

LOCAL COURT RULES

JUDICIAL DISTRICT 17A - ROCKINGHAM COUNTY

General Court of Justice-Superior Court Division

State of North Carolina

Effective January 1, 2007

CALENDARING OF CIVIL CASES

Pursuant to and supplemental to Rule 2(a) of the General Rules of Practice for Superior and District Courts the following local rules are adopted:

1. Case Tracking System

The Superior Court Calendar Coordinator shall maintain a case tracking system in addition to the Ready Calendar required to be maintained by the Clerk of Superior Court.

2. Administrative Weeks.

(a) Calendar - At least three weeks before a designated administrative week, an Administrative Week calendar shall be distributed to each attorney of record (or party if there is no attorney of record). All cases that are at issue or will be at issue before the end of the next 8 months are subject to being placed on this calendar.

(b) Calendar Setting Conferences - At the scheduled time during the administrative week, the Senior Resident Superior Court Judge will conduct a review of the file and the case. (See (d) below for provisions for conducting this conference by telephone). Each counsel will be expected to attend and briefly sketch the case from their party's perspective. A determination of the need for and extent of any future discovery will be made. Pending motions and anticipated motions will be scheduled. The status of settlement discussions will be discussed, with counsel being expected to be ready to convey firm offers to settle.

(c) Trial date - A trial date will be set during this conference consistent with each attorney's schedule and the schedule of parties and key witnesses during the next eight months. All attorneys should make prior inquiry of their clients and key witnesses (including experts) of their availability so that the cases can be calendared at a time when trial will not conflict with vacations, significant work, or other significant commitments. All attorneys should have their personal calendars of commitments before them so that a date chosen for trial by all counsel and the Court will not later conflict with vacations, appellate court appearances, educational or professional commitments, etc. Alternate dates

for trial are frequently chosen so that if for some compelling reason a case is not reached, another date will have already been designated. An Administrative Order will be prepared memorializing the decisions and commitments made at the trial setting conference.

Mediated Settlement Conferences shall be completed so as not to interfere with chosen trial dates.

(d) Hearings conducted by telephone - Unless at least one counsel requests an in-person conference, the calendar setting conference shall be conducted by telephone conference call. The responsibility for arranging such a long-distance conference call shall be the responsibility of the out-of-county counsel at the greatest distance from Wentworth. If counsel themselves cannot work out the details of the costs of such a telephone conference, all counsel shall appear personally for the calendar setting conference.

3. Request for Calendaring

Any attorney may request that a case be calendared for trial at any scheduled session of court. However, after the tentative calendar has been distributed for a session, any request by counsel for the addition of a case to the final calendar for that session must be with the approval of all attorneys in the case and the request must so state. No requested case for trial may be added to the final calendar after it has been published except by a written consent order signed by the Senior Resident Judge. Requests for calendaring shall be made to the Superior Court Calendar Coordinator.

4. Request for Peremptory Setting

When a case involves persons who must travel long distances or has numerous witnesses or for other extraordinary reasons, a request for a peremptory setting may be made to the Senior Resident Judge. A peremptory setting shall be granted for only good and compelling reasons. No more than 2 peremptory settings per week may be made. The Senior Resident Superior Court Judge may set a case peremptorily on his own motion.

5. Tentative Trial Calendar

(a) Publication - not less than 5 weeks before the first day of each superior court session, the tentative calendar of cases for trial at that session shall be prepared by the Superior Court Calendar Coordinator from the Administrative Week orders. Cases calendared shall include any motions that have matured or have been requested by an attorney of record, and cases not reached or continued from a previous session. A copy of the tentative calendar shall be distributed to each lawyer involved in any listed case and to individuals in any listed case who are not represented by counsel.

(b) Request for Removal from Tentative Trial Calendar - within 10 days after the mailing of a tentative trial calendar, an attorney in any case listed thereon may file a request with the Senior Resident Superior Court Judge, in writing with a copy to all counsel or unrepresented parties, to remove the case from the tentative calendar. The request must state the case number and name, date set, the reasons for requesting continuance, and whether the request is approved by all opposing counsel.

Those cases which were set during an administrative week, in an effort to accommodate parties, witnesses and counsel, will be less likely to be removed from the tentative trial calendar than those cases which have been added to assure complete use of available court time.

