

FIFTH JUDICIAL DISTRICT
(New Hanover County and Pender County)

SUPERIOR COURT DIVISION
CIVIL CASE MANAGEMENT PLAN

LOCAL CALENDARING RULES

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RULE 1: GENERAL RULES

- 1.1 The purpose of these Rules is to institute a case management plan for the Superior Court Division, Fifth Superior Court District, in compliance with Rule 40(a), *North Carolina Rules of Civil Procedure*; and Rule 2(a), *General Rules of Practice for the Superior and District Courts*; and to provide for the orderly, prompt and just disposition of civil matters.
- 1.2 The administration of the case management plan shall be delegated to, and under the control of, the Trial Court Administrator (TCA) in accordance with these rules and under the supervision of the Senior Resident Superior Court Judge (SRSCJ), Fifth Superior Court District.
- 1.3 These rules and procedures, and all amendments hereafter, shall be filed with the Clerk of Superior Court of New Hanover and the Clerk of Court of Pender County.
- 1.4 The Clerk for each county shall provide a case number for each action filed and shall place the case number upon the complaint, summons and all subsequent filings.

RULE 2: CALENDARING OF CASES FOR TRIAL [Trial Scheduling Notice (TSN) and Final Trial Calendar (FTC)]

- 2.1 After 120 days from the date of filing, the TCA shall send a TSN (attachment 1) to all counsel of record and/or any unrepresented party having been served in the case (by US mail or by placing it in counsel's personalized courthouse folder).
 - A. All counsel and/or any unrepresented party shall select (or request a trial date prior) to the deadline specified in the TSN.
 - B. All counsel and/or any unrepresented party shall also select a mediator, pursuant to N.C.G.S. § 7A-38.1(h), using Form AOC-CV-812 "Designation of Mediator" (attachment 2).
 - C. In the event counsel and/or any unrepresented party fail to select a trial date and/or designate a mediator, then the TCA shall make such selection.
 - D. A Discovery Scheduling Order (DSO) (attachment 3) shall be issued by the TCA after a trial date has been selected. Deadlines in all cases shall be as follows (unless the SRSCJ allows an amended DSO, or the parties execute a Consent DSO):
 - 1. Written discovery - 60 days (prior to trial)
 - 2. Expert witness disclosure - 60 days
 - 3. Discovery depositions - 30 days
 - 4. Completion of discovery (except *bene esse* depositions) - 30 days
 - 5. Completion of mediation - 30 days
 - 6. Dispositive motions - 15 days

7. Close of pleadings - 15 days

- 2.2 Four weeks prior to each civil session, a FTC shall be published by the TCA. The FTC shall be distributed to counsel by posting on the web at WWW.NCCOURTS.ORG. (Click on "Court Calendars" at top right; click on "Court Calendar" at left; click on "Civil Calendar;" select "New Hanover County;" click "Submit Query;" click on "Session;" click on "Courtroom"). Distribution to any served, but unrepresented party, shall be by US mail.
- 2.3 Cases shall appear on the FTC, oldest-numbered cases first; and listed after cases designated peremptory, given a priority setting or given statutory priority.
- 2.4 In the event a case is not reached at the session requested, counsel and/or any unrepresented party shall select another trial date. If counsel and/or any unrepresented party fail to so select, then the TCA will calendar the case on the next published FTC.
- 2.5 If a case is settled after placement on any FTC, counsel and/or any unrepresented party shall notify the TCA (within 24 hours of settlement) and advise who will prepare and present judgment and/or dismissal, and when; and shall also notify the parties appearing in the next case on the FTC.

RULE 3: PRIORITY, PEREMPTORY, REMANDED, EXCEPTIONAL or COMPLEX BUSINESS (RULE 2.1) CASES

- 3.1 Counsel shall, in writing, notify the TCA (as soon as practicable) that priority status and peremptory setting is requested for a case. The authority for such request shall be cited in such notification. Counsel shall copy all opposing counsel and/or any unrepresented party.
- 3.2 The TCA, on his/her own motion, may grant priority status and peremptorily calendar a case, for good cause shown.
- 3.3 Alienation of affection and/or criminal conversation cases often are brought for mercenary or vindictive reasons and are usually ancillary to an underlying domestic case. Because of their suspect nature, these cases shall be given a priority setting on the FTC following any peremptory set case and shall not be continued.
- 3.4 If a case is remanded from the Appellate Division to Superior Court, counsel shall notify the TCA, in writing, to calendar the case for hearing or trial. After such notice, the TCA shall calendar the case as soon as practicable, giving deference to scheduling requests from all counsel and/or any unrepresented party.

