

CIVIL LOCAL RULES AND PROCEDURES

IN THE 27-A JUDICIAL DISTRICT SUPERIOR AND DISTRICT COURTS

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CIVIL LOCAL RULES AND PROCEDURES

IN THE 27-A JUDICIAL DISTRICT SUPERIOR AND DISTRICT COURTS

Rule 1. Purpose

In accordance with and subject to the provisions of Rule 40(a) of the North Carolina Rules of Civil Procedure and Rule 2 of the General Rules of Practice for the Superior and District Courts, the following administrative and procedural rules shall constitute the case management plan for the calendaring of civil cases in the Superior Court and District Court of the 27-A Judicial District of the State of North Carolina. The purpose of these rules is to provide for the orderly, just and prompt disposition of civil matters to be heard in the Superior Court and District Court. They shall be at all times construed and enforced in such a manner as to avoid technical delay.

Rule 2. Preparation and Publication of Calendars

The Superior Court civil calendar shall be prepared under the supervision of the Senior Resident Judge. The District Court civil calendar shall be prepared under the supervision of the Chief District Court Judge. Nine months after a complaint is filed, and if the case is trial ready, the Trial Court Coordinator shall place that case on a ready calendar, unless the time is extended by written order of the Senior Resident Judge for Superior Court cases or the Chief District Court Judge for District Court Cases.

Superior Court civil cases will be scheduled for trial or alternative dispute resolution hearings in accordance with Local Rule 23.

Rule 3. Trial Calendars

A final trial calendar shall be published and distributed by the Trial Court Coordinator to each attorney of record (or party where there is no attorney of record) no later than four (3) weeks prior to the first day of the trial week. The Wednesday of the week before the first day of the trial week, the Trial Court Coordinator will publish and distribute an updated version of the trial calendar to each attorney of record, the presiding judge and the corresponding judicial assistant. Any changes between the two calendars shall be noted.

3.1 To the extent possible, the Trial Court Administrator 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.

3.2 When cases are likely to be consolidated by the trial judge, they will be regarded as one case for calendaring purposes, and will be listed under the oldest case number pending approval for consolidation from the trial judge.

3.3 The TCC shall communicate with the attorney who is appearing in a case that is set on the upcoming trial calendar. The TCC shall inquire whether the case is ready for trial and shall also ascertain the anticipated length of the trial. The TCC shall also inquire whether there are any anticipated scheduling problems, whether the parties are likely to settle and whether there are any pre-trial matters for the court. The TCC shall also ask each attorney to advise the TCC if any matter arises that may affect the ability of the court to conduct a trial of the case at the upcoming term of court. Upon communicating with each attorney for this information, the TCC will publish the final trial calendar.

3.4 The final calendar shall be published and distributed by the Trial Court Coordinator by posting the calendar to the internet at the North Carolina Court Systems Homepage, www.nccourts.org, or any subsequently succeeding website, such that it is available for public display and review. As a professional courtesy, The Trial Court Coordinator shall e-mail a copy of the final calendars to the attorneys who have registered their e-mail addresses with the Trial Court Coordinator who are counsel of record for cases appearing on the calendars.

Rule 4. Adding Cases for Trial

Only the Senior Resident Superior Court Judge or Chief District Court Judge, or their designee, can add cases for trial to final calendar. Attorneys wishing to have a case placed on the trial calendars after publication may request such an addition. All such requests must be made in writing and addressed to the respective Judge. The Judge will notify the TCC if the case is permitted to be added to the trial calendar.

4.1 The designee for the Senior Resident Superior Court Judge shall be any other resident Superior Court Judge of the 27-A Judicial District or the Trial Court Coordinator when the Senior Resident Superior Court Judge cannot be reached.

Rule 5. Publication of Calendars for Public Use

The Trial Court Coordinator will publish final trial calendars on the court's website as follows. Upon completing the final trial calendar 3 to 4 weeks prior to the start of the trial week AND upon releasing the updated trial calendar the Wednesday prior to the start of the trial week, the Trial Court Coordinator shall place the calendar on the nccourts.org website for public viewing that same day. The online calendar is to be updated each time a subsequent calendar is released.

Rule 6. Superior Court Civil, District Court Civil, and Mediated Settlement

Continuances

6.1 Appropriate Judicial Official

Superior Court Civil Cases. Only a Resident Superior Court Judge may grant a continuance which is requested before 5:00 P.M. on the Friday prior to the Trial Week. After 5:00 P.M. on that Friday, all continuance requests are to be directed to the Trial Judge. After that point, only the Judge before whom the case is scheduled may continue a case. Should either the Senior Resident Superior Court Judge or the Trial Judge be unavailable, a Resident Judge may continue cases.

