

Judicial District 11-B Civil Superior Case Management Plan

Pursuant to Rule 2(a) of the General Rules of Civil Practice for Superior Courts, the Undersigned Senior Resident Superior Court Judge for Judicial District 11-B (*the Court*), adopts this amended Case Management Plan (*CMP*) for Johnston County Civil Superior Court.

This CMP shall be effective on 1 July 2009 and shall apply to pending cases. All attorneys practicing in and all parties appearing *pro se* in Judicial District 11-B shall comply with this CMP.

Communications with the Court

"Communications with the Court" under this CMP is an informal procedure described below. It does not prevent matters from being addressed by motion and resolved formally, if necessary.

All communications with the Court shall be addressed to the attention of the Trial Court Coordinator (*TCC*) in one of the following means:

Mail:	P.O. Box 2739, Smithfield, NC 27577
Email:	barbara.h.johnson@nccourts.org
Telephone:	919.209.5512
Facsimile:	919.934.1760.

1. Written communication may be by email, letter, or facsimile.
2. Written communications must be provided contemporaneously to all other parties by the same means used to communicate with the TCC. Evidence of such communications must be included with the communications with the Court.
3. Communications must include sufficient detail to permit opposing parties to respond and the Court to address the matter.
4. In its discretion, the Court will determine if any conference call, meeting, or hearing is necessary, or if the matter can be resolved with informal communications.
5. The TCC will notify all parties of the Court's determination.

6. Unless requested by a party, the Court will not file the communications in the court file.
7. The Court will enter a written order only when requested by a party and required by law, or where the Court otherwise deems it necessary or appropriate.
8. Alternatively to this informal resolution process, any party may file a formal motion.
9. The Court retains jurisdiction to resolve all motions related to application of these Local Rules to administrative review described below, or to direct that another judge presiding in Johnston County hear such motions.

Section I. Administrative Review

1. The Court shall review all pending civil cases periodically to determine if there are administrative or scheduling issues the Court should address.
2. Review of civil cases and administrative and scheduling decisions under this CMP is defined comprehensively as "administrative review".
3. The Court designates the Trial Court Coordinator (TCC) as the Court's primary judicial assistant in administrative review, subject to the Court's supervision and ultimate authority.
4. Administrative review includes review of the status of the case, execution of a Scheduling Order, scheduling of a mediated settlement conference, or other matters the parties request or the Court deems necessary to promote the prompt and efficient resolution of the case.
5. When outstanding issues justifying administrative review exist, the TCC may ex rero motn calendar such pending cases as "matters for the court" during any civil session.
6. Unless excused by the TCC, each party or an attorney authorized by each party to participate in administrative review must appear and resolve the administrative review.
7. After consultation with the TCC, parties may seek administrative review by filing calendar requests. With the TCC's permission and

subject to the TCC's coordination with the Court, administrative review may be set before the Court during a criminal session.

8. No notice is required regarding the hearing and resolution of any issue within the scope of this CMP if the matter is set for hearing by the TCC. Proper notice of motions is required if a motion is set for hearing by request of a party. If other matters arise that a party contends requires notice, the Court will determine the notice required, if any, and set the matter for hearing.
9. Failure to provide input at administrative review will not justify amendment of deadlines or trial dates set during administrative review.
10. Parties or attorneys requesting to be excused from appearing for administrative review must correspond with the TCC to resolve all outstanding administrative review issues.
11. Failure to appear for administrative review without prior excuse from the TCC or the Court, whether set by a party or otherwise by the TCC, shall be grounds for the imposition of sanctions in the discretion of the Court.

Section II. Scheduling Orders

1. Scheduling Orders must be entered in all cases, except driver's license revocation hearings and administrative appeals.
2. Scheduling Orders must provide deadlines for mediation and a designated civil session for trial. An example of a Scheduling Order meeting these minimum requirements is attached. As established by the parties or by the Court at the request of a party, scheduling Orders may provide other deadlines for designation of experts, hearing of dispositive motions, or other deadlines or schedules necessary for the prompt and efficient administration of the cases.
3. Except as specifically provided otherwise in Scheduling Orders, the terms and schedules in this CMP shall apply.
4. Scheduling Orders may be modified only by Amended Scheduling Order entered by the Court. Parties submitting Scheduling Orders reached by consent shall submit to the TCC. The Court retains the ultimate authority to accept or reject all tendered modifications and Amended Scheduling Orders.

