

LOCAL RULES AND PROCEDURES
FOR THE CALENDARING OF CIVIL CASES
IN THE FOURTEENTH JUDICIAL DISTRICT
SUPERIOR COURT DIVISION
(EFFECTIVE JULY 1, 2010)

1. RULE 1: GENERAL RULES

- 1.1. The purpose of these rules is to institute a case management plan in the Superior Court Division of the Fourteenth Judicial District (Durham County) in compliance with Rule 40 (a), Rules of Civil Procedure (<http://www.ncga.state.nc.us/gascripts/Statutes/StatutesTOC.pl?Chapter=0001A>); Rule 2(a), General Rules of Practice for Superior and District Courts (not available on line); the Rules Implementing Mediated Settlement Conferences (<http://www.nccourts.org/Courts/CRS/Councils/DRC/MSC/Rules.asp>); and the Rules for Court-Ordered Arbitration (<http://www.nccourts.org/Citizens/CPrograms/Arbitration/Default.asp?topic=10>) in order to provide for the orderly, prompt, and just disposition of civil matters.
- 1.2. These rules shall at all times be construed in such a manner as to avoid technical delay.
- 1.3. It is recognized that these rules are not complete in every detail and will not cover every scenario which may arise. In the event these rules do not cover a specific situation, Trial Court Administration is authorized to act in its discretion, subject to consultation with the Senior Resident Superior Court Judge or Presiding Judge.
- 1.4. The calendar for the disposition of civil cases in the Fourteenth Judicial District Superior Court Division shall be set by Trial Court Administration in accordance with these rules and under the supervision of the Senior Resident Superior Court Judge.
- 1.5. Where forms are referenced in these rules, parties may use either the form provided or a form of their own which substantially corresponds to the referenced form.
- 1.6. These rules and procedures and all future amendments shall be filed with the Clerk of Superior Court for Durham County and may be cited accordingly.
- 1.7. A copy of these rules and any subsequent amendments shall be posted on the North Carolina Court System's website [www.nccourts.org]. Trial Court Administration will publicize the adoption of these rules and subsequent amendments through a notice to all electronic subscribers, through electronic postings to the North Carolina Court System's website and the Durham County Bar Association website, and will provide a hard copy or an electronic copy of the rules upon request.

2. RULE 2: SCHEDULING CASES READY FOR TRIAL

- 2.1. Trial Court Administration shall establish and maintain a case-tracking system pursuant to Rule 2(c) of the General Rules of Practice for Superior and District Courts. This system shall be used to monitor the number, age, type and procedural status of all pending cases and to provide for the calendaring of those cases.
- 2.2. A case shall be considered ready to set for trial when Trial Court Administration determines that at least one of the following has occurred:

- By posting online at <http://www1.aoc.state.nc.us/www/calendars/Civil.jsp?county=DURHAM>
- By e-mail to all subscribers to <http://www1.aoc.state.nc.us/www/calendars/Civil.jsp?county=DURHAM>

- 4.5 Cases on the final trial calendar will be set with peremptorily-set cases and statutory-priority cases appearing first, and all other cases in case number order, oldest first and newest last, unless otherwise directed by the Senior Resident Superior Court Judge or Presiding Judge assigned to call the calendar.
- 4.6 When cases have been consolidated for trial, they will be regarded as one case for calendaring purposes, and will be listed under the oldest case number.
- 4.7 Pursuant to Rule 2(g) of the General Rules of Practice for Superior and District Courts, when a case on a calendar is settled, all attorneys of record must notify the Trial Court Administration Office in writing within twenty-four (24) hours of the settlement and advise who will prepare and present judgment or dismissal, and when. Without prior written notification, counsel and unrepresented parties shall appear in court as scheduled to inform the court of the settlement.
- 4.8 Cases not reached during a scheduled trial session shall be rescheduled by the Trial Court Administration Office to another trial date. Notification will be in writing. Counsel and unrepresented parties are encouraged to consult and to provide the Trial Court Administration Office with an agreed-upon reschedule date.
- 4.9 Cases that are announced settled and to be closed by the end of the week will be dismissed by the court if the responsible party does not file the closing documents. Cases that are announced settled and to be closed after the trial week will be placed on the next trial or administrative calendar for the court to address.

5. RULE 5: TIME STANDARDS

- 5.1 The North Carolina Supreme Court established time standards for the resolution of civil cases in 1996 (see <http://www1.aoc.state.nc.us/cpms/login.do>.) Absent exigent circumstances, cases should be resolved by trial, order, or settlement and dismissal within the following deadlines: 90% within 12 months of filing, 98% within 18 months, and 100% within 24 months.

