

**26TH JUDICIAL DISTRICT
DISTRICT COURT DIVISION
GENERAL CIVIL RULES**

Rule 1: General Rules

1.1 The purpose of these rules is to institute a case management plan that will provide for the orderly, prompt, and just disposition of civil matters. They are promulgated in compliance with Rule 40(a), Rules of Civil Procedure, and Rule 2, General Rules of Practice for the Superior and District Courts.

1.2 These rules supersede all previous calendar rules of the District Court (General Civil) on their effective date of August 1, 2002, and thereafter.

1.3 The rules and all amendments hereafter shall be filed with the Clerk of Superior Court for Mecklenburg County and may be cited accordingly.

1.4 These rules are not complete in every detail and will not cover every situation that may arise. In the event that these rules do not cover a specific matter, the Trial Court Administrator is authorized to act in his or her discretion, subject to consultation with the Chief District Court Judge or presiding judge.

1.5 The calendar for the disposition of civil cases in the 26th Judicial District, District Court Division, shall be set and maintained by the Trial Court Administrator in accordance with these rules and under the supervision of the Chief District Court Judge.

1.6 The Mecklenburg County Bar shall distribute a copy of these rules and any subsequent amendments hereafter to all its members.

Rule 2: Civil Action Cover Sheet

2.1 All pleadings filed in any civil action with the Clerk of Superior Court shall be accompanied by an original and a copy of the State mandated cover sheet (Form CCF-1).

2.2 The Clerk of Superior Court shall refuse to accept for filing any pleading not accompanied by an original and a copy of the State mandated cover sheet.

2.3 The Clerk of Superior Court shall forward to the Trial Court Administrator the copy of the State mandated cover sheet filed with every pleading.

Rule 3: Ready Cases

3.1 The Trial Court Administrator shall establish and maintain a case tracking system pursuant to Rule 2(c), General Rules of Practice for Superior and District Courts, and in accordance with these rules. This system shall be used to monitor the number, age, type, and procedural status of all pending cases and to provide for the calendaring of the same.

3.2 In cases where service has not been perfected within ninety days, no alias or pluries summons has been issued, and VCAP has not automatically closed the case, the Trial Court Administrator shall calendar the action before the Court for the entry of an Order of Discontinuance.

3.3 In cases for which answer has not been filed within the specified time period and for which no extension of time has been issued, the Trial Court Administrator shall calendar the action for a Default/Inquiry hearing before the Court.

3.4 As provided for in G.S. 7A-37.1, the 26th Judicial District has been designated as a site for statewide court-ordered non-binding arbitration. In accordance with the Rules for Court-Ordered Arbitration, all general civil actions will be reviewed at the point of filing to determine eligibility for the program. Cases identified as arbitration-eligible will proceed pursuant to Rule 4. Cases determined to be ineligible for arbitration will proceed pursuant to Rule 5.

3.5 Cases remanded from the appellate division shall be calendared in accordance with Rule 9.

Rule 4: Arbitration

4.1 The Clerk of Superior Court will stamp all complaints seeking monetary damages of \$15,000 or less with the arbitration-eligible stamp provided by the Administrative Office of the Courts. Stamped copies will be provided to the plaintiff and served upon the defendant.

4.2 At the point of answer or appeal from the Small Claims Court, the Trial Court Administrator will publish a calendar and mail the parties or their counsel of record a notice on Form AOC-CV-800/801. This notice will inform the parties that their case has been selected for arbitration, assign a date, time, and place for the arbitration hearing, and list the arbitrator assigned to preside over the case. The notice will also inform the parties that they have twenty days in which to file a stipulation (Form AOC-CV-912M) as to their choice of different arbitrator or the one designated will remain.

4.3 All requests to continue the arbitration hearing must be directed to the attention of the Trial Court Administrator or his/her designee. Only the Trial Court Administrator or his/her designee has the authority to continue an arbitration hearing. Motions for Continuance shall be submitted in writing on Form CCF-5 no later than three business days prior to the scheduled hearing date. All parties of record must receive notice of the request to continue the arbitration

hearing. Absent exigent circumstances, continuances will not be granted--even if all parties agree – unless for a crucial cause that could not have been foreseen. If the parties wish to appeal the decision of the Trial Court Administrator, the appeal must be routed through the ADR Coordinator to the Chief District Court Judge for a final decision.

4.4 Within three days of the arbitration hearing the arbitrator shall issue an award (State Form AOC-CV-802). The parties shall have thirty days from the issuance of the award to file a request for a trial de novo (State Form AOC-CV-803).