5. Violation of Scheduling Orders shall be grounds for the imposition of sanctions in the discretion of the Court.
6. If the parties do not submit Scheduling Orders by consent, the parties or the TCC may set the case for administrative review as provided in Section I.
7. If a Scheduling Order is not entered within ten months of filing of a complaint and the case is not otherwise set for administrative review as provided in Section I, the TCC in consultation with the Court shall enter a Scheduling Order.
8. Parties seeking preemptory or favorable trial settings or requesting special sessions must through "communications with the Court" submit a detailed request to the TCC in writing. Within three (3) business days after the request, all objections to or comments about the request must likewise be submitted to the TCC and copied to all parties. The Court will through the TCC advise all parties of the trial setting. This provision does not prevent the TCC or the parties from pursuing administrative review as provided in Section I.
9. Cases provided preemptory or priority settings which are not tried as scheduled are not entitled to any priority setting thereafter. Absent extraordinary circumstances which prevented trials at the priority settings, the Court in its discretion will set such cases for administrative review as provided in Section I or reset the case for trial at a subsequent regular session.

Section III. Motions

1. Motions for which a hearing is requested but no date is calendared shall be set for hearing on the next available motion calendar.
2. Motions not calendared by parties filing them or the Court, may be calendared by other parties.
3. If notice proper under the North Carolina Rules of Civil Procedure is provided, motions need not be printed on calendars. Absence from the printed calendar is not a valid objection to hearing such motions.
4. Motions shall contain adequate notice of the basis for the relief sought. For example, motions for dismissal or for summary judgment shall state specific reasons in such motions to provide fair notice to opposing

parties to prepare for hearings. Upon request by opposing parties, parties failing to provide sufficient detail must cure such failure immediately after request is made. Parties must make a good faith effort to focus motions on the substantive issues involved to avoid confusion and unnecessary efforts by responding parties. Upon finding a violation of this Local Rule, the presiding judge may continue the motion or as a sanction deny it.

5. Parties with motions justifying immediate hearings cannot be otherwise scheduled or for other reasons must be heard by the Court, may by communications with the Court request in writing permission to set such motions before the Court at criminal sessions or other times the Court will be in Johnston County. After consultation with the Court, the TCC will advise the parties if and when the Court will hear such motions. The parties would then, and only then, file and serve calendar requests for such hearings. Unless special permission is granted for such hearings with the Court, motions must be calendared at established sessions.
6. Memoranda must be provided to opposing parties as required by the Rules of Civil Procedure.

Section IV. Discovery

1. This CMP does not regulate the nature, timing, or extent of discovery.
2. Unless otherwise provided in Scheduling Orders or as may be specifically set forth herein, there is no close of discovery. Parties may engage in discovery as permitted by the Rules of Civil Procedure. In cases not tried when scheduled, discovery otherwise appropriate under the Rules of Civil Procedure and this CMP may continue thereafter.
3. As a standing order of the Court, parties may take depositions by telephone. Court reporters before whom depositions are taken shall be where witnesses are located. Other parties may attend depositions in the presence of deponents.
4. Parties may not notice discovery depositions to be taken within ten (10) days of scheduled trials. Violation shall be grounds for the issuance of a protective order and imposition of sanctions.

Section V. Pretrial Orders

1. Unless excused by the Court, parties shall prepare pretrial orders in every case.
2. It is the joint responsibility of all parties to participate in good faith to present to the Court after the call of the calendar a consolidated pretrial order. If the parties cannot present a consolidated pretrial order, they must present their own versions of a proposed pretrial order to be discussed in a pretrial conference with the presiding judge.
3. Any party may initiate the pretrial process by providing a proposed pretrial order with schedules of witnesses and exhibits to opposing parties. No later than three (3) days thereafter, opposing parties shall provide their schedules of witnesses and exhibits and propose corrections or additions to the pretrial order. Parties are all obligated to cooperate in a prompt, complete and good faith effort to disclose witnesses and exhibits, and make exhibits available for inspection and copying if requested.
4. Violation of these obligations may be grounds in the discretion of the presiding judge for the exclusion of witnesses and exhibits not identified or exhibits not produced for inspection and copying upon reasonable request.
5. Motions in limine shall be heard prior to selecting a jury.

