

**CASE MANAGEMENT PLAN
AND
LOCAL RULES OF CIVIL PROCEDURE
FOR THE SUPERIOR COURT
28th JUDICIAL DISTRICT**

TABLE OF CONTENTS

1. General Rules.....	2
2. Ready Cases	3
3. Preparation and Publication of Calendars.....	3
4. Final Calendars	3
5. Peremptory, Priority, Remanded Cases, Medical Malpractice Actions.....	3
6. Calendaring of Motions	4
7. Evidence/Other materials at Hearings Other than Trials	5
8. Discovery	6
9. Mediation	7
10. Case Management Conferences.....	10
11. Pretrial Conferences.....	11
12. Continuances.....	10
13. Administrative Appeals	12
14. Judicial Approval of Minor/Incompetent Settlement	14
15. Requests for withdrawals of Counsel	15
16. Delinquent Orders or Judgments	15
17. Cases Not Reached	15
18. Default.....	16
19. Duty in Presentation to Court of Ex Parte Matters and Defaults.....	16
20. Administrative Disposition Conflicts	16
21. Administrative Dispositions.....	17
22. Sanctions.....	17
23. Forms	17
24. Exhibits at Trial.....	17
25. 28 th Judicial District Local Rules Governing the Use of still photography, audio or Video Electronic Recording equipment in the courthouse related to official business during business hours.....	17
26. Effective Date of These Rules	19

**CASE MANAGEMENT PLAN
AND
LOCAL RULES OF CIVIL PROCEDURE
FOR THE SUPERIOR COURT
28th JUDICIAL DISTRICT**

PURSUANT to the authority granted to the Senior Resident Superior Court Judge by both 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 the 28th Judicial District 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 The purpose of these rules is to institute a case management plan in the Superior Court Division of the Twenty-Eighth (28th) Judicial District – Buncombe County – in compliance with Rule 40(a), Rules of Civil Procedure and Rule 2(a), General Rules of Practice for Superior and District Courts, and to provide for the orderly, prompt and just disposition of civil matters.
- 1.2 It is recognized that these rules are not complete in every detail and will not cover every situation which may arise. In the event that these rules do not cover a specific matter, the Trial Court Administrator is authorized to act in his discretion subject to consultation with the Senior Resident Superior Court Judge or Presiding Judge.
- 1.3 Responsibility for implementing 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 Buncombe County Courthouse. The mailing address is 60 Court Plaza, Asheville, NC 28801-3574. The telephone number is (828) 259-3418 and the facsimile number is (828) 259-3384.
- 1.4 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 (Monday) at 10:00 a.m. Subsequent trial days will begin at 9:30 a.m. Motions shall be scheduled for hearing at 10:00 a.m. on first day of the trial session (Monday). Motions not heard during the morning session shall be hard at a date and time designated by the Presiding Judge.

Rule 2. READY CASES

- 2.1 A case shall be ordered ready to set for trial when one of the following has occurred:
- (a) All parties have been served, the time period for filing answers has expired, and the discovery period is over.
 - (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 by statute.

Rule 3. PREPARATION AND PUBLICATION OF CALENDARS

- 3.1 The Superior Court Civil Calendar shall be prepared under the supervision of the Senior Resident Superior Court Judge or his assignee.

Rule 4. FINAL CALENDARS

A final trial calendar shall be published and distributed by the Trial Court Administrator's office to all counsel of record or unrepresented parties no later than four (4) weeks prior to the beginning of the trial session.

- 4.1 To the extent possible, the TCA shall set cases by case number, oldest case first and newest last (except for peremptorily set cases and statutory priority settings which will be first) unless otherwise directed by the Senior Resident Superior Court Judge or Presiding Judge assigned to call the calendar.
- 4.2 When cases have been consolidated for trial they will be regarded as one case for calendaring purposes and will be listed under the oldest case number.
- 4.3 Pursuant to Rule 2(g), General Rules of Practice for Superior and District Courts, when a case on a calendar (tentative or final) is settled, all attorneys of record must notify the TCA's office within twenty-four (24) hours of settlement and advise who will prepare and present judgment or dismissal and when.
- 4.4 Cases not reached during a scheduled trial session shall be rescheduled by the Trial Court Administrator's Office, with the input of all counsel/unrepresented parties, to another scheduled trial session.

