

**District 3B  
Superior and District Court Local Rules**

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STATE OF NORTH CAROLINA

IN GENERAL COURT OF JUSTICE

3-B JUDICIAL DISTRICT

SUPERIOR COURT DIVISION

**ORDER**

Under and pursuant to Rule 40, North Carolina Rules of Civil Procedure, and Rule 2, General Rules of Practice for the Superior Supplement to the Rules of Civil Procedure, as amended by the Supreme Court July 1, 1980, the attached rules, procedures and information descriptions are hereby adopted for the 3-B Judicial District Superior Courts as of May 1, 1998.

These rules supersede all previous civil rules as to calendaring or other procedural and administrative matters.

This 1<sup>st</sup> day of May, 1998.

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James E. Ragan, III  
Senior Resident Superior Court Judge

## **I. Superior Civil Court Calendaring Rules**

### **Purpose:**

The purpose of these rules is to provide for the orderly, just, and prompt disposition of civil matters to be heard in the Superior Courts of 3B Judicial District.

### **General Rules:**

#### **1.1 Calendars Set by Trial Court Administrator:**

Calendars for the disposition of civil cases in the Superior Courts shall be set By the Trial Court Administrator in accordance with these rules. It is recognized that these rules are not complete in every detail and may not cover all situations which may arise. In the event the rules do not cover any specific point the Trial Court Administrator is authorized to act, in consultation with the Senior Resident Superior Court Judge, or the judge presiding, if necessary, to address that situation in a manner not inconsistent with the spirit of these rules.

#### **1.2 Trial Court Administrator to Supply Rules:**

A copy of these rules and any subsequent changed or additions shall be mailed to each member of the Bar of District 3B and to other attorneys practicing in the Superior Courts of the Judicial District 3B. The Trial Court Administrator will maintain a supply of printed rules and forms to be furnished to attorneys upon request.

#### **1.3 Rules Filed with Clerk:**

These rules, procedures, and all amendments hereafter shall be filed with each Clerk of Superior Court in Judicial District 3B and may be cited accordingly.

#### **1.4 Forms:**

If, at any point in these rules, a form for counsel's use is specified, counsel may use their own form, if substantively the same.

### **1.5 Responsibility for Calendaring:**

At all times prior to beginning of sessions of Superior Civil, the Trial Court Administrator shall have responsibility for calendaring of motions and trials including all additions and continuances.

### **1.6 Appeal from Decision of Trial Court Administrator:**

Appeals from decisions of the Trial Court Administrator shall be directed to the Senior Resident Superior Court Judge.

### **1.7 Case Tracking System:**

The Trial Court Administrator shall establish and maintain a case-tracking system, as required by Rule 2(c) of the General Rules of Civil Practice.

### **1.8 Case Ready for Trial:**

A case shall be considered ready for trial scheduling when the Trial Court Administrator determined that any of the following conditions have been met:

- (a) 120 days will have elapsed since the filing of the last required pleading by the start of the scheduled session. Trial of the case shall not thereafter be delayed for failure to complete discovery unless, for good cause shown by motion, the Senior Resident Superior Court Judge extends the discovery period prior to the expiration of the 120 day period.
- (b) A calendar request has been filed pursuant to Section II. 2.11, after the filing of the last required pleading.
- (c) A case is not currently assigned to Arbitration.
- (d) A case has been remanded for trial by the Appellate Division.

### **1.9 Ready Cases Placed on Trial Calendars:**

The Trial Court Administrator shall place ready cases on trial calendars pursuant to the following rules for Civil Superior Court.

### **1.10 Notification of Settlement:**

Counsel shall advise the Trial Court Administrator of any settlements of calendared cases and who will prepare the dispositive order and when.

### **1.11 Pretrial Conferences, Scheduling Conferences, Clean-Up Calendars:**

The Senior Resident Superior Court Judge and Trial Court Administrator shall schedule cases for pretrial conferences, scheduling conferences and clean-up calendars as is appropriate to the efficient administration of the docket.

### **1.12 Calendars Posted by Clerk:**

All calendars shall be posted by the Clerk in a prominent place for all counsel and the public to review at will.

## **II. Civil Superior Court**

### **2.1 Scheduling Calendar:**

Civil Superior Court ready cases not set for trial or otherwise ineligible for trial setting due to good cause shown shall be placed on a scheduling calendar for the purpose of setting tentative trial calendars. Copies of said scheduling calendars shall be provided to all attorneys and pro se litigants with cases thereon.

### **2.2 Calendar Conference:**

Each calendar quarter a calendar conference shall be held at which the Senior Resident Superior Court Judge or the Trial Court Administrator will set cases from the scheduling calendar onto initial trial calendars for the succeeding calendar quarter. Counsel and pro se litigants may have input at the calendar conference by attending in person or through prior submission of a Case Status Report.

### **2.3 Non-Jury Sessions:**

When deemed appropriate, the Trial Court Administrator shall designate sessions of court as non-jury sessions. These shall be noted on the calendar.

### **2.4 Separate Calendar Conferences:**

Separate calendar conferences shall be held for Carteret and Craven Counties.

## **2.5 Publication of Initial Calendars – Carteret and Craven Counties:**

Initial calendars for Carteret and Craven Counties shall be published no later than two weeks following the calendar conference by the Trial Court Administrator.

## **2.6 Publication of Initial Calendar – Pamlico County**

Pamlico County ready cases shall be set for trial at the next available session of Civil Superior Court unless ineligible for setting due to good cause shown. The initial calendar shall be published at least seven weeks in advance of the scheduled trial date.

## **2.7 Distribution of Initial Calendars:**

Initial calendars shall be produced by the Trial Court Administrator's office and copies provided to each attorney or pro se litigant named thereon.

## **2.8 Distribution of Final Calendars:**

Final calendars shall be produced by the Trial Court Administrator's office and provided to all counsel of record, unrepresented parties and the presiding judge at least two weeks prior to the beginning of the session.

## **2.9 Order of Cases:**

Unless otherwise designated by the Senior Resident Superior Court Judge or the Trial Court Administrator the cases on both tentative and final calendars will be in ascending case number order.

## **2.10 Consolidated Cases:**

When cases have been consolidated for trial, they will be counted as one case for calendaring purposes, and will be listed under the oldest case number.

