



LOCAL RULES AND CASE MANAGEMENT PLAN FOR THE CIVIL SUPERIOR COURT OF JUDICIAL DISTRICT 13B



Amended September 1, 2014

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Brunswick County – District 13B
Local Rules & Case Management Plan

**GENERAL RULES OF COURT AND
CASE MANAGEMENT PLAN**

**FOR THE SUPERIOR COURT OF JUDICIAL DISTRICT 13B
NORTH CAROLINA
AS AMENDED EFFECTIVE OCTOBER 1, 2014**

**PURSUANT TO THE GENERAL RULES OF
PRACTICE FOR THE SUPERIOR AND DISTRICT COURTS
OF NORTH CAROLINA**

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Subject to and in compliance with the provisions of Rule 40(a), Rules of Civil Procedure and N.C.G.S. 7A-146 and Rule 2 of the General Rules of Practice for the Superior and District Courts as adopted by the Supreme Court of North Carolina.

GENERAL RULES OF COURT AND CASE MANAGEMENT PLAN FOR THE SUPERIOR COURT, 13B JUDICIAL DISTRICT NORTH CAROLINA

1.0 GENERAL RULES

- 1.1** The purpose of these rules is to provide for the orderly, just, and prompt disposition of matters to be heard in the Brunswick County Civil Superior Court as required by amended Rule 2, General Rules of Practice. These rules shall be construed in such manner as to avoid technical delay and to ensure prompt disposition of pending cases.
- 1.2** The Clerk of Superior Court and the Trial Court Coordinator shall maintain a supply of the printed rules and required forms to furnish to attorneys upon request. The Trial Court Coordinator shall arrange for these rules to be available online.
- 1.3** If the rules do not cover a specific situation, the Trial Court Coordinator is authorized to act after consultation with the Senior Resident Superior Court Judge or presiding judge.

2.0 TIME TO TRIAL

- 2.1** The North Carolina Supreme Court expects 90 percent of all civil cases in Superior Court to be resolved within one year of filing. (See Court Performance Management System at www.nccourts.org). The following goals and expectations are established in an effort to meet the standards of the North Carolina Supreme Court.
- 2.2** The Court expects simple two-party and three-party cases to be tried no later than 10 to 11 months from the filing of the Answer.
- 2.3** The Court expects relatively simple cases with cross-claims, counter-claims, third-party claims, or unnamed defendants to be tried no later than 12 months from the filing of the first Answer.
- 2.4** The Court expects virtually all cases to be tried no later than 24 months from filing of the first Answer. Medical negligence cases with two sets of attorneys should be tried no later than 12 months from the filing of the first Answer. Medical negligence cases with three to four sets of attorneys should be tried no later than 18 months from the filing of the first Answer. Medical negligence cases with more than four sets of attorneys should be tried no later than 24 months from the filing of the first Answer.

2.5 Any case that cannot feasibly be tried within 12 months of filing should have a Discovery Scheduling Order in place. The burden is on counsel to seek such an Order as set forth in Rule 3.2 *infra*. All Discovery Scheduling Orders shall include a trial date consistent with these rules.

3.0 DISCOVERY AND PLEADINGS

3.1 Discovery shall begin promptly as contemplated by Rule 8 of the General Rules of Practice. Third-party complaints, cross-claims, counterclaims, and answers thereto shall be promptly filed. Discovery should be scheduled so as to be completed within 210 days of the filing of the complaint. Unreasonable delay in the closing of the pleadings will not be allowed to delay trial.

3.2 If additional time for discovery, to add additional parties, or to close pleadings is needed, any party may promptly move the Court for a Discovery Conference and a Discovery Scheduling Order. **All Discovery Scheduling Orders must include a trial date.** All Motions for Discovery Scheduling Orders and proposed Consent Discovery Scheduling Orders shall be delivered to the Trial Court Coordinator at or before the Administrative Hearing. The Trial Court Coordinator shall present the proposed Order to a presiding judge or Senior Resident Superior Court Judge for consideration and, if needed, a hearing. (See Local Rule 7). No Consent Discovery Scheduling Order may be signed unless it is first reviewed by the Trial Court Coordinator and is presented to the Court through the Trial Court Coordinator. Any such Order entered in violation of this rule may be vacated by the Senior Resident Superior Court Judge.

3.3 The Court expects counsel to conduct discovery in good faith and to cooperate and be courteous with one another in all phases of discovery. Depositions shall be conducted in accordance with the following guidelines:

- (i)** Counsel shall neither direct nor request a witness not to answer a question, unless 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 counsel has objected to the question on the ground that such objection is necessary to present a motion under subdivision (vi) of this Rule.
- (ii)** Counsel shall not make objections or statements that might suggest an answer to a witness. Counsel statements when making objections should be succinct, stating the basis of the objection and nothing more.
- (iii)** While counsel has the right and duty to prepare a client for a deposition, once the deposition begins, counsel and their witness-clients shall not engage in private, off-the-record conferences while the deposition is in session, except for the purpose of deciding whether to assert a privilege. Counsel may confer with clients over lunch or overnight recesses in the deposition. However, counsel may not request such a break when a

question is pending or while there continues a line of questioning that may be completed within a reasonable time preceding a scheduled break.

