

**27-A Judicial District
Superior and District Court Civil Local Rules**

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**27-A Judicial District
Superior and District Court Civil Local Rules**

Rule 1. Purpose.

In accordance with and subject to the provisions of Rule 40(a) of the North Carolina Rules of Civil Procedure and Rule 2 of the General Rules of Practice for the Superior and District Courts, the following administrative and procedural rules shall constitute the case management plan for the calendaring of civil cases in the Superior Court and District Court of the 27-A Judicial District of the State of North Carolina. The purpose of these rules is to provide for the orderly, just and prompt disposition of civil matters to be heard in the Superior Court and District Court. They shall be at all times construed and enforced in such a manner as to avoid technical delay.

Rule 2. Preparation and Publication of Calendars.

The Superior Court civil calendar shall be prepared under the supervision of the Senior Resident Judge. The District Court civil calendar shall be prepared under the supervision of the Chief District Court Judge. Five months after a complaint is filed, the Trial Court Administrator shall place that case on a ready calendar, unless the time is extended by written order of the Senior Resident Judge for Superior Court cases or the Chief District Court Judge for District Court cases.

Superior Court civil cases will be scheduled for trial or alternative dispute resolution hearings in accordance with Local Rule 22.

Rule 3. Final Calendars.

A final calendar shall be published and distributed by the Trial Court Administrator to each attorney of record (or party where there is no attorney of record) no later than four (4) weeks prior to the first day of the trial week.

3.1 To the extent possible, the Trial Court Administrator shall set cases by case number, oldest case first and newest last, except for peremptorily set cases and statutory priority settings, which will be first.

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

3.3 Upon the consent of both counsel, a case not yet considered on the ready calendar may request a case be calendared on a Final Trial Calendar.

Rule 4. Adding Cases for Trial to Published Calendars.

Only the Superior Court or District Court Trial Judge can add cases for trial to their respective final calendars. Attorneys wishing to have a case placed on the trial calendar may request such an addition. All such requests must be made in writing and addressed to the respective Trial Judge.

Rule 5. Superior Court Civil Continuances.

5.1 Appropriate Judicial Official

CIVIL CASES Only a Resident Superior Court Judge or the Trial Court Administrator may grant a continuance which is requested before 5:00 P.M. on the Friday prior to the Civil Settlement Conference Week. After 5:00 P.M. on that Friday, all continuance requests are to be directed to the Civil Settlement Conference Judge. The Judge may grant a continuance, which is requested before 5:00 P.M. on the Friday of the settlement conference week. After that point, only the Judge before whom the case is scheduled may continue a case. Should either the Civil Settlement Conference Judge or Trial Judge be unavailable a Resident Judge or the Trial Court Administrator may continue cases.

ARBITRATION CASES All applications for continuance shall be made only to the Arbitration Coordinator, Trial Court Administrator, or Resident Superior Court Judge. Under no circumstances can an Arbitrator continue a case.

MEDIATED SETTLEMENT CONFERENCE CASES All applications for extension of the deadline for completion of the mediated settlement conference shall be made only to a Resident Superior Court Judge or the Trial Court Administrator.

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

5.2 Form of Motion.

All applications for continuance shall be by written motion made on state form AOC-CV-221 or Civil Local Form 27A-1 or other form that complies with all the information set forth with Civil Local Form 27A-1.

5.3 Notification of Opposing Counsel/Unrepresented Parties.

A copy of the completed form AOC-CV-221 or Civil Local Form 27A-1, or other form that complies with all the information set forth with Civil Local Form 27A-1, must be distributed to all counsel of record and/or unrepresented parties prior to presentation of the motion to the appropriate judicial official. Distribution of the motion may be by US mail,

facsimile transmission, hand delivery, telephone, or distribution by means of attorney distribution boxes maintained in the courthouse. If the motion is granted, all counsel of record, unrepresented parties, subpoenaed witnesses, and the Trial Court Administrator's Office shall be notified as soon as possible by the moving party during the same business day.

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

5.4 Objections to Motion for Continuance.

Opposing counsel and/or unrepresented parties shall have a period of three (3) working days following completion of distribution to communicate, by any means, objections to the motion for continuance to the moving party and the appropriate judicial official. Objections not raised within this time period are deemed waived.