## **2.11 Calendar Requests:**

Any party may request a case be added to an initial calendar or set on a future session for which no initial calendar has been set. This request shall be written and directed to the Trial

Court Administrator with a copy to all other parties. The Trial Court Administrator shall act upon the request and provide a written response to the requesting party with copies to all other parties.

### **2.12 Adding Case to Final Calendar:**

No case shall be added to a final calendar for trial except by Court Order or the agreement of all counsel. Cases added to a final calendar shall be listed at the end of the calendar unless by Court Order they are placed elsewhere.

### **2.13 Peremptory Setting Requests:**

Peremptory setting requests may be made for good cause and shall be in writing to the Trial Court Administrator prior to the calendar conference for setting cases on the session in question.

### **2.14 Priority Settings:**

Cases entitled to a priority setting under the General Statutes shall be brought to the attention of the Trial Court Administrator in writing, with copies to all counsel of record, and shall cite the statutory authority for such setting.

### **2.15 Special Sessions:**

In consultation with counsel for all parties, the Trial Court Administrator shall determine which cases are appropriate for trial at special sessions. Factors which shall be considered include but are not limited to anticipated length of trial, emergencies such as witness health, complexity of issues and severe scheduling difficulties of attorneys and/or essential witnesses. The Trial Court Administrator shall make all appropriate arrangements for conduct of special sessions.

### **2.16 Continuance Request Directed to Trial Court Administrator:**

Continuance requests made prior to the beginning of a session of court shall be directed to the Trial Court Administrator. Continuance requests made after the beginning of a session of court shall be directed toward the presiding judge.

## **2.17 Time for Making Continuance Request:**

All continuance requests, save those for personal emergencies which will be heard at any time, must be in writing and received by the Trial Court Administrator's office by no later than TEN days in advance of calendar call of the scheduled session. Non-emergencies will not be considered if received after this deadline. Requests should be in letter form rather than motions and copies shall be provided to all other parties at the time request is sent to the Trial Court Administrator.

## **2.18 Rescheduling of Continued Cases:**

It is the policy of this Judicial District that all cases continued from a trial calendar be continued to another trial calendar at a date appropriate to the needs of the case, parties and court. The Trial Court Administrator in consultation with counsel, unrepresented parties and the Senior Resident Superior Court Judge shall implement this policy as part of calendar responsibility.

## **2.19 Response to Calendar and Continuance Request:**

The Trial Court Administrator shall allow at least five working days from the date of written request is received for response by adverse parties to requests to calendar or continue cases. The Trial Court Administrator shall treat written calendar or continuance requests as unopposed unless notified by party or counsel to the contrary and shall respond promptly in writing to all continuance requests.

## **2.20 Correction of Erroneous Request:**

The Trial Court Administrator has the responsibility to correct any erroneous calendaring or continuance requests rising from lack of compliance with these rules.

## **2.21 Problems with Discovery**

When a case must be continued from a trial calendar in Superior Court due to problems with discovery the TCA is authorized to set said case before the Senior Resident Superior Court Judge or before his designee for entry of a discovery and scheduling order. The attorneys or parties will be given ten days written notice of said setting.

## **2.22 Cases Called in Order Listed on Calendar:**

Cases shall be called for trial in the order they are listed on the final trial calendar unless otherwise determined by the Senior Resident Superior Court Judge, presiding judge or the Trial Court Administrator.

## **2.23 Cases with Orders Due:**

At the time a case is reported settled the attorney responsible for submitting the dispositive order shall be identified and the time by which the order is to be files shall be indicated. The Trial Court Administrator shall record these data and if the order is not files and no extension has been obtained and not less than thirty days have elapsed from the indicated date the Trial Court Administrator shall place the case on the motion calendar for the responsible attorney to show cause for the failure to comply.

## **2.24 Opportunity to Review Orders:**

Attorneys for all parties and/or pro se litigants are entitled to an opportunity to review orders assigned for preparation to one or more attorneys in a given case prior to that order being presented to the judge for signature. This entitlement does not apply when the judge dictated an order on the record or otherwise specifically gives instructions to the contrary.

## **2.25 Copies of Proposed Order to Counsel:**

Unless otherwise ordered by a judge the attorney preparing an order as assigned by the court shall provide to opposing counsel a copy of the proposed order at least forty-eight hours prior to its submission to the judge so that other parties may present themselves before the judge and request revision of the submitted order.

# **III. Motions**

## **3.1 Motions Scheduled by Trial Court Administrator:**

All pretrial motions in civil cases in Superior Court shall be calendared by the Trial Court Administrator.

### **3.2 Scheduling of Sessions to Hear Motions:**

It shall be the responsibility of the Trial Court Administrator in consultation with the Senior Resident Superior Court Judge to determine the appropriate schedule of time periods for the hearing of motions and the number of motions to be calendared on each motion session.

### **3.3 Calendaring Motions:**

Motions shall be calendared in one of the following ways:

- a. Moving counsel may telephone the Trial Court Administrator to request a hearing date and time. Such hearing is confirmed to the Trial Court Administrator and opposing counsel or unrepresented parties by copy of the notice of hearing.
- b. The request may be in writing, in the form of a calendar request or letter. The Trial Court Administrator shall then notify moving counsel and opposing counsel or parties of a hearing date by letter or telephone.
- c. At the instigation of a presiding judge who, at the time of the hearing, re-calendars the motion.
- d. At the direction of the Trial Court Administrator if the case is calendared for trial.

### **3.4 Preparation of Motion Calendars:**

Motion calendars will be prepared by the Trial Court Administrator and mailed to all counsel and unrepresented parties thereon as soon as is possible after the motion calendar is fully scheduled. Motions scheduled for hearing at sessions of court shall appear on the final trial calendar which shall be provided to all counsel and pro se litigants.

### **3.5 Continuances:**

Continuance requests shall be made pursuant to Rule II. 2.16 through II. 2.19.

### **3.6 Dispositive Motions:**

All summary judgment motions and dispositive motions including partial summary judgments made pursuant to Rule 12 shall be filed with an accompanying supporting memorandum which contains the following:

- a. a concise summary of the nature of the case;
- b. a concise statement of the facts that pertain to the matter before the court for ruling;
- c. the argument relating to the matter before the court for ruling with appropriate citations; brevity is expected;
- d. copies of any decisions in cases cited as is appropriate with the relevant portions thereof highlighted for ready reference;

- e. where the supporting memorandum opposes a motion for summary judgment a short and concise statement of the material facts as to which it is contended that there exists a genuine issue to be tried.

