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STATE OF NORTH CAROLINA  
ROCKINGHAM COUNTY

IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION

## CIVIL DISTRICT COURT RULES 17A JUDICIAL DISTRICT

### **RULE 1: AUTHORITY**

- 1.1 These rules are published pursuant to authority vested in the Chief District Court Judge of the 17A Judicial District by Rule 2, General Rules of Practice for the Superior and District Courts Supplemental to Rules of Civil Procedure adopted by the Supreme Court of North Carolina pursuant to N.C.G.S. 7A-34, as amended.
- 1.2 These Rules supersede all previous Local Civil Calendar Rules of the District Court Division from and after their effective date.
- 1.3 These Rules are not complete in every detail and will not cover every situation that may arise. In the event that these Rules do not cover a specific matter, the Trial Court Coordinator or designee is authorized to act in his or her discretion, in consultation with Chief District Court Judge or presiding judge.
- 1.4 These Rules shall be cited as Civil District Court Rules 17A Judicial District. (17A-DCR)
- 1.5 These Rules are effective for cases filed after January 15, 2012 and for cases still pending after March 15, 2012.

### **RULE 2: CALENDARING OF CASES**

- 2.1 (a) Ordinarily the setting of cases for trial is a function of the trial bar by the timely service of written notice and calendar request on the opposing attorney of record, or, if none, the opposing party through the office of Clerk of Superior Court. The Chief District Judge has the final authority over the calendaring and management of civil cases. When a Notice of Hearing is filed and served upon the opposing attorney or party, said Notice of Hearing shall specify what issues are being noticed for hearing. Upon being placed on the trial calendar pursuant to said notice, the only issues for hearing on that particular calendar will be the issues properly identified and noticed

for hearing. All other issues pending in the case will not be for hearing unless properly noticed for hearing.

(b) All calendar requests for a Civil District Court session must be filed in writing with the Clerk of Superior Court four (4) weeks in advance of the first day of said session. Additionally, matters may be scheduled for hearing through a calendar request within the four week period prior to the beginning of the session but only with the consent of the opposing counsel or party. However, in the event that consent from the opposing counsel or party is not obtained, matters may also be scheduled during this four week period but only after an in-chambers conference with the presiding judge who will determine whether or not the matter is added to the calendar. Said in-chambers conference shall be scheduled by and through the Trial Court Coordinator. All calendar requests for matters to be heard at the calendar call (short motions docket) must be filed in writing with the Clerk of Superior Court two weeks in advance of the Calendar Call date.

- 2.2 A Trial Calendar shall be maintained by the Trial Court Coordinator upon which cases shall be placed immediately after five (5) months after a complaint is filed, unless time is extended by order of the Chief District Court Judge. Upon the initial calendaring by the Trial Court Coordinator, the presiding judge and the attorneys shall address what issues remain pending and set a schedule for disposing of the case.
- 2.3 In all cases in which a Responsive Pleading has not been filed within the time allowed, the case may be calendared at any time by the complaining party, subject to the discretion of the presiding Judge.
- 2.4 In all matters in which the case has been heard or announced settled, a proposed order shall be drafted within fourteen (14) days by the responsible attorney and sent to the opposing attorney or party by facsimiles transmission. The opposing attorney or party shall respond in writing to the responsible attorney within seven (7) days of receipt of the proposed Order. A final Order shall be submitted to the presiding Judge within thirty (30) days of being heard or announced settled. If the final order is not presented within thirty (30) days of being heard or announced settled, then a Notice shall be sent by the Trial Court Coordinator to the responsible attorney that a final Order must be submitted to the Court no later than forty (40) days from the date the matter was heard or announced settled. The presiding Judge will take such appropriate action and/or impose such sanctions as he or she deems appropriate if the proposed order is not received within the forty (40) day period.
- 2.5 Jury trials shall take precedence over all other matters and shall begin on Tuesday of the session, however, the presiding Judge may modify as necessary.