5.5 Evaluation of Motions for Continuance.

Continuance requests are presumptively disfavored. However, when compelling reasons for continuance are presented which would affect the fundamental fairness of the trial process or when a continuance clearly is in the interest of justice, a continuance may be granted in the exercise of judicial discretion to further the best interest of the fair administration of justice.

In addition to other factors, the appropriate judicial official shall consider the following when deciding whether to grant or deny a motion for continuance:

- (a) the age of the case;
- (b) the status of the trial calendar for the week;
- (c) the order in which the case appears on the trial calendar, including whether the case is peremptorily scheduled;
- (d) the number of previous continuances;
- (e) the extent to which counsel had input into the scheduling of the trial date;
- (f) the due diligence of counsel in promptly filing a motion for continuance as soon as practicable;
- (g) whether the reason for continuance is a short lived event which could resolve prior to the scheduled trial date;
- (h) the length of the continuance requested, if applicable;
- (i) the position of opposing counsel and/or unrepresented parties;
- (j) whether the parties themselves consent to the continuance;
- (k) present or future inconvenience or unavailability of witnesses/parties; and
- (l) any other matter that promotes the ends of justice.

[The factors to be considered by the appropriate judicial official are set forth as guidelines to ensure consistent, rational decision making while not restricting a judge's inherent power to grant requests in the interest of justice.]

5.6 Case Rescheduling

Cases continued for trial will be scheduled to the carryover date listed on the trial calendar. Exceptions may be granted by the appropriate judicial official for good cause shown. The continuance date should be determined after receiving scheduling input from all counsel and/or unrepresented parties at the time the continuance is granted.

When an arbitration case must be continued, it shall be continued to a specific date as expeditiously as possible not to exceed fourteen (14 days). The continuance date should be determined after receiving scheduling input from all counsel and/or unrepresented parties at the time the continuance is granted.

When the date for completion of a mediated settlement conference has been extended, it shall be extended to a specific date as expeditiously as possible. The deadline extension date should be determined after receiving scheduling input from all counsel and/or unrepresented parties and the mediator at the time the deadline extension is granted.

Rule 6. District Court Civil and Magistrate Appeal Continuances.

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.

6.1 Appropriate Court Official.

All applications for continuance of a civil case shall be made only to the District Court Judge presiding over the session of court for which the case is calendared, or his or 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.

All applications for continuance of an arbitration case shall be made only to the Arbitration Coordinator, Trial Court Administrator, or Chief District Court Judge. Judge or if the Chief District Court Judge is unavailable to the Judge authorized to act for the Chief District Court Judge in the absence of the Chief District Court Judge. Under no circumstances can an Arbitrator continue a case.

6.2 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 court conflict(s) as soon 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 should be given priority over other District Court matters where practicable.

[Commentary: All attorneys are reminded of the requirements of rule 2(e) of the General Rules of Practice regarding their appearance, or the appearance of a partner, associate, or another attorney familiar with the case, if there is another court that requires his or her presence in court simultaneously.]

6.3 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.

[Commentary: This proviso for an oral motion is only for emergency situations, such as severe family illness or death of a party, one of the attorneys, or critical witnesses, and the absence of that person will make it impossible for the trial or hearing to proceed.]

6.4 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 the motion must be made by the quickest means feasible, facsimile transmission, electronic mail, or hand delivery.

[Commentary: The burden is on the moving party to advise the court and opposing counsel of any motion for a continuance. The goal of this provision is to avoid any continuance surprises and to provide notice as expeditiously as possible to the court and to the opposing party and/or their counsel.]

6.5 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 (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 or arbitration hearing date (other than an oral motion as provided in Rule 6.3, 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.

[Commentary: The writing requirement of this rule may be in the form of a letter.]

6.6 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:

- the effect on children and spouses if the issue is continued and not resolved;
- the impact of a continuance on the safety of the parties or any other persons;
- the age of the case;
- the status of the trial calendar for the session:
- the number of previous continuances;
- the extent to which counsel had input into the scheduling of the trial date;
- the due diligence of counsel in promptly filing a motion for continuance as soon as practicable, and notifying opposing counsel and parties;
- whether the reason for continuance is a short-lived event which would resolve prior to the scheduled trial/hearing date;
- whether the basis of the motion is the existence of a legitimate conflict with another court setting;
- the period of delay caused by the continuance requested;
- the availability of witnesses for the present session, or for future sessions;
- whether the persons involved consent to the continuance;
- the position of opposing counsel or unrepresented parties;
- present or future inconvenience or unavailability of witnesses/parties;
- consideration of the financial consequences to the public, the parties, the attorneys, or witnesses if the case is continued;
- compliance with any law relating to the scheduling and trial of civil cases (such as, summary ejectment appeals);
- any other factor that promotes the fair administration of justice and fair determination of the motion.

