

**LOCAL RULES OF CIVIL PROCEDURE FOR THE
SUPERIOR COURT
JUDICIAL DISTRICT 29B**

Effective January 1, 2008

Pursuant to the authority granted to the Senior Resident Superior Court Judge by the North Carolina General Statutes and the North Carolina Rules of Civil Procedure and General Rules of Practice (hereinafter N.C. Rules), the following Local Rules of Civil Procedure are hereby established. All those having business in the Superior Court of Judicial District 29B are responsible for knowledge of and compliance with the N.C. Rules and the Local Rules. These Rules should be interpreted to be consistent with all rules promulgated by the North Carolina Supreme Court.

RULE 1: GENERAL RULES

1.1 Responsibility for carrying out this Case Management Plan is assigned to the Office of the Trial Court Administrator (TCA). All communications concerning civil matters should be addressed to the TCA, whose office is located in the Henderson County Courthouse. The mailing address is 200 North Grove St., Hendersonville, NC 28792, the telephone number is (828) 694-4113, and the facsimile number is (828) 694-4229. E-mail address is Jerry.Brewer@nccourts.org.

1.2 For the purpose of these rules, except where otherwise specified, the term “Court” shall mean the Senior Resident Superior Court Judge.

1.3 Appearance of Counsel/Withdrawal of Counsel

- A.** An attorney must file a written Notice of Appearance with the Clerk of Superior Court immediately after agreeing to represent a party in a civil matter, and shall serve a copy upon each counsel of record, unrepresented party and the TCA as prescribed in the N.C. Rules. The notice shall indicate the name(s) of a specific attorney(s), not merely the name of a law firm. An attorney who files a suit for a plaintiff or who files a timely answer or other responsive pleading for a defendant need not file a Notice of Appearance. However, if a plaintiff or defendant adds or changes attorneys, new counsel shall file said notice. No trial will be continued if an attorney does not receive a calendar due to a failure to comply with this rule.
- B.** Motions to withdraw as counsel of record in civil cases more than six months old generally will not be allowed unless (1) opposing counsel consents, in writing, and (2) the client is in agreement and has signed a statement to be included with the motion and/or consent order. In the statement, the client must (1) acknowledge that he or she does not object to the attorney’s withdrawal; (2) state that he or she understands the attorney’s withdrawal will not be grounds for delaying any hearing, settlement conference or trial date; and (3) provide his or her current mailing address. Motions meeting the above criteria shall be sent to the TCA, who shall submit them to the Senior Resident Superior Court Judge for

consideration in Chambers. Motions not meeting each of the criteria will be scheduled for a hearing at the first available civil session in the Judicial District.

1.4 Secure leave.

- A. Rule 26 of the General Rules of Practice for the Superior and District Courts is designed to guarantee attorneys up to three calendar weeks of uninterrupted vacation, and the requirements of that Rule will be strictly interpreted and applied.
- B. The provisions of Rule 26 shall be available to *pro se* litigants as well as attorneys.
- C. Because the Scheduling Order in Local Rule 3 will establish trial dates as much as a year in advance, counsel who find themselves in apparent violation of Section D(5) of Rule 26 should notify the TCA immediately upon learning of conflicts so reasonable accommodations can be made.

1.5 In accord with Rule 12(a)(1) and Rule 6(b) of the N.C. Rules, no attorney, party appearing *pro se*, or Clerk of Superior Court shall consent to an extension of time to file answer or other responsible pleading beyond the 30 additional days allowed by Rule 6(b) of the Rules of Civil Procedure. Application for extension of time beyond the first additional 30 days shall be made to the Senior Resident Superior Court Judge pursuant to the provisions of Rule 6(b).

1.6 All sessions of Superior Court shall be “mixed” with the priority to be determined by the Senior Resident Superior Court Judge. Court shall convene on the first day at 10 a.m., whether the first day is Monday or a later day in the week. Subsequent trial days will begin at 9:30 a.m., unless otherwise ordered by the Presiding Judge. Calendar call will be held on the first day of the session and will ordinarily be the first order of business.