6. RULE 6: PEREMPTORY, PRIORITY, REMANDED AND EXCEPTIONAL CASES

- 6.1. All requests for peremptory settings shall be made in writing and directed to the Trial Court Administration Office, as set out in Rule 2(f) of the General Rules of Practice. If all parties join in the request and a specific trial date is set out in the request, the Court will make a decision based on the written request. If there is disagreement among the parties as to the request or the trial date, the matter may be placed on a calendar for hearing.
- 6.2. If a peremptorily-set case is continued and the parties wish another peremptory setting, a new request must be submitted in accordance with Rule 6.1.
- 6.3. Cases entitled to priority setting by statute shall be brought to the attention of the Trial Court Administration Office in writing with copies to all counsel of record and cite the statutory authority for such setting.

- 6.4. Will caveat cases (as appeals from the Clerk of Superior Court under N.C.G.S. 1-273) will be placed on the next available calendar for the purpose of aligning parties, determining a trial setting, and hearing all other motions under Rule 16 of the North Carolina Rules of Civil Procedure. Will caveat cases are entitled by statute to a priority trial calendar setting.
- 6.5. When a case is remanded for trial from the Appellate Division, appellant's counsel shall promptly notify the Trial Court Administration Office which shall set the case for trial.
- 6.6. Requests to designate a case as exceptional or as a complex business case shall be made in accordance with Rules 2.1 and 2.2 of the General Rules of Practice. When all parties are in agreement, a request for 2.1 designation may be presented to the Senior Resident Superior Court Judge as a consent motion. When all parties are not in agreement, the request shall be made in the form of a motion and scheduled for hearing pursuant to Rule 8. In both instances, the motion should include information on the factors set out in Rule 2.1(d) of the General Rules of Practice.

7. RULE 7: CONTINUANCE POLICY.

- 7.1 All requests for continuances shall be submitted in writing to the Trial Court Administration Office (See Motion and Order for Continuance <http://www.nccourts.org/Forms/Documents/214.pdf>). Requests for continuance off a published calendar will be addressed by the judge assigned to preside over the session whenever possible, or the Senior Resident Superior Court Judge if the presiding judge is not available. Requests for continuance of a case off a calendar that has not yet been published will be addressed by the Trial Court Administration Office.
- 7.2 The Court would like to consider input from all parties involved. When possible, the parties should confer prior to submission of the continuance request, and the parties' positions on the continuance included. If all parties agree to the continuance request, an agreed-upon reschedule date should also be provided for the Court's consideration. Otherwise, a copy of the continuance request must be sent by facsimile transmission or hand delivery where possible, or by U.S. mail, to all opposing counsel and unrepresented parties prior to submission to Trial Court Administration. Opposing counsel and unrepresented parties shall have a period of three business days to communicate their objections in writing to the Trial Court Administration Office. Objections may be hand-delivered or sent via e-mail or facsimile transmission. Objections not raised within this time period are deemed waived.
- 7.3 Continuance requests are presumptively disfavored. However, when compelling reasons are presented which would affect the fundamental fairness of the trial process or when a continuance clearly is in the best interest of justice, a continuance may be granted.
- 7.4 The Court 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 resolve 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
- Any other matter that promotes the ends of justice

Reasons that shall not be considered valid bases for allowing a continuance include first time scheduling of the case for trial and whether counsel of record has received payment.

- 7.5 Continuance requests based on scheduling conflicts will be addressed in accordance with Rule 3.1 of the General Rules of Practice.
- 7.6 Cases that are continued will be set for a new trial date at the time of the continuance. Input is welcomed from counsel and unrepresented parties.
- 7.7 Ex parte requests for continuance (requests without notice to opposing counsel or unrepresented parties, or without an opportunity for opposing counsel or unrepresented parties to be heard) will not be considered by the Court.

8. RULE 8: CALENDARING OF MOTIONS AND NON-JURY MATTERS

- 8.1 Counsel and unrepresented parties wishing to calendar a motion must contact the Trial Court Administration Office via telephone or e-mail to secure a hearing date and set the motion on a calendar for hearing. The requesting party should provide the following:
- The case file number
 - The type of motion to be heard
 - The estimated length of time needed for the motion to be heard
 - The date and time of the motions session requested

Parties are encouraged to consult with all other parties regarding possible hearing dates prior to placing a motion on a calendar.