6.7 Case Rescheduling

Upon granting a motion for continuance of a civil case, the judge should reschedule the case to the next civil calendar. When an arbitration case must be continued, it shall be continued to a specific date as expeditiously as possible not to exceed fourteen (14) days. The continuance date should be determined after receiving scheduling input from all counsel and/or unrepresented parties at the time the continuance is granted.

6.8 Time Standards

All general civil and magistrate appeal cases should be disposed of within 12 months of filing. All arbitration cases are to be heard within 60 days of being placed into the arbitration program.

[Commentary: These are the standards adopted by the Supreme Court of North Carolina in the Caseflow Management Plan provided 1 May 1996 to the General Assembly, pursuant to Chapter 333 of the 1995 Session Laws. The 60-day time limit in N.C. Arbitration Rule 8(b)(1) will allow time for discovery, trial preparation, pretrial motions, disposition and calendaring.]

Rule 7. Peremptory Case Trial Settings.

7.1 Requests for a peremptory setting for Superior Court cases involving persons who must travel long distances or numerous expert witnesses or other extraordinary [or statutorily mandated] reasons for such a request must be made to the Trial Court Administrator only. A peremptory setting shall be granted only for good and compelling reasons. A Senior Resident Judge may set a case peremptorily on his own motion.

7.2 Requests for a peremptory setting for District Court cases must be made to the Trial Judge assigned to the case.

Rule 8. Presence of Attorneys at Calendar Call, Settlement Conferences, Trials, etc.

When an attorney is notified to appear for the setting of a calendar, pretrial conference, settlement conference, hearing of a motion or for trial, the attorney 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 Judge before whom the matter is scheduled and has given prior notice to his opponent, a case will not be continued.

Rule 9. Notices of Settlement.

9.1 When a case on a published calendar (tentative or final) is settled, all attorneys of record must notify the Trial Court Administrator within twenty-four (24) hours of the settlement and advise who will prepare and present judgment, and when.

9.2 If a case on a published Final Trial Calendar is settled, the attorneys where feasible should notify all counsel in the next case calendared.

Rule 10. Discovery.

Counsel are required to begin promptly such discovery proceedings as should be utilized in each case, and are authorized to begin even before the pleadings are completed. Counsel are not permitted to wait until the pre-trial conference is imminent to initiate discovery.

Rule 11. Requests for Withdrawal of Counsel.

No attorney who has entered an appearance in any civil action shall withdraw his appearance, or have it stricken from the record, except on order of the Court. Once a client has employed an attorney who has entered a formal appearance, the attorney may not withdraw or abandon the case without (1) justifiable cause, (2) reasonable notice to the client, and (3) the permission of the court.

Rule 12. Calendaring of Motions.

12.1 Motions may be calendared for any session of trial court upon request to the Trial Court Administrator, or by order of the Court. Motions will be calendared for and heard on Monday mornings.

12.2 The Trial Court Administrator may, at his discretion, add Motions onto already published Final Trial Calendars. Motions added to the Final Trial Calendar must be with the consent of all counsel and/or parties or upon proper notice to opposing counsel.

Rule 13. Case Action Cover Sheet.

13.1 All papers filed in civil actions shall include as the first page of the filing two copies of a cover sheet summarizing the critical elements of the filing in a format prescribed by the Administrative Office of the Courts.

13.2 The Clerk of Superior Court shall forward a copy of the cover sheet to the Trial Court Administrator's Office.

Rule 14. Calendar Call When On Holidays or Preceding Weeks When Court Not In Session.

14.1 **District Court Cases.** When the Calendar Call falls on a holiday, it will be conducted on the preceding judicial day. When Calendar Call falls on a day during a week when Court is not held, Calendar Call will be held the following Monday morning at 9:30 a.m.

