

**26th JUDICIAL DISTRICT
SUPERIOR COURT DIVISION
CIVIL RULES**

(Revised March 01, 2009)

- Rule 1: General Rules
- Rule 2: Ready Cases
- Rule 3: Alternative Dispute Resolution
- Rule 4: Discovery Orders and Trial Calendars
- Rule 5: Time Standards
- Rule 6: Priority, Remanded, Peremptory and Exceptional/Complex Business Cases
- Rule 7: Condemnation Cases
- Rule 8: Calendar Call, Pretrial Conferences, Memoranda and Exhibits
- Rule 9: Continuances
- Rule 10: Motions
- Rule 11: Five Minute "Fire Cracker" Motions
- Rule 12: Clean-Up/Administrative Calendars
- Rule 13: Telephonic Motion Hearings
- Rule 14: Perfection of Service and Service by Publication
- Rule 15: Default Judgments
- Rule 16: Settlement of Cases
- Rule 17: Presentation of Orders and Judgments
- Rule 18: Presentation of Out-of-State Subpoenas
- Rule 19: Bankruptcy Cases
- Rule 20: Minor/Structured Settlements
- Rule 21: Notice of Calendaring to Attorneys
- Rule 22: Sanctions
- Rule 23: Preparation of Forms
- Rule 24: *Pro Hac Vice*
- Rule 25: Religious Holidays
- Rule 26: Submission of Secure Leave

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 pursuant to N.C.G.S. §1A-1, Rule 40, and Rule 2 of the General Rules of Practice for the Superior and District Courts.

1.2 These rules supersede all previous civil calendar rules for the 26th Judicial District, Superior Court Division, and go into effect April 1, 2008.

1.3 The rules and all amendments hereafter shall be filed with the Clerk of Superior Court for Mecklenburg County, published in the Mecklenburg Bar Handbook, www.meckbar.org, and published on the State website, www.nccourts.org.

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 or designee is authorized to act in his or her discretion, in consultation with the Senior Resident Superior Court Judge or presiding judge.

1.5 The calendar for the disposition of civil cases in the 26th Judicial District, Superior Court Division, shall be set and maintained by the Caseflow Management Division of the Trial Court Administrator's Office in accordance with these rules and under the supervision of the Senior Resident Superior Court Judge.

1.6 All pleadings filed with the Court shall indicate the name, Bar number, firm, address, telephone number, facsimile number, and email address of the signer.

Rule 2: Ready Cases

2.1 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 same.

2.2 A case shall be considered ready to set for trial when the Caseflow Management Division of the Trial Court Administrator's Office determines the following:

- (a) In other than condemnation actions, service has been perfected as to all parties, and the time period for filing Answer has expired with regard to all parties.
- (b) As to condemnation actions, the case is ready for trial under Local Rule 7.
- (c) The case or proceeding has been transferred by the Clerk of Superior Court.
- (d) The case is entitled to priority in hearing by statute.

(e) The case has been remanded for trial by the Appellate Division.

2.3 The Caseflow Management Administrator shall place those cases determined to be ready for trial on trial calendars pursuant to Local Rule 4.

2.4 Not later than 2:00 p.m. on the last business day preceding the session at which cases are calendared for trial, the Caseflow Management Administrator shall make available on the Court's website a calendar with the current status of all cases appearing on the final trial calendar. The website address is:

<http://www1.aoc.state.nc.us/www/calendars/Civil.jsp?county=MECKLENBURG>

2.5 Judge assignments for the next week's session will be made available on the afternoon of the last business day prior to the start of the session. The assignments are available by calling the Judicial Information Line at 704-686-0365 or by visiting the Court's website at

<http://www.nccourts.org/County/Mecklenburg/Calendars.asp>

Rule 3: Alternative Dispute Resolution

3.1 The 26th Judicial District, Superior Court Division, has adopted Rules for Alternative Dispute Resolution (ADR). The requirements of the ADR Rules run concurrently with these Civil Rules and are an integral part of the case-management plan for the District. Counsel shall be familiar with the ADR Rules and shall follow all requirements set forth therein. All forms, motions and orders or other issues or matters involving mediated settlement shall be directed to the attention of the ADR Coordinator in the Caseflow Management Division.

3.2 If a case or a claim asserted in a case is subject to binding arbitration, the party seeking to arbitrate shall promptly notify all other parties and the Court by Motion to Compel Arbitration or submission of a Consent Order.

When the Court grants a Motion to Compel Arbitration or the parties agree to arbitrate, an Order shall be entered. Consistent with Local Rule 5.1, the Order shall specify the period of time

- (a) within which the party prosecuting the claim subject to binding arbitration shall commence arbitration, and
- (b) within which an arbitrator or panel of arbitrators is expected to be appointed, and
- (c) when the arbitration is expected to be completed.

A copy of the signed and filed Order shall be delivered to the Caseflow Management Division within five business days of being entered.

The case shall be rescheduled for an administrative calendar following the date stated in the Order for completion of the arbitration. If necessary, the parties may apply to the Court for an extension of time to complete the arbitration.

Rule 4: Scheduling Orders and Trial Calendars

4.1 Once the Caseflow Management Administrator determines that a case is ready to be scheduled for trial under the guidelines set forth in Local Rule 2.2, he/she will generate a Scheduling Order (Form CCF-23) that shall establish deadlines for the identification of expert and/or material witnesses, completion of depositions, completion of discovery, the filing of dispositive motions, and a firm trial date. The Caseflow Management Administrator will provide a copy of the Order to all parties to the action or to their counsel of record.

4.2 Counsel may move to amend the Scheduling Order by submitting a motion and proposed order or by requesting a conference with the Caseflow Management Administrator within 30 calendar days from the date the Order is issued. Requests related to circumstances arising after the 30-day deadline shall also be presented to the Caseflow Management Administrator. As the designee of the Senior Resident Superior Court Judge and Trial Court Administrator, the Caseflow Management Administrator shall rule upon all Motions to Modify the Scheduling Order and shall make modifications as he/she deems appropriate. Appeals of the decision rendered by the Caseflow Management Administrator shall be directed to the Senior Resident Superior Court Judge. The parties may, by consent, extend or alter any of the deadlines set forth in the Scheduling Order except for the mediation deadline, the deadline for the filing and hearing of dispositive motions and the trial date. No Motions for Extension of Time to Complete Discovery shall be presented to the Clerk of Superior Court's Office that seek to extend the timeframe to 10 or fewer days before the trial.