Rule 5. PEREMPTORY, PRIORITY, REMANDED CASES and MEDICAL MALPRACTICE ACTIONS

Requests for a peremptory setting for Superior Court cases involving persons who must travel long distances, numerous expert witnesses [*or statutorily mandated*], or other reasons for such a request must be made to the Trial Court Administrator's office. A peremptory

setting shall be granted only for good and compelling reasons. The Senior Resident Judge may set a case peremptorily on his/her own motion.

- 5.1 Will caveat cases (as appeals from the Clerk of Superior Court under N.C.G.S. 1-273) will be placed on the next available motions calendar for the purpose of aligning parties and hearing all other motions under North Carolina Rules of Civil Procedure Rule 16. Will caveat cases will subsequently be ordered into the mediation process and will not be placed on the trial calendar until a mediated settlement conference is conducted or the matter has been removed from mediation by order of the Court. It shall be the responsibility of the attorney for the caveator(s) to notify the TCA's office of the filing of the case and the name and addresses of all parties or attorneys to whom notice should be sent.
- 5.2 When a case is remanded for trial from the appellate division, appellant's counsel shall promptly notify the TCA's office, who shall tentatively place the case on the next administrative calendar for a future trial setting or set said case for trial.
- 5.3 **Medical Malpractice Actions:** In any malpractice action, as defined in N.G.C.S §90-21.11, the parties or their attorneys shall, submit a consent order setting forth a Discovery Schedule for the case. Such orders shall be submitted to the Trial Court Administrator for entry, amendment or denial by the Senior Resident Superior Court Judge. If the parties or their attorney are unable to come to a consent order, then within 30 days after the filing of the first responsive pleading the court shall notice all the parties to appear for a Discovery Conference pursuant to Rule 26(f)(1) of the North Carolina Rules of Civil Procedure. At the conclusion of the conference the court shall enter orders as provided for in Rule 26(f) (1)(2) and (3).
- 5.4 **Amendment of Discovery Orders:** Amendment of Discovery orders may be by mutual consent of all parties or pursuant to a motion to any Presiding or the Senior Resident Superior Court Judge. Amended Discovery orders shall be filed with the Trial Court Administrator and the Court.

Rule 6. MOTIONS

Motions may be calendared for any session of Superior Court upon request to the Trial Court Administrator or by order of the Court. Motions will be calendared for and heard on Monday mornings from 10 a.m. – 12 p.m.

- 6.1 If motions in Superior Court civil cases are not scheduled through the office of the Trial Court Administrator, the Presiding Judge will not hear the motion.
- 6.2 The Trial Court Administrator may, at his discretion, add motions onto already published final motion calendar. Motions added to the final motions calendar must be with the consent of all counsel and/or parties or upon proper notice to opposing counsel.

- 6.3 The motions 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 hearings scheduled through the Trial Court Administrator's office. Any motion not appearing on the motion calendar because of counsel's failure to properly schedule the motion may be called to the attention of the Presiding Judge at the time other motions are called for hearing. When (or if) the motion is heard shall be in the discretion of the Judge.
- 6.4 No continuance of a trial or delay in any alternative dispute resolution hearing 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.
- 6.5 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.
- 6.6 The Trial Court Administrator will not continue a properly noticed dispositive motion. The moving party desirous of the continuance shall file a formal motion to continue detailing the reason(s) for the continuance and present it to the Presiding Judge.

Rule 7. EVIDENCE AT HEARINGS OTHER THAN TRIALS

Evidence at hearings other than trials shall be presented only by affidavit unless the Presiding Judge determines otherwise.

- 7.1 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, to the attention of "Superior Court Judge Presiding, Courtroom 710, [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.
- 7.2 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.
- 7.3 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.

Rule 8. DISCOVERY

The Court expects counsel to conduct discovery in good faith and to cooperate and be courteous with each other in all phases of the discovery process. Regardless of whether or not a Rule 26(f) discovery conference is held the parties must within thirty (30) days of the filing of the last required pleading meet and formulate a preliminary discovery schedule. They must continue to communicate throughout the discovery period to update the schedule. Except in cases where a discovery scheduling order has been entered, all discovery must be complete within 120 days of the required time for filing the last required pleading. The discovery period may be extended by order of a Resident Superior Court Judge obtained prior to the end of the discovery period set forth in this Rule. Continuances of trial or other hearings shall not be granted for purposes of discovery outside of the time limits of this Rule. Anything to the contrary, notwithstanding the period of discovery for cases which have been re-filed after a voluntary dismissal without prejudice pursuant to Rule 41(a) was taken shall be sixty (60) days from the required time for filing the last required pleading.

