

**19-C JUDICIAL DISTRICT – ROWAN COUNTY
COURT RULES AND CASE MANAGEMENT PLAN FOR
CALENDARING CIVIL CASES IN SUPERIOR COURT**

EFFECTIVE JANUARY 1, 1990

FROM: THOMAS W. SEAY, JR. – SENIOR RESIDENT SUPERIOR COURT JUDGE

Subject to and in compliance with the provisions of Rule 40(a), Rules of Civil Procedure and G.S. 7A-146, and Rule 2 of the General Rules of Practice for the Superior and District Courts as adopted on June 3, 1980 by the Supreme Court of North Carolina:

- (1) The calendaring of civil cases shall be prepared under the supervision of the Senior Resident Superior Court Judge, and in the District Court by the Chief District Court Judge.
- (2) The Clerk of Superior Court shall maintain a ready calendar for the Superior and District Courts. Five (5) months after a complaint is filed, the Clerk shall place that case on a ready calendar unless the time is extended by written order of the Senior Resident Judge or the Chief District Court Judge. AOC-CV 700 form entitled, Civil Docket, shall be completed for each case and maintained in docket books while said case is pending.
- (3) Calendars for Superior Court must be published and distributed by the Clerk of Court to each attorney of record (or party where there is no attorney of record) and presiding judge no later than four (4) weeks prior to the first day of court.
- (4) An attorney of record may request that his case be placed upon the trial calendar by making said request in writing to the Senior Resident Judge of the Superior Court and delivering a copy to opposing counsel or parties of record. The said request must be made no later than six (6) weeks before the scheduled session or the administrative term where the case is set for review or calendaring.
- (5) At such weeks as the Senior Resident Judge shall designate, that are agreeable to the Chief Justice, administrative terms will be held, and during such administrative terms, the Senior Resident Judge shall review all cases on the ready calendar. The Senior Resident Judge shall take appropriate actions to insure disposition of any pending motions or other matters necessary to move the cases toward conclusion. At such administrative terms or review, cases will be placed upon the trial calendar.
- (6) When an attorney is notified to appear for the setting of a calendar, pretrial conference, hearing of a motion or for trial, he must, consistent with ethical requirements, appear or have a partner, associate or another attorney familiar with the case present. Unless an attorney has been excused in advance by the judge before whom the matter is scheduled and has given prior notice to his opponent, a case will not be continued.

(7) Requests for a peremptory setting for cases involving persons who must travel long distances or numerous expert witnesses or other extraordinary reasons for such a request must be made in writing to the Senior Resident Judge. A peremptory setting shall be granted only for good and compelling reasons. The Senior Resident Judge may set a case peremptorily on his own motion.

(8) When a case calendar (ready or final) is settled, all attorneys of record must notify the Clerk of Court within the Clerk of Court within twenty-four (24) hours of the settlement and advise who will prepare and present judgment, and when.

(9) No later than four (4) weeks prior to the first day of a session of court, the final trial calendar will be prepared setting forth all the pending motions, (but not more than 20) and setting approximately twenty (20) jury cases on each civil week. Non-jury cases are to be set on Monday and tried at such time during the said session as the presiding judge may direct.

(10) The said calendar thus prepared will constitute the trial calendar for the designated civil session. Any additions shall be made only by the Senior Resident Judge after written request is made no later than four (4) weeks prior to the first day of court except as to those matters and things placed upon said calendar for disposition by consent of all the parties or ordered by the Senior Resident Judge or presiding Superior Court Judge upon his own motion.

(11) The jury cases for trial will be selected from the ready calendar giving priority to those cases so designated under the Rules, to those bearing the lowest number and to those requested by the attorneys of record.

(12) Where a multi-week session is involved, those cases not settled or disposed of during the first week will be continued until the next session or placed at the end of the calendar the second or following week at the discretion of the presiding judge.

(13) All attorneys of record 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 their cause.

(14) The jury shall be summoned to report on Monday afternoon at 2 o'clock p.m. unless otherwise ordered by the presiding judge.