4.5 The Trial Court Administrator shall monitor all arbitration cases for the filing of trial de novo requests.

4.6 If a request for a trial de novo is filed, the Trial Court Administrator shall calendar the case for trial before the previously assigned judge on the next available setting. The trial date assigned should be no sooner, however, than 120 days after the filing of the last responsive pleading. Counsel may request a specific session of court or expedite the hearing date by filing a Request to Set (Form CCF-2) with the Trial Court Administrator's Office. All requests must be received prior to the publishing of the trial calendar.

4.7 If no request for a trial de novo is filed within the thirty-day limit, the Trial Court Administrator shall present the file to the Clerk of Court for the entry of judgment.

Rule 5: Arbitration Ineligible Cases

5.1 At the point of answer or entry of appeal in a Small Claims action, the Trial Court Administrator will set the case for trial on the next available trial calendar at least 120 days in the future.

5.2 Counsel may request a specific session of court or expedite the hearing date by filing a Request to Set (Form CCF-2) with the Trial Court Administrator's Office. All requests must be received prior to the publishing of the trial calendar.

Rule 6: Trial Calendars

6.1 The Trial Court Administrator shall publish a trial calendar for each session of Court for which cases are scheduled.

6.2 Trial calendars shall be published on the third Friday proceeding the first day of each scheduled session.

6.3 Cases defined as preemptory in accordance with Rule 9 or cases having statutory priority shall appear at the top of each trial calendar. To the extent possible, the Trial Court

Administrator shall set other cases so that the oldest-numbered cases from the calendars will appear as the first cases, after those designated as preemptory or given statutory priority.

6.4 The trial date that is assigned shall be a firm date. Continuances will not be granted, even if all parties agree, unless for a crucial cause that could not have been foreseen (See Rule 11).

6.5 Any case listed on a published trial calendar is subject to dismissal for failure to prosecute if, at the time it is called for trial, the attorneys (or the parties themselves, if not represented by counsel) are not present or ready to proceed.

6.6 All cases calendared shall be ready for trial at any time during the week.

6.7 To achieve a balanced docket, the Trial Court Administrator shall recalendar cases "not reached" or continued by the Court to future trial sessions based upon calendar availability.

Rule 7: Time Standards

7.1 Absent exigent circumstances, all cases filed must be tried or disposed of within the following deadlines: Civil non-jury, twelve (12) months; civil jury, eighteen (18) months.

Rule 8: Small Claims Appeals and Special Code-Related Appeals

8.1 Notwithstanding the general provisions of these rules, the calendaring of appeals from magistrates' judgments for trials de novo shall be handled according to the specific provisions of this rule.

8.2 All cases where any pleading is based in any part on an alleged violation of the Housing Code of the City of Charlotte or the Housing Code of Mecklenburg County shall be assigned to the Environmental Court. If such a case was originally assigned to the Small Claims Court, and was appealed to the District Court, the case on appeal shall be assigned to the Environmental Court. If the case was originally based on a summary ejectment complaint only and a pleading alleging one of the above code violations is filed after an appeal is docketed, the case shall be reassigned to the Environmental Court by the Trial Court Administrator. To facilitate the appropriate scheduling of such cases, the parties or their counsel of record shall file with the Trial Court Administrator's Office a Request to Set Landlord Tenant Case (Form CCF-53).

8.3 In all other cases involving summary ejectment, the Trial Court Administrator shall place the case on the magistrate appeal section of the general civil trial calendar. Either party, however, may demand an expedited trial pursuant to G.S. Section 42-34(a) by filing a Request to Set Landlord Tenant Case (Form CCF-53). Upon receipt of Form CCF-53, the Trial Court Administrator shall place the case at the top of magistrate appeal section on the next available

civil court calendar. When a jury trial is also requested, the case will be placed at the top of the trial section on the next available civil court calendar.

8.4 Unless assigned to the Environmental Court pursuant to Rule 8.2 above, the Trial Court Administrator shall place cases brought pursuant to the Expedited Eviction of Drug Traffickers Act, G.S. Chapter 42 Article 7, at the top of the magistrate appeal section of the next available trial calendar in accordance with G.S. Section 42-68(1). When a jury trial is also requested, the case will be placed at the top of the trial section on the next available civil court calendar. To facilitate the appropriate scheduling of such cases, the parties or their counsel of record shall file with the Trial Court Administrator's Office a Request to Set Landlord Tenant Case (Form CCF-53).

Rule 9: Remanded, Priority, and Peremptory Cases

9.1 When a case is remanded for trial from the Appellate Division, appellant's counsel shall promptly notify the Trial Court Administrator, who shall assign the case for trial pursuant to Rule 6. Counsel may request a specific session or expedite the hearing date by filing a Request to Set (Form CCF-2).

