

19-B JUDICIAL DISTRICT - RANDOLPH AND MONTGOMERY COUNTIES

COURT RULES AND CASE MANAGEMENT PLAN

(Revised August 22, 2008)

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 Court, the following administrative and procedural rules shall constitute the Case Management Plan for the calendaring of civil cases and for the resolution of motions to continue civil and criminal cases in the Superior Court of 19-B Judicial District of the State of North Carolina. The purpose of these rules is to provide for the orderly, just and prompt disposition of matters to be heard in the Superior Court. They shall be at all times construed and enforced in such a manner as to reduce delay and insure fairness. These rules are in addition to, not in lieu of, the General Rules of Practice for the Superior Court. These rules shall become effective September 1, 2008.

PART I - CIVIL RULES

LOCAL RULE I.1 - CIVIL CASE TRACKING SYSTEM.

The Trial Court Coordinator, under the supervision of the Senior Resident Superior Court Judge, shall keep a case tracking system.

LOCAL RULE I.2 – MEDIATION & INITIAL TRIAL SETTING.

Upon the filing of responsive pleadings, the Trial Court Coordinator for the Senior Resident Superior Court Judge will place the matter into Mediation and set a Trial Date. When the parties do not select a mediator within 21 days, the general procedure for judicial appointment shall be to appoint the next certified mediator on the list who currently resides or maintains an office in this judicial district or a contiguous judicial district or who certifies in writing annually to the Senior Resident Judge that he or she wishes to mediate in this judicial district, is familiar with Superior Court Mediation Rules, and will comply with them and the Supreme Court Rules. The Senior Resident Judge shall retain discretion to depart from the general procedure in particular circumstances such as the appointment of one mediator to multiple related cases, appointment of a newly certified mediator, or to withhold a mediator who has not followed Supreme Court Rules for appointment. The Senior Resident Judge, in his discretion, will add/delete mediators for appointment Judicial District 19B.

The initial trial date and a jury/non-jury designation will be shown on the Order for Mediated Settlement form and subsequent mediation forms. You must inform the Trial Court Coordinator immediately if your case is not designated correctly.

Requests for extension of mediation deadlines must be made by the mediator. This may be by telephone, email, fax or mailed request. Orders extending the mediation deadline will be mailed to the mediator and attorneys. This order will also reflect your TRIAL DATE and JURY status. Any discrepancy must be reported to the Trial Court Coordinator immediately.

LOCAL RULE I.3 - PUBLICATION OF FINAL CIVIL CALENDARS.

Four weeks prior to each session, a Final Calendar will be published by the Trial Court Coordinator. Requests for continuances from this calendar must be made to the Senior Resident Superior Court Judge on FORM AOC-CV-221 which is available on the Administrative Office of the Courts' website www.nccourts.org. A written consent by opposing counsel must be attached to this form. For your convenience, this consent may be by fax or email. Emails may be sent to Robin Jones, Trial Court Coordinator at robin.jones@nccourts.org. Superior Court Civil calendars will be posted and updated on www.nccourts.org. **All Attorneys must subscribe to receive Superior Civil calendars directly via email. Subscriptions are available through www.nccourts.org. Once my office posts any calendar on the web, subscribed attorneys will be notified via email that the calendar is available. Therefore, all attorneys are deemed to have notice of every calendar published on the website. After September 1, 2008, no calendars will be mailed to attorneys.**

It is the responsibility of counsel to review the internet prior to court for any updates.

Additional cases may be added to the calendar by:

1. Obtaining permission to add to a particular calendar by calling the Trial Court Coordinator for an available date; and
2. Completing the Calendar Request Form (attached) and forwarding to the Trial Court Coordinator by mail or fax.

LOCAL RULE I.4 - CALENDARING OF CIVIL MOTIONS.

Motions will be calendared on the Monday of each regular Non-Jury Administrative Session. In the discretion of the Senior Resident Superior Court Judge, motions may be calendared during jury terms that are not dispositive (*i.e.* Motions to Dismiss and Summary Judgment motions).