(15) During that period of four (4) weeks after the publishing of the final trial calendar, the matter of any continuances is for the presiding judge.

(16) Superior Court is to convene at 10 o'clock a.m. on Monday or the opening day of each session and thereafter on each day at 9:30 a.m. It is expected that all attorneys with cases calendared for motion or trial will be present at the convening of court on the day the said matters are calendared and will remain in the courtroom or its general area unless excused by the presiding judge. There will continue to be a calendar call each Monday of each session.

(17) It is anticipated that pre-trial conferences in this district will be held during such administrative weeks as are scheduled by the Chief Justice, and the said pre-trial and motions calendar will be prepared by the Senior Resident Judge and the Clerk of Superior Court who will distribute the same together with the applicable Rules.

(18) Periodic reviews of all cases will be made by the Senior Resident Judge and the Chief District Court Judge of the status of all cases pending in the district.

(19) A copy of these Rules will be made available to the public and the attorneys practicing in District 19-C by the Clerk of Superior Court.

(20) These Rules replace and amend those heretofore designated as the Rules the 19-A Judicial District.

Thomas W. Seay, Jr.
Senior Resident Superior Court Judge

DISTRICT COURT RULES 19-C JUDICIAL DISTRICT

Rule 1: AUTHORITY – EFFECTIVE DATE

1.1 The Rules are published pursuant to authority vested in the Chief District Court Judge of the 19C Judicial District by Rule 2, General Rules of Practice for the Superior and District Courts supplemental to the Rules of Civil Procedure Adopted by the Supreme Court of North Carolina Pursuant to G.S. 7A-34, as Amended July 1, 1980.

1.2 The Rules supersede all previous civil calendar Rules of the District Court Division from and after their effective date.

1.3 The Rules shall serve as the case management plan for the calendaring of civil cases.

1.4 The Rules shall be cited as District Court Rules 19C Judicial District. (19C-DCR).

1.5 The Rules are effective for cases filed on or after January 1, 1990.

Rule 2: CALENDARING OF CASES

2.1 Ordinarily the setting of cases for trial is a function of the trial bar by the service of calendar notice on the attorney of record, or, if none, the opposing party through the office of the Clerk of Superior Court. The Chief District Court Judge has the final authority over the calendaring and management of civil cases.

2.2 The Chief District Court Judge shall publish a clean-up calendar consisting of all cases pending for more than six (6) months. When a case appears on a clean-up calendar the attorney of record must, consistent with ethical requirements, appear or have a partner, associate, other attorney present. Failure to conform with the above requirement may result in dismissal of the claim. Cases placed on a clean-up calendar not disposed of at the call of the calendar shall be set for trial on a date certain by the presiding judge, unless a continuance is allowed under another Rule herein.

2.3 In all cases in which an Answer or other appropriate pleading has not been filed within the time allowed, the case may be calendared at any time, subject to the discretion of the presiding judge.

Rule 3: JURY TRIAL PROCEDURE

3.1 When a complaint or other pleading is filed in which a trial by jury is requested, the phrase “Jury Trial Demanded” (or equivalent language) shall be typed or legibly written under the name of the pleading or complaint. Examples:

COMPLAINT
Jury Trial Demanded

ANSWER
Jury Trial Demanded

3.2 An attorney of record or unrepresented party may request that a case be placed upon the trial calendar by making a written request to the Chief District Court Judge and delivering a copy to opposing attorney of record or unrepresented party. The request must be made no later than four (4) weeks before the scheduled session.

3.3 Unless a request is made pursuant to Rule 3.2, jury cases more than six (6) months old will be placed on the calendar in numerical order according to the age of the case, unless otherwise provided for in the Rules (see Rule – 6 Peremptory Setting).

3.4 Six (6) weeks prior to a jury session a tentative trial calendar shall be prepared by the Chief District Court Judge. Additions will be made only by the Chief District Court Judge upon written request submitted no later than four (4) weeks prior to the first day of the jury session. Other additions to the jury calendar shall be in the discretion of the presiding judge.