### **3.7 Deadlines for Filing Memoranda of Law:**

The requirement for supporting memoranda set out in Section 3.6 shall apply to any of the motions referred to in Section 3.6 contained in an answer or other filing. Such supporting memoranda are to be filed no later than the time of scheduling the motion for hearing.

### **3.8 Failure to File Memoranda:**

Those motions referred to in Section 3.6 not accompanied by a supporting memorandum may be considered abandoned.

### **3.9 Responding Memoranda:**

Responses to motions may be filed by any party. The response shall be a memorandum or supported by a memorandum which shall contain the information as indicated in Section 3.6 above. When appropriate, affidavits and other supporting documents may accompany responses.

### **3.10 Deadline for Filing Responses:**

Responses and accompanying documents shall be filed at least one day prior to the date the motion is scheduled for hearing unless otherwise ordered by the court. If no response is filed the court may proceed to rule on the motion.

### **3.11 Length of Memoranda:**

Memoranda in support of or opposition to a motion shall not exceed twenty pages in length and replies to responses shall not exceed twenty pages in length without prior court approval. All memoranda shall be provided in copy form to all opposing counsel at the same time as the one filed with the court.

### **3.12 Failure to File Motions:**

Failure to timely file motions shall not be of itself a proper basis for continuance of a scheduled trial date.

### **3.13 Motions by Memoranda Without Appearance:**

By written consent of all litigants motions can be decided on the basis of memoranda without personal appearance.

### **3.14 Exceptions**

Exceptions to the requirements indicated herein may be made by order of the judge presiding on the basis of excusable neglect or good cause shown.

## **IV. Administrative Dispositions**

### **4.1 Categories of Administrative Dispositions:**

Listed below are six categories of cases deemed to be not actually pending for trial. Cases in these categories shall be eligible for removal by order from the list of pending cases. This removal shall be without prejudice in the first five categories.

- a. cases in bankruptcy
- b. defendants making payments
- c. service never made and time expired
- d. case sent to another State in which no further hearing is necessary in court of North Carolina
- e. removal for any other specific cause
- f. answer never filed and time expired

### **4.2 Removal by Order:**

Cases will be removed by orders prepared by the Clerks or the Trial Court Administrator upon review of the files and after consultation with counsel, if necessary. The orders will be signed by the Senior Resident Superior Court Judge, or his designee, and filed with the clerk, with copied to counsel.

### **4.3 Reinstatement to Active Docket:**

If, at some later date, trial or other action becomes necessary, a motion may be filed for cases in categories (a) through (e) requesting the case be returned to active status.

#### **4.4 Objections to Administrative Dispositions:**

Counsel with valid objections to such an administrative disposition of one of their cases should address those objections to the Trial Court Administrator, and appropriate action will be taken.

### **V. Arbitration**

#### **5.1 Rules Adopted:**

North Carolina Supreme Court Rules for Court Ordered Arbitration in North Carolina (Revised January 30, 1987) are incorporated as applicable to the calendaring of civil cases in the courts of Judicial District 3B. For purposes of implementing these Rules in Judicial District 3B, the following local Rules apply.

#### **5.2 Direction of Administrative Inquires to Arbitration Coordinator:**

All matters related to processing of cases through Arbitration should be initially addressed to the Arbitration Coordinator (Phone 919-830-6470) in the Trial Court Administrator's office (P.O. Box 1465, Greenville, NC 27835-1465).

#### **5.3 Definition of "Stipulation" for Administrative Purposes:**

All stipulations are to be made jointly; that is, by those with authority to act representing each party in a case. The Arbitration Coordinator will not consider as stipulations those requests so identified but signed by less than all the parties. It is the duty of the parties so identified but signed by less than all the parties. It is the duty of the parties to arrange those agreements to be stipulated to among themselves, the Arbitration Coordinator will not act as intermediary.

#### **5.4 Arbitration by Agreement:**

Parties who agree to request their case be arbitrated may do so for any case whether or not it is covered by the Supreme Court Rules for court-ordered Arbitration in North Carolina. Their agreement shall be by stipulation in writing to the Arbitration Coordinator. Stipulation to arbitration shall not be used as a basis for delay of properly calendared cases.

### **5.5 Exemption or Withdrawal from Arbitration for Cause:**

Requests for Exemption or Withdrawal from Arbitration for Cause shall be made in writing to the Arbitration Coordinator with all parties noticed of such request. The basis for the request shall be explicitly stated. Decisions shall be by the Arbitration Coordinator with guidance from the Trial Court Administrator. Appeals of decisions will be heard by the Chief District Court Judge for District Court cases and the Senior Resident Superior Court Judge for Superior Court cases.

### **5.6 Selection of Arbitrators:**

All arbitrators who serve in Judicial District 3B shall be nominated in writing by County Bar Association designated committees and approved by the Chief District Court Judge and Senior Resident Superior Court Judge.

### **5.7 Eligibility of Arbitrators to Hear Cases:**

All approved arbitrators shall be eligible to hear cases in any county of Judicial District 3B. As a matter of convenience, Arbitrators will be asked to hear only cases from their home county with Craven County Bar Association nominated Arbitrators hearing both Craven County and Pamlico County cases. Out of County Arbitrators may be requested for cause by any party with the request to be in writing with the cause specified and addressed to the Arbitration Coordinator. Appeals of decisions made by the Arbitration Coordinator will be heard by the Chief District Court Judge for District Court cases and the Senior Resident Superior Court Judge for Superior court cases.

### **5.8 Scheduling of Magistrate Appeals:**

With the exception of amended complaints or specifically identified service problems all magistrate appeals will be considered served at filing and the arbitration process schedule will begin to run from date of appeal filing.

### **5.9 Exception of Arbitrator From Pre-Hearing Exchange of Information:**

Unless specified by stipulation of all parties to a case, arbitrators shall receive no pre-hearing materials or substantive communications from the parties or attorneys involved in a case. The Arbitration Coordinator or a designated member of the Clerk's Office shall pull the case file and provide it to the Arbitrator at the beginning of the arbitration hearing. By right, Arbitrators may pull and read case files in advance but are encouraged not to do so in the interest of saving their time and avoiding pre-judgment.