Depositions shall be conducted in accordance with the following guidelines:

- 8.1 Counsel shall not direct or request that a witness not answer a question unless that counsel has objected to the question on the ground that the answer is protected by a privilege or a limitation on evidence directed by the Court, or unless that counsel has objected to the question on the ground that such objection is necessary to present a motion under subdivision (5) of this Rule.
- 8.2 Counsel shall not make objections or statements which might suggest an answer to a witness. Counsel's statements when making objections should be succinct, stating the basis of the objection and nothing more.
- 8.3 While counsel has the right and duty to prepare a client for deposition, once the deposition begins counsel and their witness-clients shall not engage in private, off-the-record conferences while the deposition is proceeding in session except for the purpose of deciding whether to assert a privilege.
- 8.4 Deposing counsel shall provide to the witness' counsel a copy of all documents shown to the witness during the deposition. The copies shall be provided either before the deposition begins or contemporaneously with the showing of each document to the

8.5 At any time during the taking of the deposition on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, any Resident Judge, Special Judge or Presiding Judge of the Superior Court for the Twenty-eighth (28th) Judicial District in which the action is pending may order the person before whom the examination is being taken to cease forthwith from taking the deposition or may limit the scope and manner of the taking of the deposition as provided in Rule 26(c) of the Rules of Civil Procedure. If the order terminates the examination it shall be resumed thereafter only upon order of a Resident Judge, Special Judge, or Presiding judge of the Superior Court of the Twenty-eighth (28th) Judicial District in which the action is pending. Upon demand of the objecting party or deponent the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of Rule 27(a)(4) of the Rules of Civil Procedure apply to the award of expenses incurred in relation to the motion.

8.6 A copy of all Discovery Scheduling Orders and Amended Discovery Scheduling Orders shall be delivered to the Trial Court Administrator by counsel immediately upon entry by the Court.

Rule 9. MEDIATION

9.1 The Trial Court Administrator 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. To that end, the Trial Court Administrator is authorized to affix the signature of the Senior Resident Superior Court Judge to documents related to mediated settlement conferences.

9.2 Originals of the designation of mediator form, all motions, the report of mediator and any other documents are to be sent directly to the Trial Court Administrator for review and processing, after which the Trial Court Administrator will file the documents with the Clerk of Superior Court.

9.3 The following local rules supplement the mediation rules:

- a. **Timing of the order for mediated settlement conference:** The order may be issued ninety (90) days after the time for filing the last responsive pleading has expired. Rule 9.3(b) shall govern the contents of the order and the date of completion of the conference.
- b. **Contents of the order:** The Court order shall: (1) require that mediated settlement conference be held in the case; (2) establish a deadline of ninety (90) days for the completion of the conference, subject to the parties obtaining an extension of time in

accordance with Rule 9.3(h); (3) call attention to the procedures for selecting a mediator in accordance with Rule 9.3(e); (4) state the rate of compensation of the court appointed mediator in the event the parties do not select their own in accordance with Rule 9.3(f); and (5) state that the parties shall be required to pay the mediator's fee at the conclusion of the settlement conference.

- c. **Motion to dispense with mediated settlement conference:** A party may move to dispense with mediation by submitting the original motion to the Trial Court Administrator and sending copies to all opposing attorneys or pro se parties, within ten (10) days after the date of the order for mediated settlement conference has been issued. Said motion shall list specific reasons for the relief sought. The non-moving party will be allowed seven (7) days from the date the Trial Court Administrator receives the motion to submit written objections and the grounds therefore to the Trial Court Administrator. Thereafter, the pleadings will be presented to the Senior Resident Superior Court Judge or his designee, who for good cause shown may grant the request with or without a hearing.
- d. **Motion to authorize the use of other settlement procedures:** A party may move to request another form of alternative dispute resolution such as arbitration, early neutral evaluation, summary jury trial, or any other settlement procedure, in lieu of a mediated settlement conference by submitting a motion to the Trial Court Administrator in the manner described in Local Rule 9.3(c).
- e. **Designation of mediator:** Counsel for the Plaintiff(s) is responsible for completing the appropriate section of the form and returning it to the Trial Court Administrator within twenty-one (21) days of the date of the order.
- f. **Appointment of mediator by the Court:** If the parties have been unable to agree on a mediator or if the designation form is not returned within the time prescribed, the Trial Court Administrator shall appoint a mediator selecting the next name on the appropriate list of certified mediators. The Trial Court Administrator may depart from the general procedure in certain instances, such as the appointment of one mediator to multiple 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.
- 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 Trial Court Administrator in the manner described in Local Rule 9.3(c). Said motion should propose a new deadline. After determining whether there are any objections to said motion, the Trial Court Administrator will issue an order either granting or denying the motion. Subsequent extension will have to be approved by the Senior Resident Superior Court Judge, and must be submitted thirty (30) days prior to the deadline unless extraordinary circumstances exist the motion to extend will be denied. In no event will a motion to extend the deadline beyond the trial be granted.