3.5 In order to remove a case from the tentative trial calendar, an attorney of record or unrepresented party must file a motion for continuance within ten (10) calendar days after the publication of the tentative trial calendar, and set the motion for hearing pursuant to the Rules of Civil Procedure.

3.6 The final trial calendar shall be published four (4) weeks prior to the first day of the jury session and distributed to attorneys of record or unrepresented parties.

3.7 After publication of the final trial calendar, all motions to continue shall be addressed to the sound discretion of the assigned trial judge.

3.8 Attorneys of record are encouraged to complete discovery as soon as practical within the Rules of Civil Procedure and to prepare Pre-Trial Orders to include such stipulations as are possible to expedite trial of their case.

3.9 The jury shall be summoned to report on Monday morning at 9:30 a.m., unless otherwise ordered by the presiding judge.

3.10 District Court Jury Session convenes at 9:30 a.m. and all attorneys with cases calendared for motion or trial will be present and will remain in the Courtroom or its general area unless excused by the presiding judge.

3.11 When a case on a published calendar is settled, all attorneys of record or unrepresented parties shall notify the Clerk of Superior Court within twenty-four (24) hours of the settlement and state who will prepare and present judgment and when.

Rule 4: PRE-TRIAL CONFERENCE AND ORDERS – JURY TRIALS

4.1 In cases on the final trial calendar, Pre-Trial Conferences shall be held at such times as scheduled by the judge assigned to preside over the jury session.

4.2 Failure of counsel to file a proper Pre-Trial Order in accordance with the Rules of Civil Procedure or the directions of the presiding judge, constitute a violation of these Rules and sanctions may be imposed.

Rule 5: CONTINUANCES – NON-JURY CASES

5.1 Motions for continuance on the regular District Civil Court trial calendar shall be oral or in writing and shall be addressed to the sound discretion of the presiding trial judge.

5.2 The party moving for and receiving a continuance must file a calendar notice for rescheduling of the case with a copy to the attorney of record or unrepresented opposing party.

Rule 6: PEREMPTORY, PRIORITY AND REMANDED CASES (ALL CASES)

6.1 Motions for peremptory settings shall be in writing to the Chief District Court Judge. Peremptory setting shall be granted only for good and compelling reason. The Chief District Court Judge may set a case peremptorily upon his own motion.

6.2 In order to ensure the setting of cases that have priority status according to the General Statutes, the requesting attorney or unrepresented party shall notify in writing the Chief District Court Judge or the trial judge and cite statutory authority with copies to opposing attorney of record or unrepresented party.

6.3 When a case is remanded by the Appellate Division, the prevailing party or other litigant shall place the case on the next appropriate trial calendar.

Rule 7: NON-JURY CALENDARS AND MOTIONS (NON-DOMESTIC RELATIONS CASES)

7.1 An attorney of record or unrepresented party may request that a case be placed on a non-jury trial calendar by making a written request to the District Court Calendar Clerk no later than fourteen (14) calendar days prior to the scheduled session unless a shorter period of time is

allowed by North Carolina General Statutes, and the request shall be served upon opposing attorney of record or unrepresented party (see also Rule 2.3).

7.2 Motions for continuance shall be directed to the sound of the presiding judge.

7.3 When all attorneys or unrepresented parties of record agree, a case may be placed on a non-jury calendar with less than fourteen (14) days' notice subject to the discretion of the presiding judge.

Rule 8: NON-JURY DOMESTIC RELATIONS CASES (INCLUDING EQUITABLE DISTRIBUTION)

8.1 An attorney of record or unrepresented party may file a request to have a case placed on the non-jury calendar by delivery of a calendar request to the District Court Calendar Clerk prior to the session and notifying opposing

8.2 In all cases where emergency Orders are issued {50A, 50B, 50-13d(2)} financial status affidavits of the movant shall be filed within five (5) calendar days of the issuance of the emergency Order.