1.7 Administrative Disposition

The following types of cases are considered to not be pending for trial. Cases in these categories will be eligible for removal by order, without prejudice, from the list of pending cases:

- A. Cases in bankruptcy (unless relief from the stay has been granted);
- B. Defendants making payments;
- C. Service not made and time for service expired;
- D. Cases inactive for any other reason.

RULE 2: READY CASES

2.1 A case shall be considered ready to set for trial when one of the following has occurred:

- A. Service on all parties has been perfected and the time for filing answers has expired with regard to all parties.
- B. It has been transferred by, or appealed from, the Clerk of Superior Court.

- C. It has been remanded for trial by the Court of Appeals or Supreme Court.
- D. It is entitled to a priority hearing by statute.

2.2 Counsel for the appellant shall notify the TCA, **in writing**, of the transfer, appeal, remand or priority status of any case described in Local Rules 2.1(B), 2.1(C) or 2.1(D). Said notification shall include all names and addresses of affected parties or other counsel.

2.3 Upon the filing of a caveat to a will, the Clerk of Superior Court shall contact the TCA to determine the next available date for the parties to appear in Court and align themselves. Notice of the proceeding shall be issued to all devisees, legatees and others as provided in G.S. 31-33. Upon the conclusion of the proceeding to align parties, the TCA shall issue a Scheduling Order as described in Rule 3.

RULE 3: SCHEDULING ORDERS AND TRIAL CALENDARS

3.1 Upon determining that a case is ready to be scheduled for trial, the TCA shall issue a Scheduling Order, subject to the provisions of Local Rule 2.3. The order will establish deadlines for the completion of mediation, discovery and the filing and hearing of dispositive motions. A trial date will also be set, and generally will be 15 months from the date of the filing of the complaint.

3.2 Counsel may move to amend the Scheduling Order by contacting the TCA within 30 days from the date the order is issued. The TCA, after hearing from all parties, may modify the Scheduling Order, if appropriate.

3.3 Counsel may request in writing to the TCA that a Scheduling Order not be issued and that the case be placed on the next available trial calendar.

3.4 Medical malpractice actions shall be scheduled for a discovery conference pursuant to the provisions of Rule 26(f) of the North Carolina Rules of Civil Procedure. Counsel for the plaintiff shall send a copy of the discovery order to the TCA when it has been signed by a judge.

3.5 A trial calendar will be considered to have been published on the date it is posted to the website of the Administrative Office of the Courts (**www.nccourts.org**).

- A. Attorneys without internet access must notify the TCA in writing. Copies of trial calendars will be provided by regular mail or by being placed in the attorney's courthouse mailbox for attorneys without internet access.
- B. Trial calendars will be mailed to *pro se* litigants, unless those individuals notify the TCA that they have internet access.
- C. Trial calendars on the website will be updated through the end of the last business day preceding the beginning of a session of court. Follow-up paper copies will not be provided.

3.6 Though older cases will generally receive priority on a calendar, counsel in newer cases may request that the TCA include a case on a trial calendar, subject to the following:

- A. Counsel making the request shall contact the TCA by telephone to determine the availability and feasibility of future trial dates.
- B. The telephone request shall be followed by a written request to the TCA. The proposed trial date shall be included.
- C. Before granting a request, the TCA may consider the number and status of older cases in which the attorney making the request is involved, and whether other counsel have reasonable objections to the proposed trial date.

3.7 If a case is placed on a trial calendar upon request of a party and is subsequently continued at the request of, or with the consent of, the same party, the case will not be eligible for further consideration for an expedited setting, except if the continuance was requested because of unforeseeable circumstances.