District Court Civil Cases. All applications for continuance of a civil case shall be made only to the District Court Judge presiding over the session of court for which the case is calendared. If the trial judge is not known at the time the request is made, the application should be addressed to the Chief District Court Judge.

Mediated Settlement Conference Cases. All applications for extension of the deadline for completion of the mediated settlement conference shall be made only to a Resident Superior Court Judge or the Trial Court Coordinator.

6.2 Form of Motion. All application for continuance shall be by written motion made on state form AOC-CV-221, Civil Local Form_27A-1 or other form that contains all the information set forth with Civil Local Form_27A-1. However, oral motions may be allowed in emergency situations at the discretion of the Presiding Judge when the reason for the continuance did not become known until immediately preceding the start of court.

6.3 Notification of Opposing Counsel/Unrepresented Parties. A copy of the completed form AOC-CV-221 or Civil Local Form 27A-1, or other form that complies with all the information set forth with Civil Local Form 27A-1, must be distributed to all counsel of record and/or unrepresented parties prior to the presentation of the motion to the appropriate judicial official. Distribution of the motion may be by US mail, facsimile transmission, electronic mail, hand delivery, telephone, or distribution by means of attorney distribution boxes maintained in the courthouse. If the motion is granted, all counsel of record, unrepresented parties, subpoenaed witnesses, and the Trial Court Coordinator's Office shall be notified as soon as possible by the moving party during the same business day.

6.4 Objections to Motion for Continuance. Opposing counsel and/or unrepresented parties shall have a period of three working days following completion of distribution to communicate, by approved means, objections to the motion for continuance to the moving party and the appropriate judicial official. Objections not raised within this time period are deemed waived.

If the motion is made within three days of the scheduled trial date, the moving party shall contact the opposing counsel and, in the motion to the appropriate court official, document the date of contact and the response of the opposing counsel.

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 appropriate judicial official 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 a motion for continuance as soon as 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 impact of a continuance on the safety of the parties or any other persons;
- j) Compliance with any law relating to the scheduling and trial of civil cases (such as, summary ejection appeals);
- k) The position of opposing counsel and/or unrepresented parties;
- l) Whether the parties themselves consent to the continuance;
- m) Present or future inconvenience or unavailability of witnesses/parties; and
- n) Any other matter that promotes the ends of justice.

6.6 Case Rescheduling. Cases continued for trial will be scheduled to the carryover date listed on the trial calendar. Exceptions may be granted by the appropriate judicial official for good cause shown. The continuance date should be determined after receiving scheduling input from all counsel and/or unrepresented parties at the same time the continuance is granted.

When the date for completion of a mediated settlement conference has been extended, it shall be extended to a specific date as expeditiously as possible. The deadline extension date should be determined after receiving scheduling input from all counsel and/or unrepresented parties and the mediator at the time the deadline extension is granted.

6.7 Time Standards. All general civil and magistrate appeal cases should be disposed of within 12 months of filing. All Superior cases should be disposed of within 18 months of filing.

6.8 Court Conflicts. The various levels of court should work together to try to move cases as expeditiously as possible. Age of case, subject matter and priority of setting should be given as much primacy as the level of court when resolving conflicts.

Attorneys shall notify the court and opposing counsel of any court conflict(s) as soon as they become known, and shall keep the court advised of the resolution of that conflict. All judges

shall communicate with other judges to resolve such conflicts. In resolving court conflicts, juvenile cases should be given priority over other District and Superior Court matters where practicable.

Rule 7. Peremptory Case Trial Setting

7.1 Requests for a peremptory setting for Superior Court cases involving persons who must travel long distances or numerous expert witnesses or other extraordinary [or statutorily mandated] reasons for such a request must be made to the Senior Resident Superior Court Judge through the Trial Court Coordinator. A peremptory setting shall be granted only for good and compelling reasons. A Senior Resident Judge may set a case peremptorily on the Senior Resident's own motion.

7.2 Requests for a peremptory setting for District Court cases must be made to the Trial Judge assigned to the case. The Trial Judge shall work in conjunction with the District Court Trial Court Coordinator to assure no other case has been set.

Rule 8. Presence of Attorneys at Calendar Call, Settlement Conferences, Trials, etc.

When an attorney is notified to appear for the setting of a calendar, pretrial conference, settlement conference, hearing of a motion for trial, the attorney must, consistent with ethical requirements, appear or have a partner, associate or another attorney familiar with the case present. Unless an attorney has been excused in advance by the Judge before whom the matter is scheduled and has given prior notice to the opposing party, a case will not be continued.