## **VI. Medical Malpractice Cases**

### **6.1 Applicable Statute:**

North Carolina G.S. 90-21.11 as amended by 1987 Session of General Assembly is hereby incorporated as applicable to the Courts of Judicial District 3B.

### **6.2 Identifying Medical Malpractice Cases to be Scheduled:**

The Trial Court Administrator will regularly review all medical malpractice cases pending in each county to determine if a discovery conference or a final conference should be scheduled. A discovery conference shall be scheduled with the Senior Resident Superior Court Judge within thirty days of the case coming at issue, the filing of a responsive pleading or the filing of a motion requiring a determination by the Court. A final pretrial conference shall be scheduled with the Senior Resident Superior Court Judge at the close of the discovery period established at the discovery conference.

### **6.3 At the Discovery Conference, the Judge Shall:**

- a. Rule on all motions.
- b. Establish an appropriate schedule for designating expert witnesses, consistent with a discovery schedule to be complied with by all parties to the action such that there is a deadline for designating all expert witnesses within an appropriate time for all parties to implement discovery mechanisms with regard to the designated expert witnesses.
- c. Establish by Order an appropriate discovery schedule designating expert witnesses, consistent with a discovery schedule to be complied with by all parties to the action such that there is a deadline for designating all expert witnesses within an appropriate time for all parties to implement discovery mechanisms with regard to the designated expert witnesses.
- d. Approve any consent order which may be presented by counsel for the parties relating to parts (a) and (b) of this subsection, unless the court finds that the terms of the consent order are unreasonable.

### **6.4 Sanctions:**

If a party fails to identify an expert witness as ordered, the court shall, upon motion by the moving party, impose an appropriate sanction, which may include dismissal of the action, entry of default against the defendant, or exclusion of the testimony of the expert witness at trial.

## **6.5 Calendaring Conference:**

At the close of the specified discovery period, the Senior Resident Superior Court Judge shall schedule a calendaring conference for the purpose of setting the case for trial.

The court shall take into consideration the nature and complexity of the case; the proximity and convenience of witnesses, the needs of counsel for both parties concerning their respective calendars, the benefits of any early disposition and such other matters as the court may deem proper.

## **6.6 Stipulated Discovery Schedule:**

Counsel for parties may submit written orders for the Senior Resident Superior Court Judge to review and sign in lieu of the discovery conference. In order to be acceptable as a substitute for the conference, these orders must be written, signed by each counsel or party, must specifically address each of the statutory mandated and must be signed by the appropriate judge at a time consistent with G.S. 90-21.11. Counsel shall advise the Trial Court Administrator of their intention to comply by stipulation.

# **VII. Mediated Settlement Conferences**

## **7.1 General:**

Mediated Settlement Conferences are hereby authorized in all cases currently pending or hereafter filed in the Superior Courts of Judicial District 3B pursuant to the provisions of G.S. 7A-38.1 et seq. and the Rules for Mediated Settlement Conferences that may from time to time be promulgated by the North Carolina Supreme Court. In the event of a conflict between these Local Rules and the provisions of G.S. 7A-38.1 et seq. or rules adopted by the Supreme Court, the statutory provisions or Supreme Court Rule will control.

## **7.2 Case Selection for Mediation:**

Any case now pending or hereafter filed in the Superior Courts of Judicial District 3B that is not exempted from mediation by Supreme Court Rule may be assigned to mediation by Order of the Senior Resident Superior Court Judge. Any case pending or hereafter filed in the Superior Courts of Judicial District 3B may be voluntarily submitted to mediation upon agreement by all counsel of record or pro se litigants. Should the case be on a final trial calendar a written agreement shall be submitted to the Trial Court Administrator who will prepare an Order assigning the case for mediation. The Trial Court Administrator will present the Order to the Senior Resident Superior Court Judge for entry.

### **7.3 Assignment of Mediator:**

Unless otherwise ordered by the Senior Resident Superior Court Judge, the parties shall designate a Mediator and notify the Trial Court Administrator of the name of the mediator within thirty (30) days of the entry of an Order assigning the case to mediation. In the event that the parties fail to designate a mediator and notify the Trial Court Administrator within the time required, the Court may enter an Order designating a mediator for the case. All mediators in Judicial District 3B, whether designated by the Supreme Court pursuant to G.S.7A-38.2.

### **7.4 Costs of Mediated Settlement Conferences:**

Costs of Mediated Settlement Conferences shall be borne by the parties. Unless otherwise ordered by the Court or agreed to by the parties, the mediator's fees shall be paid in equal shares by the parties. For purposes of this rule, multiple parties shall be considered one party where they are represented by the same counsel. Parties who are unable to pay the costs of a Mediated Settlement Conference shall be permitted to participate without costs pursuant to rules adopted by the Supreme Court.

### **7.5 Good Faith Participation:**

Such persons or entities having the authority, by law or by contract, to settle the parties' claims, and their attorneys, shall attend the Mediated Settlement Conference unless excused by Supreme Court Rule or Order of the Senior Resident Superior Court Judge. Nothing in this section shall require any party or other participant in the conference to make a settlement offer or demand which it deems is contrary to its best interests. Any person required by these rules to attend a Mediated Settlement Conference who, without good cause, fails to attend in compliance with the Order assigning the case for mediation, shall be subject to any appropriate monetary sanction imposed by a resident or presiding Superior Court Judge, following notice and hearing, pursuant to G.S. 7A-38.1(g) including but not limited to the payment of attorney's fees, mediator fees, and expenses incurred in attending the conference.

## **DISTRICT 3-B CASE DOCKETING PLAN**

### **RULE 1: General Provisions**

**1.1** The purpose of these rules is to institute a Docket Management System (DMS) that will provide for the orderly, prompt and just disposition of criminal matters in the 3B Judicial District. It is intended that matters addressed pursuant to this system be resolved in a fashion so as to protect the interests of the District and the victims of crimes as well as to ensure that the rights of criminal defendants are preserved.

**1.2** The calendar for the disposition of criminal cases in 3B Judicial District, Superior Court division, shall be set and maintained by the District Attorney in accordance with these rules. (As used in these rules, the term “District Attorney” shall include the elected District Attorney for the 3B Judicial District and his designees.)