- h. **Finalizing the agreement:** If an agreement is reached either before or during the conference, it shall be reduced to writing, signed, and delivered to the mediator and upon request by the Trial Court Administrator, to the Office of the Trial Court Administrator. Formal court documents such as a consent judgment or voluntary dismissal of all claims shall be filed with the Court within ten (10) days after agreement is reached. For good cause shown this time may be extended by the Trial Court Administrator for up to thirty (30) days. Failure of the mediator to comply with this provision may result in the removal of the mediator from the local list.
- i. **Reporting of partial settlements:** A partial settlement should be reported only after the conference and must still be reduced to writing as contemplated by Supreme Court Rule 4C. Any partial settlement which infringes upon, or involves a stay or delay in the period to complete discovery, motion or trial calendaring, or other matters which are within the responsibility of the Senior Resident Judge or Trial Court Administrator, must have the prior approval of such official(s) to be considered and reported settled.

9.4 A Resident or Presiding Judge may impose sanctions on any party or attorney for failure to attend a duly ordered mediated settlement conference or for failure to comply with a mediated settlement. Failure to comply with this provision may result in sanctions including, but not limited to, a contempt proceeding, default or dismissal of the case.

9.5 Compensation of Mediator

- a. **Payment without conference or in recess:** If no conference is held or a conference is recessed without resuming, compensation to an appointed mediator shall be submitted with the written full settlement agreement.
- b. **Indigent Cases:** If any party contends that he or she is indigent and cannot pay his or her portion of the mediator's fee that party must move to be relieved from payment of such fee. The motion shall be made on an approved petition and order for relief from obligation to pay mediator's fee form available in the Office of the Trial Court Administrator. This form *must be submitted to the mediator at the conclusion of the conference in lieu of payment, or with any written settlement agreement provided to the mediator without a conference or during a recess.* The mediator shall attach any petition submitted to his report to the Trial Court Administrator.
- c. **Sanctions for failure to pay mediator's fee:** Willful failure of a party to make timely payment of his or her share of an appointed mediator's fee, or of a party contending indigent status to timely submit the petition form, shall constitute contempt of court and may result in the imposition of any and all lawful sanctions by a resident or presiding judge.

Rule 10. CASE MANAGEMENT CONFERENCES

- 10.1 Scheduling Conference: If the Senior Resident Superior Court Judge determines, *sua sponte* or upon motion of a party, that a pending case is not proceeding in a timely manner to conclusion/disposition, he may schedule a case management conference to determine what actions, if any, need be taken and what orders, if any, need be entered.
- 10.2 Status reports: A status report shall be provided by the attorneys upon request of a Judge or the Trial Court Administrator. The report may be submitted via email, facsimile, or regular mail.
- 10.3 Telephone Conferences: The Court may direct that case management conferences, hearing of specified motions and other matters take place by telephone conference call. Also, the parties are encouraged to stipulate and agree to the use of telephonic conferences when it can further the interest of justice, reduce the expense of litigation for the parties, assist with the efficient and expedited resolution of motions and other matters, and assist with the timely disposition of cases filed in District 28. For this purpose the Court specifically approves the use of any conference call provider that offers telephonic conference call service the parties agree to employ. Contact the Judicial Assistant to schedule any telephonic conference calls.

Rule 11. PRE-TRIAL CONFERENCES

The Trial Court Administrator may schedule a pre-trial conference with either the Senior Resident Superior Court Judge or Presiding Judge prior to the week of trial. In addition, an attorney for any party may request of the Trial Court Administrator that a pre-trial conference be scheduled. When practicable, the Pre-trial conference will be conducted by the Judge presiding at the trial.

Rule 12. CONTINUANCE POLICY – CIVIL SUPERIOR

All requests for continuances shall be in writing and received by the Trial Court Administrator's Office, and specify with particularity the reason for the continuance and when the case may be rescheduled for trial.

