

AMENDED EFFECTIVE JULY 1, 1998

See Attached Amendment

**CASE MANAGEMENT PLAN
FOR
CALENDARING CIVIL TRIALS AND MOTIONS
IN
ALAMANCE COUNTY SUPERIOR COURT
JUDICIAL DISTRICT 15-A
SENIOR RESIDENT SUPERIOR COURT JUDGE
J. B. ALLEN, JR.**

Pursuant to Rule 2(a), Calendaring of Civil Cases, of the General Rules of Practice for Superior and District Courts:

1. READY CALENDAR

(a) The Calendar Clerk, designated by the Clerk of Superior Court shall maintain a ready calendar upon which cases shall be placed within five (5) months after a Complaint is filed, unless time is extended by order of the Senior Resident Superior Court Judge. Additionally, the Trial Court Coordinator shall maintain a separate case tracking system.

(b) In addition, all cases in which a certificate of readiness has been filed will be placed on the ready calendar.

(c) All cases on the ready calendar shall be subject to be placed on the trial calendar.

2. ADMINISTRATIVE WEEKS. (Pre-Trial Conference with Judge)

(a) During March and September or at such other time as may be designated by the Senior Resident Superior Court Judge, all cases on the ready calendar shall be set for a pre-trial conference before the Senior, Resident Superior Court Judge.

(b) At the pre-trial conference, the Judge shall review the status of the case, may hear any pending motions, may designate a time within which a pre-trial order shall be filed, may set the case for trial at a designated later term of court, and may take such other actions as may be appropriate to move the case towards a conclusion.

(c) A failure to comply with an Order of the Court requiring that a pre-trial order be filed within a designated time shall be grounds for sanctions against the party, either plaintiff or defendant, whose conduct has occasioned such failure; appropriate sanctions shall be ordered in

the discretion of the court and may include a dismissal of the action or the striking of an answer or other pleading.

3. SETTING OF THE TRIAL CALENDAR.

(a) The Senior Resident Superior Court Judge may calendar cases and take other appropriate action to encourage just and prompt consideration and determination of the business of the court.

(b) Any attorney may request that a case be calendared for trial at any scheduled session of court; however, request for the setting of cases on the trial calendar shall be made in writing no later than six (6) weeks prior to the beginning of the session of court. Request for calendaring of motions may be made at any time prior to the publication of the calendar. Motions not on the printed calendar may also be heard when the notice required by law has been given opposing counsel. Copies of all requests shall be sent to opposing counsel. No request for trial may be added to the trial calendar after it has been published except by a written Consent Order signed by the Senior Resident Superior Court Judge.

(c) All requests for calendaring shall be made to the Trial Court Coordinator.

(d) The calendar shall be prepared by the Trial Court Coordinator at the direction of the Senior Resident Superior Court Judge.

(e) The calendar shall be published by the Calendar Clerk and mailed by the Calendaring Clerk to each attorney of record (or party where there is no attorney of record), to the Presiding Judge, and to the Senior Resident Superior Court Judge no later than four (4) weeks prior to the first day of court.

(f) If for any reason a case is not reached for trial during the session of court for which it is set, the Presiding Judge or the Senior Resident Superior Court Judge may enter an Order setting the case for trial at a subsequent term of court.

4. CONTINUING CASES.

(a) Objections to calendaring, motions for continuances after calendaring, and objections to continuance shall be immediately communicated to opposing counsel and to the Trial Court Coordinator. The Trial Court Coordinator will be in contact with the Senior Resident Superior Court Judge wherever he is assigned to hold court and shall submit all matters to him for his consideration and then advise counsel of the Judge's decision.

(b) If the Senior Resident Superior Court Judge is on vacation or out of the State for some reason, motions to continue will be presented to the Judge assigned to hold the session of court by the Trial Court Coordinator, and that Judge's decision will be related to the parties; otherwise,

the Presiding Trial Judge is requested to continue cases based only upon reasons arising after 5:00 p.m. on the Friday before the first day of the session.

