

LOCAL CIVIL RULES FOR DISTRICT COURT TENTH JUDICIAL DISTRICT

GENERAL RULES

- 1.1 The purpose of these rules is to provide for the just, orderly, and prompt consideration, determination and disposition of civil matters to be heard in Wake County District Court. They shall at all times be construed and enforced to avoid technical delay. These rules are promulgated pursuant to Rule 2 of the General Rules of Practice and G.S. §1A-1, Rule 40.
- 1.2 These rules are not complete in every detail and will not cover all situations. If the rules do not cover a specific situation, the Trial Court Administrator is authorized to act, subject to consultation with the Chief District Court Judge or the Judge Presiding.
- 1.3 The Trial Court Administrator will maintain a supply of printed rules, calendar request forms and motion for continuance forms to be furnished to attorneys and unrepresented litigants upon request.
- 1.4 These rules may be cited as, "Tenth District Local Rule_____."
- 1.5 These rules shall apply to general civil cases as distinguished between domestic civil.

CALENDAR RULES

- 2.1 The calendar for the disposition of civil cases in Wake County District Court shall be set by the Trial Court Administrator in accordance with these rules.
- 2.2 A one day rule will apply to all cases set in trial.
- 2.3 There shall be a calendar call by the Presiding Judge each day of the week. Cases will normally be taken in order they appear on the final calendar.
- 2.4 Only the Trial Court Administrator or the Judge before whom a matter is scheduled may continue cases.
- 2.5 Jury trials will be set on Monday and Tuesday; non-jury trials and small claims appeals on Wednesday and Thursday; and motions on Friday. The Trial Court Administrator is authorized to also set motions on Thursday afternoons when needed.
- 2.6 A motion filed after the final calendar is published may be heard at the call of the case for trial. Motions filed after the final calendar is set will not be grounds for a continuance.
- 2.7 All calendars will be prepared by the Trial Court Administrator and posted on the NC Courts website no later than four weeks prior to the first day of court. Unrepresented parties will be notified in writing by the Trial Court Administrator. Attorneys are required

to subscribe at www.nccourts.org to receive civil calendars. Printed calendars will not be mailed to attorneys or their clients.

- 2.8 All matters requiring judicial action or judicial approval, whether contested or not, shall be submitted to the Trial Court Administrator for scheduling and for assignment to a presiding judge. Attorneys and litigants are not authorized under these rules to submit matters to a judge for ruling or approval without first filing such with the Trial Court Administrator for assignment. No judge has authority over any civil case which is not on that judge's calendar or has not otherwise been assigned to that judge for hearing or trial by the Trial Court Administrator, by the Chief District Court Judge, or by the Chief Justice under Rule 2.1 of the General Rules of Practice.
- 2.9 All requests for judicial review of settlements requiring judicial approval, including minor settlements, will be submitted to the Trial Court Administrator. Such matters will be given priority and will be set for hearing at the next available non-jury session of court. The Trial Court Administrator, the Chief District Court Judge, or the Presiding Judge shall have the authority and discretion to set such matters for hearing at other times in cases of hardship or exigent circumstances.
- 2.10 All motions for Temporary Restraining Orders, for expedited hearings on motions for injunctive relief, and for other similar *ex parte* requests shall be presented to the Trial Court Administrator for scheduling and assignment to a presiding judge. The Trial Court Administrator will ordinarily set such matters for hearing on Friday before the judge presiding over the civil session. The Trial Court Administrator shall have the authority and discretion to set such matters at other times in emergency or exigent circumstances.
- 2.11 All litigants seeking a temporary restraining order or other relief permitted *ex parte* shall notify opposing counsel, if any, representing the party sought to be enjoined that such judicial action is being requested and shall so certify to the Trial Court Administrator that notice has been given at the time their request for scheduling and assignment is made. Upon the scheduling an assignment of the motion by the Trial Court Administrator, counsel shall notify opposing counsel in writing of the time and place of hearing. Notice by fax with certificate of service will satisfy this requirement.