- 12.1 The Senior Resident Superior Court Judge or his judicial designee shall have control over the status of trial calendars, including the authority to consider continuances, until the trial session begins. The Trial Court Administrator is authorized the discretion to continue a non-peremptorily set case at least four (4) weeks prior to the trial term and secure an agreement from the attorneys/parties on a date certain for a future trial setting.
- 12.2 Motions for continuance will not be granted except for the unforeseeable cause. The advance notice provided by the posting of final trial calendars on www.nccourts.org

four (4) weeks prior to the start of the trial session is deemed a reasonable and sufficient period to accommodate the majority of conflicts.

- 12.3 Copies of the request for continuance shall be sent to all opposing counsel or unrepresented parties. Objections by opposing counsel or unrepresented parties shall be made to the Trial Court Administrator's Office. If a response is not received from opposing counsel within five (5) working days of the receipt of the request, it will be assumed that the opposing party does not desire to be heard on the request.
- 12.4 Ex parte requests for continuances, without notice to opposing counsel or unrepresented party, or with an opportunity for opposing counsel or unrepresented party to be heard, will not be considered by the Court.
- 12.5 Motions for continuances shall 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 comply with the foregoing rules. Counsel in such a situation should be directed by the Presiding Judge to immediately contact the Trial Court Administrator's office for rescheduling the trial.
- 12.6 In addition to the other factors which may be relevant, the Senior Resident Superior Court Judge and any 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 status of the trial calendar for the session;
 - c. the order in which the case appears on the trial calendar;
 - 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 of unavailability of witnesses or parties; and
 - l. any other matter than promises the ends of justice.
- 12.7 Reasons that shall not be cited as a valid basis for a continuance and shall not be considered by the Senior Resident Superior Court Judge or presiding Judge include first time scheduling of the case for trial and that the discovery has not been completed within the limits set forth in these Rules or within an ordered time of discovery.

Rule 13. ADMINISTRATIVE APPEALS

- 13.1. Rules 13.1 through 13.15 shall govern judicial review of final administrative agency decisions pursuant North Carolina General Statutes, 150B, and judicial review of all other administrative rulings other than those requiring evidence to be presented to the Superior Court.
- 13.2 With respect to administrative judicial review of matters not covered by G.S. 150B of the North Carolina General Statutes, reference in these rules to procedures in said statutes shall apply.
- 13.3 Pursuant to N.C.G.S. 150B-47, the agency which makes the final agency decision must submit the official record to the court within thirty (30) days after the receipt of the copy of the petition for review, or within such additional time as the court, or these rules, may allow. In cases brought to the Court by certiorari, the record shall be submitted within thirty (30) days from the issuance of the writ.
- a. **Prior** to submitting the official record, the agency shall consider any proposed additions or deletion to the N.C.G.S.150B-37-42 record submitted by the petitioner or the respondent state agency, when it did not make for final agency decision, to the final decision agency within fifteen (15) days of the filing of the petition for judicial review. The petition shall request deletion of any items not required for an understanding of the basis for relief from the final agency decision asserted in the petition for judicial review. Requests for additions to the record shall be accompanied by a copy of the proposed addition, unless a copy was previously provided to the parties. The final decision agency shall notify the petitioner and the respondent state agency of any deletions it proposes to the official record within twenty (20) days of receipt of the petition for judicial review. If the parties are unable to settle the record, the final decision agency shall submit the official record acceptable to the agency with a report of the remaining differences.
 - b. In the cases where no record was prepared pursuant to N.C.G.S.150B-37, or -42, the final decision agency shall notify the petitioner and any intervenor of a proposed official record within twenty (20) days after receipt of a copy of the petition for review. Requests for additions or deletions shall be served on the agency within ten (10) days of receipt of the proposed official record. After consideration of such requests, the agency shall file the official record within ten (10) days of receipt of any requests for additions or deletions. If no such requests are served on the agency, the proposed official record shall be filed as the official record. If the parties are unable to settle the record, the agency shall accompany the official record with report of the remaining differences.
 - c. If the review is of a decision of a local government or agency, all relevant ordinances shall be included in the record.