- 3.5 Any request by counsel and/or any unrepresented party to designate a case "*Exceptional*" or "*Complex Business*" under Rule 2.1, *General Rules of Practice for the Superior and District Courts*, shall be made within 30 days from the issuance of the DSO. If possible, requests should be made to the SRSCJ in the form of a consent motion. The motion must include a certification that the movant has in good faith conferred or attempted to confer with all opposing counsel and/or any unrepresented party to obtain consent to the motion; and, if the motion is for designation of a case as "*exceptional*," a certification that the movant has in good faith conferred or attempted to confer with all opposing counsel and/or any unrepresented party to obtain consent for the selection of a specific judge to be assigned; and, in the event such consent is obtained, whether the judge consents to the assignment.

RULE 4: CONDEMNATION CASES

- 4.1 Condemnation actions brought pursuant to Article 9, Chapter 136, *Condemnation*, or by a **public condemnor** pursuant to Chapter 40A, *Emminent Domain*, shall be presumed ready for trial 100 days after answer has been filed (unless sooner noticed for trial) or unless commissioners are appointed pursuant to N.C.G.S. § 136-109 prior to that time.
- 4.2 Under this **RULE 4**, if necessary, counsel for property owners and/or any unrepresented property owner shall provide the TCA with notice of a request for appointment of commissioners (on an approved form provided by the TCA's office).
- 4.3 If the Commissioner's report is appealed from (and a jury trial demanded), the Clerk shall, within 10 business days, serve the TCA with notice of entry of the appeal and transfer to the superior court civil docket.
- 4.4 Condemnation actions brought by a **private condemnor** pursuant to Chapter 40A, *Eminent Domain*, shall be presumed ready for trial upon transfer to the superior court docket.
- 4.5 If commissioners are appointed and their report is appealed from (and a jury trial demanded), the Clerk shall, within 10 business days, serve the TCA with notice of entry of the appeal and transfer to the superior court civil docket.

RULE 5: CONTINUANCES

- 5.1 The continuance of a calendared case shall be granted only pursuant to Rule 40, *North Carolina Rules of Civil Procedure*, upon good cause shown and upon such changes and conditions as justice may require.

- 5.2 The TCA, under the supervision of the SRSCJ, shall have exclusive authority to continue a calendared case prior to the first day of the civil session. Counsel and/or any unrepresented party shall not request a continuance from the Presiding Judge prior to the first day of the civil session.
- 5.3 A request for continuance (attachment 4) must be received by the TCA, in writing, at least 10 days prior to the first day of the civil session.
- 5.4 A request for continuance shall state the specific reason(s) for the request and the proposed new trial date. Such request shall be copied and mailed to all opposing counsel and/or any unrepresented party. Counsel and/or any unrepresented party shall make their best efforts to agree upon a new trial date. The TCA shall honor the requested date, if practicable.
- 5.5 Any opposing counsel and/or unrepresented party may, in writing, consent or object to a request for continuance. Any objection not received within 5 business days from the date of mailing the request, shall be deemed waived.
- 5.6 The TCA shall, in writing, promptly rule on any request for continuance. Counsel and/or any unrepresented party may, by written motion, appeal the ruling of the TCA to the SRSCJ or to the Presiding Judge. Such motion shall state specifically that the request for continuance was originally denied by the TCA in addition to any other reason.
- 5.7 Absent permission from all adverse parties and/or any unrepresented party, any *ex parte* request for continuance is improper and shall not be allowed, except for good cause shown.

RULE 6: MOTIONS

- 6.1 The TCA shall calendar all motions for hearing during non-jury sessions.
- 6.2 Counsel and/or any unrepresented party shall file a written "Notice of Hearing" (NOH) with the TCA in compliance with the minimum statutory notice requirement provided in the *North Carolina Rules of Civil Procedure* (i.e., 5 days for Rule 6(d); 10 days for Rule 56(c), etc.); or, not later than 3 business days prior to the non-jury session of court if all counsel and/or any unrepresented party waive the minimum statutory notice requirement, and consent thereto. The NOH shall specify Monday, Tuesday, Wednesday or Thursday as the desired day for hearing. If no day is specified, the TCA shall calendar the motion for hearing, as practicable.