- 8.2 Motion hearings are scheduled for the second full week of each month, with hearings set for morning and afternoon sessions each day.
- 8.3 Time-sensitive or emergent motions may also be added to a trial calendar at the discretion of the Trial Court Administration Office based on the status of the trial calendar.
- 8.4 The party scheduling the motion must serve all other parties with a copy of the motion and the notice of hearing indicating the date, time and location of the motion hearing. The originals shall be filed with the Clerk of Court and a copy of the notice of hearing only should be forwarded to the Trial Court Administration Office.
- 8.5 Motion calendars will be posted online at <http://www1.aoc.state.nc.us/www/calendars/Civil.jsp?county=DURHAM> approximately one week prior to the start of the calendar. This is for information purposes only, and does not serve as a formal notice of hearing. When a filed motion no longer requires a hearing, the party that filed the motion shall provide notice of withdrawal or removal of the motion to the Court, in writing.

- 8.6 In order to avoid the last-minute expense of trial preparation, parties are encouraged to schedule dispositive motions thirty (30) days prior to the trial date.
- 8.7 Motions to withdraw as counsel shall be set for hearing with notice provided to the client, all parties and/or counsel of record, and shall include the client's current mailing address. Motions shall also include the scheduled trial date or a statement that no date has been set. If a consent order signed by a client is submitted, it should acknowledge an understanding by the client that allowance of the motion to withdraw will not necessarily result in a continuance of trial or other hearings. A Notice or Motion to Substitute Counsel must include the signature(s) and contact information of the attorney(s) who will be withdrawing their representation of a party and the attorney(s) who will be making an appearance. No judicial action will be taken on motions to withdraw or substitutions of counsel that do not contain this information.
- 8.8 A party seeking a temporary restraining order or preliminary injunction shall present the motion to a Judge, or shall contact the Trial Court Administration Office for assistance. The attorney is expected to make an effort to notice the other side prior to appearing before the judge in accordance with Rule 65 of the Rules of Civil Procedure. The moving party shall contact the Trial Court Administration Office for a return hearing date, include that date on the order, and provide a copy to the Office in order to ensure that the case is set on the calendar.
- 8.9 An attorney who associates with an out-of-state attorney to represent a party in a proceeding and that out-of-state attorney shall adhere to N.C.G.S. 84-4.1 and North Carolina State Bar Rules 27 N.C.A.C. 1H.0101 and 27 N.C.A.H. 1D.0903 and .0904. Copies of the North Carolina State Bar Rules and the required registration form are available at www.ncbar.com. The required fee shall accompany the motion and order.
- 8.10 Parties in a case proceeding to arbitration shall notify the Court of their intentions as soon as possible or upon receipt of the Court's Order to Mediated Settlement Conference. The notification or motion to stay should include the anticipated arbitration schedule.
- 8.11 In cases in which a motion has been heard or a bench trial held and the presiding judge takes the matter under advisement, Trial Court Administration will place the matter on an upcoming civil calendar for review by that presiding judge 30-60 days after the original hearing date.
- 8.12 Motions for continuance shall be handled as set out in Rule 7.

9. RULE 9: Minor/Structured Settlements

- 9.1 Minor/Structured Settlements should be filed with the Clerk, then scheduled through the Trial Court Administration Office.
- 9.2 All settlements will be recorded, unless instructed otherwise by the Court.
- 9.3 The Minor and his/her Guardian *ad Litem* shall be present at the minor settlement, absent prior excusal by the Court.
- 9.4 Defense counsel shall state on the record the total and complete amount of insurance coverage afforded to a Defendant in the situation in question.

9.5 To the extent potential damages exceed insurance coverage, Plaintiff's counsel shall make independent inquiry of Defendant's other assets that are reasonably available, other than insurance, and be prepared to report his or her findings to the Court.

9.6 To the extent a Minor or other settlement is to be structured, Plaintiff's counsel shall certify to the Court the present value of the settlement and the tax liability, if any, to the Minor.

10. RULE 10: CALENDAR CALLS, ATTORNEY PRESENCE

10.1 The call of the Superior Court trial calendar shall be at the time and date indicated on the published calendar.

10.2 Cases will be called in the order in which they appear on the trial calendar unless counsel is instructed otherwise by the Presiding Judge or the Trial Court Administration Office.

10.3 Pursuant to Rule 2(e), General Rules of Practice for Superior and District Courts, counsel for all parties in an action, when notified to appear at pre-trial conferences, hearings on motions or at trial, must, consistent with ethical requirements, appear or have a partner, associate, or other attorney familiar with the case present. Unless an attorney has been excused in advance by the Judge before whom the matter has been scheduled, and has given prior notice to his opponent, a case will not be continued.

11. RULE 11: PRE-TRIAL PROCEDURE

11.1 Pre-trial conferences may be held with or without the involvement of a Superior Court Judge. There shall be a pre-trial conference and order in every civil case called for trial unless counsel for all parties stipulate in writing to the contrary and the court approves the stipulation. See Rule 7, General Rules of Practice. The purpose of the conference is to explore settlement possibilities, define and narrow the issues for trial, and to draft a pre-trial order for submission to the court.