- (iv) Deposing counsel shall provide to all counsel present copies of all documents shown to the witness during the deposition. The witness and the witness's counsel do not have the right to discuss documents privately before the witness answers questions regarding the documents.
- (v) Upon motion, the Court may limit the time permitted for a deposition. If a deponent or other party impedes or delays the examination, the Court shall allow additional time for a fair examination. If the Court finds such an impediment, delay, or other conduct has frustrated the fair examination of the deponent, the Court may impose upon the persons responsible an appropriate sanction, including reasonable cost and attorney's fees incurred as a result thereof.
- (vi) At any time during a 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 Senior Resident Superior Court Judge, Special Superior Court Judge, or presiding judge may order the person before whom the examination is being taken to cease from taking the deposition, or limit the scope and manner of the taking of the deposition as provided in Rule 26(c) of the Rules of Civil Procedure. If such order terminates the examination, it shall be resumed only upon the order of a Senior Resident Superior Court Judge, Special Superior Court Judge, or presiding judge. 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 37(a) (4) of the Rules of Civil Procedure apply to the award of expenses incurred in relation to the motion. Requests for court intervention pursuant to this Rule shall be directed to the Trial Court Coordinator pursuant to Rule 6 *infra*.
- (vii) Counsel shall avoid making long speeches and arguments on the record. Counsel shall not call names or question the professional competence of other lawyers or judges. Counsel shall not use demeaning, rude, or insulting language.

3.4 No party may seek an extension of time from the Clerk to answer discovery when the extended date sought is within 30 days of the trial date. No party may seek an extension of time from the Clerk after the date discovery is scheduled to be completed if a Discovery Scheduling Order has been entered. All interrogatories, requests to produce documents, and requests for admission should be served at least 70 days before trial.

3.5 Amendments to Discovery Scheduling Orders may only be allowed by the Senior Resident Superior Court Judge or her designee. Motions for Discovery Conferences and proposed Discovery Scheduling Orders sought after a case is set for trial may be allowed only by the Senior Resident Superior Court Judge or her designee. Requests for either

shall be delivered to the Trial Court Coordinator for presentation to the Senior Resident Superior Court Judge.

- 3.6** Failure to timely undertake, answer, or otherwise complete discovery is not grounds for delaying trial. Scheduling delays and problems should be planned for and expected, and are not grounds for delaying trial. If discovery will be necessary, the discovery process should be initiated as early as possible.
- 3.7** In any medical negligence case subject to Rule 9(j) of the Rules of Civil Procedure:
- (i) No later than ten days after a defendant files an Answer, the parties shall exchange copies of all available and relevant medical records. The parties are under a continuing duty to make relevant medical records available to all other parties. Each party is required to comply with this rule even in the absence of any formal discovery requests, and even if other parties do not so comply. Violations may be brought to the attention of the Senior Resident Superior Court Judge through a Motion to Compel.
 - (ii) At the time a party discloses its expert witnesses, that party shall on the same date provide to all other parties at least three possible dates and times for the deposition of each expert witness within the time frame allowed by the Discovery Scheduling Order. Counsel shall promptly respond to inquiries concerning and cooperate in the scheduling of depositions consistent with the terms of the Discovery Scheduling Order. Violations may be brought to the attention of the Senior Resident Superior Court Judge through a Motion to Compel.
 - (iii) To reduce delays and minimize costs, the parties are encouraged to exchange detailed affidavits of expert witnesses and agree to time limits for expert depositions, such as 90 minutes per deposition, and to take non-local expert depositions via telephone, video conferencing, or similar method.
- 3.8** Absent agreement by all parties or a Court Order, all discovery seeking identification of expert witnesses shall be served at least 100 days before trial and shall be answered at least 60 days before trial. Late requests or disclosures, even if agreed upon, will not delay trial. Expert witnesses not timely disclosed upon request shall not be allowed to testify absent an agreement between all parties.
- 3.9** Any party contending that any part of Rules 3.3, 3.4, or 3.7 is inappropriate in a particular case may seek relief from the Senior Resident Superior Court Judge by filing a motion to that effect. Such motion should explain why the Local Rule should not be applied and offer an alternative plan for promptly moving the case toward resolution.