**1.3** These rules shall be construed in such a way as to avoid technical delay.

**1.4** The rules shall be filed in the offices of the Clerks of Court of Carteret, Craven, and Pamlico Counties and may be cited accordingly.

**1.5** The District Attorney shall distribute a copy of these rules and any amendments to each member of the Bar of the 3B Judicial District. The District Attorney shall maintain a supply of printed rules to be provided to attorneys upon request.

**1.6** It is recognized that these rules are not complete in every detail and will not cover every situation which may arise. In the event these rules do not address a specific matter or issue, the District Attorney is authorized to act in his discretion, subject to the laws and constitutions of North Carolina and the United States and after consultation with the Senior Resident Superior Court Judge. If the Senior Resident Superior Court Judge is unavailable, then the District Attorney may consult with the Superior Court Judge presiding in this Judicial District.

**1.7** The Clerk of Superior Court shall provide a file number for each case at the time of indictment. That file number shall be designated on all subsequent communications to opposing counsel, parties, or court personnel. All pleadings in a case, all motions and all documents needed to comply with these rules shall be filed with the Clerk.

**1.8** The provisions of the rules shall apply to all Superior Court cases with indictments docketed as 00 CRS cases and filed on or after January 1, 2000. Such cases shall be termed, “Docket Management System (DMS) Cases.” Superior Court filings prior to January 1, 2000, Pre-Docket Management System” may be integrated into the Docket Management System at the discretion of the District Attorney upon consultation with the Senior Resident Superior Court Judge of the Presiding Judge.

**1.9** These rules shall not apply to cases designated as “Exceptional” District Attorney, a Resident Superior Court Judge or by agreement of the parties. Exceptional cases shall also include all class A, B, B2, and C Felonies. Cases which may also be designated as “Exceptional” include, but are not limited to, complicated drug conspiracies, cases including multiple defendants or victims, complicated white-collar crimes and those requiring scientific investigation. Cases designated as exceptional by the District Attorney must be so designated on or before the First Administrative setting or thereafter with consent of the parties or by order of the court.

## **Rule 2: Definite Trial Date**

When a case has not been scheduled for trial within 120 days of Indictment (90 days if the Defendant is confined) or of service of notice of indictment if required by law, then upon motion by the defendant, the Senior Resident Superior Court Judge may hold a hearing for the purpose of establishing a trial date for the defendant.

## **Rule 3:**

**3.1** The attorney of record shall request discovery pursuant to G.S. 15A-901. et seq.

**3.2** If a request and motion for discovery has been filed with the Clerk of Court more than seven calendar days prior to the first administrative setting, the State shall provide discovery to the attorney of record no later than the first administrative setting. If the request and motion for discovery is filed within seven days of the administrative setting, or after the administrative setting, the State shall provide discovery to the attorney of record within ten calendar days of said filing. Discoverable material shall include all matters subject to discovery under G.S. 15A and Brady vs. Maryland.

**3.2** Reciprocal discovery shall be provided by defense counsel to the State within ten working days of defense counsels’ receipt of discovery from the State. Reciprocal discovery shall be defined by N.C.G.S. 15A.

**3.3** It shall be the responsibility of a newly retained or appointed attorney to immediately notify the State of the fact of representation of the Defendant. Should a change in defense counsel occur, it is the joint responsibility of new and previous counsel to ensure that the photocopied discovery material is transferred from previous counsel of record to the new counsel of record. Upon request of new counsel, the State shall assist new counsel in confirming that he has received complete discovery from previous defense counsel.

**3.4.** Photocopies of discovery material shall not be distributed to counsel entering only a limited appearance through District Court.

**3.5** The prosecutor assigned to a case shall be responsible for completing a “Discovery Disclosure Certificate (DDC)” for that case. A completed and signed Discovery Disclosure

Certificate shall accompany the photocopied discovery and shall be served upon the defense attorney of record in one of the following ways: (a) personal delivery, (b) U.S. Postal delivery, (c) delivery to the office of the defense attorney of record; or (d) by depositing the discovery material into the attorney's mailbox located in the Office of the Clerk of Superior Court. A completed and signed DDC also shall be filed with the Clerk of Superior Court for placement in the Court file.

## **Rule 4:**

**4.1** First Administrative setting shall be calendared for each felony within 60 days of indictment or service of notice of indictment if required by law, or at the next regularly scheduled session of superior court if later than 60 days from indictment or service if required. At an administrative setting:

1. The court shall determine the status of the defendant's representation by counsel; After hearing from parties, the court shall set deadlines for the delivery of discovery, arraignment if necessary, and filing of motions;
2. If the District Attorney has made a determination regarding a plea arrangement, the District Attorney shall inform the defendants counsel of record as to the terms of any proposed plea arrangement. If the defendants counsel of record has made a determination regarding a plea arrangement, the defendants counsel shall inform the District Attorney as to the term of any proposed plea arrangement. The court may conduct a plea conference if supported by the interest of justice.
3. The court may hear pending pretrial motions, set such motions for hearing on a date certain, or defer ruling on motions until the trial of the case; and
4. The court may schedule more than one administrative setting if requested by the parties or if it is found to be necessary to promote the fair administrative of justice in a timely manner.

## **4.2 The Second and Subsequent Administrative Settings**

The following matters shall be accomplished at the second setting:

1. A confirmation by the Court that the State has filed its discovery, and, if applicable, that the defendant has provided reciprocal discovery;
2. An inquiry by the Court as to the status of plea negotiations between counsel;
3. The adjudication of a guilty plea by agreement of parties;
4. The scheduling of a date and time for the adjudication of a guilty plea if the parties represent to the Court that they have reached a negotiated plea agreement, and the plea cannot be taken at this setting for some reason;
5. The setting by the Court of deadline for the filing of all remaining pre-trial motions, with the exception of motions in limine;
6. The scheduling of hearing date for the pre-trial motions;
7. The schedule of a trial date.

**4.3** The District Attorney, defendant, and defense attorney, if any, shall be present at all administrative hearings.

#### **4.4 Trial Settings**

If the parties have not otherwise agreed upon a trial date, then upon the conclusion of the final administrative setting, the District Attorney shall announce a proposed trial date. The court shall set that date as the tentative trial date unless, after providing the parties an opportunity to be heard, the court determines that the interests of justice require the setting of a different date. In that event, the District Attorney shall set another tentative trial date during the final administrative setting, except by agreement of the State and the defendant.