- d. A motion to make previously requested additions or deletions to the official record shall be filed within ten (10) days of the filing of the official record. Any party unreasonably refusing to stipulate to limit the record shall be taxed by the court for the additional costs occasioned by the refusal.
- 13.4 The petition for judicial review shall state explicitly the objections to the agency decision and the basis for the objections. Any objections to specific findings of fact and conclusion of law shall be identified in the petition. The petition shall be accompanied by a copy of the agency decision and a certificate of service showing service on the parties to any prior contested case hearing.
 - 13.5 Applications to present additional evidence, pursuant to N.C.G.S. 150B-49, shall be filed within thirty (30) days of the submission of the official record, unless the court finds good cause for a late filed application. The application shall be accompanied by a copy of the additional evidence or a statement showing what the evidence will show. Responses to such applications shall be filed within twenty (20) days of service of the application.
 - 13.6 Applications for stay of decision, pursuant to N.C.G.S. 150B-48, shall be accompanied by:
 - a. A copy of the final agency decision.
 - b. An affidavit demonstrating the harm to the applicant and an ability to post a bond adequate to compensate the agency or any other party to the contested case proceeding which will be adversely affected by the stay.
 - c. A memorandum of law, or other statement of law, demonstrating the applicant is entitled to a stay of decision; and
 - d. A certificate of service demonstrating notice to the agency before the hearing on the application is conducted.
 - 13.7 A motion to remand to the agency pursuant to N.C.G.S. 150B-51(a) shall be filed within thirty (30) days of the filing of the contested case petition.
 - 13.8. The brief of the petitioner shall be filed with this Court and served upon all other parties to the proceeding in accordance with N.C.G.S. 1A-1, Rule 5, within thirty (30) days after the original or a certified copy of the record of the proceedings under review has been filed with this Court, as provided in N.C.G.S. 150B-47, or settled by this Court, whichever is later.
 - 13.9. The brief of the respondent, whether the agency or any person who was party to the agency proceeding and who became party to the review proceeding pursuant to N.C.G.S. 150B-46, shall be filed with this Court and served upon all other parties to the proceeding in accordance with N.C.G.S. 1A-1, Rule 5, within thirty (30) days after service of the brief of the petitioner.

- 13.10. The brief of an intervenor who may become a party to the review proceeding, pursuant to N.C.G.S. 150-46, shall be filed with this Court and served upon all other parties to the proceeding in accordance with N.C.G.S. 1A-1, Rule 5, within thirty (30) days of the date of the filing of the intervenor's motion to intervene; provided that where, because of the time of such motion for intervention, the intervenor's brief should be under thirty (30) days or less from the date the review is set for hearing, the intervenor's brief shall be filed concurrently with its motion to intervene.
- 13.11 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.
- 13.12 Briefs pursuant to Rule 11.7 – 11.10 shall be in the format required by Appellate Rule 28 and in the cases of Rules 11-7 – 11.9 shall not exceed ten (10) pages, and in the case of 11.10, five (5) pages except as specifically upon motion ordered by the Court.
- 13.13 Judicial review proceedings shall be set for hearing at the first regular non-jury administrative session of Buncombe County Superior Court commencing on or after the thirtieth (30th) day following the filing in this Court of the brief of the respondent or such later regular session of the Superior Court as determined by the Trial Court Administrator under the supervision of the Senior Resident Superior Court Judge.
- 13.14 All parties to the judicial review proceedings may offer oral argument.
- 13.15 Nothing contained in the 28th District Local Rules 13.1 through 13.15 shall be deemed to prohibit the Court in its discretion for good cause shown, from enlarging the times herein provided for filing briefs for any party to the review proceeding, from permitting the filing of briefs after the expiration of the time previously allotted for such filings, or from continuing and rescheduling review hearings.
- 13.16 All time periods prescribed or allowed by the 28th District Local Rules 13.1 through 13.15 or by any order of this Court pursuant to such rules shall be computed in accordance with N.C.G.S. 1A-1, Rule 6(a).

Rule 14. JUDICIAL APPROVAL OF MINOR/INCOMPETENT SETTLEMENTS

- 14.1 Hearings in Open Court: All hearings for Judicial Approval of minor/incompetent settlements shall be held in open court.
- 14.2 On the Record: All such hearings shall be recorded by an Official Court Reporter.
- 14.3 Presence Required: The minor/incompetent and his or her Guardian Ad Litem must be present at the hearing absent prior excusal by the Court.

- 14.4 Statement of the Insurance Coverage: Defense counsel shall state on the record the total and complete insurance coverage afforded to a Defendant in the situation in question.
- 14.5 Structured Settlements: To the extent a minor/incompetent settlement is to be structured, Plaintiff's counsel shall certify to the Court the present value of the settlement to the minor/incompetent.
- 14.6 Filing of Documents: All documents submitted to the Court for consideration shall be placed in the file and may be placed under seal in the discretion of the Court.