4.3 Counsel may expedite the generation of the Scheduling Order and request a specific session of Court by filing a Request to Set (Form CCF-2) with the Caseflow Management Division. All requests must be received, however, prior to the issuance of the Order.

4.4 In the discretion of the Caseflow Management Administrator, a determination may be made that a Scheduling Order is not necessary for Local Rule 2.2 (c), (d) and (e) cases and that the action may proceed directly to the next available trial calendar. Requests to this effect shall be in writing and directed to the Caseflow Management Administrator's attention.

4.5 To better facilitate the scheduling of medical malpractice cases, the parties will be assigned a deadline for providing to the Caseflow Management Administrator any consent discovery order that can be developed. The parties are to verify the availability of preemptory settings with the Caseflow Management Administrator, prior to submission of any consent discovery order.

Upon the receipt of a consent order, the Caseflow Management Administrator shall review the terms and either return it for adjustment to comply with established timelines set forth in Local Rule 5 or forward it to the Senior Resident Superior Court Judge for signature.

If the parties are unable to develop a consent order by the deadline provided, a discovery conference will be scheduled before the Senior Resident superior Court Judge in accordance with N.C.G.S. §1A-1, Rule 26(f). The parties shall contact the Caseflow Management Administrator, prior to the expiration of the above deadline, in order to schedule the conference.

If the trial date is agreed upon, but the parties are unable to agree on other matters, the parties shall contact the Caseflow Management Administrator, prior to the expiration of the above deadline, in order to schedule the appropriate motion(s) to be heard during the regular motions session of court.

Any motion scheduled or heard during the regular motions session of court, shall in no way be used to alter or extend the trial date assigned to the case. The trial date must be received from the Caseflow Management Administrator and approved by the Senior Resident Superior Court Judge.

The signed and filed copy of the Discovery Order shall be delivered to the Caseflow Management Division within five days of being entered. Modifications of Discovery Orders prepared pursuant to Rule 26(f) shall also be submitted to the Senior Resident Superior Court Judge for determination. Once the Order has been signed and filed, a copy of the Order shall again be delivered to the Caseflow Management Division within five business days.

Discovery Orders prepared pursuant to Rule 26(f) may govern in place of the Scheduling Order provided for in Rule 4.1.

4.6 The Caseflow Management Administrator shall publish a trial calendar for each term of Court for which cases are scheduled. Trial calendars shall be published approximately 40 days in advance of the first day of each scheduled session.

4.7 Cases defined as peremptory in accordance with Local Rule 6 or cases having statutory priority shall appear at the top of each trial calendar. To the extent possible, the Caseflow Management Administrator shall set other cases so that the oldest-numbered cases from the calendars will appear as the first cases, after those designated as peremptory or given statutory priority. Cases that were previously calendared may also be given priority.

4.8 When an attorney is notified to appear before the Court, the attorney shall, consistent with ethical requirements, appear or have a partner, associate, or another attorney familiar with the case present.

4.9 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. All cases calendared shall be ready for trial at any time during the session.

4.10 To achieve a balanced docket, the Caseflow Management Administrator shall re-calendar cases not reached or continued by the Court to future trial sessions based upon calendar availability. It is the responsibility of counsel to contact the Caseflow Management Administrator to advise of any future conflicts no later than the Friday afternoon of the close of the trial session.

4.11 When both sides consent, counsel may have their case heard prior to the scheduled date by submitting a consent motion and proposed order to the Caseflow Management Administrator. The proposed order shall include the date of the agreed-upon trial session.

4.12 Counsel requesting use of the technology courtroom (Courtroom 6130) shall contact the Superior Court Judicial Assistant in order to determine availability and obtain a reservation. Once the reservation has been made, the requesting party shall notify the Caseflow Management Administrator of the approved request. The parties shall notify the Superior Court Judicial Assistant and the Caseflow Management Administrator immediately upon settlement or continuance of a case once the technology courtroom has been reserved.

Rule 5: Time Standards

5.1 Absent exigent circumstances, cases must be tried or disposed of within the following deadlines—90% within 12 months, 98% within 18 months, and 100% within 24 months from the initial filing.

Rule 6: Priority, Remanded, Peremptory, and Exceptional/Complex Business Cases

6.1 Counsel shall bring to the attention of the Caseflow Management Administrator cases entitled to priority settings by statute. Notice shall be in writing, with copies to all counsel of record, and the statutory authority for such setting shall be cited.

6.2 When a case is remanded for trial from the Appellate Division, appellant's counsel shall promptly notify the Caseflow Management Administrator, who shall assign the case for trial pursuant to Local Rule 4. Counsel may request a specific session or expedite the hearing date by filing Request to Set (Form CCF-2).

6.3 Requests for peremptory settings shall be delivered to the Caseflow Management Division within 30 days of the date the Scheduling Order is issued. Said requests shall be submitted in writing (Form CCF-3) to the Caseflow Management Administrator, specifically stating the reason for the request, with copies to all counsel of record. If the request is due to travel distance, the motion shall state the location from which the party/witness is traveling in order to attend the trial. Requests received after the 30-day deadline will be considered only for previously unknown or unforeseen reasons. In cases where the parties/attorneys require the use of the technology courtroom, the guidelines set forth in Local Rule 4.12 shall be used.

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

- (a) 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 reasonably close enough to Charlotte to 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;
- (b) The case involves numerous expert witnesses;
- (c) Severe adverse economic consequences will result from delay of the trial;
- (d) The case has been repeatedly scheduled for trial without being reached;
- (e) The case is more than two years of age;
- (f) Other extraordinary reasons requiring a prompt resolution of the case.