(c) After the publication of the trial calendar, continuance will be granted only for reasons of compelling necessity. In general, a continuance will not be granted because of the unavailability of an expert witness or a witness who is not subject to subpoena. -The use of depositions is encouraged.

5. MOTIONS.

(a) A party filing a motion shall contemporaneously file a separate written request that the motion be calendared for hearing. The request shall be sent to the Trial Court Coordinator . All motions so requested shall be set at the next available session of Civil Superior Court unless the requesting party in writing and for good cause specifies a later session. A failure to comply with this rule shall be the grounds for the denial of any motion in the discretion of the Presiding Judge.

(b) The pendency of a motion that has not been requested for hearing as provided by this rule shall not be grounds for a continuance when the case is set for trial. Also, the filing of a motion subsequent to the setting of the case for trial (either by court order or by publication of a calendar) shall not be grounds for continuance of the case.

6. DISCOVERY.

The one hundred and twenty (120) days after filing of answer or last required pleading shall be reserved for discovery. The trial of a case shall not thereafter be delayed for failure to complete discovery unless, for good cause shown, the Senior Resident Judge extends the discovery period before the expiration of the 120 day period. Motions for extension of discovery should be mailed to the Trial Court Coordinator who shall present them to the Senior Resident Superior Court Judge. Attorneys are encouraged to complete discovery as soon as practical within the Rules and to prepare pre-trial orders to include such stipulations as are possible to expedite the trial of these cases.

7. PRE-TRIAL ORDERS.

(a) A pre-trial order shall be prepared and filed in every civil case unless counsel for all parties stipulate in writing to the contrary and the court approves the stipulation.

(b) The pre-trial order shall be prepared in compliance with the provisions of Rule 7 of the General Rules of Practice for the Superior and District Courts as the same appears in Volume 4A, Appendix 1, of the North Carolina General Statutes.

(c) A failure to file a pre-trial order shall be grounds for sanctions as set forth in paragraph 2(c) of this plan.

8. PEREMPTORY SETTINGS.

Insofar as possible requests for a peremptory setting should be made to the Senior Resident Judge at the Administrative Sessions of Court held in March and September of each year. A peremptory setting shall be had only for good and compelling reasons and may be ordered either by request or upon the courts own motion by the Senior Resident Superior Court Judge.

9. SETTLEMENTS.

When a case on the published trial calendar is settled, all attorneys of record must notify the Judicial Secretary within 48 hours of the settlement and advise who will prepare and present Judgment, and when.

10. BANKRUPTCY CASES.

Civil actions in which one of the parties declares bankruptcy will be disposed of in accordance with the following authority and procedure:

- (a) Rule 401 of the Federal Bankruptcy Act;
- (b) 11 U.S.C. 362;
- (c) 11 U.S.C. 1301
- (d) Whitehurst vs. Virginia Dare Transport Company,
19 N.C. App. 352 (1973);
- (e) N.C.G.S. 1-23.

Any requests to continue, hold, or in any other 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. Attorney for the bankrupt party shall prepare an injunction pursuant to the above authority, which shall be filed with the Clerk of Court and the Judicial Secretary, and be presented to the appropriate Judge. After sufficient notice, the Judge will dismiss the civil action without prejudice. Such notice may be in writing by way of letter or in the form of a calendar.

11. MAILING ADDRESSES.

Mrs. Barbara Dodson
Trial Court Coordinator
245 Criminal Courts Building
212 W. Elm Street
Graham, N.C. 27253

Mrs. Diane Pickett
Clerk of Superior Court
Alamance County Courthouse
Graham, N.C. 27253

12. AUTHORITY AND EFFECTIVE DATE.

This plan is adopted pursuant to the General Rules of Practice for Superior and District Courts, Volume 4A, page 270, of North Carolina General Statutes as amended June 3, 1980, by the Supreme Court of North Carolina, 300 N.C. 751, 46 N.C. App. 841 (1980). The foregoing plan supersedes previously adopted plan and will become effective October 1, 1987.