Rule 15. REQUESTS FOR WITHDRAWAL OF COUNSEL

- 15.1 No attorney who has entered an appearance in any civil action shall withdraw his appearance or have it stricken from the record, except by order of the Court. Once a client has employed an attorney who has entered a formal appearance, the attorney may not withdraw or abandon the case without: (1) justifiable cause; (2) reasonable notice to the client; and (3) the permission of the Court.
- 15.2 Upon filing a Motion to withdraw as counsel of record and subsequent hearing by the court, the moving party shall provide the Trial Court Administrator's Office a signed copy of the Order allowing or denying the withdrawal in which the client's mailing address will be contained.

Rule 16. DELINQUENT ORDERS OR JUDGMENTS

- 16.1 Cases tried or reported settled shall be considered delinquent if the order or judgment of disposition is not filed within fifteen (15) working days after the judgment was reported in court or the settlement was reported, unless otherwise directed by the Trial Judge.
- 16.2 Motions heard shall be considered delinquent if the order or final judgment of disposition is not filed within fifteen (15) working days after the motion is ruled upon, unless otherwise directed by the Trial Judge.
- 16.3 Cases or motions so delinquent may be dismissed by the Senior Resident Superior Court Judge, or other designee, either upon motion by the party against whom the judgment or order was taken, or by the Trial Court Administrator bringing the case to the Judge's attention.

Rule 17. CASES NOT REACHED

Cases not reached during any session of court will be rescheduled to another trial date with the input of all counsel or unrepresented parties and the Trial Court Administrator's Office.

All parties will be notified of the trial date thirty (30) days prior to the start of the trial session.

Rule 18. DEFAULT

Any party seeking default is requested to give five (5) days written notice to any party making an appearance in the case before entry of default. A copy of the letter should be sent to the Clerk of Court for filing.

Rule 19. DUTY IN PRESENTATION TO COURT OF EX PARTE MATTERS AND DEFAULTS

In the event any ex-parte matter or default proceeding has been presented by any person to any judge and the requested relief is denied for any reason, such matter shall not be presented to any other judge without making full disclosure of the prior presentation. For a failure to comply with the provisions of this Rule, the order or judgment made on such subsequent application may be vacated at any time as a fraud upon the Court.

Rule 20. CONFLICTS

20.1 The Trial Judge will assist attorneys in resolving calendar conflicts so that cases may be tried without delay.

20.2 For purposes of resolving appearance conflicts, the following schedule of court attendance priority shall be followed by attorneys appearing in the courts of this judicial district. If a case is started in a court with lower priority, and counsel is unexpectedly required to appear in a higher priority court, the already begun trial takes precedence until its termination.

- a. Appellate Cases
- b. Federal Court, Criminal Division
- c. Superior Court, Criminal Division
- d. Federal Court, Civil Division
- e. Superior Court, Civil Division
- f. Federal Court, Bankruptcy Division
- g. Industrial Commission Hearings
- h. District Court, Criminal Division
- i. District Court, Civil Division
- j. Administrative Agency Hearing
- k. Civil Arbitration Hearings
- l. Mediated Settlement Conferences
- m. Magistrate's Court

Rule 21. ADMINISTRATIVE DISPOSITION

Listed below are five (5) types of cases deemed to be not pending for trial. Cases in these categories shall be eligible for removal by order from the list of pending cases. This removal shall be without prejudice.

1. Cases in bankruptcy; (unless relief from stay has been granted)
2. Defendants making payments;
3. Service not made and time expired;
4. Removal for any other reason; and
5. Answers not filed and time expired.

Rule 22. SANCTIONS

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. FORMS

Where forms are specified to be used by these rules, counsel may use either the forms provided or a form of their own which substantially corresponds to that specified.

Rule 24. EXHIBITS AT TRIAL

All exhibits introduced at trial shall have been exhibited to opposing counsel before the trial. In the event counsel wishes a documentary exhibit to be shown to the jury, counsel must have an individual copy for each juror which may be passed by the bailiff to the jury. In the event counsel has failed to show opposing counsel exhibits prior to trial they shall not be received in evidence. In the event counsel does not have individual copies of documentary exhibits for each juror the documents shall not be passed to the jury.