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

6.6 If a peremptory case is continued, a written request for a new peremptory setting shall be made to the Caseflow Management Administrator.

6.7 Requests to designate any case as Exceptional or as a Discretionary Complex Business Case under Rule 2.1 and Rule 2.2 of the General Rules of Practice shall be made no later than 30 days after the issuance of a Scheduling Order. Requests for 2.1 designation are generally presented as a consent motion to the Senior Resident Superior Court Judge, the attorneys having previously agreed upon and consulted with a Superior Court Judge who is willing to take the case. Additional information concerning The NC Business Court may be obtained via the website www.ncbusinesscourt.net.

6.8 If the motion to designate as an Exceptional or as a Discretionary Complex Business Case under Rule 2.1 and Rule 2.2 is granted, a copy of the signed designation shall be delivered to the Caseflow Management Administrator within five business days of the receipt of the order.

Rule 7: Condemnation Cases

7.1 Condemnation actions brought under Article 9 or Chapter 136 of the General Statutes shall be presumed ready for trial 100 days after Answer has been filed unless sooner noticed for trial or unless commissioners are appointed pursuant to N.C.G.S. §136-109 prior to that time. Counsel for property owners in such actions shall provide the Caseflow Management Division with a copy of the Notice of Request for Appointment of Commissioners on Form CCF-12, submitted to the Clerk of Superior Court, which shall take place no later than 30 calendar days from the receipt of the Scheduling Order. The parties are to notify the Caseflow Management Administrator if the appointment of commissioners has not taken place within 30 calendar days after the request has been made to the Clerk of Superior Court.

7.2 Condemnation actions brought under Chapter 40 of the General Statutes shall be presumed to be ready for trial upon transfer by the Clerk of Superior Court or upon Entry of Appeal from the Commissioner's report. The Clerk shall notify the Caseflow Management Administrator of any such transfer and forward to him/her a copy of the Appeal from the Commissioner's report.

Rule 8: Calendar Call, Pretrial Conferences, Memoranda & Exhibits

8.1 A call of the Superior Court jury trial calendar will be held in the designated court at 10:00 a.m. on the first day of the session. Cases normally will be called for trial or hearing in the order they appear on the final calendar; however, any case can be called by a presiding judge at any time during the trial week.

8.2 Unless otherwise agreed by all parties, counsel for all parties in a case appearing on a trial calendar shall file a Pretrial Memorandum with the Clerk of Superior Court no later than the Wednesday preceding the first day of the session on which the calendar is set for trial. The Pretrial Memorandum shall 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 shall 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 that can practicably be numbered shall be so numbered in accordance with the exhibit list. Copies of all exhibits that can practicably be photocopied shall be attached to the Memorandum. The opposing party shall 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.

8.3 Counsel shall provide the Courtroom Clerk a list of all exhibits with sequential numbers as listed in the Pretrial Memorandum at the beginning of the trial.

8.4 Counsel desiring that non-photographic exhibits be published to the jury shall provide the same number of copies as jurors unless excused from doing so by the presiding judge.

8.5 Counsel shall be responsible for notifying the Caseflow Management Administrator of any requests for Pretrial Motions to be added to the trial calendar to be heard by the presiding judge.

Rule 9: Continuances

9.1 Motions for Continuance shall be submitted in writing on Form CCF-5 to the Caseflow Management Division no later than noon on the Wednesday preceding the first day of the session in which the case is set for trial. The original and one copy, together with a self-addressed, postage-paid envelope, shall be submitted to the Caseflow Management Administrator. Faxed copies are not accepted and will not be signed. If the submitting party does not include a self-addressed, postage-paid envelope, the documents will be placed in the basket in the Caseflow Management Division's Office, Suite 3420, for pick-up. The requesting party shall provide copies to the opposing parties once the approved order has been returned.

Continuance requests shall include all of the reasons for which the continuance is being sought. Failure of the requesting party to include known pertinent information in the original motion is not grounds for reconsideration or appeal of the ruling made by the Caseflow Management Administrator.

Information regarding whether opposing counsel objects to the Motion or whether the case has been previously continued may be included in a Motion to Continue, but the lack of an objection by opposing counsel or the fact that the case has not been continued before shall not alone constitute good cause for the continuance of the trial.

9.2 Opposing counsel or unrepresented parties shall be notified of the request for a continuance prior to the submission of the continuance request to the Caseflow Management Division. Any objections shall be delivered to the Caseflow Management Division on Form CCF-6 within two days of the submission of the Motion to Continue. If an objection is not submitted to the Caseflow Management Division within the two days specified, it will be assumed that the opposing party does not object to the request.

9.3 The Caseflow Management Administrator will rule on Motions to Continue upon 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 Caseflow Management Administrator shall be submitted to the Caseflow Management Administrator for subsequent delivery to the Senior Resident Superior Court Judge. Opposing counsel or unrepresented parties shall be notified of the appeal prior to its delivery to the Caseflow Management Administrator.

Objections to the appeal shall also be delivered to the Caseflow Management Administrator for subsequent delivery to the Senior Resident Superior Court Judge within two days of being notified. Failure of counsel to follow the established process may result in automatic denial of the motion and/or the imposition of sanctions. In the event the Senior Resident Superior Court Judge is not assigned to the District or is otherwise unavailable, appeals shall be directed to his or her designee, who shall be the next most senior Resident Superior Court Judge holding court in Mecklenburg County, unless otherwise specified. The decision of the Senior Resident Superior Court Judge, or his or her designee, is final. The motion to continue may not be renewed at the calendar call for the same reason(s) presented to the Caseflow Management Administrator and the Senior Resident Superior Court Judge or his or her designee.

9.4 Absent exigent circumstances, continuances will not be granted except for a crucial cause that could not have been reasonably foreseen. The advance notice provided to counsel, coupled with the opportunity to modify all trial dates within 30 days of the receipt of such notice, is deemed as a reasonable and sufficient opportunity to accommodate the majority of conflicts. Personal conflicts such as vacations (see Rule 26 of the General Rules of Practice for the Superior and District Courts), family commitments, and continuing legal education opportunities do not rise to the level of a crucial cause that could not have been reasonably foreseen. Unavailability of a peremptory setting date is not grounds for a continuance of the trial date.