9.2 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. Counsel may request a specific session by filing a Request to Set (Form CCF-2).

9.3 Requests for peremptory settings may be made at any time, but should be made as early as possible.

9.4 Requests for a peremptory setting shall be submitted in writing on Form CCF-3. The request must: (1) state the specific reason for the peremptory setting; (2) be copied to all counsel of record, and; (3) be addressed to the assigned judge.

9.5 Peremptory settings will be granted in the discretion of the Trial Court Administrator, but only for good and compelling reasons. Among the reasons which may warrant a peremptory setting are:

- (1) It is impossible or impractical for a witness or litigant to appear for the trial except by air travel. In cases where litigants or witnesses live close enough to Charlotte to reasonably travel by land to the trial, the Court will not ordinarily grant peremptory settings. It will, however, give counsel sufficient advance notice of the setting of the trial to allow those persons time to arrive, provided counsel makes timely request for such notice;
- (2) The case involves numerous expert witnesses;
- (3) Severe adverse economic consequences will result from delay of the trial;
- (4) The case has been repeatedly scheduled for trial without being reached;
- (5) The case is more than two years of age;

(6) Other extraordinary reasons requiring a prompt resolution of the case.

9.6 The Court may set a case peremptorily on its own motion for any reason.

9.7 No case that has been peremptorily set may be continued except on written motion (Form CCF-5) served on the opposing party or counsel of record and addressed to the Trial Court Administrator in accordance with Rule 11.

9.8 Any peremptorily set case that is continued will be rescheduled peremptorily only by renewing the request in the manner required by this policy.

Rule 10: Calendar Call and Pretrial Memoranda

10.1 A call of the District Court jury trial calendar will be held at 9:00 am on the first day of the session. Attorneys (or their designee) and/or unrepresented parties are required to appear at the calendar call and should be prepared to advise the court on the nature of the litigation and the estimated length of trial. Continuances will be handled in accordance with Rule 11.

10.2 Whenever more than one civil session is scheduled during a given week, there will be a combined calendar call. The location of the calendar call will be specified on the calendar cover sheet. All motions, Magistrate Appeals, and non-jury hearings (defaults & discontinuances) will be set for hearing in the courtroom holding calendar call and will be heard immediately following the completion of this task. When two civil sessions are scheduled, trials will immediately commence in the second courtroom following the call of the calendar. Trials will also be heard in the Calendar Call Courtroom upon the completion of motion, Magistrate Appeal and all other non-jury hearings whether one courtroom is running or two. The location and hearing time of all non-jury matters will also be posted on the published calendar.

10.3 Counsel or unrepresented party(ies) in cases appearing on a trial calendar shall submit to the Trial Court Administrator's Office a pretrial memorandum no later than the Wednesday prior to the trial session. The Pre-trial memorandum should contain the following information:

- (a) A list of witnesses who may be called at the trial. If a witness will be offered as an expert, the witness specific area of expertise should be stated along with a brief statement of the witness' qualifications.
- (b) A list identifying all exhibits that the party may offer at trial. All exhibits which can be practicably numbered in accordance with the exhibit list. Copies of all exhibits, which can practicably be photocopied, shall be attached to the memorandums. The opposing party should make all other exhibits available for inspection by the deadline for filing the memorandum.
- (c) A list of what the party contends are the issues to be submitted to the jury accompanied by the appropriate citations to the pattern jury instructions. If

no pattern instruction exists in a particular area, a suggested instruction should be submitted.

Rule 11: Continuances

11.1 All motions for continuance shall be submitted in writing on Form CCF-5 to the Trial Court Administrator no later than the Wednesday proceeding the first day of the session on which the case is set for trial. Thereafter, motions to continue will only be granted due to unforeseen circumstances arising after the Wednesday deadline. The reason for the continuance shall be clearly stated.

11.2 Opposing counsel or unrepresented parties must be notified of the request for a continuance prior to the filing with the Trial Court Administrator. Any objections must be delivered to the Trial Court Administrator on Form CCF-6 within two days of the filing of the motion to continue. If an objection is not filed with the Trial Court Administrator within the two days specified, it will be assumed that the opposing party does not object to the request.

11.3 The Trial Court Administrator will rule upon motions to continue after the expiration of the two day objection period or sooner if the position of the opposing party is already known. Appeals of the decision rendered by the Trial Court Administrator shall be directed to the District Court Judge assigned to the case. Failure of counsel to follow the established process may result in the imposition of sanctions.