4.0 MEDIATION

- 4.1 Upon the filing of a responsive pleading or dispositive motion, all eligible cases shall be ordered into Mediation.
- 4.2 The Court expects the parties the North Carolina Supreme Court Rules governing mediated settlement conferences, which will be enforced by the Court. Counsel/parties shall cooperate with the mediator in scheduling mediated settlement conferences. Sanctions will be imposed if appropriate.
- 4.3 Any party filing a Designation of Mediator form or any pleading concerning mediation shall file the original with the Trial Court Coordinator, where staff will then place the original in the Court file.
- 4.4 The deadline for completion of the Mediated Settlement Conference will be 30 days before trial. Short extensions will be granted for good cause shown, so long as trial itself is not delayed. Form AOC-CV-835 should be used for this purpose.
- 4.5 Requests to dispense with mediation are disfavored and will not be allowed absent extraordinary circumstances.
- 4.6 Litigants are encouraged to timely select a mediator appropriate for the case. This issue will be addressed at the Administrative Hearing, if one is held. If the parties agree to a mediator at the Administrative Hearing, the parties shall submit a Designation of Mediator form stating such agreement to the Trial Court Coordinator. If the parties do not agree to a mediator, the parties shall submit a Designation of Mediator Form to the Trial Court Coordinator and the Senior Resident Superior Court Judge will appoint a mediator. Subsequent motions to select or substitute a different mediator will only be allowed if the appointed mediator has a conflict or is otherwise unable to mediate the case.
- 4.7 If parties wish to delay discovery until after mediation, the parties should promptly schedule the mediated settlement conference and notify the Trial Court Coordinator. Failure to complete discovery while waiting on mediation is not good cause to delay setting a case for trial.
- 4.8 Mediators who neither live nor practice in Brunswick County who wish to be appointed to mediate cases must annually so advise the Trial Court Coordinator by letter between April 1 and May 1 of each year, for the upcoming Fiscal Year to begin July 1.

5.0 MOTIONS AND NON-JURY MATTERS

- 5.1 Counsel may request the scheduling of non-jury matters by completing a Calendar Request form (**Appendix A**), submitting the completed form to the Trial Court Coordinator, and serving the form on all other parties.

- 5.2** A Calendar Request must be submitted for each motion filed with the Court. This rule includes motions contained within other pleadings and preliminary injunctions, and other motions scheduled by a Superior Court Judge. Any motion filed is presumed to be ready for hearing.
- 5.3** No motion may be calendared until it has been filed. Motions will be heard at the scheduled time and at such other times during the session as shall be determined by the presiding judge.
- 5.4** Any Calendar Request for motions filed within 10 court calendar days of the first day of the requested session may be scheduled only if all parties consent and the presiding judge agrees to add the matter. Such Calendar Request may also be scheduled if the Court determines that the interests of justice require the motion be heard on less than 10 court calendar days' notice.
- 5.4** Motions may be heard out-of-term by consent only. Such motions will be heard in chambers by any presiding or resident judge, subject to the requirements of Rule 6 herein.
- 5.5** Motions may be heard by way of telephone only by agreement of all counsel and the Court.
- 5.6** Motion calendars shall be prepared by the Trial Court Coordinator and shall be posted online at www.nccourts.org no later than 10 calendar days (during which court is in session) before the day the session begins.
- 5.7** Scheduling within the term of court for motions on a published calendar shall be in the manner prescribed by and in the discretion of the presiding judge.
- 5.8** All uncontested motions shall be submitted to the Trial Court Coordinator for referral to a presiding or resident judge for review and decision, as set forth in Rule 6 herein.
- 5.9** A party filing one or more of the following motions must make a good faith effort to determine whether the motion will be opposed:
- (i) Motion to Amend a pleading or add a party;
 - (ii) Motion to Transfer to Superior Court; and
 - (iii) Motion for *Pro Hac Vice* Admission.

If the Motion is consented to, the procedures set forth in Rule 6 shall apply.

- 5.10** Motions to withdraw as counsel must include a Notice of Hearing and a certificate of service upon the client. The motion must set forth the name and address of substitute counsel, if known, and the current address of the party from whom representation is being withdrawn. No judicial action will be taken on a Motion to Withdraw that does not contain this information.

- 5.11** Motions for *Pro Hac Vice* Admission must include a statement under oath that the statutorily-required fee has been paid.
- 5.12** If a party responding to a complaint, counterclaim, cross-claim, or third-party complaint does not file an Answer and instead files a dispositive motion, said party must immediately schedule the motion for hearing. A dispositive motion not promptly scheduled for hearing may be deemed abandoned or scheduled for hearing *sua sponte* by the Trial Court Coordinator or other sanctions or consequences may be imposed. Discovery shall proceed regardless of whether the motion is scheduled for hearing.
- 5.13** Motions shall be filed and scheduled promptly. Delays in scheduling motions for hearing, particularly after a trial date has been set, may be grounds for denial of any motion that will delay trial. Failure to schedule a motion for hearing may result in the motion being denied or deemed withdrawn without a hearing or in the imposition of sanctions such as, *inter alia*, limiting or prohibiting discovery. Any motion filed after a trial date has been set shall include the date of trial in the motion.
- 5.14** When a filed motion no longer requires a hearing, the filing party shall file a notice withdrawing said motion.
- 5.15** Motions to Amend Pleadings or Add Parties
- (i)** Motions to amend pleadings and motions to add parties shall be filed promptly so as not to delay trial or scheduling a case for trial, if at all possible. Once a case is set for trial, all motions to amend the pleadings and motions to add parties must include the trial date. Such motions shall also state whether the parties consent to the Motion and whether trial will be delayed if the motion is allowed.
 - (ii)** If the trial is more than two months from the filing of the motion, the moving party shall promptly schedule the motion for hearing in the usual way. However, consent motions shall be presented to the Trial Court Coordinator pursuant to Rule 6.
 - (iii)** If the trial date is within two months, the motion will be decided by the Senior Resident Superior Court Judge. Such motions will typically be decided without a hearing. The moving party shall deliver a copy of the motion to the Trial Court Coordinator. All other parties are allowed five business days to respond in writing. Any objection to the motion shall be filed with the Clerk and a copy delivered to the Trial Court Coordinator. Consent may be communicated by letter or email to the Trial Court Coordinator.
 - (iv)** If a motion to add parties or to amend pleadings is allowed and any party contends that the trial date therefore needs to be changed, that party shall immediately file a Motion to Continue pursuant to Local Rule 12.