3.8 Requests for Peremptory Setting

- A. Medical malpractice cases will be presumed to require a peremptory setting unless the TCA is notified otherwise by counsel.
- B. Requests for a peremptory setting in all other cases shall be made in writing to the TCA within 30 days of the date the Scheduling Order is issued. Counsel shall specifically state the reasons for the request.
- C. Granting a peremptory setting will be in the TCA's discretion. Among the reasons counsel may cite in a request are the following:
 - 1. It is impossible or impractical for a witness or litigant to appear for the trial except by air travel.
Where litigants or witness live close enough to travel by land to the trial, the Court will not ordinarily grant peremptory settings.
 - 2. The case involves numerous expert witnesses.
 - 3. Severe adverse economic consequences will result from delay of the trial.
 - 4. The case has been repeatedly scheduled for trial without being reached.
 - 5. The case has been pending for more than 18 months.
 - 6. Any other extraordinary reasons requiring a prompt resolution of the case.

3.9 Any case listed on a published trial calendar is subject to dismissal for failure to prosecute if at calendar call or 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 on a calendar shall be ready for trial at any time during the session.

3.10 When cases are not reached or are continued by the Presiding Judge at calendar call, the TCA shall re-schedule the cases to a future trial session based upon calendar availability. Counsel shall promptly contact the TCA to determine the next available date and to discuss any potential conflicts.

3.11 If both sides consent, a case may be placed on a list of “short notice” cases maintained by the TCA. When the cases appearing on the regular calendar are disposed before the end of the session, either the TCA or the Civil Clerk will notify counsel with “short notice” cases that their matter can be heard.

RULE 4: ALTERNATIVE DISPUTE RESOLUTION

4.1 All parties to civil cases, except matters exempted by G.S. 7A-38 or by Local Rule 3.4, will be required to participate in a Mediated Settlement Conference, which shall be conducted pursuant to Rules of the North Carolina Supreme Court Implementing Statewide Mediated Settlement Conferences (hereinafter Mediation Rules).

4.2 The TCA is specifically assigned the responsibility of managing the mediation process, including establishment of deadlines, insuring adherence to those deadlines and issuing appropriate documents in a timely manner. The TCA is authorized to sign all documents related to Mediated Settlement Conferences.

4.3 Originals of the Designation of Mediator form, all motions, the Report of Mediator and any other documents are to be sent directly to the TCA for review and processing, after which the TCA will send the documents to the Clerk of Superior Court for filing

4.4 The following Local Rules shall supplement the Mediation Rules:

- A.** Timing of the Order for Mediated Settlement Conference. An Order for Mediated Settlement Conference shall be included as one of the provisions of the Scheduling Order described in Local Rule 3.
- B.** Motion to Dispense with Mediated Settlement Conference. A party may move to dispense with mediation by submitting the original motion to the TCA and sending copies to all opposing attorneys or pro se parties. The motion shall list specific reasons for the relief sought. The non-moving party will be allowed five (5) business days from the date the TCA receives the motion to submit written objections and the grounds therefor to the TCA. Thereafter, the TCA will issue an order granting or denying the motion to dispense. If a mediator has been appointed by the Court before the filing of the motion to dispense with mediation, the parties will be ordered to compensate the mediator in the amount of the administrative fee.
- C.** Motion to Authorize the Use of Other Settlement Procedures. A party may move to use the arbitration program existing in Judicial District 29B, or any other settlement procedure, in lieu of a mediated settlement conference by submitting a motion to the TCA in the manner described in Local Rule 4.4(B). The motion should state that all parties consent to the use of the alternative procedure. In the event arbitration is selected, the case will be subject to the rules governing that process. The use of another settlement procedure will not delay the trial date.
- D.** Designation of Mediator. Counsel for the plaintiff(s) is responsible for completing the appropriate portions of the Designation of Mediator form (AOC-

CV-812, available at nccourts.org) and returning the **original to the TCA** within 21 days of the date of the order. The 21-day time period will not be tolled when a form is improperly sent to the Senior Resident Superior Court Judge or Clerk of Superior Court, or to the TCA at an incorrect address.

