

**CASE MANAGEMENT PLAN
AND LOCAL RULES
FOR SUPERIOR CIVIL CASES
JUDICIAL DISTRICT 24
MADISON, YANCEY, MITCHELL, AVERY AND WATAUGA COUNTIES
WITH JULY 1, 2007, AMENDMENTS**

The following case management plan for the calendaring of civil matters in the Superior Courts of Judicial District 24 has been adopted by the Senior Resident Superior Court Judge as required by the General Rules of Practice for the Superior and District Courts adopted by the Supreme Court of North Carolina.

RULE 1 - TIME STANDARDS FOR CALENDARING

A case shall be calendared for trial as soon as practical after the following events:

- (a) The lapse of 120 days after the filing of the Answer or last required pleading. The 120-day period shall be reserved exclusively for discovery and mediation, unless otherwise ordered by the Court, but the trial of the case shall not thereafter be delayed for failure to complete discovery, unless for good cause shown the Senior Resident Superior Court Judge extends the expiration of the 120-day period. Motions for limitation or extension of discovery period should be mailed to the office of the Senior Resident Superior Court Judge; or
- (b) The remand of a case on appeal for re-trial; or
- (c) The docketing of any case having a statutory priority; or
- (d) The filing of a consent request for calendaring signed by all attorneys of record in the case and all parties not represented by attorneys.

RULE 2 - ADMINISTRATIVE SESSIONS

Twice yearly the Senior Resident Superior Court Judge shall conduct an Administrative Review of the pending civil cases in the Superior Courts of each county of the 24th District, pursuant to Rule 2(d) of the General Rules of Practice for the Superior and District Courts. These Administrative Review sessions shall be scheduled as nearly as possible in the first full week in January and the first full week in July, or such other weeks as the Senior Resident Superior Court Judge shall designate, pursuant to the General Rules of Practice.

The purpose of these Administrative Review sessions shall be to ensure all pending cases that are ready for calendaring are assigned a trial date, and to take appropriate actions to insure

prompt scheduling and disposition of any pending motions or other matters necessary to move the cases towards a conclusion. It will not be the purpose of Administrative Review sessions to assign a new trial date to cases already having a trial date. Obtaining a different trial date should be properly brought before a court by a Motion to Continue, pursuant to Rule 6, below.

The Administrative Review sessions may be held in open court with preparation and distribution of calendars, or may be informally conducted in chambers, as the Senior Resident Superior Court Judge shall deem appropriate.

Recognizing that some cases involve complex issues requiring a trial time in excess of the one week normally allowed for civil terms, the Court will, during Administrative Review sessions, determine if such cases exist in each county; and if so, the Court will determine if a special court session for the trial of such a case is necessary.

If the Administrative Review session is being conducted in open court, the Court may also hear Motions in pending civil cases, providing said Motions are properly noticed and scheduled with the approval of the Court.

RULE 3 - PEREMPTORY SETTINGS

At any time prior to publication of the calendar by the Trial Court Coordinator, an attorney or unrepresented party may request a peremptory setting. The request should state the reasons why the case should be peremptorily set and whether the request is approved by all other attorneys or parties in the case. This request should be directed to the Senior Resident Superior Court Judge. No more than one peremptory setting per week shall be made. If a peremptorily set case is continued, parties in that case shall not be entitled to a second priority setting unless another request is approved.

RULE 4 - TRIAL CALENDAR

4.1 PUBLICATION

Not less than four weeks prior to the first day of each session, the Trial Court Coordinator shall prepare a calendar of cases for trial at that session. The Trial Court Coordinator shall distribute this calendar to the Clerk of Superior Court for that county, and it shall be the obligation of the Clerk to distribute one copy thereof to each law firm with one or more cases listed thereon, one copy to each unrepresented party whose address appears of record, and one copy to the Presiding Judge.

Each attorney and each unrepresented party shall be responsible for seeing that his or her correct mailing address appears in the record.

4.2 ORDER OF LISTING FOR TRIAL

Peremptorily set cases shall be calendared at the top of the trial calendar and marked accordingly. Thereafter, cases shall be set by date of filing in chronological order unless otherwise ordered by the Senior Resident Superior Court Judge. Cases shall be called when reached in the order they are set unless the calendar notes a date before which or after which a case shall not be tried; however, a presiding judge during a term of court may change the order of trial cases when the presiding judge determines such change to be necessary.