8.1 Any case noticed for hearing is subject to dismissal for failure to prosecute, when appropriate, if, at the time the case is called for hearing, the attorneys or *pro se* litigants are not present or ready to proceed and have failed to notify the Court of any emergency or conflict which would preclude the attorney or party from being present and/or ready to proceed.

Rule 9. Notices of Settlement

9.1 When a case on a published calendar is settled, all attorneys of record must notify the Trial Court Coordinator within twenty-four (24) hours of the settlement and advise who will prepare and present the judgment, and by what date the dispositive order will be presented.

9.2 If a case on a published Final Trial Calendar is settled, the attorneys, when feasible, should notify all counsel in the next case calendared.

Rule 10. Discovery

Counsel are required to begin promptly such discovery proceedings as should be utilized in each case, and are authorized to begin even before the pleadings are completed. Counsel are not permitted to wait until the pre-trial conference is imminent to initiate discovery.

Rule 11. Requests for Withdrawal of Counsel

No attorney who has entered an appearance in any civil action shall withdraw his or her appearance, or have it stricken from the record, except on 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.

Rule 12. Calendaring of Motions

12.1 Motions may be calendared for any session of trial court when space permits upon request to the Trial Court Coordinator, or by order of the Court. Motions will be calendared for, and heard on Monday mornings.

12.2 The Trial Court Coordinator may, at his/her discretion, add Motions onto already published Final Trial Calendars with the consent of the presiding Judge. Motions added to the Final Trial calendar must be with the consent of all counsel and/or parties or upon proper notice to the opposing counsel.

12.3 Each attorney filing a Motion must notify the TCC as to what motions the attorney desires to be heard and the approximate time that the hearing will require upon the initial filing of the Motion. The attorney should also notify the TCC if the hearing of the Motion will require an evidentiary hearing involving the testimony of witnesses. Each attorney is to provide the TCC with a copy of a file-stamped Motion, the Notice of Hearing and a detailed Certificate of Service upon the initial filing of the Motion.

12.4 The quantity of Motions for a given setting may not exceed 15 Motions without permission from the presiding Judge and an analysis of the estimated Motion lengths to ensure that more Motions are not scheduled than the time available would reasonably permit.

12.5 It is the duty of an attorney to notify the Trial Court Coordinator if a Motion is no longer for hearing at least three (3) days prior to the publishing of the updated calendar.

12.6 If an attorney fails to adhere to the procedures for calendaring a Motion with the TCC as outlined by these Local Rules, the TCC may withhold calendaring the Motion until all of the necessary information is received.

Rule 13. Case Action Cover Sheet

All papers filed in civil actions shall include as the first page of the filing two copies of a cover sheet summarizing the critical elements of the filing in a format prescribed by the Administrative Office of the Courts. This cover sheet can be obtained in the office of the Clerk of Court.

Rule 14. Calendar Call When on Holidays or Preceding Weeks When Court Not in Session

14.1 District Court Cases. Calendar Call will be held on the morning of the first day of the session at 9:30 a.m. Cases appearing on the Final Trial Calendar will be electronically sent to all attorneys before the case's trial week. While all cases appearing on the Final Trial Calendar are assumed to be ready for trial, attorneys or parties must comply with Local Rule 8 on Calendar Call appearances.

14.2 Superior Court Cases. Calendar Call will be held on the morning of the first day of the session at 10:00 a.m. Cases appearing on the Final Trial Calendar will be electronically sent to all attorneys before the case's trial week. While all cases appearing on the Final Trial Calendar are assumed to be ready for trial, attorneys or parties must comply with Local Rule 8 on Calendar Call appearances.

Rule 15. Facsimile Copies of Judgments or Orders

The Clerk of the Superior Court of Gaston County is hereby authorized to accept and file judgments or orders which have been emailed or faxed provided that the email or facsimile copy contains an original signature of the presiding judge.

15.1 The presiding judge maintains deference as to whether to execute a judgment or order submitted to the judge through email or facsimile transmission.

15.2 The Clerk is further authorized to accept and file a facsimile copy of a judgment or order bearing a judge's original signature, even if the judgment or order contains signatures of attorneys or parties which have been faxed.

Rule 16. Delinquent Orders of Judgments

16.1 Cases tried or reported settled shall be considered delinquent if the Order or Judgment of Disposition is not filed within twenty-one (21) 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 twenty-one (21) days after the Motion is ruled upon, unless otherwise directed by the Presiding Judge.