- E. Appointment of Mediator by the Court. If the parties have been unable to agree on a mediator, or if the form is not returned within the time prescribed, the TCA shall appoint a mediator by selecting the next name on the appropriate list of certified mediators. The TCA may depart from the general procedure in certain instances, such as the appointment of one mediator to multiple related cases, to appoint a newly certified mediator to a case, or to withhold a mediator from appointment pursuant to Rule 2(E) of the Mediation Rules.
- F. Mediator Directory. The list of mediators who are willing to accept appointment in Judicial District 29B consists of those who live within geographical proximity of at least one of the counties within the district. However, any certified mediator may be included on the list if he or she contacts the TCA in writing and requests inclusion, and if he or she acknowledges familiarity with the District's Local Rules and agrees to abide by them. A list of all mediators certified in the State of North Carolina is available through the AOC website (nccourts.org). The parties may not agree to utilize a non-certified mediator.
- G. Motion to Extend Deadline for Completion of Mediation. A party, or the mediator, may move to extend the deadline for completion of the mediated settlement conference by submitting the motion to the TCA in the manner described in Local Rule 4.4(B). Said motion should propose a new deadline. After determining whether there are any objections to said motion, the TCA will issue an order either granting or denying the motion. A motion to extend the deadline beyond the trial date will not be granted.
- H. Report of Mediator. The mediator shall complete form AOC-CV-813, available through the AOC website (nccourts.org) and send the original to the TCA.

4.5 If a case is removed from the pending trial docket so the parties may engage in binding arbitration, said arbitration shall be completed within six months from the date of the order of removal.

RULE 5: MOTIONS

5.1 All motions must be filed and heard prior to the date of trial, except those which must be heard by the Trial Judge. Motions shall be scheduled for hearing at 10 a.m. on the first day of a trial session. Motions not heard during the morning shall be heard at a date and time to be designated by the Presiding Judge.

5.2 A motion shall be placed on a calendar for hearing only when one of the following has occurred:

- A. The TCA has received a copy of the notice of hearing from the moving party no later than 12 noon seven (7) calendar days before the first day of the session of Court; or
- B. The TCA has issued the notice of hearing; or
- C. A hearing has been ordered continued by the Presiding Judge and the TCA has been provided a copy of the order. Copies of affidavits, briefs or lengthy motions should not be sent to the TCA with the notice of hearing. Pursuant to G.S. 1A-1, Rule 5(d), briefs or memoranda provided to the Court may not be filed with the Clerk unless ordered by the Court.

5.3 Copies of notices of hearing may be sent to the TCA by regular mail, electronic mail or fax, or may be hand-delivered. The TCA will acknowledge the receipt of notices sent by electronic mail as soon as they are read.

5.4 A motion which does not appear on a calendar because counsel failed to follow the requirements of Local Rule 5.2A will not be heard by the Presiding Judge, nor will there be an “add-on” motions calendar.

5.5 A motions calendar will be posted on the AOC website, and will be updated whenever changes are made. The posted calendar will not serve as a substitute for a properly served notice of hearing. Rather, the calendar will be a listing of the notices of hearing issued as provided in the N.C. Rules and Local Rule 5.2.

5.6 When a motion to dismiss is filed under Rule 12(b) of the N.C. Rules, the TCA shall schedule the motion to be heard at the next available civil session by issuing notice of hearing to all counsel and/or unrepresented parties, **except** when the motion is filed as part of the answer.

5.7 No continuance of a trial or delay in any alternative dispute resolution proceeding will be granted due to the belated filing of a procedural or dispositive motion, or because a motion is pending for which a hearing date has not been requested.

5.8 If the moving party fails to appear to argue a motion when scheduled, the motion will be considered denied or withdrawn, whichever the Court deems appropriate.

5.9 The TCA will not continue a properly noticed motion, except at the request of the moving party.

5.10 A motion may be set for hearing at a civil session outside the county in which venue lies only with prior approval of the TCA. When such a hearing is scheduled, counsel shall determine amongst themselves who will be responsible for delivering the court file to the hearing and for promptly returning it to the originating county. If the Clerk of Superior Court has a policy prohibiting the removal of files from the courthouse, counsel shall prepare copies of all pertinent documents for use at the hearing.