The Guidelines for Resolving Scheduling Conflicts as adopted by the State-Federal Judicial Council of North Carolina and Rule 3.1 of the General Rules of Practice for the Superior and District Courts will govern rulings regarding professional conflicts. Witness unavailability, incomplete medical treatment, personal emergencies, and outstanding discovery issues will be handled 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.

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

9.5 Continuance requests related to circumstances arising after the Wednesday deadline shall also be presented to the Caseflow Management Division. The requirements of Rule 9.2 again apply, but the Caseflow Management Administrator will attempt to make contact with opposing counsel if his or her position is not known and a decision is required prior to the end of the specified two-day period. Once all relevant information has been received and reviewed, the Caseflow Management Administrator will rule on the motion and notify moving counsel, who is then responsible for notifying opposing counsel. Continuance requests received after the Wednesday deadline for reasons known before that time will be summarily denied.

Appeals of the decision rendered by the Caseflow Management Administrator for continuances submitted after the Wednesday deadline shall be submitted to the Caseflow Management Administrator for subsequent delivery to the Senior Resident

Superior Court Judge. Opposing counsel or unrepresented parties shall be notified of the appeal prior to its delivery to the Caseflow Management Administrator. The Senior Resident Superior Court Judge, or his or her designee, will rule on the appeal. Unlike in the provisions of Rule 9.3, however, the parties may renew their motion at calendar call providing they also disclose to the presiding judge the prior rulings made on the motion.

Rule 10: Motions

10.1 Counsel desiring to calendar a Motion shall contact the Caseflow Management Division of the Trial Court Administrator's Office via telephone to receive a hearing date. The requesting party shall have the following information available prior to calling to schedule the motion:

- (a) the case/file number,
- (b) the type of motion to be heard,
- (c) the estimated length of time needed for the motion to be heard,
- (d) the name of the requesting attorney or party, and
- (e) dates and times the requesting party is available and, if at all possible, the availability of the other parties involved.

The date, time and location received from the Caseflow Management Division shall be cited in the Notice of Hearing, which will be served on counsel for the opposing party or parties by hand-delivery, email, facsimile, express delivery or mail no later than two business days after the date has been received. The original Notice of Hearing shall be filed with the Clerk of Superior Court and a copy provided to the Caseflow Management Division. Do not send calendar requests or copies of the Motion—send only the Notice of Hearing.

10.2 Absent exigent circumstances, all summary judgment and other dispositive motions shall be filed no later than 45 days before the trial date and heard not less than 1 week prior to the trial date

In the event exigent circumstances arise, parties shall submit a motion and order for exemption from Local Rule 10.2 to the Caseflow Management Administrator for subsequent delivery to the Senior Resident Superior Court Judge. Motions for Exemption from Local Rule 10.2 are generally disfavored.

10.3 Failure of counsel to timely file a motion and receive a hearing date will not delay any trial date assigned and may result in a motion's not being heard.

10.4 Once a motion has been noticed or the Final Calendar has been published, any party requesting removal of a motion from the calendar shall submit a withdrawal of the motion to the Clerk of Superior Court and provide a copy to the Caseflow Management Division. If the motion needs to be rescheduled rather than withdrawn, the Caseflow

Management Division shall be contacted to schedule a new date and time for the motion. An Amended Notice of Hearing shall then be filed with the Clerk of Superior Court and a copy sent to the Caseflow Management Division.

Not later than 2:00 p.m. on the last business day preceding the session at which cases are calendared for a motion hearing, the Caseflow Management Administrator shall make available on the Court's website a calendar with the current cases appearing on the final motions calendar. The website address is:

<http://www1.aoc.state.nc.us/www/calendars/Civil.jsp?county=MECKLENBURG>

10.5 With respect to Motions to Withdraw as Counsel, moving counsel is responsible for providing his or her client with appropriate notice of the hearing. Motions shall include the scheduled trial date or a statement that no date has been set. The Order allowing the withdrawal shall include the current mailing address for the client. If a Consent Order signed by a client is submitted, it should acknowledge an understanding by the client that allowance of the Motion to Withdraw will not necessarily result in any delay or continuance of trial or other settings. A copy of the signed and filed withdrawal order shall be delivered to the Caseflow Management Division within five business days after entry.

Motion to Substitute Counsel shall be presented as a joint motion with certificate of service on all parties. A copy of the signed and filed substitution Order shall be delivered to the Caseflow Management Division within five business days after entry.

10.6 Motions for Temporary Restraining Order or Preliminary Injunction shall be brought on for hearing, if possible, before the Motions Court Judge. The requesting party shall contact the Courtroom Clerk in 6310 to identify available time settings during the current session. If no judge is assigned to Motions Court, or if the assigned judge is unavailable, another available judge may hear a Motion for Temporary Restraining Order. Hearings on such Motions for Temporary Restraining Order or Preliminary Injunction will be conducted upon affidavits, and oral testimony will not be considered. The attorney is expect to make an effort to notice the other side prior to appearing before the judge.

10.7 All responses, briefs, memos, and supporting cases, or any other materials intended to be used in oral argument or submitted to the Court ("Hearing Materials") are to be delivered to the Superior Court Judges' Office, Suite 9600, to the attention of "Superior Court Judge Presiding, Courtroom 6310, [date of hearing], [time of hearing]" no later than two business days prior to the hearing on the Motion. Supplemental materials may not be submitted once the 48-hour deadline has passed.

The delivering party shall ring the buzzer to have the materials logged in with the Judicial Assistant for Superior Court Judges. Once the judge has been assigned to Courtroom 6310, the Hearing Materials will be given to the judge.