16.3 Cases or Motions so delinquent may be dismissed by the Senior Resident Superior Court Judge, the Chief District Court Judge, or their designee, either upon Motion by the party against whom the Judgment or Order was to be taken, or by the Trial Court Coordinator bringing the case to the Judge's attention.

Rule 17. Calendaring Cases Not Reached or Cases Continued

Cases not reached or continued during any session of court will be scheduled on the carryover date listed on the face of the Trial Calendar.

Rule 18. 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 19. Conflicts

19.1 Attorneys will assist Trial Judges in resolving calendar conflicts so that cases may be tried without delay.

19.2 For purposes of resolving appearance conflicts, the Court defers to the schedule of court attendance priority set forth in the General Rules of Practice for the Superior and District Courts Rule 3.1. 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.

Rule 20. Default

20.1 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

20.2 Pendency of the requested notice shall not be cause for delaying the hearing of the Entry of Default or Entry of Default Judgment motions.

Rule 21. Administrative Dispositions

21.1 Listed below are three categories 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.

- a. Cases in bankruptcy (accompanied by a copy of stay order from Bankruptcy Court)
- b. Defendants making payments
- c. Removal for any other reason

21.2 Cases will be removed by Orders prepared by the Clerk or the Trial Court Coordinator upon review of the files and after consultation with counsel, if necessary. The Order will be signed by the Senior Resident Superior Court Judge, the Chief District Court Judge, or their designees, and filed with the Clerk.

21.3 If, at some later date, trial or other action becomes necessary, a motion may be filed requesting the case be returned to active status

21.4 Counsel with valid objections to such an administrative disposition of one of their cases should address those objections to the Trial Court Coordinator and appropriate action will be taken.

Rule 22. 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 and contains all the information covered in that specified.

Rule 23. Mandatory Participation Among Alternative Dispute Resolution Programs

23.1 All parties to Superior Court civil actions must mutually select from Mandatory Court Ordered Mediation or Private Mediation, within twenty-one (21) days from the filing of the last responsive pleading.

23.2 Exemptions for Mediation

a) Cases exempted from participation in the alternative dispute resolution programs are:

- a. Cases seeking the issuance of an extraordinary writ
- b. Cases appealing the revocation of a motor vehicle operator's license
- c. Declaratory judgment actions, (unless agreed upon by the parties)
- d. Cases appealing an administrative agency's decision

~~b) The Trial Court Coordinator is to provide written notice to all attorneys and unrepresented parties after filing of the last responsive pleading, informing them of the mandatory alternative dispute resolution programs to which they are ordered and the date by which their mutual selection of a Mediator must be received in the Trial Court Coordinator's office.~~

Rule 24. Calendaring for Trial Actions Exempted from Mediated Settlement Conferences or Private Arbitration/Mediation Programs

Cases exempted or removed from participation in the alternative dispute resolution programs are to be scheduled by the Trial Court Coordinator for trial after the case has reached five (5) months of age from filing. The Trial Court Coordinator is to notify the attorneys or parties in writing of the trial weeks available during the immediate ninety (90) day period from which they may mutually select. Failure of the attorneys or parties to agree upon a listed trial week and notify the Trial Court Coordinator's office within fourteen (14) days will result in the case being ordered to the default trial week listed on the notification letter.

Rule 25. Mediated Settlement Conferences

25.1 Selection of Mediator

- a) Pursuant to §7A-38.2B(d), persons ordered to mediation have the right to designate a mediator in accordance with §7A-38. Upon failure to mutually select a mediator within 21 days of the court's order, the Trial Court Coordinator will appoint the next mediator on the certified mediator list provided by the Dispute Resolution Commission. The Senior Resident Superior Court Judge or the Trial Court Coordinator retains the discretion to depart from the procedure for such circumstances as the appointment of a mediator to a case, or to withhold a mediator from appointment pursuant to Rule 6(d) of the "Rule Implementing Mediated Settlement Conferences."
- b) The Senior Resident Superior Court Judge or Trial Court Coordinator may, in the Senior Resident Superior Court Judge's discretion, appoint a retired or emergency judge or justice of the district, superior, or appellate court as mediator, whether or not such judge has been certified as a mediator.
- c) Disqualification of a Mediator by Judge. If a Resident or Presiding Superior Court Judge orders a mediator disqualified, the moving party must provide a copy of the order to the Trial Court Coordinator within two (2) days of the date of the order.

- d) Self-disqualification of Mediator. A mediator may disqualify themselves upon written notice to the Senior Resident Superior Court Judge, Trial Court Coordinator and the parties.