#### **Rule 5: Motions**

All pre-arraignments and pre-trial motions and other motions shall be timely filed pursuant to order of the Presiding Judge in accordance with the provisions of the North Carolina General Statutes.

#### **Rule 6: Plea Offers**

The state shall communicate a plea offer to the defendant's counsel of record ten days prior to the second administrative setting. If defendant's counsel fails to respond within ten days, said plea arrangement offer is deemed withdrawn.

#### **Rule 7:**

**7.1** No less than ten working days before cases are calendared for trial, the District Attorney shall publish the trial calendar. The trial calendar shall schedule the cases in the order in which the District Attorney anticipated they will be called for trial and should not contain cases that the District Attorney does not reasonably expect to be called for trial.

#### **7.2 Order of Trial**

The District Attorney, after calling the calendar and determining cases for pleas and other disposition, shall announce to the court the order in which the District Attorney intends to call remaining cases in the calendar. Deviations from the announce order require approval by the presiding judge if the defendant whose case is called for trial objects, but the defendant may not object if all the cases scheduled to be heard before the defendant's case have been disposed of or delayed with the approval of the presiding judge or by the consent of the State and the defendant. A case may be continued from the trial calendar only by consent of the State and the defendant or upon order of the presiding judge or Resident Superior Court Judge for good cause shown. The District Attorney, after consultation with the parties, shall schedule a new trial date for cases not reached during that session of court.

## **Rule 8: Printed Calendars**

No less than seven calendar days prior to each non-jury administrative day or court, the State shall prepare and publish a calendar of case settings as described in Rule 4. The non-jury administrative calendar shall be separated by first setting, second and subsequent administrative settings, pre-trial motions, and probation violation hearings.

## **Rule 9: Motions for Continuances**

**9.1** A case may be continued from the trial calendar only with consent of the State and the defendant, or upon order of the presiding judge, or the Resident Superior Court Judge, after hearing from the parties, for good cause shown.

**9.2** No case shall be continued without a rescheduling of the trial date to a certain date except in a case of extreme and unusual circumstances.

## **Rule 10: Miscellaneous Provisions**

**10.1** No provisions of these rules shall be interpreted by any party or by the Court in such a way as to deprive any Defendant of any right by the General Statutes of North Carolina or by the State and Federal Constitutions.

**10.2** No provisions of these rules shall be interpreted by any party or by the Court in such a way as to deprive any victim of a come of any right provided by the General Statutes of North Carolina or by the Constitution of North Carolina.

**10.3** No provisions of these rules shall be interpreted by any party or by the Court in such a way as to contradict the North Carolina General Statutes.

**10.4** These rules shall remain in effect for a period of six months and thereafter shall continue in effect year to year unless amended thereafter pursuant to the terms of N.C.G.S. 7A-49.4.

## **DISTRICT COURT CONTINUANCE POLICY**

### **RULE 1: MOTIONS FOR CONTINUANCE – CRIMINAL CASES**

Criminal cases should be disposed at the earliest opportunity, including the first trial setting. However, when compelling reasons for continuance are presented which would affect the fundamental fairness of the trial process, a continuance may be granted for good cause. Requests for continuances that are made after 90 days from the first calendaring before a judge shall only be granted for extraordinary cause.

#### **1.1 APPROPRIATE COURT OFFICIAL**

Rulings on any request for continuance made on the day of court for the session in which the case is calendared shall be the responsibility of the presiding trial judge of that court. The Chief District Court Judge shall establish a written policy identifying the appropriate court official to address the motions for continuance made prior to the session of court during which the case is calendared.

#### **1.2 COURT CONFLICTS**

The various levels of court should work together to try to move cases as expeditiously as possible. Age of case, subject matter, and priority of setting should be given as much primacy as the level of court when resolving conflicts.

Attorneys shall notify the court and opposing counsel of any other court conflict(s) as they become known and shall keep the court advised of the resolution of that conflict. All judges shall communicate with other judges to resolve such conflicts. In resolving court conflicts juvenile cases shall take precedence over all other matters.

#### **1.3 DOCUMENTATION OF CONTINUANCE**

Except as hereinafter set forth, all orders for continuance shall be documented in or on the file, and shall include the name of the moving party, any objections to the continuance, and the basis for the continuance. Written continuance orders are not required in cases where the only charge or charges are infractions or waivable offense. In such cases, the courtroom clerk

will note the new court date on the shuck containing the citation. Further, the clerk will note beside the date from which the case is being continued whether the case was continued at the request of the State, the Defendant or both parties.

- a. the moving party shall inform the clerk in open court which party has requested the continuance.
- b. notwithstanding the provisions hereinabove, any party or the presiding judge may cause written continuance order to be prepared and placed in the file with the findings thereon if the party or presiding judge wishes to do so.

#### **1.4 NOTIFICATION OF OPPOSING COUNSEL/UNREPRESENTED PARTIES/WITNESSES**

All application for continuance shall be made as soon as a conflict is identified, and all impacted – opposing counsel, unrepresented parties, subpoenaed witnesses, or court staff charged with subpoenaing witnesses – shall be notified as soon as possible by the moving party.

#### **1.5 OBJECTIONS TO MOTION FOR CONTINUANCE**

All parties should have an opportunity to be heard on a motion to continue.

#### **1.6 EVALUATION OF MOTIONS FOR CONTINUANCE**

Factors to be considered by the appropriate court official when deciding whether to grant or deny a motion for continuance should include:

- a. the opportunity to exercise the right to effective assistance of counsel;
- b. the age of the case and seriousness of the charge;
- c. the incarceration status of the defendant;
- d. the effect on children and spouses if the issue is continued and not resolved;
- e. the impact of a continuance on the safety of the parties or any other persons;
- f. the status of the trial calendar for the session;
- g. the number, moving party, and grounds for previous continuances;
- h. the due diligence of counsel in promptly making a motion for continuance as soon as practicable and notifying opposing counsel and witnesses;
- i. the period of delay caused by the continuance requested;
- j. the presence of witnesses, including the defendant;
- k. the availability of witnesses for the present session, or for a future session;
- l. whether the basis of the motion is the existence of a legitimate conflict with another setting;
- m. the availability of counsel;
- o. consideration of the financial consequences to the public, the parties, the attorneys, or witnesses if the case is continued; and
- p. any other factor that promoted the fair administration of justice.