5.11 Motions for Summary Judgment

- A.** Motions for summary judgment shall be filed in sufficient time to allow a hearing to be held no later than 30 days prior to the trial date. The TCA may waive the time requirement or utilize the provisions of Local Rule 5.10 if the master court schedule prevents compliance with the 30-day requirement. In no event will a motion for summary judgment be scheduled for hearing at the same session as the case appears on the trial calendar.
- B.** Counsel shall prepare and exchange briefs according to the provisions of the Rules of Civil Procedure and the General Rules of Practice. Copies may be submitted to the appropriate judge. Pursuant to G.S. 1A-1, Rule 5(d), briefs or memoranda provided to the Court may not be filed with the Clerk unless ordered by the Court.

5.12 Motions to transfer

- A.** The moving party shall cause a motion to transfer a case from District Court to Superior Court to be scheduled for hearing at the next available civil session. Failure to schedule the hearing will cause an order denying the motion to be entered by the Court.
- B.** If a case appears on a District Court trial calendar, a motion to transfer the matter to Superior Court will be considered untimely filed, and the Senior Resident Superior Court Judge will enter an order denying the motion.
- C.** Except as provided in the preceding rule, if all parties consent to the transfer of a case from District Court to Superior Court, a consent order may be sent to the Senior Resident Superior Court Judge for consideration in Chambers.

RULE 6: JUDICIAL REVIEW OF ADMINISTRATIVE ACTION

6.1 Pursuant to G.S. 150B-47, the agency which makes the final decision shall file the original or a certified copy of the official record with the Clerk of Superior Court, and shall serve a copy upon all interested parties within 30 days after receipt of the petition for review, or as provided by a Writ of Certiorari.

6.2 The brief of the petitioner/appellant shall be filed with the Clerk of Superior Court and served upon all other parties to the proceeding within 20 days after the record has been filed.

6.3 The respondent/appellee shall have 20 days from the date of the filing of the petitioner's brief in which to prepare and file its brief with the Clerk of Superior Court and to serve it upon all other parties.

6.4 Unless the Court in its discretion shall order to the contrary, there shall be no reply briefs filed by any party to the review proceedings.

6.5 The matter shall be set for hearing at the first available session of court after the last date for filing and exchanging briefs.

6.6 Nothing contained in these rules shall prohibit the Court, in its discretion and for good cause shown, from enlarging or shortening the times provided for filing briefs, or from continuing and rescheduling review hearings.

RULE 7: DELINQUENT ORDERS OR JUDGMENTS

7.1 Cases or motions which are removed from a calendar due to a reported resolution shall be considered delinquent if the order, judgment or a settlement agreement signed by all the parties is not filed within ten (10) business days after the first day of the trial session.

7.2 Cases or motions which are heard by the judge or by jury shall be considered delinquent if the order or judgment is not filed within ten (10) business days after the hearing, unless additional time is granted by the Presiding Judge.

7.3 Cases which are reported settled at mediation shall be considered delinquent if a voluntary dismissal or judgment is not filed within 14 days of the settlement, or before expiration of the mediation deadline, whichever is longer.

7.4 Delinquent cases will be brought before the Senior Resident Superior Court Judge for review, following proper notice, either upon motion by either party or by the Clerk or TCA. At the discretion of the Judge, cases determined to be delinquent may be dismissed, or the Judge may order any sanctions or impose penalties deemed appropriate or lawful. Any attorney or party in the case may appear and show cause why the case should not be dismissed.

RULE 8: CONTINUANCE POLICY - CIVIL

8.1 The Senior Resident Superior Court Judge shall have exclusive control over the status of trial calendars, including the authority to consider continuances, until the trial session begins. Said authority may be delegated to the Trial Court Administrator.