### **RULE 3: PRE-TRIAL CONFRENCES AND ORDERS- JURY AND NON JURY TRIALS**

- 3.1 In all cases when a jury trial has been requested on the final trial calendar and/or in Equitable Distribution of Marital Property cases, Pretrial Conferences shall be held at such times as scheduled by the judge assigned to preside over the session, and a Pre-Trial Order shall be prepared in conformity with Rule 7 of the General Rules Of Practice For The Superior And District Courts.
- 3.2 In all non-jury trials, the parties shall submit to opposing counsel a list of proposed witnesses and one (1) legible copy of all proposed exhibits intended to be introduced in their case in chief. Counsel shall also submit a brief statement of contended issues to be resolved by the trial to opposing counsel and have a copy of the same available for the Court. These documents are to be exchanged not later than 4:00 p.m. on the day prior to the Calendar Call Meeting.
- 3.3 Failure of counsel for each party to file a proposed Pre-Trial Order required by Rule 3.1 above or the materials required by Rule 3.2 above in accordance with the Rules of Civil Procedure or the directions of the Presiding Judge prior to the Calendar Meeting for the term of court at which the matter is to be heard, constitutes a violation of these Rules and sanctions under the Rule 37 of the North Carolina Rules of Civil Procedure may be imposed. The compliant party shall be entitled to have the matter continued to a later term of court or seek sanctions as set out above.

### **RULE 4: CONTINUANCES**

- 4.1 Motions to continue will be made to the presiding District Court Judge or the Trial Court Coordinator who will notify the presiding Judge.
- 4.2 All requests for continuance should be by written motion. In addition to the normal service requirements set out by statute, Notice of the Motion must be made as soon as possible after the need for the continuance becomes known to the moving party. Further, said Notice of the Motion must be made in the quickest means feasible, including facsimiles transmission, electronic mail, hand delivery and/or telephonic communication. Failure of the moving party to give the opposing side notice of the request for a continuance by the quickest means feasible shall be grounds for the Court to summarily deny the Motion for Continuance. Although written Motions are preferred, oral Motions may be allowed when the reason for continuance did not become known until immediately preceding the call of the calendar or the trial

session itself. However, the moving party must strictly adhere to the notice requirements set out above for written motions. Also, oral Motions for Continuance shall be readily granted by the presiding Judge if the attorneys for all sides are in agreement to said continuance.

#### **RULE 5: PEREMPTORY, PRIORITY AND REMANDED CASES**

5.1 Motions for preemptory settings may be made orally or in writing to the presiding Judge or to the Chief District Court Judge if the presiding Judge is unavailable. A preemptory setting shall be granted only for good cause shown. The Chief District Court Judge or presiding Judge may set a case preemptorily upon her or his own motion upon due notice to the attorneys of record.

5.2 Emergency hearings will be held at the discretion of the Presiding Judge and as provided by the statutes. Exigent circumstances must exist, and if exigent circumstances do not exist, then opposing counsel and the Presiding Judge must consent to an emergency hearing.

5.3 When a case is remanded by the Appellate Division, the prevailing party or other litigant shall promptly notify the presiding Judge who shall place the case on the appropriate trial calendar.

#### **RULE 6: MEMORANDA OF SETTLEMENTS (ALL CASES)**

6.1 At any time the parties execute a Memorandum of Settlement, if all parties are represented by counsel, the Memorandum may provide that it may be entered by the judge presiding out of the presence of the parties. For equitable distribution cases, Form A in the Appendix to these Rules is the preferred form to use by the parties.

6.2 If any party is not represented by counsel, the parties shall remain in the courtroom to allow the presiding judge to address the unrepresented parties to determine whether they understand the terms of the Memorandum and whether they have executed the same voluntarily and knowingly.

6.3 When any issue in a case on a trial calendar is settled, it shall be the responsibility of the attorneys of record to notify the Trial Court Coordinator of the specific issues settled and to advise the Trial Court Coordinator as to what settlement documents will be filed, who will prepare the appropriate settlement documents and when they will be filed with the Court.

## **RULE 7: BANKRUPTCY**

7.1 Civil actions in which one of the parties had filed a petition under the Federal Bankruptcy Act, or who has been adjudicated bankrupt, 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 v Virginia Dare Transport Company*,  
19 N.C. App. 352 (1973)

7.2 Any request 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 certificate of bankruptcy filing or “filed” copy of the stay of proceeding from the United States Bankruptcy Court having jurisdiction.

7.3 Notwithstanding any provisions contained in this Rule 7, the court will enter such Order(s) as may be necessary to enforce the bankruptcy stay, enjoin state action, and administratively move the file to inactive status.

7.4 Once a matter is placed on inactive status, it will remain on inactive status until there is an order from the Bankruptcy Court allowing the action to proceed, there is an Order lifting the stay, or an appropriate motion is filed and heard to remove the case from the inactive status.

## **RULE 8: EQUITABLE DISTRIBUTION**

8.1 All cases in which an Equitable Distribution (hereinafter “ED”) claim is asserted, the initiating party must state the same in the cover sheet.