Rule 25. 28th JUDICIAL DISTRICT LOCAL RULES GOVERNING THE USE OF STILL PHOTOGRAPHY, AUDIO or VIDEO ELECTRONIC RECORDING EQUIPMENT IN THE COURTHOUSE FACILITY RELATED TO OFFICIAL BUSINESS DURING BUSINESS HOURS (Supplementing N.C. Supreme Court Order RE: Electronic Media/Still Photography Coverage of Public Judicial Proceedings, *Rule 15 of the General Rules of Practice for Superior and District Courts*, in pertinent part)

25.1 General Application Process for Utilization of Electronic Equipment for Recording or Presentation Purposes

- a. There is one *local* application form that can be submitted to allow the use of electronic equipment in the courthouse: *Application to Utilize Still Photography or Electronic Equipment Within the Courthouse for Recording or Presentation Purposes*

- b. Application for the use of still photography, audio or video recording equipment in a trial courtroom or other area of the courthouse must be made to the Presiding Trial Judge. Such application must be in writing and must designate the trial/office/area in which electronic equipment will be utilized.
- c. These rules apply to filming official business activities inside the courthouse during business hours. Filming non-business related activities after regular business hours and on weekends does not require any authorization.
- d. The Trial Judge will be sole and final interpreter of these rules. His/her decision is final.

25.2 Policies Pertaining to Media Representatives

- a. All media representatives must submit a copy of the formal application and court order (attached) at least seventy-two (72) hours before the beginning of jury selection and /or recording/filming event.
- b. Cameras are allowed in the trial courts only.
- c. Cameras will not be used in the corridors outside any courtroom or outside any jury pool area.
- d. One camera (each), video or shutter, will be allowed per courtroom.
- e. The location of all microphones must be approved by the trial judge in advance of trial.
- f. All cameras, both video and shutter, must be in a fixed location. Silence boxes must be used. All cameras must be silent. Any camera being a distraction must be removed.
- g. There will be no panning or other photographing of the jury or audience.
- h. There will be no photographing of any witness under the age of sixteen (16) years.
- i. Media Coverage, publication or identification of jurors is expressly prohibited at every state of a Judicial Proceeding including jury selection.
- j. Cameras will be operated Only:
 1. During opening statements of counsel;
 2. During testimony from witnesses;
 3. During closing argument of counsel; and
 4. During jury charge and verdict.
- k. Cameras will be shut off at all other times. The Trial Judge may modify this section, in writing, on a case-by-case basis.
- l. Only the Presiding Trial Judge can authorize photography, filming or audio recording within a particular courtroom while court is in session.
- m. In the event of multiple applications, the Presiding Trial Judge will coordinate operations.

25.3. Policies Pertaining to Jurors, the General Public, Attorneys and Court Employees

- a. Attorneys may bring in still photography cameras, video recording gear, audio recording devices, and other electronic equipment as long as proper and

sufficient identification is shown at the security station. However, counsel must expressly gain permission from the Presiding Trial Judge at the time of the proceeding to utilize any of the above equipment.

- b. Absent the completion of the formal application and approved accompanying Court order, pro se parties, jurors and members of the public are prohibited from bringing still photography, audio and/or video electronic recording devices into the courthouse.
- c. Court employees may bring still photography, audio and/or video electronic recording equipment in to the courthouse for personal use.
- d. The filming of commercial advertisements for public or private organizations and/or individuals for television and/or websites is prohibited anywhere inside the courthouse without permission of the Senior Resident Superior Court Judge and the Chief District Court Judge.

25.4 Policies Pertaining to Utilization of Photography, Audio or Video Recording Equipment *within the Clerk's Office.*

- a. Application may be submitted directly to the Clerk's Office. An agency representative will contact Applicant with the decision.
- b. Applications to cover public hearings that are scheduled in a courtroom should be submitted to the Clerk's Office for approval.

25.5. Policies Pertaining to Utilization of Photography, Audio or Video Recording Equipment within the Courthouse.

Applications should be made to the Clerk of Court to utilize still photography, audio or video recording equipment in general use areas of the courthouse and within courtrooms when court is not in session.

Rule 26. EFFECTIVE DATE OF THE FOREGOING RULES

It is **ORDERED** that the above revisions to the case management plan and the Local Rules of Civil Procedure for the Superior Court of the 28th Judicial District be, and **HEREBY** are **ADOPTED, PUBLISHED** and **DECLARED** effective January 1, 2012.

Honorable Alan Z. Thornburg
Senior Resident Superior Court Judge
28th Judicial District