## **1.7 CASE RESCHEDULING**

Upon granting a motion for continuance, the judge should reschedule the case, taking into consideration the availability of counsel, defendant, and witnesses.

## **1.8 TIME STANDARDS**

All criminal and motor vehicle cases should be disposed within 120 days from the first appearance in District Court.

## **RULE 2: MOTIONS OF CONTINUANCE – GENERAL CIVIL AND MAGISTRATE APPEAL CASES**

Civil cases should be disposed at the earliest opportunity, including the first trial setting. However, when compelling reasons for continuance are presented which would affect the fundamental fairness of the trial process, a continuance may be granted for good cause. Requests for continuances that will delay the resolution of the case beyond the established time standards shall only be granted for extraordinary cause.

### **2.1 APPROPRIATE COURT OFFICIAL**

All applications for continuance shall be made to the District Court Judge presiding over the session of court for which the case is calendared, or his/her designee. If the trial judge is not known at the time the request is made, the application should be addressed to the Chief District Court Judge, or his or her designee.

### **2.2 COURT CONFLICTS**

The various levels of court should work together to try to move cases as expeditiously as possible. Age of case, subject matter, and priority of setting should be given as much primacy as the level of court when resolving conflicts.

Attorneys shall notify the court and opposing counsel of any other court conflict(s) as they become known and shall keep the court advised of the resolution of that conflict. All judges shall communicate with other judges to resolve such conflicts. In resolving court conflicts juvenile cases shall take precedence over all matters.

### **2.3 DOCUMENTATION OF CONTINUANCE**

All requests for continuance shall be by written motion. However, oral motions may be allowed when the reason for the continuance did not become known until immediately preceding the start of court.

### **2.4 NOTIFICATION OF OPPOSING COUNSEL/UNREPRESENTED PARTIES/WITNESSES**

All parties must be notified of a motion to continue. A copy of the motion to continue must be distributed to all counsel of record and/or unrepresented parties prior to ruling on the motion. In addition to the service requirements set out in the statute, distribution of transmission, electronic mail, or hand delivery.

### **2.5 OBJECTIONS TO MOTION FOR CONTINUANCE**

All parties should have an opportunity to be heard on a motion to continue.

When a motion to continue is made more than seven (7) working days prior to trial, opposing counsel and/or unrepresented parties shall have a period of four (4) working days, following completion of distribution, to communicate objections to the motion for continuance to the moving party and the presiding District Court Judge of his/her designee. Objections not raised in writing within this time period are deemed waived.

When a motion to continue is made within seven (7) working days of the trial term (other than an oral motion as provided in Rule 2.3, above), the moving party shall include in the written motion a statement that the opposing counsel or party has been contacted and a short statement on opposing party's on the motion (including whether the opposing party or counsel consents or objects, and whether or not he or she desires to be heard on the motion). If the moving party is unable to contact the opposing counsel or unrepresented parties, the motion shall state what efforts were made and why contact was not possible.

### **2.6 EVALUATION OF MOTIONS FOR CONTINUANCE**

Factors to be considered by the appropriate court official when deciding whether to grant or deny a motion for continuance should include:

- a. the effect on children and spouses if the issue is continued and not resolved;
- b. the impact of a continuance on the safety of the parties of any other persons;
- c. the age of the case;
- d. the status of the trial calendar for the session;
- e. the order in which the case appears on the trial calendar, including whether the case is peremptorily scheduled;
- f. the number of previous continuances;

- g. the extent to which counsel had input into the scheduling of the trial date;
- h. the due diligence of counsel in promptly filing motion for continuance as soon as practicable;
- i. whether the reason for continuance is a short-lived event which would resolve prior to the scheduled trial date; whether the basis of the motion is the existence of a legitimate conflict with another court setting;
- k. the period of delay caused by the continuance requested;
- l. the position of opposing counsel of unrepresented parties; for a future session;
- m. whether the parties themselves consent to the continuance;
- n. present or future inconvenience or unavailability of witnesses/parties;
- o. consideration of the financial consequences to the public, the parties, the attorneys, or witnesses if the case is continued;
- p. compliance with any law relating to the scheduling and trial of civil cases (such as, summary ejection appeals); and
- q. any other factor that promoted the fair administration of justice.

## **2.7 CASE RESCHEDULING**

Upon granting a motion for continuance, the judge should reschedule the case to a specific trial date after receiving input from all parties.

## **2.8 TIME STANDARDS**

All general civil and magistrate appeal cases should be disposed within 24 months of filing, with 90% of all cases disposed within 12 months of filing.

## **RULE 3: MOTIONS FOR CONTINUANCE – DOMESTIC CASES**

Domestic cases should be disposed at the earliest opportunity, including the first trial setting. However, when compelling reasons for continuance are presented which would affect the fundamental fairness of the trial process, a continuance may be granted for good cause. Requests for continuances that will delay the resolution of the contested issues beyond the established time standards shall be granted for extraordinary cause.

### **3.1 APPROPRIATE COURT OFFICIAL**

All applications for continuance shall be made to the District Court Judge presiding over the session of court for which the case is calendared, or his/her designee. If the trial judge is not known at the time the request is made, the application should be addressed to the Chief District Court Judge, or his designee.

### **3.2 COURT CONFLICTS**

The various levels of court should work together to try to move cases as expeditiously as possible. Age of case, subject matter, and priority of setting should be given as much primacy as the level of court when resolving conflicts.

Attorneys shall notify the court and opposing counsel of any other court conflict(s) as they become known and shall keep the court advised of the resolution of that conflict. All judges shall communicate with other judges to resolve such conflicts. In resolving court conflicts juvenile cases shall take precedence over all other matters.

### **3.3 DOCUMENTATION OF CONTINUANCE**

All requests for continuance shall be by written motion. However, oral motions may be allowed when the reason for the continuance did not become known until immediately preceding the start of court.

### **3.4 NOTIFICATION OF OPPOSING COUNSEL/UNREPRESENTED PARTIES/WITNESSES**

All parties must be notified of a motion to continue must be distributed to all counsel of record and/or unrepresented parties prior to ruling on the motion. In addition to the service requirements set out in the statute, distribution of the motion must be made by the quickest means feasible, including facsimile transmission, electronic mail, or hand deliver.

