitrator and all opposing parties prior to filing with the Trial Court Administrator.
- c. Ruling shall be made by the Trial Court Administrator without hearing and notice provided to the parties as indicated on the notice.

9.2 At least ten (10) days prior to the hearing, parties shall exchange Pre-Hearing Information as defined in Rule 3 of the Rules For Court-Ordered Arbitration in North Carolina.

- a. Any document exchanged may be received in the hearing without further authentication. Documents that are not exchanged may not be received if to do so would, in the arbitrator's opinion, constitute unfair, prejudicial surprise. Copies of exchanged documents or exhibits are admissible in the hearing.
- b. The parties are required to state their contentions regarding pending motions deferred by the court to the arbitrator, in the Pre-Hearing Information exchange.

9.3 Witnesses may be compelled to testify under oath or affirmation and produce evidence by the same authority and to the same extent as if the hearing were trial. Any party may call adverse witnesses to testify who are the author or custodians of any document produced at the hearing. (To include a witness through whom the document might otherwise have been introduced.)

9.4 The North Carolina Rules of Evidence do not apply, except as to privilege, in the hearing but shall be considered as a guide.

9.5 Upon completion of the arbitration hearing, an Arbitration Award shall be filed with the court by the arbitrator pursuant to [Rule 12](#) below.

RULE 10. AUTHORITY AND DUTIES OF ARBITRATOR

10.1 The arbitrator shall;

- Have the same authority as a trial judge to govern the conduct of hearings, except the power to punish for contempt.
- Be empowered and authorized to administer oaths and affirmations in arbitration hearings.
- Consider all evidence presented at the hearing and give it the weight and effect as determined appropriate. An arbitrator is not required, however, to receive repetitive or cumulative evidence.
- Not have any ex parte communications between the parties or their counsel.
- Declare the hearing concluded when all evidence is in and any arguments that have been permitted, are concluded.
- Have the discretion in exceptional cases, to receive post-hearing briefs within three (3) days after the hearing is concluded, but not further evidence.
- Determine the amount of judgment to be entered in an action in default pursuant to N.C.R.Civ.P. 55(b).

RULE 11. PARTICIPATION OF PARTIES, ATTORNEY(S) AND OTHER PARTICIPANTS

11.1 All parties shall be present at hearings in person or through representatives authorized to make binding decisions on their behalf in all matters.

- All parties may be represented by counsel.

11.2 If a party fails to appear, the hearing may proceed and an award may be made by the arbitrator against the absent party.

11.3 A party that failed to obtain a continuance and failed to appear for the arbitration hearing for reasons beyond their control, may file a written motion for rehearing with the Trial Court Administrator within the time allowed for demanding a trial de novo.

- The Trial Court Administrator may rule upon the motion without hearing and provide notice to the party.

RULE 12. AWARD

12.1 The arbitrator shall prepare, sign and file the Arbitration Award with the Clerk of Superior Court.

- No later than three (3) days after the arbitration hearing is concluded
- No later than six (6) days after the arbitration hearing is concluded if post-hearing briefs are presented.
- A copy of the Award shall be provided to the Trial Court Administrator at the time of presenting the award for filing.
- A copy of the Award shall be forwarded to all parties to the action by the arbitrator.

12.2 The award must resolve all pending issues raised by the pleadings and all parties in the action.

- a. As a result of the hearing any agreed upon dismissals to be taken by any party shall be completed prior to the party being excused by the arbitrator. AOC-CV-405 shall be made available to the party for completion by the arbitrator and shall be returned with the court file to the Trial Court Administrator.

RULE 13. TRIAL DE NOVO

13.1 An appeal of the award of the arbitrator must be made within thirty (30) days of the filing of the award with the court on AOC-CV-803 entitled Arbitration Request for Trial De Novo and filed with the Clerk of Superior Court with the filing fee as set by law , except :

- No judgment determining an amount in default may be appealed.

- After an adverse ruling by the Trial Court Administrator on a motion to rehear, the appeal shall be taken within ten (10) days of the ruling, if the period exceeds the thirty (30) days.

RULE 14. JUDGMENT

14.1 The parties may file a stipulation of dismissal or consent of judgment at any time before the entry of judgment on the award.

14.2 If there is no appeal of the arbitration award, dismissal or consent judgment filed by the parties during the thirty (30) day period, the Clerk of Superior Court shall enter judgment on the award.

- The Clerk of Superior Court shall forward copies of the judgment to all parties.

RULE 15. NOTICE OF SETTLEMENT

15.1 Notice of settlement of the case shall be provided to the Trial Court Administrator pursuant to [Rule 11.1](#) of the District Court Division Civil Case Management Plan; I. Civil Calendaring Rules.

15.2 Notice of settlement of a case that has been designated for Court Ordered Arbitration, prior to the scheduled date and/or time of the Arbitration Hearing, shall also be provided to the mediator, and the arbitration coordinator.

RULE 16. SANCTIONS AND CONTEMPT

16.1 Any party failing to attend or refusing to participate in good faith and in a meaningful manner at the arbitration hearing shall be subject to such sanctions as are deemed appropriate and allowed by law.

- The arbitrator, or opposing party shall present to the Trial Court Administrator in written form, with specificity, the grounds for sanctions.
- The Trial Court Administrator shall thereafter notice the matter for hearing before the judge.

16.2 Any party found in contempt shall be subject to punishment for contempt by the court.

- The arbitrator, shall present to the Trial Court Administrator in written form, with specificity, the grounds for contempt.

- The Trial Court Administrator shall thereafter notice the matter for hearing before the judge.

RULE 17. COMPENSATION OF THE ARBITRATOR

17.1 Upon the filing of an Award with the court, the arbitrator shall be paid a fee by the court for each arbitration hearing as set by Rule 2(c) of the Rules for Court-Ordered Arbitration in North Carolina. In addition, arbitrators may be reimbursed for expenses actually and necessarily incurred in connection with an arbitration hearing, and paid a reasonable fee not exceeding any amount delegated by statute for work on a case not resulting in a hearing upon the arbitrator's written application to and approval by the Chief District Court Judge.

- The arbitrator shall present an Application And Order For Payment To Arbitrator (AOC-CV-804) in duplicate, to the arbitration coordinator for submission for signature to the Chief District Court Judge.

RULE 18. FORMS

18.1 Forms for use by counsel/unrepresented parties and arbitrators in accordance with the rules governing court ordered arbitration are produced and distributed by the Administrative Office of the Courts, and are subject to change as legislation and/or policy dictates.