5.16 When a party has been served and has not filed an Answer or otherwise responded, the party seeking relief shall promptly seek entry of default and default judgment. Failure to act within four months from service may result in dismissal for failure to prosecute.

6.0 Off-Calendar Matters: Consent, Uncontested, and Purported Emergencies

6.1 All uncontested matters requiring judicial action or approval and all matters an attorney believes require expedited or emergency hearing shall be submitted to the Trial Court Coordinator for scheduling and to a resident or presiding judge for assignment. Attorneys and litigants may not submit matters directly to a judge for ruling or approval. Litigants or attorneys who write or approach individual judges about such matters should expect to be scolded and rejected.

6.2 Counsel filing consent motions shall so state in the motion and contain original signatures. A proposed Order must be included with the filing and state that the motion is consented to or otherwise unopposed. Signatures on the proposed Order are not required, except that the signature of a party is required before counsel representing that party can withdraw without a hearing.

6.3 If a party believes a matter requires expedited or emergency hearing, that party must make a written request for such a hearing to the Trial Court Coordinator. The rule does not apply to requests pursuant to Rule 3.3(vi) *supra*.

6.4 The Trial Court Coordinator is responsible for promptly submitting uncontested, consent, and purported emergency matters to the presiding judge and for working with that judge to resolve any scheduling issues.

6.5 While the Trial Court Coordinator and the Court will make reasonable efforts to promptly deal with uncontested and emergency matters, counsel should be aware that judges have courtroom duties and other office responsibilities that may take priority. Counsel should allow sufficient time for the Court to give these matters appropriate consideration and should make every effort not to wait until the last minute to seek the Court's assistance.

6.6 Motions for continuances of trials or for amendments to Discovery Scheduling Orders, even if by consent, will be heard only by the Senior Resident Superior Court Judge or her designee. Motions to amend pleadings and motions to add parties will also be heard only by the Senior Resident Superior Court Judge.

7.0 SCHEDULING CASES FOR TRIAL/CASES READY FOR TRIAL

7.1 All Cases Reviewed at 120 Days Post-Filing.

Approximately four months after filing, all cases will be set for trial/hearing or placed on an Administrative Calendar for review.

7.2 Entry of Administrative Orders Setting a Case for Trial.

In simpler cases or in cases requiring neither a jury nor the taking of evidence, the Trial Court Coordinator may send to all parties/counsel of record a tentative Administrative Order which will set the case for trial/hearing and, if appropriate, will initiate the mediation process. If this date is inconvenient or causes scheduling difficulties for any party or attorney, or is for any reason inappropriate for a particular case, within 10 days of the date of the Administrative Order:

- (i) Any party or attorney may file a calendar request for an earlier trial/hearing date; or
- (ii) The parties may submit a joint Consent Order rescheduling trial/hearing for a date within three weeks of the originally scheduled date; or
- (iii) Any party or attorney may request an Administrative Hearing.

If no such action is taken by any party, the tentative Administrative Order will become final and will be entered by the Court.

7.3 Administrative Hearings.

- (i) The Trial Court Coordinator may schedule any case 120 days past the date of filing for an Administrative Hearing.
- (ii) All *pro se* parties shall receive notice of the hearing at the address in the file. Notice letters and paper copies of calendars will NOT be provided to attorneys. Counsel should sign up for email calendar notifications available at www.nccourts.org to ensure notice. Attorneys should determine in advance of appearing at the Administrative Hearing the availability of witnesses and any potential court or personal scheduling conflict.
- (iii) At the hearing, the parties shall discuss with the Trial Court Coordinator an appropriate trial date, an appropriate mediator, whether expedited trial is appropriate, and any other scheduling matters requiring attention. Non-jury trials shall be scheduled for trial within four months and jury trials within six months. Medical malpractice cases shall be scheduled for trial as set forth in Rule 2.4.
- (iv) At the conclusion of the hearing, counsel shall prepare a Consent Discovery Scheduling Order over the Court's signature setting the trial date, a Designation of Mediator form appointing a mediator or noting the parties' selection of a mediator. The Trial Court Coordinator has full authority to act for the Senior Resident Superior Court Judge in issuing Administrative Orders and her decisions concerning scheduling are binding as if issued by the Court.