8.3 In cases dealing with custody or visitation, an affidavit containing the information required by G.S. 50A-9 shall be attached to or incorporated in the initial pleading filed by each party.

8.4 In all child support and alimony pendente lite cases, when responsive pleadings are filed in the case, the pleading shall contain a financial status affidavit of responding party. If the responsive pleading is not filed before the scheduled hearing date, the financial affidavit shall be served upon opposing attorney of record or unrepresented party within a reasonable time before the hearing.

8.5 In all alimony pendente lite cases, both parties shall bring to the hearing records of their earnings for the past two (2) years, including tax returns, pay stubs and other records.

8.6 When a civil action seeking child support is filed by complaint, petition, answer, motion or counterclaim, the attorney or unrepresented party seeking child support must serve a NOTICE AND ORDER TO APPEAR AND ORDER TO PRODUCE RECORDS (Form 19C-CSE-1) simultaneously with the Complaint, Summons, Answer, Counterclaim or Notice of Motion, upon the opposing party or his attorney of record. Form 19C-CSE-01 sets a hearing date which must be within forty-five (45) days of the filing of the first pleading or motion and must be signed by a District Court Judge, the Clerk of Court, or an Assistant Clerk of Court.

8.7 Hearings of child support cases must be completed within forty-five (45) days of the filing of the first pleading or motion asking for child support except by Order of the presiding judge upon motion of a party stating the statutory reasons for the request.

8.8 All non IV-D Orders for child support must contain language which includes the following information:

8.9 Payor must keep Clerk of Court informed of his current residence and mailing address; and

8.10 Payor will be subject to income withholding under a separate Order if Payor's arrearages, equal to one (1) month's support obligation, accumulate; or Payor may request such withholding through the office of the Clerk of Superior Court; or upon the Court's finding, pursuant to a motion or independent action, that the Payor is or has been delinquent or erratic in making child support payments; and

8.11 Payor shall cooperate fully with Payee in verifying the amount of Payor's disposable income.

8.12 Custodial party shall keep non-custodial party informed at all times of the residence and mailing address of the minor child/children, unless the Court has determined that such notice is inappropriate due to verbal or physical threats which constitute domestic violence under Chapter 50B.

RULE 9: EQUITABLE DISTRIBUTION CASES

9.1 When an action for absolute divorce has been filed, and equitable distribution has been requested by either party, a Pre-Trial Conference, pursuant to Rule 16 of the Rules of Civil Procedure, shall be held. The initial Pre-Trial Conference shall be held no sooner than sixty (60) days after the filing of the Complaint, in order to allow adequate time for discovery. Ten (10) days notice is required, but may be waived by mutual consent of the parties.

9.2 An Equitable Distribution affidavit shall be filed by each party and served upon opposing attorney of record, or unrepresented party, no less than thirty (30) days prior to the initial Pre-Trial Conference. The Affidavit shall be identical to the form incorporated into these Rules.

9.3 The initial Pre-Trial Conference may be held in open court or in Chambers. Attorneys are required to exchange complete information in order to eliminate as many areas of controversy as possible. The parties must be present at the initial Pre-Trial Conference, and shall sign the Equitable Distribution Affidavit pursuant to Rule 11 of the Rules of Civil Procedure certifying that they have read it and that to the best of their knowledge, information, and belief, there are sufficient grounds to support it.

9.4 The parties, their attorneys, and the Presiding Judge, at the initial Pre-Trial Conference, shall review the Affidavits, determine the need for further discovery, attempt to settle the case, determine the need for a reference, and set the date for the next Conference or Trial.

9.5 The Court may in its discretion, pursuant to Rules 53 and 16 (5) of the Rules of Civil Procedure, order a reference. The Court may apportion costs of such reference as it deems to be fair.

9.6 A Pre-Trial Order shall be drawn setting forth stipulations, discovery schedules, necessity of appraisers and experts, and other matters to expedite the resolution of the case.