The Clerk of Superior Court shall immediately forward a copy of this plan to all practicing attorneys in Alamance County and to all attorneys having matters pending in this county. The Clerk of Superior Court and the Trial Court Coordinator shall maintain a supply of copies of this plan for those attorneys and parties who request the same.

This the 15th day of August, 1987.

J. B. Allen, Jr.
Senior Resident Superior Court Judge
15-A Judicial District

AMENDMENT EFFECTIVE JULY 1, 1998

**STATE OF NORTH CAROLINA
SUPERIOR COURT MODEL CONTINUANCE POLICY**

Rule 1: Motions for Continuance-Civil Cases

1.1 Appropriate Judicial Official

Prior to the opening of court for the session in which the case is calendared, all applications for continuance shall be made to the Senior Resident Superior Court Judge of the judicial district in which the case is filed, or his/her designee. Following the opening of court for the session in which the case is calendared, any application for continuance shall be made to the presiding judge of the court in which the case is calendared.

[This rule is created to minimize the confusion inherent in the Superior Court Rotation system and to place the decision making authority in the hands of the judicial official most likely to have access to accurate information concerning the status of the trial calendar as a whole and the history of individual cases thereon.]

1.2 Form of Motion

All applications for continuance shall be by written motion made on state form AOC-CV-221 Motion And Order For Continuance (Civil Superior Cases).

1.3 Notification of Opposing Counsel/Unrepresented Parties

A copy of the completed form AOC-CV-221 must be distributed to all counsel of record and/or unrepresented parties prior to presentation of the motion to the appropriate judicial official. Distribution of the motion may be by US mail, facsimile transmission, hand delivery, or distribution by means of attorney distribution boxes maintained in the courthouse facility.

[Timely notification of all parties is essential to provide an opportunity for hearing. Allowing distribution of the motion by as many ways as possible will ensure the earliest possible notification.]

1.4 Objections to Motion for Continuance

Opposing counsel and/or unrepresented parties shall have a period of three (3) working days following completion of distribution to communicate, by any means, objections to the motion for

continuance to the moving party and the office of the Senior Resident Superior Court Judge or the office of his/her designee. Objections not raised within this time period are deemed waived.

1.5 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:

- the age of the case;
- the status of the trial calendar for the week;
- the order in which the case appears on the trial calendar, including whether the case is peremptorily scheduled;
- the number of previous continuances;
- the extent to which counsel had input into the scheduling of the trial date;
- the due diligence of counsel in promptly filing a motion for continuance as soon as practicable;
- whether the reason for continuance is a short lived event which could resolved prior to the scheduled trial date;
- the length of the continuance requested, if applicable;
- the position of opposing counsel;
- whether the parties themselves consent to the continuance;
- present or future inconvenience or unavailability of witnesses/parties; and
- any other matter that promotes the ends of justice.

Reasons that shall not be considered valid bases for allowing a continuance motion include first time scheduling of the case for trial, potential conflicting scheduling of other trials in other courts and whether counsel of record has received payment.

[The factors to be considered by the appropriate judicial official are set forth as guidelines to ensure consistent, rational decision making while not restricting a judge's inherent power to grant requests in the interest of justice.]

1.6 Case Rescheduling

Prior to granting a motion for continuance, the appropriate judicial official in consultation with the office of the Senior Resident Superior Court Judge or his/her designee, should reschedule the trial of the case after receiving scheduling input from all counsel.

Rule 2: Motions for Continuance-Criminal Cases

2.1 Appropriate Judicial Official

Prior to the opening of court for the session in which the case is calendared, all applications for continuance shall be made to the Senior Resident Superior Court Judge of the judicial district in which the case is filed, or his/her designee. Following the opening of court for the session in which the case is calendared, any application for continuance shall be made to the presiding judge of the court in which the case is calendared.