- (v) Before the hearing, the parties may submit a Consent Discovery Scheduling Order to the Trial Court Coordinator to be excused from appearing at the Administrative Hearing Coordinator so long as the trial date is within the framework set forth herein in Rule 7.3(c).

- 7.4 To the extent feasible, the Trial Court Coordinator will make reasonable efforts to set cases consistent with each attorney's schedule and the schedules of parties and key witnesses. Cases may be set despite attorney trial conflicts, given that most cases settle; such conflicts shall be noted in the Administrative Order upon request.
- 7.5 A party who fails to appear at the Administrative Hearing or submit a Consent Discovery Scheduling Order will be considered by the Court to have waived any conflicts or problems with the trial date and will be bound by the trial date as if counsel had been present and consented to the date.
- 7.6 Because trial dates are set far in advance, the Trial Court Coordinator has some authority to reschedule trial dates, so long as the requirements of Rule 2 concerning time-to-trial are met. Up to six weeks prior to trial, the Trial Court Coordinator may, upon written request with consent of all parties, reschedule a trial date one or two terms before or after the date set at the Administrative Hearing. All applications for rescheduling shall cite this Rule and submit form AOC-CV-221, available at www.nccourts.org. Rule 12 applies once a case is within six weeks of trial, if more than a two-term delay is sought, or if the rescheduled date would take the trial outside the confines of Rule 2.
- 7.7 Once a case is set for trial by Administrative Order, a continuance will not be granted absent:
 - (i) Exigent circumstances arising after the setting of the trial date (Failure to complete discovery is not a compelling reason), or
 - (ii) Amendment of the pleadings or addition of parties if justice requires a delay.

8.0 TRIAL CALENDARS

- 8.1 At least three weeks before the beginning of the session, the Trial Court Coordinator shall prepare the Trial Calendar and post it online at www.nccourts.org. Cases will be placed on the trial calendar in the order in which they are scheduled for trial.
- 8.2 Attorneys shall proceed on the assumption that all cases on the Trial Calendar will be tried at the scheduled session unless resolved by Consent Order or dismissal. If there is more than one civil session of court, a case may be called for trial by any presiding judge.
- 8.3 When a case on a published calendar is settled, all attorneys of record MUST notify the Trial Court Coordinator within 24 hours of the settlement and must, before the time the case is to be called for trial or hearing, complete and file with the Trial Court Coordinator

a Case Settlement Report similar to that in **Appendix B** which informs the Court how the case will be closed. Failure to file the Case Settlement Report may result in a court order establishing dates as the Court sees fit or in dismissal of all claims.

8.4 Failure to present such pleadings as are necessary to close a case reported as settled may result in summary dismissal without further notice.

9.0 CALENDAR CALL AND WEEKS OF COURT

9.1 On the first day of each civil trial session, the business of the court shall be conducted in the following manner:

(i) Session shall begin at 10:00 a.m.

1. Calendar shall be called
2. Motions will be heard
3. Pre-trial conferences will be conducted

(ii) On the following day, jury selection for the first case will begin at 9:30 a.m.

All motions not reached or conferences not conducted during the first day of the session shall remain on a stand-by status and shall be disposed of at other times during the week in the discretion of the presiding judge.

9.2 Generally cases shall be called for trial in the order in which they appear on the Trial Calendar. However, after the first case is tried or resolved, cases may be called for trial in such order as appears appropriate to the presiding judge.

9.3 Counsel must submit a signed Pre-trial Order to the Trial Court Coordinator on the Tuesday before trial. If any party does not cooperate, the cooperating party or parties shall submit a proposed Order leaving the witnesses and exhibits of the non-cooperating party blank and shall include a cover letter reciting efforts made to obtain the information from the non-cooperating party or parties. The presiding judge may impose appropriate sanctions for failure to comply with this Rule.

9.4 If a case is not reached for trial or there is a mistrial, the case will be placed on the next civil calendar to be published. If a scheduling conflict exists with counsel of record, they must submit an Amended Consent Discovery Scheduling Order within 10 days.

10.0 PEREMPTORY OR PRIORITY SETTINGS

- 10.1** When the North Carolina General Statutes provide for a priority setting, all counsel are mutually and individually responsible for bringing this fact to the attention of the Trial Court Coordinator within 30 days.
- 10.2** Once a case has received a preemptory setting for trial, it should rarely be continued from the session at which it is ordered to trial.
- 10.3** When a case has been preemptorily set for trial, and the case is continued from the Session at which it was ordered for trial for any reason other than those listed below, then the case shall not be granted a preemptory setting again. Rather, the case will be set in the discretion of the Court at any subsequent session without any designated priority.
- (i)** Counsel being in trial in another case which carried over from the previous week; or
 - (ii)** A conflict with the North Carolina Supreme Court, North Carolina Court of Appeals, or a United States Federal Court; or
 - (iii)** Serious medical emergency involving counsel or a party.