11.4 In accordance with Rule 2 (e) of the General Rules of Practice for the Superior and District Courts, when an attorney is notified to appear for the hearing of a motion or trial, he/she must, consistent with ethical requirements appear or have a partner, associate, or another attorney familiar with the case present. Unless an attorney has been excused in advance by the Trial Court Administrator or the Judge with whom the matter is scheduled and has given prior notice to his/her opponent, a case will not be continued. Rulings regarding professional conflicts will be governed by the Guidelines for Resolving Scheduling Conflicts as adopted by the State-Federal Judicial Council of North Carolina.

Absent exigent circumstances, continuances will not be granted except for a crucial cause that could not have been reasonably foreseen. Witness unavailability, incomplete medical treatment, personal emergencies, and outstanding discovery issues will be entertained on a case-by-case basis. The timeliness of counsel in identifying and addressing each one of these issues, however, will be a major determinant in any ruling. Requests based upon personal conflicts such as vacations (see 26th Judicial District Attorney Vacation Policy), family commitments, and continuing legal education opportunities must be made within seven (7) calendar days of the date which the calendar was published. Please note that supporting commentary by counsel citing that the case has never before been set, that opposing counsel does not object, or that the other side received a prior continuance is deemed to be without merit and should not be included in any motion presented to the Court.

Trial slots are a scarce resource. Counsel must have an ethical and a professional responsibility to ensure that this resource is wisely managed.

Rule 12: Motions

12.1 All motions filed with the Court must be accompanied by a Notice of Motion (Form CCF-4). A copy of the form shall also be provided to the Trial Court Administrator's Office.

12.2 Upon receipt of the Notice of Motion, the Trial Court Administrator shall schedule the motion for hearing on the next available motion calendar.

12.3 Counsel desiring to select his or her own hearing date may contact the Trial Court Administrator's Office in advance of filing the motion. The date received from the Trial Court Administrator shall be cited in the Notice of Motion. The original shall be filed with the Clerk of Superior court and a copy provided to the Trial Court Administrator's Office.

12.4 Failure of counsel to file the Notice of Motion and receive a hearing date in a timely manner will not delay any trial date assigned.

12.5 With respect to Motions to Withdraw as Counsel, it is the responsibility of moving counsel to provide his or her client with appropriate notice of the hearing and to provide the Trial Court Administrator with a copy of the order allowing withdrawal, including the address and telephone number of the now-unrepresented party.

Rule 13: Emergency Matters

13.1 An application for a temporary restraining order or preliminary injunction shall be made in a written, verified pleading which sets forth the facts giving rise to the need for emergency relief. The verified pleading may be accompanied by affidavits of third parties.

13.2 A party making an application for emergency relief shall deliver the pleading to the judge assigned to preside over the current civil session. If the judge grants ex parte relief or determines to have a hearing to consider the motion, s/he shall schedule the hearing within ten (10) days through the Trial Court Administrator Office. The moving party shall serve notice of the hearing on the opposing party.

If the presiding judge is unavailable, application shall be made to the judge assigned to Courtroom 203 and thereafter the Chief District Court Judge. The judge assigned to Courtroom 203 shall determine whether the alleged emergency requires the Court to act before the anticipated return of the judge presiding over the current civil session. If so, the judge shall enter the appropriate order either granting or denying the relief requested. The emergency motion

and any resulting order shall be filed with the Clerk of Court and made available to the judge(s) presiding at future hearings.

13.3 A Party making an application for emergency relief must give actual and reasonable notice of the application and any scheduled hearing to the Party against whom the order is sought, except for those circumstances in which the Court made an evidentiary finding that either:

- (a) notice of the application for such order will result in the very harm sought to be prevented; or
- (b) all reasonable means calculated to give the notice required were used but were unsuccessful.

Rule 14: Settlement of Cases

14.1 When a case is reported as settled on the Arbitration Calendar or prior to the placement on a published trial calendar, the parties or attorneys must notify the Trial Court Administrator within 24 hours of the settlement and must specify to the TCA who will prepare and present the court with a Judgment or disposition. If parties fail to file the appropriate disposition within 10 days, the case will be set on the next motions calendar for entry of Memorandum of Judgment/Order (Form AOC-CV-220).

14.2 If a case on a published trial calendar is settled, the attorneys must notify the Trial Court Administrator within 24 hours of settlement. Attorneys must specify to the Trial Court Administrator who will prepare and present the judgment or disposition and when it will be presented. If the disposition is not filed within the trial session, attorneys must submit to the court the Memorandum of Judgment/Order (Form AOC-CV-20) during the session their case is calendared.