14.2 Superior Court Cases. No Calendar Call will be held. Cases appearing on the Final Trial calendar will be electronically sent to all attorneys before the case's trial week. All cases appearing on the Final Calendar are assumed to be ready for trial.

Rule 15. Delinquent Orders or Judgments.

15.1 Cases tried or reported settled shall be considered delinquent if the Order or Judgment of Disposition is not filed within twenty-one (21) days after the judgment was reported in Court or the settlement was reported, unless otherwise directed by the Trial Judge.

15.2 Motions heard shall be considered delinquent if the Order or Final Judgment of Disposition is not filed within seven (7) days after the Motion is ruled upon, unless otherwise directed by the Presiding Judge.

15.3 Cases or Motions so delinquent may be dismissed by the Senior Resident Superior Court Judge, the Chief District Court Judge, or their designee, either upon Motion by the party against whom the Judgment or Order was to be taken, or by the Trial Court Administrator bringing the case to the Judge's attention.

Rule 16. Calendaring Cases Not Reached or Cases Continued.

Cases not reached or continued during any session of court will be scheduled on the carryover date listed on the Trial Calendar.

Rule 17. Duty In Presentation To Court Of Ex Parte Matters And Defaults.

In the event any ex parte matter or default proceeding has been presented by any person to any Judge and the requested relief is denied for any reason, such matter shall not be presented to any other Judge without making full disclosure of the prior presentation. For a failure to comply with the provisions of this rule, the Order or Judgment made on such subsequent application may be vacated at any time as a fraud upon the Court.

Rule 18. Conflicts.

18.1 Attorneys will assist Trial Judges in resolving calendar conflicts so that cases may be tried without delay.

18.2 For purposes of resolving appearance conflicts, the following schedule of court attendance priority shall be followed by attorneys appearing in the Courts of this judicial district. If a case is started in a Court with lower priority, and counsel is unexpectedly required to appear in a higher priority Court, the already begun trial takes precedence until its termination.

1. Appellate Cases
2. Federal Court, Criminal Division
3. Superior Court, Criminal Division
4. Federal Court, Civil Division
5. Superior Court, Civil Division
6. Federal Court, Bankruptcy Division
7. Industrial Commission Hearings
8. District Court, Criminal Division
9. District Court, Civil Division
10. Administrative Agency Hearing
11. Civil Arbitration Hearings
12. Mediated Settlement Conferences
13. Magistrate's Court

Rule 19. Default.

19.1 Any party seeking default is requested to give five (5) days written notice to any party making an appearance in the case before entry of default. A copy of the letter should be sent to the Clerk of Court for filing.

19.2 Pendency of the requested notice shall not be cause for delaying the hearing of the Entry of Default or Entry of Default Judgment motions.

Rule 20. Administrative Dispositions.

20.1 Listed below are three categories of cases deemed to be not 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.

- a. Cases in bankruptcy (accompanied by a copy of stay order from Bankruptcy Court)
- b. Defendants making payments.
- c. Removal for any other reason.

20.2 Cases will be removed by Orders prepared by the Clerk or the Trial Court Administrator upon review of the files and after consultation with counsel, if necessary. The Order will be signed by the Senior Resident Superior Court Judge, the Chief District Court Judge, or their designees, and filed with the Clerk.

20.3 If, at some later date, trial or other action becomes necessary, a motion may be filed requesting the case be returned to active status.

20.4 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.

Rule 21. Forms.

Where forms are specified to be used by these Rules, counsel may use either the forms provided or a form of their own which substantially corresponds to that specified.

Rule 22. Mandatory Participation Among Three Alternative Dispute Resolution Programs.

22.1 All parties to Superior Court civil actions filed on or after December 1, 1995 must mutually select from the three mandatory alternative dispute resolution programs, listed in the following, within twenty-one (21) days from the filing of the last responsive pleading.

The three alternative dispute resolution programs are:

1. Civil Arbitration
2. Mediated Settlement Conferences
3. Private Mediation or Arbitration
 - (a) Types of Actions Exempted from Civil Arbitration and Mediated Settlement Conferences. Cases exempted from participation in the three alternative dispute resolution programs are:
 - (1) cases seeking the issuance of an extraordinary writ
 - (2) cases appealing the revocation of a motor vehicle operator's license
 - (3) declaratory judgment actions
 - (4) cases appealing an administrative agency's decision
 - (b) Types of Actions Exempted from Civil Arbitration Program are:
 - (1) family law issues
 - (2) title to real estate
 - (3) wills and decedent's cases
 - (4) special proceedings
 - (c) The Trial Court Administrator is to provide written notice to all attorneys and unrepresented parties after filing of the last responsive pleading, informing them of the three mandatory alternative dispute resolution programs from which they are to select and the date by which their mutual selection must be received in the Trial Court Administrator's office by.