11.0 CLEAN-UP CALENDARS

- 11.1** At any appropriate time, the Trial Court Coordinator may prepare a Clean-Up Calendar for cases in which no progress has been noted. The Clean-Up Calendar may contain any cases which in the opinion of the Senior Resident Superior Court Judge or Trial Court Coordinator may be a proper subject of inquiry as to their status, including, *inter alia*, cases in which no service has been obtained, cases in which settlement has been reported but pleadings sufficient to close the case have not been filed, and any other case that is not moving towards disposition.
- 11.2** The presiding judge during a Clean-Up Calendar shall determine if a trial will be required and if so, whether any impediments exist. If there are impediments to trial, the presiding judge shall resolve such impediments for disposition or otherwise ascertain when they will be resolved, and shall enter an appropriate Order.
- 11.3** If the case is dormant without discernable activity, no summons appears to have been issued, the summons has expired, or the case has abated or appears to have been abandoned or discontinued, the Presiding Judge shall take any necessary action to remove the case from the active calendar, including involuntary dismissal for failure to prosecute or other appropriate reason. Counsel and *pro se* parties are obligated to attend hearings on Clean-Up Calendars, and failure to attend subjects a case to dismissal for failure to prosecute without further notice. Calendar notice is available at www.nccourts.org.

12.0 CONTINUANCE POLICY

12.1 Continuance requests are presumptively disfavored, except under the circumstances set forth in Rule 7.6. However, when compelling reasons are presented that would affect the fundamental fairness of the trial process or when a continuance is clearly in the interests of justice, a continuance may be granted in the exercise of judicial discretion. In addition to other factors, the appropriate judicial official shall consider the following when deciding to grant or deny a request:

- (i)** The age of the case;
- (ii)** The status of the trial calendar for the week;
- (iii)** The order in which the case appears on the trial calendar, including whether the case is peremptorily scheduled;
- (iv)** The number of previous continuances;
- (v)** The extent to which counsel had input into the scheduling of the trial date;
- (vi)** The due diligence of counsel in promptly filing a motion for continuance as soon as practicable;
- (vii)** Whether the reason for continuance is a short-lived event which that could be resolved before the scheduled trial date;
- (viii)** The length of the continuance requested, if applicable;
- (ix)** The position of opposing counsel;
- (x)** Whether the parties themselves consent to the continuance;
- (xi)** Whether the Court has recently allowed an amendment to the pleadings or the addition of a party, which change requires additional discovery;
- (xii)** Present or future inconvenience regarding the unavailability of witnesses/parties; and
- (xiii)** Any other matter that promotes the ends of justice.

Reasons that shall NOT be considered a valid basis for granting a request for continuance include: potential conflicting scheduling of other trials in other courts; failure to complete discovery; failure to obtain depositions or evidence needed for trial; whether counsel of record has received payment; and voluntarily switching counsel on the eve of trial. Late disclosure of experts is not a reason to delay trial, but may be a basis for sanctions. See Local Rule 3.8.

12.2 Requests to continue shall be filed as soon as the need for the continuance arises.

- 12.3** Before the opening of court for the session in which the case is calendared, all motions for continuance shall be directed to the Trial Court Coordinator, who will bring them to the attention of the Senior Resident Superior Court Judge or her designee for decision. Following the opening of court for the session in which the case is calendared, any request for continuance shall be made to the presiding judge of the court in which the case is calendared. Only matters that arose after the close of business on the Friday prior to trial shall be grounds for continuance by the presiding judge.
- 12.4** All requests for continuance shall be by written motion made on state form AOC-CV-221, available at www.nccourts.org. A party seeking a continuance must make reasonable efforts to confer with all other parties before submitting the request for continuance. Further, the request must explicitly state the position of all other parties as to the request. Requests not explicitly consented to by all other parties shall provide at least two dates within the next two months on which the case could be rescheduled. Consent or unopposed motions shall provide at least one date within the next two months on which the case can be rescheduled. Consent of all parties does not guarantee the motion will be granted.
- 12.5** A copy of the completed form AOC-CV-221 must be served on all counsel of record and unrepresented parties before presentation of the request to the Court and must be served by hand, facsimile, electronically, or such other method as ensures receipt on the day the motion is filed.
- 12.6** Opposing counsel and/or unrepresented parties shall have a period of three working days following service of the motion to communicate in writing objections to the request for continuance to the moving party and the Trial Court Coordinator. Objections not raised within this time period are deemed waived. If the request is filed in the week immediately preceding trial, opposing counsel/parties may communicate the fact of an objection orally to the Trial Court Coordinator, and shall file a written objection as soon as practicable.
- 12.7** Once a case has been set for trial, no party or attorney will thereafter schedule any vacation, secured leave, or business trip that can be advanced as a basis to seek a continuance. All parties and attorneys have a continuing duty to take affirmative steps to obtain testimony by deposition or otherwise of any party or witness who becomes unavailable subsequent to the Order of the Court setting a trial date. All parties and attorneys also have an affirmative duty to respect the Order of the Court setting the date for trial and not to undertake to schedule any matter or event that would conflict with or abort the Court-ordered trial date. Should any attorney choose to undertake employment in any matter or engage in any activity that will conflict with his or her availability for trial as ordered by the Court, another member of the firm must be ready, willing, and able to carry on in the case without delay and appear for trial at the scheduled date and time. Cases may be rescheduled by consent pursuant to Rule 7.6.