Acceptable forms of delivery include hand-delivery, express delivery, or mail. Facsimile or email may not be used without the permission of the presiding judge. Pursuant to N.C.G.S. §1A-1, Rule 5(d), briefs and memoranda provided to the Court may not be filed with the Clerk unless ordered by the Court.

All Hearing Materials delivered to the Court in accordance with this Rule shall be delivered to counsel for the opposing party or parties by hand-delivery, email, facsimile, express delivery or mail, such that opposing counsel receives the materials no later than two business days before the hearing date and no later than 48 hours prior to the hearing time. For example, if the Motion is scheduled to be heard at 10:00 a.m. on Monday morning, the Hearing Materials shall be delivered for receipt by opposing counsel no later than 10:00 a.m. on the previous Thursday. In no event shall Hearing Materials be delivered to the Judge prior to delivery to opposing counsel.

The purpose of this Rule is to allow the judge to review briefs and other materials in advance of the hearing to ensure that oral advocacy is meaningful and to allow counsel the same time to review the opposing party's materials in advance of the hearing. If any Hearing Materials to which this Rule applies are not served on opposing counsel within the time and in the manner specified in this Rule, the Court may continue the hearing for a reasonable period of time, proceed with the hearing without considering the untimely served materials, or take such other action as justice requires.

10.8 The Court favors concise briefs. Unless the following limits are modified by the Court for good cause shown, briefs in support of motions and responsive briefs shall be double-spaced and limited in length to a maximum of 7,500 words. Headings, footnotes, quotations and citations count toward these word-count limitations. The case caption on the first page of a brief, any table of contents, any table of authorities, and any required certificates of counsel or of a party do not count toward these word-count limitations. Reply briefs shall also be double-spaced and may not exceed 3,750 words. Sur-reply briefs are not permitted.

Requests for expansion of word limitations shall be made five business days prior to submission of the brief for which expansion of word limitations is sought. Requests for expansion of word limitations that are submitted simultaneously with the brief shall be denied.

Each brief shall include a certificate by the attorney or party that the brief complies with this Local Rule 10.8. The attorney or party may rely upon the word-count feature of the word-processing system used to prepare the brief.

Unless an order of the Court expressly provides otherwise, all parties who are jointly represented by any law firm shall join together in a single brief. Unless otherwise ordered by the Court, that single brief may not exceed the length limit stated above.

10.9 Counsel seeking attorneys' fees or other costs as part of a motion shall have an affidavit in support of same at the time of the hearing.

10.10 After the hearing, Counsel shall not send materials to the Judge, unless requested, before any ruling is made. In cases where a new and relevant appellate decision has been rendered, the opposing counsel and presiding Judge shall be provided a copy of the decision.

10.11 Counsel shall provide the Clerk with a self-addressed, postage-paid envelope to be attached to the file by the Clerk. This envelope will be used to mail a copy of any Order entered by the Judge out-of-court, out-of-term and/or out-of-session as soon as it is filed. Compliance with this rule will expedite your notice of the rulings.

10.12 In cases where a motion has been heard and taken under advisement without a ruling by the presiding Judge and 30 days have passed, Counsel shall bring this to the attention of the Caseflow Management Administrator, who shall make inquiry of the presiding Judge concerning whether the court file and paperwork have been inadvertently re-filed or as to whether another hearing shall be calendared.

10.13 Motions to reconsider shall be calendared only after obtaining approval from the Judge making the original ruling.

10.14 Motions for Order in Aid of Execution shall be submitted to a Superior Court Judge. Said motions and proposed orders shall conform to Forms CCF-74 and CCF-75. If an account is co-owned by a person other than the Judgment Debtor, then Forms CCF-76, CCF-77 and CCF-78 shall be used.

Rule 11: Five-Minute “Firecracker” Motions

11.1 When all parties consent, Motions may be calendared on the Five-Minute "Firecracker" Motions Calendar. The Firecracker Calendar is held every Tuesday at 2 p.m. in Courtroom 6310. Arguments are limited to no longer than five minutes for each side. All parties shall consent to the case being heard on the Firecracker Calendar. The parties do not have to consent to the Motion—only to it being heard on this calendar. When Entry of Default has been established, expressed consent is not required in order for the case to be heard on this calendar.

11.2 In order to be heard, moving counsel shall deliver a completed Five-Minute Motion Calendar Notice (Form CCF-10) to the Firecracker Calendar box located in the Caseflow Management Division (Suite 3420) by noon on the business day before the scheduled hearing. The notices received will be used by the Court Clerk as the calendar. Any party requesting relief shall furnish the Court with a suggested Order using Form CCF-11, together with sufficient copies, so that the Order may be entered and copies distributed at the time of the hearing. Parties shall deliver the original (without being file-stamped) and two copies of both forms to the Firecracker Calendar box referenced above.

11.3 The Court and Clerk will take no action on a motion when the parties have resolved the matter or otherwise fail to appear.

11.4 Minor Settlement Hearings and Transfer of Structured Settlements may not be heard on the Firecracker Calendar.

11.5 If a Motion to Withdraw as Counsel is heard on the Firecracker Calendar, the parties shall adhere to Local Rule 10.5.

Rule 12: Clean-up/Administrative Calendars

12.1 Parties are required to appear unless the matter has been removed by the Casflow Management Administrator following receipt of an appropriate disposition, or the party is excused by the presiding judge. Sanctions may be imposed by the Court for failure to comply.

12.2 Cases on Clean-up Calendar are scheduled for discontinuance, default, dismissal, filing of orders, or other appropriate disposition as the Court determines. Failure of Counsel to appear or to file defaults, delinquent orders, or judgments at the time the case is called shall result in the dismissal of the action or other sanction by the Court.

Cases for default are scheduled for 2:00 p.m. and shall be placed on the calendars for a date at least 120 days from the service date. Absent exigent circumstances, this date shall not be extended. Once the answer has been filed, the case will be removed from the calendar. If the answer is not filed in the allowed time, the party/attorney shall move for default as required by Local Rules 15.1, 15.2 and 15.6.