22.2 Failure of Parties to Designate a Selection of Alternative Dispute Resolution Programs

Should the parties fail to select an alternative option within twenty-one (21) days from the filing of the last responsive pleading, the parties are considered to affirmatively agree, and the court to

have approved, the case being placed in the Civil Arbitration Program regardless of the amount of monetary relief sought pursuant with Rule 1 (b) of the Supreme Court's "Rules for Court Ordered Arbitration in North Carolina."

Rule 23. Calendaring for Trial Actions Exempted from Civil Arbitration, Mediated Settlement Conferences or Private Arbitration/Mediation Programs.

Cases exempted or removed from participation in the three (3) alternative dispute resolution programs are to be scheduled by the Trial Court Administrator for trial after the case has reached five (5) months of age from filing. The Trial Court Administrator is to notify the attorneys or parties in writing of the trial weeks available during the immediate ninety (90) day period from which they may mutually select. Failure of the attorneys or parties to agree upon a listed trial week and notify the Trial Court Administrator's office within fourteen (14) days will result in the case being ordered to the default trial week listed on the notification letter.

Rule 24. Civil Arbitration Program.

24.1 Length of Hearings. Arbitration Hearings are limited to one hour unless the parties mutually agree that more time is necessary. A written request for enlargement of the time for a hearing must be filed with the Trial Court Administrator's office at or before the time of mutual selection of an arbitrator within twenty (20) days of notice placing case in Civil Arbitration Program. The request must state the expected length of the hearing and that the parties agree to pay the arbitrator's hourly fee exceeding the first hour. The arbitrator's fee shall be paid in equal portions by the parties. Payment shall be due upon completion of the hearing.

24.2 Sanctions for Failure to Pay Arbitrator's Fee. Failure of a party to make timely payment of his or her portion of the arbitrator's fee shall constitute contempt of court and may result in the imposition of any or all lawful sanctions by a Resident or Presiding Judge.

24.3 Failure of an Arbitrator to Comply with Supreme Court Arbitration Rules and Local Rules. The Senior Resident Superior Court Judge and the Trial Court Administrator reserve the right to withhold future appointments of any arbitrator who does not fully comply with the requirements of the "Rules for Court-Ordered Arbitration in North Carolina" or Rule 23 of these Local Rules.

24.4 Appeal of an Arbitration Award. The timely filing of a "Request for Trial De Novo" and payment of the filing fee by any one party will result in the entire case being appealed.

24.5 Scheduling of Trial for Arbitration Cases Appealed. Cases in which the arbitration award was appealed, the case is to be set for trial on the next trial calendar on or after ninety (90) days from the day the case was appealed. The trial may be scheduled on an earlier date with the mutual agreement of all parties.

Rule 25. Mediated Settlement Conferences.

25.1 Selection of Mediator.

- (a) Appointment of Mediator by the Court. The Trial Court Administrator will appoint the next mediator on the certified mediator list provided by the Dispute Resolution Commission.. The Senior Resident Superior Court Judge or the Trial Court Administrator retains the discretion to depart from the procedure for such circumstances as the appointment of a mediator to a case, or to withhold a mediator from appointment pursuant to Rule 6 (d) of the "Rules Implementing Mediated Settlement Conferences".
- (b) The Senior Resident Superior Court Judge or Trial Court Administrator may, in his discretion, appoint a retired or emergency judge or justice of the district, superior or appellate court as mediator, whether or not such judge has been certified as a mediator
- (c) Disqualification of a Mediator by Judge. If a Resident or Presiding Superior Court Judge orders a mediator disqualified, the moving party must provide a copy of the order to the Trial Court Administrator within two (2) days of the date of the order.
- (d) Self-disqualification of Mediator. A mediator may disqualify themselves upon written notice to the Senior Resident Superior Court Judge, Trial Court Administrator and the parties.