All motions must be accompanied by a Notice and Calendar Request specifying a date for hearing.

Motions may be added to an existing calendar by:

1. Obtaining permission to add to a particular calendar by calling the Trial Court Coordinator; and

2. Completing the Calendar Request Form and forwarding to the Trial Court Coordinator by mail or fax.

All requests for calendaring motions must be addressed to the Trial Court Coordinator in the office of the Senior Resident Superior Court Judge, using, a CALENDAR REQUEST, which is located on the internet at www.nccourts.org and which must be FULLY COMPLETED including type of motion and estimated time needed to hear said motion, must be served on the opposing party(ies), FILED with the Clerk's office and a copy given to the Trial Court Coordinator.

Motions will not be calendared unless the Trial Court Coordinator is mailed or faxed a copy of the Calendar Request. DO NOT mail or fax copies of the Motions.

CONFLICTS FROM OPPOSING COUNSEL MUST BE REPORTED TO THE SENIOR RESIDENT SUPERIOR COURT JUDGE'S OFFICE IMMEDIATELY UPON RECEIPT OF THE CALENDAR REQUEST AND NOTICE.

Motions will be heard and determined immediately after calendar call or as directed by the Presiding Judge.

LOCAL RULE I.5 - ADDING CIVIL CASES OR CIVIL MOTIONS TO PUBLISHED CALENDARS.

After the publication of a Final Calendar attorneys wishing to have a matter placed on the calendar for a particular session may request such an addition by calling the Trial Court Coordinator for the Senior Resident Superior Court Judge. If such request is approved, you must follow instructions for calendaring in Local Rule I-4 above.

DO NOT mail or fax copies of motions.

Only the Senior Resident Superior Court Judge or the Trial Court Coordinator can add cases or motions to a final calendar.

LOCAL RULE I.6 - MOTIONS FOR CONTINUANCE OF CIVIL CASES

Prior to the opening of court for the session in which the case is calendared, all applications for continuance shall be made to the Senior Resident Superior Court Judge, or his designee. **All applications for continuance shall be by written motion made on form AOC-CV-221, including a date to which counsel agree the case may be continued. This request should be accompanied by a fax or email from opposing counsel attached to the form.**

A copy of the completed form **AOC-CV-221** must be distributed to all counsel of record and/or unrepresented parties prior to the presentation of the motion to the Senior Resident Superior Court Judge. Distribution of the motion may be by US Mail, facsimile

transmission, hand delivery, or distribution by means of attorney distribution boxes maintained in the courthouse facility.

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.

Following the opening of court for the session in which the case is calendared, any application for continuance shall be made to the presiding judge.

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

- if the Senior Resident Superior Court Judge has already denied the request to continue;
- the age of the case;
- the status of the trial calendar for the week;
- the order in which the case appears on the trial calendar, including whether the case is peremptorily scheduled;
- 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;
- whether the reason for continuance is a short lived event which could resolve prior to the scheduled trial date;
- the length of the continuance requested, if applicable;
- the position of opposing counsel;
- whether the parties themselves consent to the continuance;
- present or future inconvenience or unavailability of witnesses/parties; and
- any other matter that promotes the ends of justice.

Reasons that shall not be considered valid bases for allowing a continuance motion include first time scheduling of the case for trial, potential conflicting scheduling of other trials in other courts and whether counsel of record has received payment.

When a continuance is granted, the appropriate judicial official shall refer the case to the Senior Resident Superior Court Judge or his designee, who will reschedule the trial of the case.

**LOCAL RULE I.7 - NOTICES OF SETTLEMENT OF CIVIL CASES AND
RESOLUTION OF MOTIONS.**

In the event that a motion is considered “complied with” or in any event “not to be heard,” and the movant wishes to have said motion removed from the calendar, a **WRITTEN NOTICE OF WITHDRAWAL OF MOTION** must be filed with the Clerk of Superior Court prior to the session.