Cases for disposition are scheduled for 2:01 p.m. If the appropriate disposition was already entered but not properly recorded by the Court, a filed copy of the disposition shall be mailed or faxed to the Casflow Management Division. If the appropriate disposition has not yet been entered, necessary steps shall then be taken by the party/attorney to ensure the disposition is entered prior to the calendar call and as required by Local Rule 12.4.

Cases for judicial review are scheduled for 2:02 p.m. This setting includes cases for review of service and for status. If the case appears on the calendar for status, the parties/attorneys shall advise the Casflow Management Administrator of the requested status, in writing, delivered by mail or hand-delivery in accordance with Local Rule 12.4. If service has not been perfected as required by Local Rules 14.1, 14.2 and 14.3, the case shall be considered delinquent and shall be subject to dismissal.

12.3 Cases will not be removed from the calendar unless file-stamped copies of the appropriate documents are provided to the Casflow Management Administrator.

Case files may be reviewed in the Clerk of Superior Court's Office (Suite 3725) via either the file or the public terminals if the parties/attorneys have questions about which issues remain pending and require further disposition.

12.4 The appropriate documentation shall be submitted to the Caseflow Management Division no later than 15 calendar days prior to the scheduled session date. If the parties/attorneys are unable to timely provide the required or requested documents, a Motion and Order for Continuance shall be submitted to the Caseflow Management Administrator outlining the reasons the required documents are unable to be filed prior to the calendar date. The Continuance shall also be submitted no later than 15 calendar days prior to the scheduled session date. The 30-40 calendar days of advance notice given to the parties/attorneys is deemed as a reasonable and sufficient opportunity to resolve most outstanding issues. Continuances will not be given unless a crucial cause that could not have been reasonably foreseen exists. Not later than 2:00 p.m. on the last business day preceding the session at which cases are calendared for hearing, the Caseflow Management Administrator will make available on the Court's website a calendar with the current status of all cases appearing on the final Clean-up calendar. The website address is:

<http://www1.aoc.state.nc.us/www/calendars/Civil.jsp?county=MECKLENBURG>

Rule 13: Telephonic Motion Hearings

13.1 When all parties consent, Motions may be heard by telephone conference in lieu of a physical appearance under any of the following circumstances:

- (a) "Firecracker Motions" in which the length of argument will not exceed five minutes for each side;
- (b) Discovery Conferences referred by the Caseflow Management Administrator; or
- (c) With the permission of the Court, any other matter that the parties consent to be heard by telephone.

13.2 In order to be heard, moving counsel shall present a completed Consent Notice of Telephonic Proceeding (Form CCF-43) to the 6310 Courtroom Clerk by noon on the Wednesday preceding the beginning of the session in which the motion is scheduled to be heard. The notices received will be provided to the presiding Judge for approval. Counsel for either side will be contacted by the Courtroom Clerk and instructed when to initiate the call shortly prior to the date of the hearing. Counsel shall immediately notify the Courtroom Clerk once a conflict becomes known or if the matter is resolved prior to the scheduled time.

13.3 All materials that the parties wish to submit to the Court shall be delivered no less than five working days prior to the telephonic motion hearing. Materials submitted after the five-day period shall not, in the discretion of the Court, be considered. Also,

materials that the parties wish to submit during the course of the telephonic motion hearing shall not, in the discretion of the Court, be considered.

13.4 At the conclusion of the hearing, counsel for the prevailing side will be directed to prepare an Order. Counsel shall provide such Order to the Court prior to the end of the session.

Rule 14: Perfection of Service and Service by Publication

14.1 Once a Complaint is filed with the Clerk of Superior Court's Office, the parties/attorneys shall be allowed a period of five months to perfect service via means other than service by publication. If service has not been perfected after the initial five-month period has expired, the parties/attorneys shall be required to serve the Complaint via publication. Any violation of this rule will cause the case to be identified as delinquent and may be dismissed at the discretion of the Senior Resident Superior Court Judge or presiding Judge.

14.2 The service-by-publication process shall be initiated within 15 calendar days from the expiration of the initial five-month period for service. Any violation of this rule will cause the case to be identified as delinquent and may be dismissed at the discretion of the Senior Resident Superior Court Judge or presiding Judge.

14.3 Proof of Service and any required affidavits shall be filed within 15 calendar days after service has been perfected. Any violation of this rule will cause the case to be identified as delinquent and may be dismissed at the discretion of the Senior Resident Superior Court Judge or presiding Judge.

Rule 15: Default Judgments

15.1 Before a Motion for Default Judgment is entertained, an Entry of Default first shall have been obtained from the Clerk pursuant to N.C.G.S. §1A-1, Rule 55(a). The Motion for Entry of Default shall be submitted to the Clerk of Superior Court's Office (Suite 3725) as soon as possible after the expiration of the period of time to respond, but no later than 90 calendar days after the service date. Any violation of this rule will cause the case to be identified as delinquent and may be dismissed at the discretion of the Senior Resident Superior Court Judge.

15.2 All Default Judgments requested pursuant to N.C.G.S. §1A-1, Rule 55(b)(2)(b) shall be delivered by the moving party to the Clerk's Civil Department (Suite 3725) with a self-addressed, postage-paid envelope (SASE). All Default Judgments requested pursuant to N.C.G.S. §1A-1, Rule 55 shall be submitted no later than 30 calendar days after the Entry of Default has been approved. If a hearing is required, the Caseflow Management Division must be contacted, in accordance with Local Rule 10, to obtain a date for hearing no later than two business days after the motion for Default Judgment

has been submitted. Any violation of this rule will cause the case to be identified as delinquent and may be dismissed at the discretion of the Senior Resident Superior Court Judge or presiding Judge.

15.3 Each week, the designated Superior Court Judge in Courtroom 6310 shall review the Default Judgment Motions forwarded by the Clerks and rule on each as he/she deems appropriate. The designated Superior Court Judge in Courtroom 6310 shall cause all Default Judgment Motions and Judgments presented to be returned to the Clerk in Courtroom 6310 on the day on which they were signed. The Clerk in Courtroom 6310 shall immediately file the Judgment, if entered, and return the file to the Civil Department for further handling. If a Default Judgment is entered, copies with the Book and Page of docketing will be sent to the moving party in the SASE. If Default Judgment is not entered, the proposed Judgment, along with a cover sheet giving a reason as to why the Judge did not enter the Default Judgment, will be returned to the moving party in the SASE.