11.2 Some cases may benefit from a pre-trial conference conducted by a judge. Upon receipt of the trial calendar, a party may schedule a pre-trial conference by contacting the Trial Court Administration Office. Whenever possible, the conference will be set before the scheduled trial judge during the two-week period prior to the trial date.

11.3 The pre-trial order shall substantially conform with Rule 7 of the General Rules of Practice for the Superior and District Courts.

11.4 The Trial Court Administration Office shall schedule a pre-trial discovery conference in all medical malpractice cases when all responsive pleadings have been filed or the time for pleadings has expired. The Trial Court Administration Office may also schedule other cases for a pre-trial conference when they are deemed complex or it appears they might benefit from a judicial review or pre-trial conference.

12. RULE 12: JUDICIAL REVIEW OF CASE STATUS

12.1 Trial Court Administration may set cases for judicial review or status update at an administrative session. .

12.2 Cases involving, but not limited to, the following matters shall be eligible for judicial review and possible action at an administrative session of court:

- Individuals in bankruptcy or cases removed to the U.S. District Court;
- Lack of service and expired summons;
- Failure to file answers or replies to complaints, crossclaims, or counterclaims, and the time to do so has expired;
- Binding or non-binding arbitration;
- Periodic settlement payments;
- Exceptional or complex business status designation;
- Medical malpractice claims but no current discovery scheduling order;
- Previous announcements of settlement but no closing documents have been filed;
- Appeals and cases remanded to the trial court.

12.3 Failure to appear or provide the Court with a written status report that addresses the outstanding issues may result in a dismissal for failure to prosecute or any other disposition allowed by law at the call of the calendar.

13 RULE 13. ALTERNATE DISPUTE RESOLUTION

13.1 In accordance with G.S. 38.1, all civil cases shall be ordered to participate in mediated settlement conferences unless otherwise exempted by the Supreme Court Rules Implementing Statewide Mediated Settlement Conferences in Superior Court Civil Actions. Upon a party's motion and a showing of good cause, the judge may exempt a case from a mediated settlement conference.

13.2 Parties may file a motion requesting that the Senior Resident Superior Court Judge authorize the use of some other settlement procedure as set out in Rule 1.C.(2) of the Mediated Settlement Conference Rules cited above.

14. RULE. 14: OUT OF STATE SUBPOENA

14.1 This procedure for the issuance of non-North Carolina action subpoenas is established pursuant to Rule 28(d)(1) and Rule 45 of the Rules of Civil Procedure.

14.2 The party seeking the subpoena shall deliver to the Office of the Clerk of Superior Court the following items:

- A. A petition or request for issuance of a subpoena to be used outside the state of North Carolina, signed by the requesting attorney.
- B. A copy of the signed Commission, Order, Notice, Consent, or other authority under which the deposition is to be taken or documents produced.
- C. Order appointing Commissioner to collect before the deposition a sufficient sum of money to cover all costs and charges incident to the taking of the deposition, including such witness fees as are allowed to witnesses in the State for attendance in court. The Order shall be signed by a Resident Superior Court Judge.
- D. A completed North Carolina subpoena form AOC-G-100 (<http://www.nccourts.org/Forms/Documents/556.pdf>), leaving blank the file number, date and signature lines for the Clerk and Resident Judge to complete.

- E. If documents or testimony covered under HIPPA are being subpoenaed, prepare a separate Order addressing the HIPPA regulations and include it for the Resident Judge's signature.
- F. If the out-of-state attorney intends to make an appearance in North Carolina in connection with this case and is not licensed in North Carolina, a Motion and Order to Admit Counsel *Pro Hac Vice* must be filed; see Rule 8.9.

14.3 The following will be needed to complete the process:

- A. A check made payable to Durham County Clerk of Superior Court in the amount of \$110.00. If requesting Attorney is not licensed in North Carolina, the above check must include an additional \$225.00.
- B. If requesting Durham County Sheriff's Office to serve the subpoena, a check made payable to the Sheriff in the amount of \$50.00 (for each subpoena issued). If other type service is requested, indicate how.
- C. Include a large, self-addressed, postage-paid envelope for return of all filings.

14.4 The original set remains in the Clerk's Office and is placed in the court file. One set will be returned in the self-addressed stamped envelope, and one set will be served on each person for whom a subpoena is issued. If service is to be completed by the Sheriff, an additional copy of the subpoena should be given to the Clerk.

15. RULE. 15: SANCTIONS

15.1 Failure to comply with any section of these Rules may subject an action to dismissal or other actions allowed by law and deemed appropriate at the discretion of the Presiding Judge.