- 12.8** The Court recognizes that parties will occasionally be added, or pleadings will be amended such that a trial date needs to be changed. When the Court has allowed such an amendment, any party who contends the trial date needs to be changed shall immediately file a request for continuance in the manner otherwise set forth in this Rule. Amendment of the pleadings or addition of a party does not guarantee a new trial date, as many amendments do not raise new issues. If such request is granted, the continuance will be for the shortest time fairness allows.
- 12.9** The Senior Resident Superior Court Judge will not continue a case without setting another trial date. When a presiding judge grants a request for continuance, the parties shall immediately consult with the Trial Court Coordinator concerning available trial dates. Within three days of the date on which the case was continued, the presiding judge or the Trial Court Coordinator will enter an Order rescheduling the case for trial. Failure to communicate with the Trial Court Coordinator constitutes a waiver of any scheduling problems with the new trial date. Parties who were first on the trial calendar before their case was continued should not expect to receive another first setting.

13.0 BANKRUPTCY

- 13.1** When a defendant files bankruptcy while their case is pending, the defendant or counsel for the defendant shall immediately provide a certified copy of the bankruptcy filing to the Trial Court Coordinator and to the Clerk. Upon receipt of the bankruptcy filing, plaintiff or plaintiff's counsel shall ensure the Trial Court Coordinator has a copy. Any requests to continue, hold, or in any way delay disposition of a case due to bankruptcy of one of the parties must be accompanied by certification of the bankruptcy filing of stay of proceeding from the United States Bankruptcy Court having jurisdiction.
- 13.2** The Trial Court Coordinator will refer the case to the Senior Resident Superior Court Judge for evaluation regarding whether execution of an injunction/stay/inactive order is appropriate.
- 13.3** Cases in which a defendant is in bankruptcy will ordinarily be placed on inactive status and the case closed. Upon completion of the bankruptcy proceedings or the lifting of the stay, any party may seek to reopen the case by filing an appropriate motion.

14.0 EXPEDITED TRIAL PROCEDURE

Parties are encouraged to consider and use an expedited or alternative trial procedure in appropriate cases. The Court will entertain other proposals designed to reduce delays and speed resolution of cases. Expedited trial agreements may be presented for consideration by the Trial Court Coordinator; requests not consented to by all parties shall be heard by the Senior Resident Superior Court Judge or her designee.

15.0 INACTIVE STATUS

A case may be placed on inactive status if such case is undergoing binding arbitration, on appeal, has long-term issues that prevent final resolution, or has other circumstances that prevent trial. A case may be placed on inactive status and closed only by Order of the Senior Resident Superior Court Judge. Such cases may be reopened by the Senior Resident Superior Court Judge upon motion of any party for good cause shown.

16.0 SANCTIONS

16.1 Should counsel or a *pro se* litigant fail to comply in good faith with any provision of these Local Rules or the General Rules of Practice, the Court may impose appropriate sanctions.

16.2 An order entered in substantial violation of these rules is subject to modification or vacation by the Senior Resident Superior Court Judge without notice to the parties.

17.0 NOTICE

17.1 All calendars will be posted online at www.nccourts.org :

- (i) Trial Calendars – no later than 30 days before the first day of the court session
- (ii) Motion Calendars – no later than 10 business days (during which court is in session) before the first day of the court session

17.2 No case shall be placed on a calendar as a result of a Calendar Request until all parties have been served with a copy of the Calendar Request. Administrative Orders, Notices of Administrative Hearings, and Mediation Orders shall be provided by the Clerk to all parties/counsel of record. Paper copies of calendars will not be provided in hard copy to attorneys with cases on the calendar. Attorneys should sign up for email calendar notification at www.nccourts.org.

17.3 Administrative Calendars occur regularly throughout the year. Parties and counsel should sign up for email calendar notification available at www.nccourts.org to ensure notice. Counsel and parties may avoid attending Administrative Calendars by promptly

moving the case toward disposition and complying with all deadlines to the court regarding paperwork.

18.0 MISCELLANEOUS

18.1 Pro Hac Vice

Motions to be admitted *Pro Hac Vice* must be accompanied by the fee required by the North Carolina General Statutes. Motions not accompanied by the fee will be denied without notice. Should a motion not accompanied by the fee be inadvertently allowed, the Order allowing the admission will be revoked without notice.

18.2 Business Court

Cases subject to statutory removal to the Business Court will not be transferred without payment of the fee required by the North Carolina General Statutes. Attempts to remove such cases without paying the required fee will be denied without notice. Should such an attempt be inadvertently allowed, the Order allowing the removal will be revoked without notice.