Section VI. Trial Calendars

1. Where Scheduling Orders establish trial dates, parties need not file calendar requests.
2. Although the Court will ordinarily set trial dates through Scheduling Orders, the Court retains the right to set cases for trial pursuant to calendar requests filed by parties or as the Court may otherwise determine is appropriate.
3. The Court or the TCC shall resolve any dispute as to the requested date or trial setting.
4. All attorneys will be required to provide the TCC with a valid e-mail

address and shall include this address with the attorney's signature on all pleadings. An attorney entering a notice of appearance in an existing lawsuit shall provide a copy to the TCC.

5. Trial calendars will be published on the Administrative Office of the Courts (AOC) website (www.nccourts.org).
6. Attorneys shall obtain calendars from the AOC website. Printed calendars will not be distributed to attorneys by U.S. mail or by e-mail, and will not be placed in attorney mailboxes in the Clerk of Superior Court's office. The TCC will mail printed calendars to parties appearing pro se.
7. Failure to obtain calendars will not be grounds for continuance of motions (provided proper notice of hearing was provided for the motions) or for continuance of trial that was set in the Scheduling Order.

Section VII. Continuances

1. Parties moving for continuance or objecting to calendaring shall by communication with the Court detail the basis of the request or objection.
2. If the basis is an unexpected event or development, parties must communicate the facts and request to the TCC immediately.
3. If the Court is not available to consider the motion or objection, or if the motion or objection is based upon events arising after 5:00 p.m. on the last business day before the first day of the trial session, the TCC will present the motion or objection to the judge presiding for the session.
4. Except as provided herein, parties may not otherwise request continuances from presiding judges during the session at which cases are calendared for trial.
5. After publication of trial calendars, the Court will grant continuances only for compelling reasons.
6. Within 48 hours of the settlement of a case on the trial calendar, the plaintiff shall advise the TCC of the settlement, the party who will prepare and present the judgment or dismissal, and the date by which it will be filed.

Section VIII. Failure to Prosecute

If 120 days after complaints are filed there is documented service on parties but answers are not timely filed, the TCC may calendar the case on "matters for the court" for default or other action. When parties do not obtain default thereafter or appear to address the case status satisfactorily, the case may be dismissed without prejudice for failure to prosecute.

Section IX. Administrative Removal

After proper notice to parties by calendaring cases for either administrative review or otherwise as matters for the court, cases in which scheduling orders are not entered and which are not pending for trial are subject to an order of removal from the active docket, without prejudice to activation by motion. Examples are cases in which: stays are imposed by bankruptcy filings; defendants are making payments toward a settlement or other obligation; sender is not perfected and time has expired; answers are not filed and time has expired; and, removal to the US District Court.

CMP Local Mediation Rules

Pursuant to G.S. § 7A-38.1 and Rule 10 of the Rules Implementing Mediated Settlement Conferences in Superior Court Civil Cases adopted by the N.C. Supreme Court (the Supreme Court Rules), the Court adopts these additional Local Rules that apply to all mediated settlement conferences (mediation) in Judicial District 11-B. Except as expanded by these Rules, G. S. § 7A-38.1 and the Supreme Court Rules are incorporated by reference and shall control. All future amendments to the Supreme Court Rules are incorporated by reference as of their effective date.

Section I. Procedures

1. The Court orders that all persons or entities identified under Supreme Court Rule 4, in all cases in Judicial District 11-B, shall participate in a pretrial mediation.
2. This order replaces AOC-CV-811 (Order for Mediated Settlement Conference and Trial Calendar Notice). When a complaint is filed, AOC-CV-811 shall be deemed entered by the Court. All its terms are incorporated except the following modifications that control mediation procedures in Judicial District 11-B.