(c) Request for Additions to Tentative Trial Calendar - within 10 days after the mailing of a tentative court calendar, attorneys may request that additional cases be added to the calendar for trial. Any such request should be filed on behalf of all counsel in writing and be directed to the Superior Court Calendar Coordinator.

6. Final Trial Calendar

(a) Publication - 3 weeks before the first day of each civil session, the Superior Court Calendar Coordinator shall prepare a final calendar of cases for trial at that session. The Superior Court Calendar Coordinator shall distribute one copy thereof to each attorney or law firm whose cases are listed thereon and to unrepresented parties.

(b) Order of Listing for Trial - the final trial calendar shall be composed of cases not removed from the tentative calendar by settlement, dismissal or order, and matters requested by agreement of counsel. It shall also include, in addition, any motions which have matured or have been requested by an attorney of record, and cases for trial not reached at or continued from a previous session after consultation with attorneys of record as to their conflicts and convenience. The final trial calendar shall contain any cases having a statutory priority as required by law. Peremptorily set cases shall be calendared at the top of the final calendar and marked accordingly. Some priority may be given to cases requested for trial by counsel or set at an administrative week in a particular sequence. Otherwise, cases will be set generally by date of filing in chronological order. Motions and pretrials will be scheduled for the first morning of the first week of a session. Jurors shall be summonsed for that afternoon of the first week and Monday morning of any subsequent week.

(c) Carry-over of Cases - cases not reached during the first or subsequent week of a multi-week session shall not be carried over to any subsequent weeks of the session, unless otherwise ordered by the Senior Resident Judge or the Presiding Trial Judge. Cases not disposed of during the session for which they are scheduled may be placed on the final calendar for the next civil session of court, even though the tentative calendar for that session has been previously published without listing those cases for trial.

7. Motion Calendar

(a) Final Motion Calendar - non-jury matters and motions filed shall be calendared automatically at the next available civil session or other available time as designated by the Senior Resident Judge. The regular motion calendar hopefully will not contain more non-trial matters than can be reasonably expected to be heard. Some motions and non-jury matters may be scheduled by the Court for later in the week.

(b) Supplemental Motion Calendar - any motions pending at the time the final trial calendar is prepared and duly noticed may be set on a supplemental motion calendar. Any motion calendar request filed less than 3 weeks before the first day of the session shall be filed with the Clerk

of Court and will be added to a supplemental calendar by the Superior Court Calendar Coordinator. Matters on this calendar will be heard as time permits and shall generally be given lower priority than matters on the regular motion calendar.

8. Discovery

Discovery is to begin promptly and may begin even before the pleadings are completed. Attorneys are encouraged to complete discovery as soon as practical. Discovery should not be postponed until mediation is held. Mediation is more likely to succeed if essential information is shared beforehand.

In medical negligence cases or other exceptional cases, a date for ending discovery set by order shall be honored. An order of the Senior Resident Judge at an administrative conference setting a discovery cut off is a target date. Even after such a date, discovery may continue so long as it does not delay the trial or delay any hearing before the court Tennessee-Carolina Transport v. Strick Corp., 291 N.C. 618 (1977), and so long as discovery is not undertaken to harass opposing counsel. Turner v. Duke University, 325 N.C. 152, 168-171 (1989)

9. Pretrial Conferences

At least twenty one days before trial, plaintiff's counsel shall arrange with defense counsel a pretrial conference to be held a minimum of seven calendar days before trial. (Rule 7, Superior and District Court Rules) At such a conference a pretrial order shall be prepared and signed by the attorneys. Attorneys are encouraged to prepare pretrial orders to include stipulations which expedite trial and distill the controversy to its essence.

10. Motions for Continuance

(a) 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 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.

(b) Form of Motion - All applications for continuance shall be by written motion made on state form AOC-CV-221. A copy of such motion shall be delivered to the Superior Court Calendar Coordinator.

(c) Notification of Opposing Counsel/Unrepresented Parties - A copy of the completed form AOC-CV-1997 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 U.S. mail, facsimile transmission or hand delivery.

(d) 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 his/her designee. Objections not raised within this time period are deemed waived

(e) Evaluation of Motions for Continuance - Once a trial date has been chosen, 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 calendar, including whether the case is peremptorily set;
- 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; and
- present or future inconvenience or unavailability of witnesses/parties.