18.3 Removal to Federal Court

When a party removes a case to Federal Court, counsel for that party shall contemporaneously provide a copy of the relevant pleading to the Trial Court Coordinator.

18.4 Cases Initiated Other than By Complaint

Upon initiating any matter in Civil Superior Court by the filing of any pleading that is not a Complaint (i.e., Will Caveat, Administrative Appeal, Certiorari) counsel shall provide a copy of this pleading to the Trial Court Coordinator. Upon refileing a case previously dismissed pursuant to Rule 41, the plaintiff shall provide a copy of the new complaint to the Trial Court Coordinator along with a reference to the first case number.

18.5 Notice of Appearance

Any attorney filing a Notice of Appearance, Substitution of Counsel, or similar document shall provide a copy to the Trial Court Coordinator.

18.6 Service

A party filing a lawsuit is expected to promptly undertake reasonable efforts to obtain service. If personal service is not obtained within five months after undertaking reasonable efforts, the party shall seek service by publication. Failure to undertake

reasonable efforts to obtain service or to keep summonses alive will result in involuntary dismissal for failure to prosecute.

18.7 Rule 2.1 Requests

All requests for complex case designation pursuant to Rule 2.1 of the General Rules of Practice shall be determined by the Senior Resident Superior Court Judge or her designee. Any party filing a pleading with the Business Court asserting jurisdiction there shall provide a copy to the Trial Court Coordinator.

18.8 Remands from Appellate Courts

Upon remand of a case from an appellate court, the prevailing party before the appellate court shall notify the Trial Court Coordinator of the remand within thirty days.

18.9 Voluntary Dismissals

If a party files a Voluntary Dismissal and the case is on a calendar within the next 10 days, the party filing the dismissal shall deliver a filed copy to opposing counsel/parties and to the Trial Court Coordinator on the date the dismissal.

18.10 Conflicts

If the Senior Resident Superior Court Judge has a conflict in a case and a matter required by these Rules to be heard needs a decision, she will designate another judge to handle that case.

18.11 Matters for the Senior Resident Superior Court Judge

Matters that must be heard by the Senior Resident Judge include:

- (i) Motions for Discovery Scheduling Orders filed after a case is set for trial. (Rule 3.5)
- (ii) Amendments or changes to Discovery Scheduling Orders (Rule 3.5)
- (iii) Violations of Rule 3.7 and Motions to Dispense with Rules 3.3, 3.4, and 3.7 (Rule 3.7 and Rule 3.9)
- (iv) If trial is within 2 months, all Motions to Amend the Pleadings or to Add Parties (Rule 5.15)
- (v) Motions to continue trials, except on the day of trial. (Rule 6.6 and Rule 12.3) (Please deliver such requests to the Trial Court Coordinator)
- (vi) All motions for expedited trial filed after the Administrative Hearing (Rule 14.1)
- (vii) All matters concerning scheduling of trials, inactive orders, and mediation orders
- (viii) Rule 2.1 Recommendations (Rule 18.7)

18.12 Copies to Trial Court Coordinator

Copies of the following pleadings must be delivered to the Trial Court Coordinator:

- (i)** Requests for Discovery Scheduling Conferences and proposed Consent Discovery Scheduling Orders (Rule 3.2) and amendments thereto (Rule 3.5)
- (ii)** Designation of Mediator forms or any pleading concerning mediation (Rule 4.3)
- (iii)** Calendar Requests (Rule 5.1)
- (iv)** Motions to Amend the Pleadings or Add a Party if trial is within two months, and any objections or consent thereto (Rule 5.15)
- (v)** Uncontested Motions and Consent Motions (Rule 5.8 and Rule 6)
- (vi)** Consent Responses to Administrative Hearing Notices (Rule 7.3)
- (vii)** Individual Party Responses to Administrative Hearing Notices (Rule 7.3)
- (viii)** Requests to move a trial date one or two weeks either way, up to six weeks before trial (Rule 7.6)
- (ix)** Case Settlement Reports (Rule 8.3)
- (x)** Pre-Trial Orders on the Tuesday prior to Trial (Rule 9.3)
- (xi)** Motions and Requests for Continuance (Rule 12.3)
- (xii)** Certified Copies of Initial Bankruptcy Filings (Rule 13.1)
- (xiii)** Removal to Federal Court Petitions (Rule 18.3)
- (xiv)** Will Caveats, Petitions, Administrative Appeals, and any other pleading initiating a Civil Superior Court case that is not a complaint (Rule 18.4)
- (xv)** Copies of complaints refiling cases dismissed per Rule 41 (Rule 18.4)
- (xvi)** Notice of Appearance by Counsel, Substitution of Counsel, or other similar pleadings (Rule 18.5).
- (xvii)** Pleadings seeking mandatory Business Court Jurisdiction (Rule 18.7)
- (xviii)** Decisions remanding a case from an appellate court to Superior Court (Rule 18.8)
- (xix)** Voluntary Dismissals filed within ten days of a scheduled court date (Rule 18.9)