3. Within 120 days after an attorney first enters an appearance on behalf of any defendant, or a defendant appears pro se, the plaintiff shall provide an appropriate Order to the TCC designating the mediator selected by the parties.
4. Alternatively, the plaintiff shall by letter as provided in Section 3 request that the Court extend the time, make a designation in the absence of consent, or take other action the plaintiff contends is appropriate.
5. Otherwise, the Court will select and designate a mediator without further notice to the parties.
6. Unless extended by scheduling order of the Court, the parties shall complete their mediation within one year after the complaint is filed. The plaintiff must obtain an order providing any extension that is necessary as provided in Section 3. The request must be made prior to the expiration of the deadline. Either the parties or the mediator must provide the proposed order.

Section II. Extensions & Exceptions

A party requesting an extension or exception must make such requests prior to the passing of a deadline or prior to the occurrence of the issue about which an exception is requested. The Court will extend the deadline for completion of mediation only upon a showing of compelling circumstances that the parties by due diligence could not have avoided.

Section III. Sanctions for Violation of Mediation Rules

1. Supreme Court Rule 5 is incorporated, but is expanded to apply to any violation of these Rules.
2. As a sanction for any violation of these Mediation Rules, including the Court's ruling on any tardy application for an extension or exception, the Court in its discretion impose any one or more of the following sanctions: payment of attorney's fees and costs of the adverse party(s) caused by the violation; payment of mediator's fees and expenses caused by the violation; civil contempt with appropriate sanctions; or, any other sanction authorized by Rule 37(b) of the Rules of Civil Procedure.

3. Before entering any sanctions, the Court shall set a hearing at which all parties may present evidence and argument relevant to the violations at issue. The Court shall enter an Order in compliance with Supreme Court Rule 5.

Judicial District 11-B Civil Superior Case Management Plan

Thomas H. Lock
Senior Resident Superior Court Judge
Judicial District 11-B
Effective 1 July 2009

NORTH CAROLINA
JOHNSTON COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO: ___ CVS _____

John Doe
Plaintiff

v.

Scheduling Order

Mary Doe
Defendant

Pursuant to the Judicial District 11 -B Civil Superior Case Management Plan, the consent of counsel as confirmed with the Trial Court Coordinator, and the Court's confirmation of the status and scheduling needs of case, Senior Resident Superior Court Judge Thomas H. Lock orders that:

1. Mediation shall be completed by _____ .
2. This case is set for jury trial on _____.
3. *[other optional deadlines or provisions as set by agreement of counsel]*
4. Unless expressly modified by this Order, all Local Rules will apply.

Thomas H. Lock
Senior Resident Superior Court Judge
This _____ day of _____, 20____.

NORTH CAROLINA
JOHNSTON COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO: ___ CVS _____

John Doe
Plaintiff

v.

Order Closing File

Mary Doe
Defendant

THIS CAUSE comes on for hearing administratively by the undersigned Senior Resident Superior Court Judge for Johnston County. It appears to the Court that defendants are involved in a Federal bankruptcy proceeding and therefore this cause cannot proceed while defendants are involved in such proceedings. Counsel for the parties have advised the Court that they will actively pursue the lifting of the Stay in Bankruptcy. In the meantime, this case will be inactive unless reopened by motion of either party.

IT IS THEREFORE ORDERED that the above-captioned cause be and the same is hereby administratively closed subject to being reopened on motion of either party after such time as the Stay in Bankruptcy has been lifted.

This the _____ day of _____, 20____.

THOMAS H. LOCK
Senior Resident Superior Court Judge

NORTH CAROLINA
JOHNSTON COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO: _____ CVS _____

John Doe
Plaintiff

v.

Order Closing File

Mary Doe
Defendant

This cause comes on for hearing administratively by the undersigned Senior Resident Superior Court Judge of Johnston County. It appears from the record that the parties hereto have reached an out of court settlement at mediation as is reflected in a written memorandum of record. The settlement allows for extensive payments over time to allow the defendant to make the required payments. In the meantime, the case will be inactive unless reopened by motion of either party.

It is therefore ordered that this action be and the same is hereby administratively closed subject to being reopened on the motion of either party in the event issues arise as to the execution of the settlement.

This the _____ day of _____, 20____.

THOMAS H. LOCK
Senior Resident Superior Court Judge