SETTING MOTIONS AND OTHER MATTERS (PRETRIAL)

- 3.1 The Chief District Court Judge shall designate court sessions and assign judges for those sessions.
- 3.2 Motions will ordinarily be set on Fridays. The Trial Court Administrator may write in non-jury matters to be considered on jury and non-jury days.
- 3.3 Upon filing of any motion, the Trial Court Administrator will calendar that motion for hearing on the next available Friday. Other uncontested motions or matters consented to by the parties will be presented to the Trial Court Administrator for assignment to a judge for judicial action, without any requirement that such be calendared.
- 3.4 Upon the filing of any motion or request for judicial approval of a minor settlement, the Trial Court Administrator will calendar that matter for hearing on the next available calendar. To the extent possible, minor settlements shall have priority in scheduling.

- 3.5 All motions must first be filed with the Clerk of Superior Court, before the Trial Court Administrator will consider any request to calendar the motion for hearing. Any party desiring to have a motion or other matter set for hearing shall file with the Trial Court Administrator a completed request on a form supplied by the Trial Court Administrator. A calendar request should not be filed with the clerk. A non-moving party may request that an opposing party's motion be set for hearing by filing such calendar request with the Trial Court Administrator. No calendar request can be made until after a motion has actually been filed.
- 3.6 The calendar request for motions and judicial approval of minor settlements shall be filed with the Trial Court Administrator and mailed to all opposing counsel at least six weeks before the beginning of the requested session. The calendar as provided in Local Rule 2.7, designating a motion to be heard constitutes notice of hearing on the motion and further notice is not required. In exigent circumstances, the Trial Court Administrator may set a motion for hearing at anytime, so long as notice requirements of G.S. §1A-1, Rule (6) (d) are satisfied or all parties consent.
- 3.7 A record of cases that have been calendared for motion hearings but which were not heard shall be maintained by the Trial Court Administrator for setting future calendars. Such record will contain a statement of the reason the matter was not heard or resolved.
- 3.8 Cases may be added to the final calendar after it is published only by the Judge Presiding or the Trial Court Administrator.
- 3.9 All uncontested motions shall be submitted to the Trial Court Administrator for referral to a presiding judge for review and decision, without the necessity of formal calendaring. A party filing any one or more of the following motions must make a good faith effort to determine whether or not the motion will be opposed: (a) motion for extension of time to file answer or otherwise plead; (b) motion to amend a pleading or to add a party; (c) motion to withdraw as counsel; and (d) motion for extension of time for discovery under Local Rule 8.4. If the motion is uncontested the procedures set forth in this section shall apply. Counsel or unrepresented litigant filing the motion shall include with the filing a proposed order which shall recite that the motion is consented to or otherwise unopposed. Signatures on the proposed order of opposing counsel or unrepresented litigant to verify consent are not required.
- 3.10 Motions to withdraw as counsel must include a certificate of service upon the client from whom representation is being withdrawn and to opposing counsel or unrepresented litigant. The motion must set forth the name and address of substitute counsel, if known, and the current address of the party from whom representation is being withdrawn. No judicial action will be taken on a motion to withdraw as counsel that does not contain this information.
- 3.11 Attorneys and unrepresented parties shall serve briefs or memorandums at least two days prior to the hearing on any motion seeking a final determination of the rights of any party as to any claim or defense, and shall serve affidavits in opposition to motions for summary judgment at least two days before the motion hearing in accordance with G.S. § 1A-1, Rule 5, Rule 6 and Rule 56. However, this rule does not preclude an attorney or unrepresented litigant from providing to the court copies of cases or statutes relied upon at a hearing.