[This rule is created to minimize confusion created by the Superior Court rotation schedule. The authority to decide all continuance prior to the opening of court rests with the Senior Resident or his/her designee. This does not abridge the trial judge's right to hear motions made the day of court or during a session.]

2.2 Form of Motion

All applications for continuance shall be by written motion made on state form AOC-CR-410 Motion And Order For Continuance (Criminal Superior Court Cases).

2.3 Notification of Opposing Counsel/Unrepresented Parties

A copy of the completed form AOC-CR-410 must be distributed to all counsel of record and/or unrepresented parties prior to presentation of the motion to the appropriate judicial official. Distribution of the motion may be by US mail, facsimile transmission, hand delivery, or distribution by means of attorney distribution boxes maintained in the courthouse facility.

If the motion is filed by defense counsel, the motion must be presented to the District Attorney prior to presentation to the appropriate judicial official.

2.4 Objections to Motion for Continuance

The Senior Resident Superior Court Judge or his designee shall establish an appropriate method of obtaining information from all counsel concerning positions on the motion to continue.

If the District Attorney consents to the continuance and such consent is indicated by signature of the District Attorney on the continuance form, the continuance is allowed and the continuance form shall be filed in the court file. If no District Attorney's signature appears on the continuance form, the District Attorney's opposition to the motion is presumed.

[This rule recognizes the District Attorney's current statutory right to calendar cases. Motions which have the consent of the District Attorney do not require presentation to a judicial official but are deemed "allowed".]

2.5 Evaluation of Motions for Continuance

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:

- the age of the case;
- the pre-trial detention status of the defendant;
- the status of the trial calendar for the week,
- the order in which the case is designated for trial including whether the case has a priority designation;
- the number of previous continuances;
- the number of times the cases has been designated for trial and not reached;
- the extent to which counsel had input into the scheduling of the trial date;
- the due diligence of counsel in promptly filing a motion for continuance as soon as practicable;
- whether the reason for continuance is a short lived event which could resolved prior to the scheduled trial date;
- the length of the continuance requested, if applicable;
- the position of opposing counsel;
- whether the motion has been considered by another judge (Senior Resident or designee) on the same grounds;
- whether the parties themselves consent to the continuance;
- present or future inconvenience or unavailability of witnesses/parties; and
- any other matter that promotes the ends of justice.

Reasons that shall not be considered valid bases for allowing a continuance motion include first time scheduling of the case for trial, potential conflicting scheduling of other trials in other courts and whether counsel of record has received payment.

[The factors to be considered by the appropriate judicial official are set forth as guidelines to ensure consistent, rational decision making while not restricting a judge's inherent power to grant requests in the interest of justice.]

**GENERAL RULES OF PRACTICE FOR THE
SUPERIOR AND DISTRICT COURTS**

(Supplemental to the Rules of Civil Procedure)

Rule 3. Continuances

An application for a continuance shall be made to the presiding judge of the court in which the case is calendared.

When an attorney has conflicting engagements in different courts, priority shall be as follows: Appellate Courts, Superior Court, District Court, Magistrate's Court.

At mixed sessions, criminal cases in which the defendant is in jail shall have absolute priority.

[Amended February 13, 1973]

PROPOSED AMENDMENT

Prior to the opening of court for the session in which the case is calendared, all applications for continuance shall be made to the Senior Resident Superior Court Judge of the judicial district in which the case is filed, or his/her designee. Following the opening of court for the session in which the case is calendared, any application for continuance shall be made to the presiding judge of the court in which the case is calendared.

All applications for continuance shall be by written motion made on state form AOC-CV-221 Motion And Order For Continuance (Civil Superior Cases) or AOC-CR-410 Motion And Order For Continuance (Criminal Superior Court Cases).