- 6.3 The NOH shall specify the name and address of all counsel and/or any unrepresented party. A copy of the NOH shall be served upon all opposing counsel and/or any unrepresented party, and shall serve as due notice.
- 6.4 At least 2 business days prior to the session, duly noticed motions shall appear on a printed calendar, posted at www.nccourts.org (See directions, **Rule 2.2**). The motion calendar will not be mailed.
- 6.5 In order to remove a motion before the session begins, the moving party must notify the TCA, in writing, but only after obtaining the consent of all counsel and/or any unrepresented party.
- 6.6 Failure to duly calendar a motion under these rules shall not be used as a basis for a continuance from a future trial calendar.
- 6.7 Pender County motions may be calendared in New Hanover County.

RULE 7: CALENDAR CALL AND APPEARANCE OF ATTORNEYS

- 7.1 The Presiding Judge shall call the calendar (jury or non-jury) beginning at 10:00 a.m., on the first day of the session, and thereafter as he/she may deem necessary.
- 7.2 Duly calendared cases shall be called in the order which they appear, unless otherwise determined by the Presiding Judge or the TCA.
- 7.3 Rule 2(e), *General Rules of Practice for the Superior and District Courts*, shall control the appearance of attorneys at calendar call.

RULE 8: DELINQUENT CASES

- 8.1 When any case on a published calendar (jury or non-jury) is settled, dismissed, ends in a jury verdict, or ends in a judge's order, after 15 business days from the close of the session if **Rule 2.5** (above) has not been complied with, the case shall be deemed delinquent.
- 8.2 After a case is determined delinquent, the TCA shall re-calendar the case on the next motion calendar. The Presiding Judge (or the SRSCJ) shall have discretion to dismiss the case or to impose any appropriate sanction allowable by law.

RULE 9: PRE-TRIAL PROCEDURE

- 9.1 **Rule 7**, *General Rules of Practice for the Superior and District Courts* shall control pre-trial conferences and pre-trial orders.

RULE 10: ADMINISTRATIVE CALENDARS

- 10.1 The TCA shall, as necessary, prepare and schedule administrative calendars (during jury and non-jury sessions) in order for the SRSCJ, or the Presiding Judge, to review the status of any delinquent, complex, aged, or non-disposed case. The judge shall have discretion to summarily resolve any issue which caused the case to appear on such administrative calendar.
- 10.2 The TCA shall send administrative calendars (by US mail or by placing it in counsel's personalized courthouse folder) to all counsel of record and/or any unrepresented party.

RULE 11: BANKRUPTCY CASES

- 11.1 Counsel of record for any party and/or any unrepresented party who has filed a petition for relief under the United States Bankruptcy Code, shall file with the Clerk of Superior Court a "Motion to Stay Proceedings," accompanied by a file-stamped copy of a "Certificate of Bankruptcy Filing" or "Stay of Proceeding" from the bankruptcy court having jurisdiction. A copy of the motion shall be served on the TCA (or sent by US mail). Upon receipt, the TCA shall prepare an "Order to Close the File" (attachment 5), stating the reason for closing the case. Nothing shall prohibit a case from being re-opened, at any time, for good cause shown.

RULE 12: INACTIVE CASES

- 12.1 Inactive cases do not require monitoring, calendaring, or review. A case may be declared inactive by filing a Consent Motion with the TCA, executed by, and served upon, all counsel of record and/or any unrepresented party. Upon filing, the SRSCJ (by the TCA) shall order the Clerk of Superior Court to close and remove the case from the county's active docket (attachment 6).
- 12.2 The TCA shall also petition the court, from time to time, to declare as inactive, certain cases that are on appeal, in binding arbitration, removed to federal court, or in bankruptcy. Nothing shall prohibit a case from being re-activated, at any time, for good cause shown.

RULE 13: COURT ORDERED MEDIATED SETTLEMENT CONFERENCES

- 13.1 N.C.G.S. § 7A-38.1, *Mediated Settlement Conferences in Superior Court Civil Actions*, and the *Rules Implementing Statewide Mediated Settlement Conferences in Superior Court Civil Actions*, shall control mediation.

13.2 Cases filed in Superior Court, not otherwise exempted by the rules of the Supreme Court, shall be ordered to a Mediated Settlement Conference (attachment 7). The deadline for the completion of such conference shall be 30 days prior to the calendared trial date.

These rules shall become effective January 1, 2014.

SO ORDERED.

This the 24th day of September, 2013.

W. Allen Cobb, Jr.
Senior Resident Superior Court Judge
Fifth Superior Court District