25.2 Reporting Full or Partial Settlement Agreement Before or During the Conference.

Upon reaching a full or partial settlement agreement before or during the conference, including any recess of the conference, the parties and others with settlement authority shall provide a copy of the executed written agreement to the mediator within five days of such settlement. The mediator shall attach a copy of the written agreement to the report of mediator and mail both to the Trial Court Administrator within seventy-two (72) hours. Failure to provide a copy of the written agreement to the mediator on a timely basis may result in sanctions as for failure to attend.

When a case has reached a full or partial settlement agreement, the attorneys of record or unrepresented party must notify the Trial Court Administrator within twenty-four (24) hours of the settlement agreement.

25.3 Reporting Settlement Agreement Requiring Subsequent Board Approval. If a proposed settlement agreement is reached which can be approved only by governmental board as contemplated by Rule 4. A (1) (iii) of the Supreme Court's "Rules Implementing Settlement Conferences", the mediator is to report the settlement without the necessity of obtaining the board approval. The attorneys of record must notify the Trial Court Administrator within twenty-four (24) hours of the settlement agreement.

25.4 Failure of a Mediator to Comply with Supreme Court Settlement Conference Rules and Local Rules. The Senior Resident Superior Court Judge and the Trial Court Administrator reserves the right to withhold future appointments of any mediator who does not fully comply

with the requirements of the "Rules Implementing Mediated Settlement Conferences" or Rule 27 of these Local Rules.

25.5 Compensation of Mediator.

- (a) Payment without Conference or in Recess. If no conference is held or a conference is recessed without resuming, compensation to an appointed mediator shall be submitted with the written full or partial settlement agreement.
- (b) Indigent Cases. If any party contends that he or she is indigent and cannot pay his or her portion of the mediator's fee, the party must file a motion to be relieved from payment of such fee on an approved "Petition and Order for relief from Obligation to Pay Mediator's Fee" form available in the office of the Trial Court Administrator prior to the initial settlement conference.
- (c) Sanctions for Failure to Pay Mediator's Fee. Failure of a party to make timely payment of his or her portion of the mediator's fee, or if a party contending indigent status fails to timely submit the Petition form, it shall constitute contempt of court and may result in the imposition of any or all lawful sanctions by a Resident or Presiding Judge.

25.6 Scheduling Unsettled Cases for Trial. Cases that did not fully settle during the mediated settlement conference process are to be scheduled for the next printed trial calendar which shall be no less than four (4) weeks from the date impasse was declared.

25.7 Communication with Court. All communications concerning mediated settlement conferences in this judicial district should be addressed to:

Trial Court Administrator
325 Marietta Street
Gastonia, NC 28052
Telephone Number (704) 852-3122
Fax Number (704) 852-3125

Rule 26. Private Mediation or Arbitration.

26.1 Selection. At any time prior to trial and if all parties agree, they may select to place the case before a private arbitrator or mediator, not part of the court's supervised arbitration or mediated settlement conference programs. The selection of a private arbitrator or mediator may be made at any time before the case is tried. All arrangements of details for obtaining the private service, such as the payment of the arbitrator or mediator, determination of the date, time and location, and other details are left to the sole responsibility of the parties.

26.2 Reporting Selection of Private Arbitrator or Mediator. When all parties to a case have decided to obtain the services of a private arbitrator or mediator, the attorneys must notify the Trial Court Administrator within twenty-four (24) hours of the decision.

Rule 27. Superior Court Settlement Conference Rules.

All parties having Superior Court Civil cases calendared for trial are required to attend a Judge-supervised Settlement Conference prior to trial.

27.1 Conference Format. Settlement conferences will be scheduled for one hour. Conferences exceeding one hour may be scheduled in the discretion of the Settlement Judge at the request of counsel for all parties. At the time of the conference, attorneys for all parties and either the party or a person with full authority to settle all pending claims must be present. For the purposes of this Rule, the "person with full authority to settle" shall not be the attorney. A party or person having full settlement authority who resides more than 100 miles by the usual highway route may appear at the conference, with the Settlement Judge's prior consent, through telephone communication. In all other cases, the physical presence of attorneys, the parties or persons with full settlement authority is presumptively required. Any request for an exemption from physical presence must be directed to the Settlement Judge prior to the conference. Exceptions will be granted for good cause. In cases where physical presence is excused, participation in the settlement conference by phone will be required.