8.2 Inventory Worksheet

- (a) Within ninety (90) days after the service of a CLAIM for ED, the party who first asserts the CLAIM (initiating party) shall prepare and serve upon the opposing party an initial ED Inventory Worksheet using Form "B" found in the forms appendix to these rules. Within thirty (30) days after service of the initial Inventory Worksheet, the responding party shall prepare and serve their responses to the initial Inventory Worksheet upon the initiating party. The initiating party then has thirty (30) days to respond. All parties shall use the Inventory Worksheet located in the appendix. No other form shall be accepted by the Court and no party shall be required to respond to

an Inventory Worksheet that does not conform to the forms set out in the appendix. Further, the Inventory Worksheet must be sent to the mediator at least 10 days prior to the mediation settlement conference by the initiating party. Failure of the initiating party to comply with this provision shall allow the responding party to request a postponement of the mediation settlement conference and the postponement fee charged by the mediator, if any, shall be paid by the initiating party who has failed to comply with this provision.

(b) Within one hundred fifty (150) days of the filing of the initial pleading or a motion requesting ED, the party first seeking ED SHALL apply to the Court for the initial scheduling and discovery conference. If that party fails to make application, then the other party may do so.

(c) Anytime after 75 days from the initial pleading or motion requesting ED, the responding party may give written notice to the initiating party that they intend to seek sanctions from the court if Rule 8.2(a) (90 day service requirement) is not complied with. Thereafter, upon application by the aggrieved party, sanctions shall be entered by the presiding judge in an amount of not less than \$100.00. The notice required to be used in this paragraph is Form 'C' in the forms appendix and this is the form that must be used in order to comply with this section.

8.3 By the date of the initial scheduling conference both parties shall have prepared and exchanged the Inventory Worksheets and shall bring it to the conference. At the conference the Court shall determine a schedule of discovery as well as consider and rule upon any motions for appointment of expert witnesses or other applications, including applications to determine the date of separation. All attorneys shall be present at the initial scheduling conference. At the conclusion of the scheduling conference all dates shall be set out in a Court Order, including discovery completion date, the date by which all motions must be resolved, the date for the initial Pre-Trial Order to be served upon the opposing party and dates for further pretrial conferences at which time lawyers and parties shall be present. The judge may order further conferences if needed. Form 'D' found in the forms appendix shall be used by the Court as its scheduling Order. Failure by a party or his attorney to comply with the scheduling order, as it pertains to the preparation and distribution of the Pre-Trial Order, shall be grounds for the presiding Judge or the Chief District Court Judge to require that opposing counsel prepare the Pre-Trial Order, and the party or attorney who has failed to comply with the scheduling order shall be assessed the cost and attorney fees incurred by the party who has been required to prepare the Pre-Trial Order.

8.4 Within two hundred and seventy (270) days after the initial pleading or motion requesting ED, the judge shall conduct a final pretrial conference with lawyers

present. The final pretrial order as set out on Form 'E' in the Forms Appendix shall be entered at that time and the court date for the trial shall be set.

8.5 Ten (10) days to two weeks prior to the trial of the Equitable Distribution, the judge shall hold a Trial Management Conference with the attorneys, at which time exhibits, etc. shall be reviewed by the parties and the court. (If not conducted at final pretrial.)

8.6 Upon motion of either party or upon the Court's own motion, the Court SHALL impose an appropriate sanction for willful obstruction or unreasonable delay of proceedings. Sanctions may include an order to pay the other party the amount of the reasonable expenses and damages incurred because of the obstruction or delay, including attorney fees and including appointment by the Court, at the offending party's expense, of an accountant, appraiser, or other expert whose services the Court finds are necessary to ensure proper and timely discovery or to ensure that the ED matter proceeds to a timely conclusion.

8.7 Once the initial pretrial proceeding is held before a judge, that judge shall retain jurisdiction of the case until the ED issues have been resolved.

8.8 The Trial Court Coordinator shall be directed to place all ED cases over twelve months of age in which the above guidelines have not been complied on the Cleanup Calendar for dismissal. The presiding Judge shall not dismiss the ED claim if good cause has been shown by either party that said dismissal should not be entered.

## **RULE 9: MISCELLANEOUS**

## **RULE 10: COMPLIANCE**

10.1 Failure to comply with any provision of these rules shall be sufficient grounds to deny any request made by said non-complying party and furthermore shall subject an action to dismissal or such other sanctions allowed by law and deemed appropriate by the Presiding Judge or Chief District Court Judge.

10.2 Nothing in these rules shall be construed to divest the Chief District Court Judge or the Presiding Judge of the authority to insure full court utilization.