15.4 All Motions for Entry of Default Judgment and proposed Default Judgments that can be decided by the Clerk shall also be delivered to the Civil Department (Suite 3725) with a SASE. The same process as above will be followed regarding the return of copies of proposed Judgments to the moving party.

15.5 In all cases, if a SASE is not provided, copies of the documents can be picked up from the appropriate basket in the vestibule of Courtroom 6310 or the Civil Department (Suite 3725).

15.6 No attorney who knows that the opposing party in litigation is represented by an attorney, either by special employment in that litigation or generally on retainer, shall take a Default against the opposing party so represented until 10 calendar days after written notice has been given to the attorney representing the opposing party against whom Default is proposed. The 10-calendar-day notice shall be given immediately after the expiration period for filing the answer and not later than five business days after the expiration period. Any violation of this rule will cause the case to be identified as delinquent and subject to being dismissed at the discretion of the Senior Resident Superior Court Judge or presiding judge.

Rule 16: Settlement of Cases

16.1 When a case is settled prior to or after placement on a published trial calendar, all attorneys of record shall notify the Caseflow Management Division within 24 hours of settlement. Attorneys shall specify to the Caseflow Management Administrator as to who will prepare and present the Judgment, and when it will be presented. If the case is already on a published trial calendar, the attorneys shall also notify all counsel in the next case calendared.

Rule 17: Presentation of Orders and Judgments

17.1 Cases or Motions scheduled for trial or hearing, which are removed due to settlement, shall be considered delinquent if the Order, Judgment or Disposition is not presented to the Court for signature or filing within 10 working days after the case was announced as settled.

17.2 Cases or Motions scheduled on trial calendars and heard by a judge or jury shall be considered delinquent if the Order, Judgment or Disposition is not presented to the Court for signature or filing within 10 working days after the hearing, unless otherwise directed by the presiding Judge.

17.3 The Caseflow Management Administrator will identify those cases deemed to be delinquent, pursuant to Local Rule 17.1 or 17.2, and bring them to the attention of the Senior Resident Superior Court Judge or presiding Judge. Cases identified as being delinquent may be dismissed at the discretion of the Senior Resident Superior Court Judge or presiding Judge, or said Judge shall order such sanctions or impose penalties allowed by law as he or she deems appropriate.

17.4 No Order or Judgment shall be presented to a Judge until opposing counsel has had a *reasonable* opportunity (no less than 24 hours) to review it and has been advised of the date when the proposed Order/Judgment will be presented for signature. "Verification of Consultation with Opposing Counsel," Form CCF-7, shall accompany the Order/Judgment.

17.5 When preparing an Order/Judgment, the Judge's signature line and date shall not be on a separate page from some other portion of the Order/Judgment.

17.6 Orders and/or Judgments submitted for signature shall be delivered to the mail center outside the Superior and District Court Judges' Office (Suite 9600). Counsel or their designee shall log in the provided Superior Court logbook the date the Order/Judgment was delivered, case number, case caption, Judge's name, and name of the attorney presenting the Order before depositing the Order in the appropriate Judge's box for signature. No Order will be signed unless these procedures are followed.

17.7 Orders that have been signed will be logged out accordingly and made available for pickup in the appropriate basket outside the Judges' Office. The attorney will be notified. If the Order remains after 48 hours, it will be sent to the Civil Division of the Clerk's Office for filing. Filed copies will be mailed in a self-addressed, postage-paid envelope, if provided. Otherwise, copies will be available for pickup in the Civil Division of the Clerk of Superior Court's Office, Suite 3725.

Rule 18: Presentation of Out-of-State Subpoenas

18.1 This procedure for the issuance of non-North Carolina action subpoenas is made pursuant to N.C.G.S. §1A-1, Rule 28(d)(1) and Rule 45.

18.2 The party seeking the Subpoena shall deliver to the Office of the Clerk of Superior Court the following items:

- (a) A letter or memorandum requesting the issuance of a Subpoena and indicating how the requesting party wants it handled when completed.
- (b) A check made payable to Mecklenburg County Clerk of Court in the appropriate amount to open a Superior Court file.
- (c) A copy of the signed Notice of Deposition or Notice to Produce Documents and Certificate of Service [or other authority permitted by Rule 28(d)(1)] generated by the out-of-state party seeking the deposition or documents in North Carolina. Rule 45(b)(2) requires that a copy of the Subpoena served also shall be served upon each party in the manner prescribed by Rule 5(b). Rule 5(d) requires a Certificate of Service on all parties.
- (d) Both sides of North Carolina Subpoena form (AOC-G-100) with side one completed as follows: At the top of the form, designate "Mecklenburg" as the County, check the block labeled "Superior Court Division," and leave the space for "File No." blank. (The Clerk shall assign a number.) Complete the remainder of the Subpoena, leaving the date and signature lines blank for the Judge's signature. Provide three copies of each Subpoena.
- (e) If documents or testimony covered under HIPAA are being subpoenaed, prepare a separate Order addressing the HIPAA regulations and include it for the Judge's signature. Provide three copies of each Order (if submitted).
- (f) If the out-of-state attorney intends to make an appearance in North Carolina in connection with this matter (such as attending the deposition), submit every item specified in N.C.G.S. §84-4.1 and Local Rule 24 to admit the out-of-state attorney *pro hac vice*, including a check made payable to Mecklenburg County Clerk of Court in the appropriate amount. Submit two copies of all required documents.
- (g) A large self-addressed, postage-paid envelope for return of all filings.