RULE 5 - SCHEDULING OF MOTIONS

Motions should be presented to the Trial Court Coordinator at the office of the Senior Resident Superior Court Judge, in the manner described below, in sufficient time to be included on a court calendar. Motions shall be presented, in all instances, with proper notice, at least ten days prior to the beginning of the term of court. Motions noticed for hearing within ten days of the beginning of the term of court shall be heard only with the consent of the presiding judge. This local rule shall be considered supplemental to Rule 6 of the North Carolina Rules of Civil Procedure.

In advance of filing a motion, counsel shall contact the Trial Court Coordinator to determine a date certain for hearing. The Trial Court Coordinator shall advise counsel of possible dates that are available for the Motion to be heard. After the date is determined, the date should be cited in the notice of hearing accompanying the motion filed with the Clerk of Court and served on opposing counsel. Upon filing, a copy of the notice of hearing shall be mailed by the party making the Motion to the Trial Court Coordinator at the office of the Senior Resident Superior Court Judge.

Motions to dismiss filed under Rule 12(b), N.C. Rules of Civil Procedure, shall not be calendared for hearing if they are included as part of the answer, unless the moving party requests otherwise. In such case, the same scheduling procedure outlined in the preceding paragraphs will be followed.

With the approval of the Senior Resident Superior Court Judge, a motion may be set for hearing at a session outside the county in which venue lies if (1) all parties agree, or (2) the hearing could dispose of a case or (3) the progress of a case toward resolution would be delayed if the motion were not heard.

With the approval of the Senior Resident Superior Court Judge, a civil motion may be set for hearing at criminal priority sessions. The Trial Court Coordinator in cooperation with the District Attorney's Office shall determine an appropriate time for the initial scheduling of that motion. The motion shall be heard during that criminal priority term at the initial time scheduled, or at a time set by the presiding judge.

Motions not scheduled through the Trial Court Coordinator will not appear on a published calendar and will be heard only at the discretion of the Presiding Judge.

RULE 6 – CONTINUANCES

6.1 PROCEDURE; APPROPRIATE JUDICIAL OFFICIAL

Any motion to continue a case from the trial calendar shall be in writing on the approved form (AOC-CV-221, as designated in Rule 6.2 below), and shall be presented to the Senior Resident Superior Court Judge, by mailing or hand-delivering the motion to the Trial Court Coordinator in the Watauga County Courthouse at 842 W King St., Ste. 11, Boone, NC 28607. Motions filed with the clerk of court only, or mailed to the court in a county or location other than the Watauga County address as designated above, shall not be considered properly delivered to the court, and may be disregarded. Facsimile transmissions or other electronic transmissions alone shall also not be considered proper delivery to the court, and may also be disregarded. Motions to continue a case must be *received* at least ten (10) days *prior* to the first day of each session of court. For prompt decision and return, a self-addressed stamped envelope shall be enclosed with the motion to continue. Motions to continue that are received within ten (10) days prior to the first day of that session of court will be considered untimely filed and will not be considered, except in situations which, in the Senior Resident Superior Court Judge's opinion, constitute an unforeseen emergency or hardship situation.

Prior to the opening of court for the session in which a case is calendared, the authority to continue cases or motions from that calendar is exclusively vested with the Senior Resident Superior Court Judge. The Senior Resident Superior Court Judge shall receive and consider submitted motions from the Trial Court Coordinator, as described in the paragraph above.

Pre-trial motions to continue shall not be submitted to judicial officials other than the Senior Resident Superior Court Judge. Also, pre-trial motions shall not be submitted to other judicial officials that, if allowed, would have the effect of continuing a case from a trial date. Examples include, but are not limited to, motions to extend discovery deadlines beyond a trial date or motions to extend any response time beyond a trial date. If such a motion that has the effect of continuing a case from a trial date is submitted to another judicial official, and is allowed, such a motion and order shall be considered in violation of these prior Local Rules, and will not be considered valid. Pre-trial motions submitted to the Senior Resident Superior Court Judge that, if allowed, would have the effect of continuing a case from a trial date, must include within the motion the notification that the motion, if allowed, would have the effect of continuing the case from a designated trial date; and accompanying such motion must be a separate motion to continue the case, as described in the first paragraph under Rule 6.1, above, and Rule 6.2, below.

Following the opening of court for the session in which a case is calendared, any application for continuance shall be made to the presiding judge of the court in which the case is calendared. If a motion to continue that case from the trial calendar was earlier denied by the Senior Resident Superior Court Judge, the moving party shall advise the presiding judge of the earlier denial of the motion, and shall present such additional factors to the presiding judge, which might justify re-considering the motion to continue. If the presiding judge, in his or her discretion, feels the motion to continue should be allowed, the judge may continue the case to the next scheduled civil priority term.