25.2 Reporting Full or Partial Settlement Agreement Before or During the Conference. Upon reaching a full or partial settlement agreement before or during the conference, including any recess of the conference, the parties and others with settlement authority shall provide a copy of the executed written agreement to the mediator within five days of such settlement. Failure to provide a copy of the written agreement to the mediator on a timely basis may result in sanctions as for the failure to attend. The mediator shall mail the Report of Mediator to the TCC's office within seventy-two (72) hours.

When a case has reached a full or partial settlement agreement, the attorneys of record or unrepresented party must notify the Trial Court Coordinator within twenty-four (24) hours of the settlement agreement.

25.3 Reporting Settlement Agreement Requiring Subsequent Board Approval. If a proposed settlement agreement is reached which can be approved only by governmental board as contemplated by Rule 4 A(1) (iii) of the Supreme Court's "Rules Implementing Settlement Conferences", the mediator is to report the settlement without the necessity of obtaining the board approval. The attorneys of record must notify the Trial Court Coordinator within twenty-four (24) hours of the settlement agreement.

25.4 Failure of a Mediator to Comply with Supreme Court Settlement Conference Rules and Local Rules. The Senior Resident Superior Court Judge and the Trial Court Coordinator reserve the right to withhold future appointments of any mediator who does not fully comply with the requirements of the "Rules Implementing Mediated Settlement Conferences" and Rules 25 and 26 of these Local Rules.

25.5 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 or partial 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, the party must file a motion to be relieved from payment of such fee on an approved "Petition and Order for Relief from Obligation to Pay Mediator's Fee" form available in the office of the Trial Court Coordinator subsequent to the settlement conference and/or trial.
- c) Sanctions for Failure to Pay Mediator's Fee. Failure of a party to make timely payment of his or her portion of the mediator's fee, or if a party contending indigent status fails to timely submit the Petition form, it shall constitute contempt of court and may result in the imposition of any or all lawful sanctions by a Resident or Presiding Judge.

25.6 Scheduling Unsettled Cases for Trial. Cases that did not fully settle during the mediated settlement conference process will be scheduled for trial in due course from the date which impasse was declared. Cases are scheduled by order of case age, with older cases being given scheduling priority.

Rule 26. Private Mediation or Arbitration

26.1 Selection. At any time prior to trial and if all parties agree, they may select to place the case before a private arbitrator or mediator, not part of the court's mediated settlement conference program. The selection of a private arbitrator or mediator may be made at any time before the case is tried. All arrangements of details for obtaining the private service, such as the payment of the arbitrator or mediator, determination of the date, time and location, and other details are left to the sole responsibility of the parties.

26.2 Reporting Selection of Private Arbitrator or Mediator. When all parties to a case have decided to obtain the services of a private arbitrator or mediator, the attorneys must notify the Trial Court Coordinator within twenty-four (24) hours of the decision.

Rule 27. Communication with Court

All communication concerning the procedures outlined in these Local Rules can be directed to the Trial Court Coordinator's Office:

Superior Trial Court Coordinator
325 Dr. Martin Luther King, Jr. Way
Suite 4135
Gastonia, NC 28052-2331
Telephone Number (704) 852-3170 / (704) 852-3122
Fax Number (704) 852-3125

District Court Judges' Office
325 Dr. Martin Luther King, Jr. Way
Suite 3063
Gastonia, NC 28052-2331
Telephone Number (704) 852-3117
Fax Number (704) 852-3131

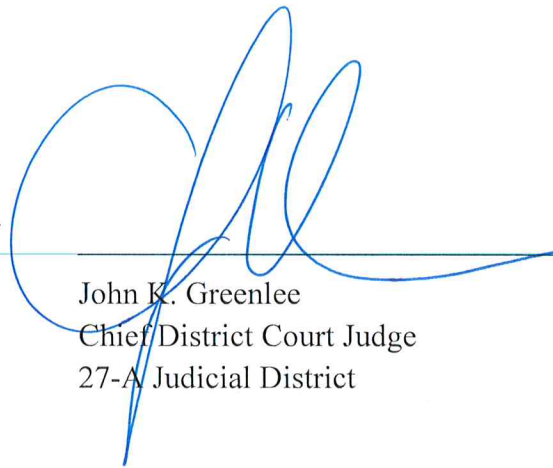
Rule 28. Effective Date of These Rules

These Local Rules and Plan for the calendaring of civil cases shall be effective on January 24, 2022.

This, the 20 day of January, 2022.



David A. Phillips
Senior Resident Superior Court Judge
27-A Judicial District



John K. Greenlee
Chief District Court Judge
27-A Judicial District