27.2 Calendaring. Settlement conferences will be calendared for a time certain during the first week of the month court is in session. Six one-hour conferences will be scheduled each day, Monday through Thursday. Fridays will remain open, to the extent possible, for use by the Settlement Judge for extended settlement conferences, continuances, add-ons, carry-overs or other settlement conference matters, in the Settlement Judge's discretion.

27.3 Scheduling Settlement Conferences. Requests for a specific date and time for the settlement conference must be made to the Trial Court Administrator prior to the publishing of the Trial Calendar, with the consent of all parties. Such requests are encouraged to preclude conflicts. The date and time of the settlement conference will be published with the Trial Calendar for the case. Attorneys with more than one case appearing on the Trial Calendar will have, as much as possible, settlement conference settings scheduled consecutively. Parties are encouraged to settle cases prior to the settlement conference, and promptly notify the Superior Court Judge's Secretary.

27.4 Settlement Conference Continuances. All requests for a continuance must be made in accordance with Local Rule 5, Continuances. Continuances will be discouraged. If continued, the settlement conference in most instances will be rescheduled to another date and time during the week the settlement conference is originally scheduled in the discretion of the Settlement Judge.

27.5 Trial Continuances. There will no longer be a call of the Superior Court Final Trial Calendar on the Wednesday preceding the first day of the session on which the calendar is set for trial. All requests for trial continuances must be made pursuant with Local Rule 5, Continuances.

27.6 Early Setting. Upon the request of all parties, a settlement conference may be scheduled for an early setting prior to the settlement week before the case is to be tried. Requests for an early setting should be made to the Trial Court Administrator. Early settings shall be scheduled for a date and time mutually acceptable to the parties. In the discretion of the

Settlement Judge, early settings may be made upon the request of fewer than all parties. Nothing in these rules shall be deemed to prevent more than one settlement conference, at the request of the parties or in the discretion of the Settlement Judge.

27.7 Conference Procedure. The form and manner of conducting the settlement conference shall be in the discretion of the Settlement Judge. The Settlement Judge may not impose a settlement on the parties, but will instead seek to assist the parties to reach a resolution of all claims. Settlement conference proceedings will remain confidential, and in the event a settlement is not achieved, will not be communicated to the Trial Court Judge. There will be no stenographic or other record made of the settlement conference. Settlement conferences will be conducted in private, and persons other than counsel, the parties or persons with full settlement authority may attend the settlement conference only with the consent of all parties and the Settlement Judge.

27.8 Trials. Cases not disposed of through settlement conferences will be called for trial in the order they appear on the Final Trial Calendar. The Settlement Judge will not preside at the trial of any case for which s/he acted as Settlement Judge. After 2:00 p.m. on the Friday preceding the session at which cases are calendared for trial, the Trial Court Administrator will make available a calendar with the current status of all cases appearing on the Final Trial Calendar. At trial, the Trial Judge will presume that all cases are ready for trial, and will not initiate any further settlement discussion. Cases calendared for trial and not disposed of will be carried over to the next available trial date pursuant to Local Rule 15, Cases Not Reached, without another settlement conference being calendared absent a request for another conference by all parties.

27.9 Documentation. At the conclusion of the settlement conference, counsel and the parties, or the person with full settlement authority, will confirm in writing the result of the settlement conference in a form approved by the Settlement Judge. All settlement documents prepared as a result of the settlement conference must be signed by all parties or persons with full settlement authority, and counsel, with an original distributed to each party. In the event a case does not settle, an acknowledgment shall be executed and state at a minimum that the parties in good faith attempted to resolve their dispute, but were unable to do so. In the event of a partial settlement, the parties with unresolved issues will proceed to trial, and the Settlement Judge will note in the court file for the Trial Court Judge those issues remaining to be tried.

27.10 Sanctions. Any party failing to appear or refusing to participate in the settlement conference in a good faith and meaningful manner shall be subject to monetary sanctions, in the discretion of the Settlement Judge in an amount not to exceed \$250 in the aggregate and as provided in N.C.R.CivP. 37(b)(2)(A) and N.C.Gen.Stat. § 6-21.5.

Rule 28. Effective Date of These Rules.

These Local Rules and Plan for the calendaring of civil cases shall be effective on July 1, 1998.