### **3.5 OBJECTIONS TO MOTION FOR CONTINUANCE**

All parties should have an opportunity to be heard on a motion to continue.

When a motion to continue is made more than seven (7) working days prior to trial, opposing counsel and/or unrepresented parties shall have a period of four (4) working days, following completion of distribution, to communicate objections to the motion for continuance to the moving party and the presiding District Court Judge or his/her designee. Objections not raised in writing within this time period are deemed waived.

When a motion to continue is made within seven (7) working days of the trial term (other than an oral motion as provided in Rule 3.3, above), the moving party shall include in the written motion a statement that the opposing counsel or party has been contacted and a short statement on opposing party's position on the motion (including whether the opposing party or counsel consents or objects, and whether or not he or she desires to be heard on the motion). If the moving party is unable to contact the opposing counsel or unrepresented parties, the motion shall state what efforts were made and why contact was not possible.

### **3.6 EVALUATION OF MOTIONS FOR CONTINUANCE**

- a. the effect on children and spouses if the issue is continued and not resolved;
- b. whether there is in effect a temporary order dealing with the issue that is the subject of the continuance request;
- c. the impact of a continuance on the safety of the parties or any other persons;
- d. whether the issue has been identified statutorily as an issue which should be addressed expeditiously, i.e., child support, post-separation support;
- e. the age of the case or motion;
- f. the status of the trial calendar for the session;
- g. the number of previous continuances OR the number, moving party, and grounds for previous continuances;
- h. the extent to which counsel had input into the scheduling of the trial date;
- i. the due diligence of counsel in promptly making a motion for continuance as soon as practicable;
- j. whether the reason for continuance is a short-lived event which would resolve prior to the scheduled trial date;
- k. whether the basis of the motion is the existence of a legitimate conflict with another court setting;
- l. the period of delay caused by the continuance requested;
- m. the position of opposing counsel or unrepresented parties;
- n. whether the parties themselves consent to the continuance;
- o. present or future inconvenience or unavailability of witnesses/parties;
- p. consideration of the financial consequences to the public, the parties, the attorneys, or witnesses if the case is continued; and
- q. any other factor that promoted the fair administration of justice.

### **3.7 CASE RESCHEDULING**

Prior to granting a motion for continuance, the appropriate judicial should reschedule the trial or pre-trial of the contested issues to a specific date after receiving scheduling input from all parties.

### **3.8 TIME STANDARDS**

All domestic cases should be disposed of within 18 months of filing, with 90% disposed within six months. Issues of child support should be resolved and a temporary or permanent order entered within 60 days of service. Post-disposition issues, such as contempt and motions to modify existing orders, should be resolved within 60 days of the filing of such actions.

## **RULE 4: MOTIONS FOR CONTINUANCE – JUVENILE CASES**

For an abused or neglected child, the courts are his or her source of protection and the source of services. For a delinquent child or youth, the courts provide the opportunity for rehabilitation. The goal of a case management plan for juvenile court is to put the courts in the best position to ensure safety of children, and to give them the best possible chance of living in stable, permanent families. Therefore continuances should be allowed only when it serves the child's best interest. Participants must come to court prepared to meet each statutory obligation that is required for resolution of these matters.

Accordingly, juvenile cases, including motions for review in neglect and abuse matters, should be disposed at the earliest opportunity, including the first setting for hearing. Requests for continuances that are made after the first setting for hearing on the merits of the case shall only be granted for extraordinary cause.

### **4.1 APPROPRIATE COURT OFFICIAL**

All applications for continuance shall be made to the District Court Judge presiding over the session of court for which the case is calendared. If the trial judge is not known at the time the request is made or is unavailable, the application should be addressed to the Chief District Court Judge, or his or her designee.

### **4.2 COURT CONFLICTS**

The various levels of court should work together to try to move cases as expeditiously as possible. Age of case, subject matter, and priority of settings should be given as much primacy as the level of court when resolving conflicts.

### **4.3 DOCUMENTATION OF CONTINUANCE**

All orders for continuance shall be documented in writing, and shall include the name of the moving party, any objections to the continuance, and the basis for the continuance.

### **4.4 NOTIFICATION OF OPPOSING COUNSEL/UNREPRESENTED PARTIES/WITNESSES**

All applications for continuance shall be made as soon as a conflict is identified, and all impacted – opposing counsel, unrepresented parties, subpoenaed witnesses, or court staff charged with subpoenaing witnesses – shall be notified as soon as possible by the moving party.

#### **4.5 OBJECTIONS TO MOTION FOR CONTINUANCE**

Factors to be considered by the appropriate court official when deciding whether to grant or deny a motion for continuance should include:

- a. the best interest of the child;
- b. the opportunity to exercise the right to effective assistance of counsel;
- c. the age of the case and seriousness of the charge;
- d. the incarceration status of the juvenile;
- e. the effect on children and spouses if the issue is continued and not resolved;
- f. the impact of a continuance on the safety of the parties or any other persons;
- g. the status of the trial calendar for the session;
- h. the number, moving party, and grounds for previous continuances;
- i. the due diligence of counsel in promptly making a motion for continuance as soon as practicable and notifying opposing counsel and witnesses;
- j. the period of delay caused by the continuance requested;
- k. the presence of witnesses, including the juvenile;
- l. the availability of witnesses for the present session, or for a future session,
- m. whether the basis of the motion is the existence of a legitimate conflict with another court setting;
- n. the availability of counsel;
- o. consideration of the financial consequences to the public, the parties, the attorneys, or witnesses if the case is continued; and
- p. any other factor that promoted the fair administration of justice.

#### **4.6 CASE RESCHEDULING**

Upon granting a motion for continuance, the judge shall reschedule the case for a specified date, taking into consideration the availability of counsel, parties and witnesses.

#### **4.7 TIME STANDARDS**

All undisciplined cases should be disposed within 30 days of service of the petition. All delinquency cases involving misdemeanor offenses should be disposed within 90 days of service of the petition and those involving felony offenses within 120 days after service of the petition.

All adjudication of neglect and abuse cases should be within 60 days of service of the petition. All termination of parental rights matter (TPRs) should be disposed of within 120 days after service of the petition.

This 30 day of September, 1997.

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Jerry F. Waddell  
Chief District Court Judge  
Judicial District 3B