Rule 15: Presentation of Orders and Judgments

15.1 Cases or motions scheduled for trial or hearing which are removed due to consent or settlement shall be considered delinquent if the order of judgment or disposition is not presented to the Court for signature or filing within ten working days after the case was announced as settled.

15.2 The Trial Court Administrator will identify those cases which are delinquent, pursuant to Rule 15.1, and bring them to the attention of the Chief District Court Judge or presiding judge. Cases identified as being delinquent may be dismissed at the discretion of the Chief District Court Judge or presiding judge, or the presiding judge shall order such sanctions or impose penalties as he or she deems appropriate and are allowed by law.

15.3 Cases or motions scheduled on trial calendars and heard by a judge or jury shall be considered delinquent if the order of judgment or disposition is not presented to the Court for

signature or filing within ten working days after the announcement of the judge's decision, unless otherwise directed by the presiding judge.

15.4 The Trial Court Administrator will identify those cases which are delinquent, pursuant to Rule 15.3, and bring them to the attention of the Chief District Court Judge or presiding judge. Cases identified as being delinquent may be dismissed at the discretion of the Chief District Court Judge or presiding judge, or the presiding judge shall order such sanctions or impose penalties as he or she deems appropriate and are allowed by law.

15.5 No judgment or order shall be presented to a judge until opposing counsel has had a reasonable opportunity to review it and has been advised of the date when the proposed judgment/order will be presented for signature. A suggested "Verification of Consultation with Opposing Counsel" is included as Form CCF-7.

15.6 All orders and or judgments submitted for signature shall be delivered to the reception desk of the Superior and District Court Judges' Office. Counsel or their designee must log-in the receipt book provided the case number, the case caption, the Judge's name, the date the order was delivered and the name of the attorney presenting the order. Once completed, the attorney or their designee will deposit the order in the appropriate judge's box for signature. No order will be signed unless these procedures are followed.

Orders that have been signed will be returned to the reception area and logged out accordingly. Orders will remain in the reception area for 48 hours for pickup by counsel or their designee. At the expiration of this time period, the orders will be sent to the Civil Division of the Clerk's Office for processing.

Rule 16: Bankruptcy Cases

16.1 Civil actions in which one of the parties is adjudicated bankrupt will be disposed of in accordance with the following authority and procedure:

- (a) Rule 401 of the Federal Bankruptcy Act
- (b) 11 U.S. Code 362
- (c) 11 U.S. Code 1301
- (d) *Whitehurst v. Virginia Dare Transportation Co.* 19 N.C. App. 352 (1973)
- (e) N.C.G.S. 1-23

16.2 Any request to continue, hold, or in any other way delay disposition of a case due to bankruptcy of one of the parties shall be submitted on Form CCF-8 and must be accompanied by a certificate of bankruptcy filing or stay of proceeding from the United States Bankruptcy Court having jurisdiction.

16.3 The Trial Court Administrator will refer the case to the appropriate judge for execution of an injunction pursuant to the above authority. After reasonable notice, the judge

may dismiss the civil action without prejudice. Said notice may be in writing via letter or in the form of a calendar.

16.4 Notwithstanding any provisions of Rule 16 or any subdivisions thereof, the appropriate judge will enter such order(s) (Form CCF-9) as may be necessary to enforce the bankruptcy stay, enjoin the state action, and administratively close the file in question.

16.5 After reasonable notice, the appropriate judge will dismiss/close the civil action in state court without prejudice. Said notice may be in writing in the form of a letter or by placing the case on a civil calendar.

Rule 17: Notice of Calendaring to Attorneys

17.1 Calendars will be made available to counsel through the Clerk of Superior, The Mecklenburg Times, and through the Internet web site address for the 26th Judicial District at <http://www.nccourts.org> at the time specified in Rule 6.2. The availability of calendars published through the outlets described shall constitute official notice to attorneys.

17.2 Individual notices regarding hearing and trials will be sent to out-of-town attorneys and unrepresented parties (excluding parties in default) by the Trial Court Administrator. The Clerk of Superior Court will also make calendars available to these groups.

17.3 It shall be the responsibility of counsel and unrepresented parties to be aware of cases appearing on trial calendars.

Rule 18: Sanctions

18.1 Failure to comply with any section of these rules shall subject an action to dismissal or other sanctions allowed by law and deemed appropriate at the discretion of the presiding judge.

Rule 19: Preparation of Forms

19.1 Attorneys shall be responsible for reproduction of forms that are required by these rules.

19.2 Reproduction may be any process that results in clearly legible copies of standard letter size.