- 3.12 In cases wherein a motion has been heard and taken under advisement without a ruling by a presiding judge; and, wherein a period in excess of 90 days has elapsed from the date of that hearing without a judicial decision; and, wherein the Trial Court Administrator has notified that presiding judge in writing that the delay is prejudicing the rights of the parties to a prompt and fair resolution, and has requested a judicial decision but has been unable to obtain one; then, the Chief District Court Judge or his designee, may thereafter enter an appropriate order finding that the presiding judge has by his or her conduct relinquished jurisdiction over the motion and he or she may instruct the Trial Court Administrator to re-calendar the same motion before another judge to be heard *de novo*.
- 3.13 In cases wherein a motion has been heard and taken under advisement without a ruling by a presiding judge who has failed to comply with a written request from the Trial Court Administrator for a judicial decision under Local Rule 3.12, and where more than 90 days has elapsed from the date of that hearing and the case has been placed on a Final Trial Calendar and has been called for trial, then the judge who has failed to act is deemed under these rules to have relinquished jurisdiction over the unresolved motions and the trial judge is authorized to hear those motions *de novo* at the time the case is called for trial.
- 3.14 When a case on a published calendar is settled, all attorneys of record must notify the Trial Court Administrator within twenty-four hours of the settlement and advise who will prepare and present the Judgment, and when. Attorneys and unrepresented litigants are to take all steps necessary to close settled case files and have an affirmative duty to file all necessary documents and do so within the term of court for which the case is calendared for trial, or hearing, or by a date set by the Chief District Court Judge of the Tenth Judicial District or the Judge before whom the case is scheduled for trial or hearing.
- 3.15 When an attorney is notified to appear for a pretrial conference, motion hearing, or 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 case is scheduled and has given prior notice to his/her opponent, an attorney's absence should not be grounds for a continuance.

CONTINUANCES

- 4.1 Any request for a continuance of a case set for trial must be in writing and contain the following information:
- (a) Caption and file number of the case.
 - (b) Session at which the case is set.
 - (c) The reason for the request for continuance (position of the case on the calendar will ordinarily not be considered a valid reason for continuance). When an engagement in another court is the reason for continuance, the request must state the case number, the court in which the other case is pending, and the date when

- (d) The number of times the case has previously been continued; and
 - (e) A certification that all opposing counsel has been sent a copy of the request.
- 4.2 Opposing counsel or unrepresented litigant must be notified of the request for continuance prior to the delivery of the request to the Trial Court Administrator. Should counsel or unrepresented litigant fail to comply with the provisions of this Rule, the request for a continuance is deemed denied without a hearing.
- 4.3 Any case continued by these rules shall be continued to a date designated by the Trial Court Administrator or the Presiding Judge. The Trial Court Administrator is authorized to designate the next available appropriate trial date for a case continued from the trial calendar. All orders of continuance from a trial calendar submitted to the Court for signature shall include a provision that declares that the case is continued until the new date is set by the Trial Court Administrator or the Presiding Judge. The Trial Court Administrator shall designate on the order of continuance the new trial date. Cases on a trial calendar which are not reached will also be continued to a new trial date by the Trial Court Administrator. In setting new court dates, the Trial Court Administrator may confer with counsel for all parties or unrepresented litigants as appropriate to avoid scheduling conflicts.

PRIORITY CASES

- 5.1 Requests for a peremptory setting for cases involving person who must travel long distances, or numerous expert witnesses, or other extraordinary reasons for such a request must be made to the Chief District Court Judge or to the Trial Court Administrator. A peremptory setting shall be granted only for good and compelling reasons. The Chief District Court Judge or designee may set a case peremptorily on his/her own motion. No more than two peremptory cases will be set for trial on any day.