When a case on any calendar has been settled, all attorneys of record shall notify the Trial Court Coordinator for the Senior Resident Superior Court Judge **within 24 hours** of the settlement and advise as to who will prepare the Judgment or other necessary papers. This judgment must be prepared and filed within 30 days of the date of settlement or the matter will be placed on the next civil "Motion Calendar" by the Trial Court Coordinator to be reviewed by the Presiding Judge.

LOCAL RULE I.8 - PRETRIAL CONFERENCES AND ORDERS IN CIVIL CASES.

There shall be a pre-trial conference in every civil case at which time a pre-trial order will be submitted to the Presiding Judge, unless counsel for all parties stipulate in writing to the contrary and the court approves the stipulation. Upon its own motion or upon the request of any party, the court may dispense with or limit the scope of the pre-trial conference or order.

LOCAL RULE I.9 - PRESENCE OF ATTORNEYS AT CIVIL CALENDAR CALL.

Attorneys must, consistent with ethical requirements, appear or have a partner, associate or another attorney familiar with the case appear for him at the call of the calendar at 10:00 a.m., on the first day of the session and thereafter as directed by the Presiding Judge. Unless an attorney has been excused in advance by the Presiding Judge and has given prior notice to his opponent, a case will not be continued due to the attorney's absence.

LOCAL RULE I.10 - NON-JURY CIVIL CASES.

Non-jury cases may be calendared for Monday in chronological order following the motion calendar but are subject to trial at any time during the session in the discretion of the Presiding Judge. Non-Jury cases may also be calendared for the first day of each regular Non-Jury Administrative Session.

LOCAL RULE I.11 - CIVIL JURY TRIALS

The jury will report at 1:20 p.m. on the first day of each jury session and jury trials will begin at 2:00 p.m. on that day, **unless otherwise ordered by the Presiding Judge or the Senior Resident Superior Court Judge.**

PART II - CRIMINAL RULES

NOTE: The elected District Attorney is vested by statute with the management of the criminal docket including the right to calendar cases. This rule simply establishes procedures for the filing and resolution of motions to continue cases which have been calendared by the District Attorney in the exercise of that authority.

LOCAL RULE II.1 MOTIONS FOR CONTINUANCE OF CRIMINAL CASES

Prior to the opening of court for the session in which the case is calendared, all applications for continuance shall be made to the Senior Resident Superior Court Judge, or his/her designee. Following the opening of court for the session in which the case is calendared, any application for continuance shall be made to the presiding judge of the court in which the case is calendared, and may be made orally in open court.

All applications for continuance shall be by written motion made on state form AOC-CR-410 made prior to opening of court.

A copy of the completed form AOC-CR-410 must be distributed to all counsel of record and/or unrepresented parties prior to the presentation of the motion to the appropriate judicial official. Distribution of the motion may be by US Mail, facsimile transmission, hand delivery, or distribution by means of attorney distribution boxes maintained in the courthouse facility.

If the motion is filed by defense counsel, the motion must be presented to the District Attorney prior to presentation to the appropriate judicial official.

The Senior Resident Superior Court Judge or his designee shall establish an appropriate method of obtaining information from all counsel concerning positions on the motion to continue.

If the District Attorney consents to the continuance and such consent is indicated by signature of the District Attorney on the continuance form, the continuance is allowed and the continuance form shall be filed in the court file. If no District Attorney's signature appears on the continuance form, the District Attorney's opposition to the motion is presumed.

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 the 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:

- the age of the case;
- the pre-trial detention status of the defendant;
- the status of the trial calendar for the week;
- the number of previous continuances;
- the number of times the case has been designated for trial and not reached;
- 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;
- whether the reason for continuance is a short lived event which could resolve prior to the scheduled trial date;
- the length of the continuance requested, if applicable;
- the position of opposing counsel;
- whether the motion has been considered by another judge (Senior Resident or designee) on the same grounds;
- whether the parties themselves consent to the continuance;
- present or future inconvenience or unavailability of witnesses/parties; and
- any other matter that promotes the ends of justice.

Reasons that shall not be considered valid bases for allowing a continuance motion include first time scheduling of the case for trial, potential conflicting scheduling of other trials in other courts and whether counsel of record has received payment.

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