8.2 All motions for continuance shall be in writing on AOC-CV-221, and shall be received by the TCA no later than 10 calendar days prior to the opening of the trial session. A copy must be sent to all counsel of record and/or unrepresented parties by U.S. mail, facsimile transmission, hand delivery or by the use of attorney mailboxes maintained in each Courthouse prior to presentation to the TCA. The motion shall specify the reasons for the request, and a new trial date shall be proposed. Distribution to the TCA shall be by hand delivery or U.S. mail. Counsel may send a facsimile transmission to the TCA for informational purposes, but no action will be taken until the original document is received.

8.3 Opposing counsel and/or unrepresented parties shall have a period of two (2) business days following completion of distribution to communicate objections to the moving party and the TCA. The date upon which the TCA receives the motion shall signal the beginning of the period in which to object. Objections not raised within this time period shall be deemed waived. The TCA is authorized to grant or deny the motion, or may submit it to the Senior Resident Superior Court

Judge upon the expiration of the two-day objection period, or sooner if the position of the opposing party is known.

8.4 Motions for continuance will not be granted except for crucial, unforeseeable cause. The advance notice provided in the Scheduling Order is deemed a reasonable and sufficient period to accommodate the majority of conflicts. Personal conflicts such as vacations, family commitments and continuing legal education opportunities do not rise to the level of crucial, unforeseeable cause. 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 Court 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.

8.5 Motions for continuance may be presented to the Presiding Judge only after the beginning of the trial session, and only when it can be shown that circumstances made it impossible for counsel to have complied with the above Rules.

8.6 In addition to other factors which may be relevant, the Senior Resident Superior Court Judge, Presiding Judge or TCA 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 session;
- C.** The order in which the case appears on the trial calendar, including whether the case is preemptorily scheduled;
- D.** The amount of advance notice counsel had received of the specific or approximate trial date;
- E.** The number of previous continuances;
- F.** The extent to which counsel offered input into the setting of the trial date;
- G.** The diligence of counsel in promptly filing a motion for continuance as soon as practical;
- H.** Whether the reason for continuance could resolve prior to the trial date;
- I.** The length of the continuance requested;
- J.** Whether the parties themselves consent to the continuance;
- K.** Present or future inconvenience or unavailability of witnesses or parties, and
- L.** Any other matter that promotes the ends of justice.

8.7 Reasons which shall not be cited as valid bases for moving for a continuance, and which shall not be considered by the Senior Resident Superior Court Judge, Presiding Judge or TCA, include first-time scheduling of the case for trial, potential conflicting scheduling of other trials in other courts and whether counsel has received payment.

RULE 9: CONTINUANCE POLICY - CRIMINAL

9.1 All motions for continuance shall be in writing upon a specific form by the Administrative Office of the Courts, AOC-CR-410, which shall be the sole method for requesting a continuance. A copy of the motion/form shall be presented to the District Attorney or his designee, and shall specifically state the reasons for the request.

9.2 At a hearing, in addition to other factors which may be relevant, the Presiding Judge shall consider the following when deciding whether to grant or deny a motion for continuance:

- A.** The age of the case;
- B.** The pre-trial detention status of the defendant;
- C.** The status of the trial calendar for the session;
- D.** The order in which the case appears on the trial calendar, including whether the case has a priority designation;
- E.** The number of previous continuances;
- F.** The number of times the case has been set for trial and not reached;
- G.** The extent to which counsel offered input into the setting of the trial date;
- H.** The diligence of counsel in promptly filing a motion for continuance as soon as practical;
- I.** Whether the reason for continuance could resolve prior to the trial date;
- J.** The length of the continuance requested;
- K.** Whether the motion has been considered by another judge on the same grounds;
- L.** Present or future inconvenience or unavailability of witnesses or parties;
- M.** Whether the parties themselves consent to the continuance, and
- N.** Any other matter that promotes the ends of justice.

9.3 Reasons which shall not be cited as valid bases for moving for a continuance, and which shall not be considered by the Presiding Judge, include first time scheduling of the case for trial, potential conflicting scheduling of other trials in other courts and whether counsel has received payment.

This 8 day of October, 2007.

s/Mark E. Powell
Senior Resident Superior Court Judge