PRE-TRIAL CONFERENCES

- 6.1 There shall be a pre-trial/settlement conference in every jury case and in those more complicated non-jury cases where the Judge orders the same on the Judge's own motion or where a party or counsel for a party makes a written request for such a conference. The pre-trial conference shall be conducted in accordance with the General Rules of Practice for the Superior and District Courts, particularly Rule 7. Such written request shall be filed with the Trial Court Administrator at least fifteen days prior to the trial date and the conference will be scheduled to occur the week before the trial date. If no request is made by any party or counsel, no pre-trial/settlement conference will occur.
- 6.2 At the time of the pre-trial conference, counsel for all parties and unrepresented litigants shall enter into a frank discussion concerning settlement possibilities. Clients should either be consulted in advance of the conference concerning settlement negotiations, or be available for consultation at the time of the conference.

- 6.3 At the time of, or immediately following, the conference, it shall be the duty of counsel for the plaintiff to prepare the final pre-trial order to be signed by all counsel. The pre-trial order shall be in substance as shown on the sample form set out in the General Rules of Practice for the Superior and District Courts. The exhibits that the parties plan to offer at trial shall be numbered in sequence.
- 6.4 No later than noon on Friday prior to the trial date, all counsel shall be prepared to present the signed pre-trial order to the Judge before whom the case is scheduled for trial for approval, signature and filing. If no pre-trial/settlement conference has occurred, the Presiding Judge will conduct such conference immediately prior to the call of the case for trial.

STATUS REVIEW CALENDARS

- 7.1 The Trial Court Administrator shall confer with the Chief District Court Judge to consider the need for a status review calendar.
- 7.2 Cases shall be placed on a status review calendar if the Trial Court Administrator or the Chief Court Judge determines that such cases are a proper subject for inquiry concerning their status.

DISCOVERY

- 8.1 Attorneys serving interrogatories, requests for production of documents, or requests for admissions must leave sufficient space after each interrogatory or request for the answer or response to be written, together with any reasonable explanatory material. The interrogatories, requests for production of documents, or requests for admission must be served in duplicate upon opposing counsel.
- 8.2 Answering counsel, in lieu of recopying all interrogatories or requests, must answer or object in the space provided and return the original with the answers to opposing counsel, retaining the duplicate for his/her files. If insufficient space is provided for the answer or objection, it may be stated upon a separate sheet of paper and inserted immediately following the pages upon which the interrogatory or request appears.
- 8.3 Failure to comply with Local Rule 8.1 and 8.2 may result in the Court's sustaining objection to the interrogatories, requests for production of documents, or requests for admissions.
- 8.4 Discovery must be completed within one hundred and twenty (120) days after the last required pleading is filed and not inconsistent with Rule 26(d) of the Rules of Civil Procedure. If additional time is needed, it may be granted only by the Chief District Court Judge or designee. The motion for additional time to complete discovery must be served upon opposing counsel or unrepresented litigant at least five days before being presented to the Chief District Court Judge or designee and the moving party must comply with Local Rule 3.9 to determine if the motion is opposed.

BANKRUPTCY CASES

- 9.1 Any request to continue, hold, or in any other way delay disposition of a case due to bankruptcy of one of the parties, must be accompanied by a copy of the stay of proceeding order from the United States Bankruptcy Court having jurisdiction.
- 9.2 The Trial Court Administrator shall maintain a suspense file for such cases and periodically provide the Chief District Court Judge with a listing of such cases for the purpose of judicial inquiry.

ARBITRATION

- 10.1 All eligible civil actions pending in the 10th Judicial District shall be ordered to arbitration unless there is a written order by a judge waiving such arbitration requirements.

PRODUCTION OF MEDICAL RECORDS IN LIEU OF APPEARANCE

- 11.1 The Trial Court Administrator shall be the designee to accept by registered mail or personal delivery certified copies of medical records pursuant to G.S. §1A-1, Rule 45 (c).