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 (see Section 15 below for resolution of scheduling conflicts), and whether counsel of record has received payment.

(f) 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.

11. Scheduling Conflicts

The Guidelines for Resolving Scheduling Conflicts in N. C. Courts were adopted by the State-Federal Judicial Council of North Carolina on June 20, 1985. They are found at 316 N.C. 741 and they supplement Rule 3 of the Superior and District Court Rules.

A message, phone call, last minute letter, or Fax to the Clerk or the Superior Court Calendar Coordinator is not sufficient to resolve a conflict unless the excuse is a last minute emergency and, with reasonable diligence, contact with the trial judge can not be made before court convenes. Normally, when an attorney learns of a conflict, that attorney should promptly give written notice to the presiding judges, opposing counsel and the clerks of the courts affected. The circumstances relevant

to the resolution of the conflict shall be stated in the writing. Included shall be the case names, docket numbers, the courts, the date on which the other court calendar was published, the comparative age of the cases, their complexity, the estimated trial time, the number of attorneys and parties involved, whether the trial involves a jury, and the difficulty or ease of rescheduling. The judges of the different courts involved will themselves then promptly confer, resolve the conflict, and notify counsel.

12. Settlement

When a case on a published calendar (tentative or final) is settled, all attorneys of record must notify the Superior Court Calendar Coordinator within 24 hours of the settlement and advise who will prepare and present the dismissal or judgment and when. If a case is settled after being placed on a final trial calendar, counsel should notify counsel of record in the next (following) calendared case of such settlement. Cases in which settlement judgment or dismissal is not forthcoming within the time indicated may be calendared on a supplemental motion calendar at the next session for involuntary dismissal by the Court.

13. Inactive Cases

If all parties and attorneys in a case agree that the ends of justice require the declaration of a case as inactive and removal of the case from the trial docket, they may prepare a consent order (stating the reasons) for approval and signature of the Senior Resident Judge, declaring the case inactive and closing the case file without prejudice to any party's right to have the matter reopened upon motion. The Senior Resident Superior Court Judge will then rule upon that request. Such inactive cases shall be reviewed at least once every twelve months, at an administrative week, by the Senior Resident Superior Court Judge.

14. Bankruptcy

Civil actions in which one of the parties declares bankruptcy will be dealt with 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)
- (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 or stay of proceeding from the United States Bankruptcy Court having jurisdiction. Attorney for the bankrupt party shall forward notice of the bankruptcy filing to the Superior Court Calendar Coordinator. The Senior Resident Judge may then place the case on inactive status.

15. Attorneys

All attorneys, no matter where their offices are, must arrange their schedules to be present when their cases are calendared. Attorneys, those residing within and outside District 17A, must work out with the Senior Resident Judge and Superior Court Calendar Coordinator their conflicts, such as seminars, appellate courts and vacations before the case

is calendared for trial and any calendar is published. Consistent with ethical requirements, when an attorney is notified to appear for the setting of a calendar, administrative conference, hearing of a motion, or for trial, he/she must appear. Alternatively, such attorney of record may have present, a partner, associate or other attorney fully familiar with the particular case involved. The only legitimate excuses for not being in court when a case is calendar are death or serious illness or conflict with an appellate court. When an excuse or a scheduling conflict is known in advance, the office of the Senior Resident Judge should be notified to avoid calendaring such cases. Nothing else should take priority over an attorney's punctual appearance in court. The Senior Resident Judge will do all that he can to accommodate lawyers' conflicts and try to calendar cases at the time most convenient to all concerned, consistent with his responsibility to fully utilize available court time and to keep all cases moving efficiently through the system to a conclusion. Contact with the Senior Resident Judge shall be through the Superior Court Calendar Coordinator, Rockingham County Courthouse, P. O. Box 97, Wentworth, NC 27375, telephone (336) 342-8750 - Fax (336) 634-5683. The Superior Court Calendar Coordinator will be in contact with the Senior Resident Judge wherever he is assigned to hold court, and shall submit all matters to him for his consideration.

This the 29th day of December, 2006.

Edwin G. Wilson, Jr.
Senior Resident Superior Court Judge