These documents shall be delivered to the following address:

Clerk of Superior Court - Civil Division
832 East Fourth Street, Suite 3725
Charlotte NC 28202

18.3 The Clerk shall open a file and forward the entire package to the Office of Superior Court Judges where the documentation shall be reviewed. If it is in order, a

judge will sign the Subpoenas and, if required, the HIPAA Order and/or the Order Granting Admission *Pro Hac Vice*.

18.4 The documents may be picked up by the requesting party in Suite 9600. If a self-addressed, postage-paid envelope is provided, the documents shall be mailed to the requesting party or its designee. If the requesting party prefers to engage a private process-server, said party shall make appropriate arrangements with the process-server and indicate that in the cover letter.

18.5 If the requesting party wants the Sheriff's Department to serve the Subpoena(s), the party shall provide three copies of the Subpoena, include a self-addressed, postage-paid envelope, and attach a check payable to **Mecklenburg County Sheriff** in the amount of \$50 per person or entity to be served. If the requesting party desires the Judges' Office to forward the documents to the Sheriff's Department, that party shall provide an envelope large enough to hold the documents, addressed to **Sheriff's Department, Subpoena Desk, 715 E. Fourth Street, Charlotte NC 28202**. No postage is required on this envelope.

Allow a minimum of 10 days' notice from date of service. If the requesting party wishes to check on service after a reasonable time, the party may call the Subpoena Desk at 704-432-6973. The Sheriff shall send one copy of the Return(s) of Service to the court file and the other to the requesting party in the envelope provided by the requesting party.

18.6 After service is completed, a copy of the Subpoena shall be sent to the Clerk of Superior Court – Civil Division to be placed in the court file.

Rule 19: Bankruptcy Cases

19.1 Civil actions in which one of the parties has filed a petition for relief under the United States Bankruptcy Code will be disposed of in accordance with the following authority and procedure:

- (a) 11 U.S.C. 362;
- (b) 11 U.S.C. 1301;
- (c) *Whitehurst v. Virginia Dare Transportation Co.*,
19 N.C. App. 352 (1973); and
- (d) N.C.G.S. §1-23

19.2 Any request to discontinue a case as to one or more parties shall be submitted on and accompanied by a file-stamped copy of a Certificate of Bankruptcy Filing or Stay of Proceeding from the United States Bankruptcy Court having jurisdiction and shall apply only to the party filing a petition for relief under the United States Bankruptcy Code or to a co-debtor specifically referenced under a Chapter 13 proceeding. A copy

of the bankruptcy docket report available through PACER indicating that a party in the pending State action is subject to bankruptcy provisions should also be attached.

19.3 Notwithstanding any provisions of Local Rule 19 or any subdivisions thereof, the Clerk of Superior Court shall administratively close the case.

Rule 20: Minor/Structured Settlements

20.1 Minor/Structured Settlements are scheduled through the Caseflow Management Division of the Trial Court Administrator's Office, routinely in Motions Court (6310).

20.2 All settlements will be recorded, either by a Court Reporter or by the audio/video recorder in Courtroom 6310.

20.3 The Minor and his/her Guardian *ad Litem* shall be present at the minor settlement, absent prior excusal by the Court.

20.4 Defense counsel shall state on the record the total and complete amount of insurance coverage afforded to a Defendant in the situation in question.

20.5 To the extent potential damages exceed insurance coverage, Plaintiff's counsel shall make independent inquiry of Defendant's other assets that are reasonably available, other than insurance, and be prepared to report his or her findings to the Court.

20.6 To the extent a Minor or other settlement is to be structured, Plaintiff's counsel shall certify to the Court the present value of the settlement and the tax liability, if any, to the Minor.

Rule 21: Notice of Calendaring to Attorneys

21.1 Calendars will be made available to counsel through the Clerk of Superior Court and through the Internet website address for the 26th Judicial District at www.nccourts.org at the time specified in Local Rule 4.6. The availability of calendars so published shall constitute official notice to attorneys.

21.2 It shall be the responsibility of said attorneys and unrepresented parties to provide the Caseflow Management Division and Clerk of Superior Court with a current mailing address.

21.3 It shall be the responsibility of counsel and unrepresented parties to be aware of cases appearing on trial calendars. Paper notices are issued to parties/ attorneys as a courtesy. Failure to receive paper notices shall not be cause for a continuance of the trial date.

Rule 22: Sanctions

22.1 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 23: Preparation of Forms

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

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

Rule 24: *Pro Hac Vice*

24.1 An attorney who associates with an out-of-state attorney to represent a party in a proceeding in this district and that out-of-state attorney shall adhere to N.C.G.S. §84-4.1 and North Carolina State Bar Rules 27 N.C.A.C 1H .0101 and 27 N.C.A.H. 1D .0903 and .0904. Copies of the North Carolina State Bar Rules and the required registration form are available for download at www.ncbar.com.

24.2 The required fee shall accompany the Motion and Order.

Rule 25: Religious Holidays

25.1 In the discretion of the presiding Judge, efforts shall be made to accommodate parties and attorneys in their observance of religious holidays in connection with the scheduling of cases.

Rule 26: Submission of Secure Leave

26.1 When submitting a Secure Leave for General Civil Court cases, the Secure Leave shall be submitted on Local Form CCF-27. The form shall be sent to the following address:

Attention: Secure Leave
Trial Court Administrator's Office
Caseflow Management Division
832 East Fourth Street, Suite 3420
Charlotte NC 28202

If the Secure Leave form is hand-delivered, the form shall be taken to the above address and placed in the box marked "Secure Leave." Only one form is required—it need not be submitted to each case coordinator in the Caseflow Management Division or to the Trial Court Administrator or the Judges' Office.

All other elements to Rule 26 of the General Rules of Practice shall be followed by the submitting party. This rule does not apply to cases in the Criminal Court, before the Clerk of Superior Court, or involving Family Law.

26.2 The leave form will be stamped as "Received" by the Caseflow Management Division. The leave will be entered for each case in the database that contains the name of the listed attorney and will be entered into a separate database solely used to track secure leave.

26.3 The submitting party shall include the original secure leave form and one copy with a self-addressed, postage-paid envelope if a return copy is desired.