6.2 FORM OF MOTION

All applications for continuance shall be presented to the Senior Resident Superior Court Judge as a written motion, made on state form AOC-CV-221. For said motion to be considered, counsel shall fully complete the appropriate portions of the form, and sign it.

6.3 NOTIFICATION OF OPPOSING COUNSEL/UNREPRESENTED PARTIES

A copy of the completed form AOC-CV-221 must be distributed to all counsel of record and/or unrepresented parties prior to presentation of the motion to the appropriate judicial official. Distribution of the motion may be by US Mail, facsimile transmission, hand delivery or distribution by means of attorney distribution boxes maintained in the courthouse facility.

6.4 OBJECTIONS TO MOTION FOR CONTINUANCE

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

6.5 EVALUATION OF MOTIONS FOR CONTINUANCE

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

In addition to other factors, the Senior Resident Superior Court Judge shall consider the following when deciding whether to grant or deny a motion for continuance:

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

- (l) any other matter that promotes the ends of justice.

Reasons that shall not be considered valid bases for allowing a continuance motion include, but are not limited to: first time scheduling of the case for trial; potential conflicting scheduling of other trials in other courts; whether the counsel of record has received payment; or discovery is not complete, when the age of the case and other factors indicate there has been ample time to complete discovery.

Cases which are two years old, or older, will **not** be continued, short of demonstration of truly extraordinary circumstances.

6.6 - CASE RESCHEDULING

A calendared case not reached for trial at a particular session shall be deemed continued to the next regularly scheduled civil priority session for that county, unless the next regularly scheduled civil priority session in that county is within four weeks. If the next regularly scheduled civil priority session in that county is within four weeks, then the case not reached for trial shall be deemed continued to the second following regularly scheduled civil priority session in that county.

Except for good cause shown or as otherwise ordered by the court, a case which is continued by order of the court due to a motion to continue before the trial date shall be set for the next regularly scheduled civil priority session for that county.

RULE 7 - PRE-TRIAL PROCEDURE

This Rule is substantially the same as Rule 7 of the General Rules of Practice for the Superior and District Courts of North Carolina.

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

A party who has not requested a pre-trial conference may not move for a continuance on the ground that it has not been held.

At least twenty-one days prior to trial date, the plaintiff's attorney shall arrange a pre-trial conference with the defendant's attorney to be held not later than seven days before trial date. At such conference a pre-trial order shall be prepared and signed by the attorneys.

If, after due diligence, plaintiff's attorney cannot arrange a conference with defendant's attorney, he may apply to the presiding judge or other judge holding court in the district who shall make an appropriate order. The defense attorney may initiate pre-trial under the same rules applicable to plaintiff's attorney.

The pre-trial Order shall be in substance as shown on the sample form entitled “Order on Pre-Trial Conference”, found in the appendix of the General Rules of Practice for the Superior and District Courts of North Carolina.

This Rule is both a State and Local Rule and shall apply to all pending and future civil cases. The Pre-Trial Order shall be submitted to the presiding judge when a case is called for trial, or as otherwise directed by a presiding judge. To provide ample time for implementation of this Rule, Orders shall be prepared for cases calendared for sessions on or after April 17, 2000.

A presiding judge shall have authority to impose appropriate sanctions for non-compliance.

RULE 8 - SETTLEMENT OF CASES

When a case on a published calendar is settled, all attorneys of record MUST notify the Clerk of Court AND the Trial Court Coordinator within twenty-four (24) hours of the settlement and advise who will prepare and present judgment and when.

If the attorney responsible for preparing and presenting a judgment or dismissal fails to prepare said order, the case shall thereafter be placed on the regular or supplemental motion calendar for a later session of Court for possible dismissal of the case for failure to timely file the judgment or dismissal. Any attorney or party in the case may appear and show cause why the case should not be dismissed. If no good cause is shown, the case shall, in the discretion of the Presiding Judge, be immediately called for trial, or dismissed for failure to timely file the judgment or dismissal.

RULE 9 - REMOVING INACTIVE CASES FROM TRIAL DOCKETS

The Senior Resident Superior Court Judge may, of his own motion, declare a case inactive and remove it from the trial docket if it appears to him the controversy between the parties no longer exist, that service was not made and the time expired, or that trial of the matter will not be required. When a case is declared inactive by the Court’s own motion, such ruling shall be without prejudice to any party’s right to have the case reopened for further necessary proceedings.