EXHIBITS

- 12.1 Exhibits shall be premarked with appropriate stickers obtained from the Clerk's Office or elsewhere with the sequential numbers as listed in the pre-trial order.
- 12.2 When an exhibit is presented to a witness or offered into evidence it need not be handed to opposing counsel. However, if opposing counsel contends that a copy has not been provided or the copy has been lost or misplaced or counsel has not been given an opportunity to inspect the exhibit; that may be brought to the Court's attention.
- 12.3 A list of all exhibits with the sequential numbers as listed in the pre-trial order shall be provided to the courtroom clerk at the beginning of the trial.
- 12.4 Counsel is encouraged to provide a sufficient number of copies of exhibits for use by the jury.

SANCTIONS

- 13.1 Should counsel or an unrepresented litigant fail to comply in good faith with any provision of these Local Rules or the General Rules for Practice of the Superior and District Courts, the Court may, in its discretion, impose appropriate sanctions. An order entered in substantial violation of these rules may be modified or vacated by the Chief District Court Judge.

FILING BY TELFACSMILE TRANSMISSION (FAX)

- 14.1 Any motion, calendar request, notice, continuance request, peremptory setting request, or discovery extension may be made by facsimile to FAX No. (919) 792-4951.
- 14.2 Memorandums of Law and correspondence may be sent by FAX to the Trial Court Administrator to be delivered to the Judge hearing or considering a matter provided the Brief or correspondence does not exceed 10 pages.
- 14.3 Filing of pleadings and other court papers with the Clerk of Superior Court by facsimile are not permitted on FAX No. (919)792-4951 but must be made pursuant to G.S. §1A-1, Rule 5, Rules of Civil Procedure.
- 14.4 Attorneys may use the FAX machine in the Trial Court Administrator's office upon request and approval by that office but must pay appropriate costs for any long distance transmission by billing to their own office number or credit card.
- 14.5 All users of the FAX machine must complete a cover sheet setting forth the name of the sender, name of receiver with FAX number, and the date and time sent.

VACATION POLICY FOR ATTORNEYS

- 15.1 The following policy for attorneys shall apply in the Civil District Court of the 10th Judicial District. This policy is adopted in recognition of the need for time away from the demands of professional responsibilities to improve the overall professional performance of the bar as well as the quality of life of members of the profession and their families.
- 15.2 Attorneys may designate three weeks each calendar year as vacation periods during which they shall not be required to appear before the District Court of the 10th Judicial District when the procedure below is followed.
- 15.3 Each attorney practicing in the 10th Judicial District may designate such times, either consecutively or at intervals, 90 days or more in advance of such vacation periods. However, such designation of vacation times does not apply if a trial or other matter has already been set by a Judge or Trial Court Administrator on a final calendar.
- 15.4 Attorneys may designate vacation time by filing in the office of the Clerk of Superior Court of Wake County a letter designating such weeks. A copy of the letter shall be filed with the District Attorney's office and with the Trial Court Administrator office with a copy retained by the attorney marked filed which may be provided to judges and opposing counsel to reserve the weeks designated as vacation.
- 15.5 The policies and procedures described herein are not exclusive. In extraordinary circumstance the time limitation for notifications of designated weeks may be waived by the Court when attorneys have been faced with particular or unusual situations. Furthermore, attorneys shall be able to make other requests to be excused from appearing before the Court for personal or professional reasons.

These rules shall become effective October 26th, 2009. They have been promulgated and approved by the undersigned.

This the 26th day of October, 2009.

Robert B. Rader
Chief District Court Judge

Sallie B. Kearns, Trial Court Administrator

**NORTH CAROLINA
COUNTY OF WAKE**

**IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION**

ADMINISTRATIVE ORDER

In the Local Civil Rules for District Court, Tenth Judicial District, effective October 26, 2009, there are numerous references to the "Chief District Court Judge". Where these words appear, it shall be understood that they include the wording "...or his/her designee".

As of the effective date of this order the undersigned Chief District Court Judge designates Judge Jane P. Gray to act in his stead in all matters addressed by these rules.

Entered this 26th day of October, 2009

Robert B. Rader
CHIEF DISTRICT COURT JUDGE