RULE 10 – MEDIATION

This rule supercedes an Order entered by this Court on January 26, 1996, entitled “In Re: Implementation of Supreme Court Rules and Local Rules for Mediated Settlement Conferences in Superior Court Civil Actions.”

10.1 MEDIATION RULES AND GUIDELINES

The Rules for court-ordered mediated settlement conferences as adopted and published by the North Carolina Supreme Court (“Rules Implementing Statewide Mediated Settlement Conferences In Superior Court Civil Actions”), together with all updates and revisions, shall be observed in this District.

10.2 SELECTION OF MEDIATOR – LOCAL RULES

Rule 2.C. of the aforementioned “Rules Implementing Statewide Mediated Settlement Conferences In Superior Court Civil Actions” adopted by the North Carolina Supreme Court provides in part that the Senior Resident Superior Court Judge, when no mediator has been timely selected by the parties, shall appoint a certified mediator under a procedure established by said Judge and set out in Local Rules. In compliance with Rule 2.C., the following procedure is adopted and shall be utilized by the Court in the selection of mediators.

When the parties do not timely select a mediator, the general procedure for judicial appointment shall be to appoint the next certified mediator on the appropriate list (maintained by the Trial Court Coordinator) of available mediators who currently reside or maintain an office in this judicial district or a contiguous judicial district or who certify in writing annually to the Senior Resident Superior Court Judge that he or she wishes to mediate in this judicial district, and is familiar with these Local Mediation Rules, and will comply with them and the Supreme Court Rules.

However, the Senior Resident Superior Court Judge shall retain discretion to depart from the general procedure outlined above in such cases and in such particular circumstances, as the Senior Resident Superior Court Judge deems appropriate. This shall include, but is not limited to: the appointment of one mediator to multiple related cases; the appointment of a newly certified mediator; the appointment of a particular mediator to such cases involving subject matters or issues in which that particular mediator has demonstrated particularized skill or expertise; the appointment of a particular mediator to types of cases in which that particular mediator has exhibited marked success in mediation; or the withholding of appointment of a mediator who has not followed Local or Supreme Court Rules.

10.3 FAILURE TO COMPLY WITH NOTICE PROVISIONS

In the event the Senior Resident Superior Court Judge has not received a notice of appointment post marked within the period provided in the Rules, and has therefore appointed a mediator, and thereafter it should appear that the parties on their own selected a mediator without complying with the notice provisions, then the parties shall be obliged to pay to the court-appointed mediator an administrative fee of \$125.00.

10.4 APPOINTMENT OF RETIRED OR EMERGENCY JUDGES

The Senior Resident Superior Court Judge may, in his discretion, appoint a retired or emergency judge or justice of the district, superior, or appellate courts as a mediator, whether or not such judge has been certified as a mediator.

10.5 REMOVAL OF MEDIATORS

The Senior Resident Superior Court Judge shall remove any mediator who fails to comply with the Local or Supreme Court Rules. Removal may include loss of fees, and a bar from mediating in the District. The Senior Resident Superior Court Judge shall also have authority to reinstate mediators, when the Judge deems it appropriate.

10.6 SANCTIONS

Any party or counsel of such party may be sanctioned to the extent provided for in the Local and Supreme Court Rules, the North Carolina Rules of Civil Procedure, the General Rules of Practice, and the Rules of Professional Conduct.

10.7 SETTLEMENT CONFERENCE OBJECTIVE

At the mediation conference, all counsel, parties, and representatives of parties, shall engage in a full, frank, and candid discussion of settlement potential; and a good faith effort to resolve the action shall be undertaken.

1.08 CASES SUBJECT TO MEDIATION

All civil actions pending in the District shall be submitted to a mediation conference, with the following exceptions: (1) Actions in which a party seeks the issuance of an extraordinary writ or appeal of revocation of an operator's license pursuant to provisions of the Division of Motor Vehicles; or (2) Cases specifically excluded from mediation by order of the Senior Resident Superior Court Judge, either on the motion made by one or more parties to an action and granted by the Court, or by order of the Court for just cause without motion from parties.

These Local Rules may be modified or amended by the Senior Resident Superior Court Judge, by subsequent modification orders as deemed appropriate and necessary.

Adopted with amendments this the 1st day of July, 2007.

JAMES L. BAKER
SENIOR RESIDENT SUPERIOR COURT JUDGE
24TH JUDICIAL DISTRICT