9.7 If one party fails to provide an Equitable Distribution Affidavit, or otherwise fails to cooperate as provided by these Rules, the Affidavit provided by the opposing party may be adopted by the Court, and the non-complying party's proffered testimony may not be allowed into evidence.

9.8 The Court may designate a time for the case to be re-calendared for entry of the final Pre-Trial Order.

9.9 At the final Pre-Trial Conference, a final Pre-Trial Order shall be signed by the attorneys and the parties, and shall set forth, inter alia, each party's binding contention as to the marital estate, separate property, values, and all other matters either agreed upon or in dispute. A form Pre-Trial Order as incorporated in these Rules shall be used in all cases.

9.10 If a party contends, pursuant to G.S. 50-20 (c) that the division of marital property should not be equal, the final Pre-Trial Order shall specify the factors upon which the party relies.

RULE 10: BANKRUPTCY CASES

10.1 Civil actions in which one of the parties has 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) 11 U.S. Code § 362; 11 U.S. Code § 1301;
- (b) *Whitehurst v. Virginia Dare Transport Co.*, 19 NCA 352 (1973);
- (c) N.C.G.S. § 1-23

10.2 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 a certificate of bankruptcy filing or "filed" copy of the first page of the bankruptcy petition or by a Notice of Bankruptcy Stay utilizing Form CCF-15-1 upon all parties of record and will send a copy to the Office of the Chief District Court Judge.

10.3 Upon receipt of notification by any method set forth in Rule 10.2, or by verification of the Office of the Chief District Court Judge that a Bankruptcy Petition has been filed by a party to a state action, the Office of the Chief District Court Judge will refer the case to the Appropriate judge for the entry of such Order(s) as may be necessary.

10.4 Notwithstanding any provisions contained in Rule 10, the Court will enter such Order(s) as may be necessary to enforce the bankruptcy stay, enjoin state action, and administratively close the file in question.

10.5 After reasonable notice, the Court will dismiss or close the civil action in state court without prejudice. Notice may be in writing via letter, or by placing the case on a civil calendar.

RULE 11: MISCELLANEOUS

11.1 Unless an attorney has been excused by the trial judge for good cause shown in advance and had given notice to opposing attorney of record or unrepresented party, sanctions under these Rules may be considered.

11.2 When an attorney is ordered or has agreed to prepare an Order or Judgment for the Court's signature and the Order or Judgment is not presented for signature within twenty-one (21) calendar days of the hearing, the Court may (a) refuse to sign, (b) reschedule the case for rehearing or (c) dismiss the claim of the party whose attorney was delinquent.

11.3 In all cases where an Order is drawn pursuant to a Memorandum of Judgment/Order, a copy shall be attached for review by the judge when the Order is presented for signature.

11.4 District Criminal Court will begin at 9:00 a.m. and District Civil Court will begin at 9:30 a.m. District Criminal Court will take precedence if there is a conflict unless otherwise directed by the Chief District Court Judge. Regardless of the above Rule, a case in progress or in the process of being tried shall take precedence.

Rule 12: SANCTIONS

12.1 Failure to comply with any section of these Rules shall subject an action to dismissal at the discretion of the presiding judge.

STATE OF NORTH CAROLINA
ROWAN COUNTY

IN THE GENERAL COURT OF JUSTICE
 DISTRICT SUPERIOR COURT DIVISION
FILE NO. _____--CVD/CVS _____

_____,)
Plaintiff,)
v.)
_____,)
Defendant)

NOTICE OF BANKRUPTCY STAY

A petition has been filed/An Order for Relief under Chapter _____ of the Federal Bankruptcy Act has been entered for _____ .

Relief has been granted in case number _____ filed on the ____ day of _____, _____-, in the United States Bankruptcy Court for the _____ District of _____ Division.

Further proceedings involving _____ are stayed pursuant to the provisions of 11 USC 363, 1201 & 1301.

This, the _____ day of _____, _____ .

(Attorney signature)
(Type Attorney Name)
Attorney for Plaintiff Defendant

STATE OF NORTH CAROLINA
ROWAN COUNTY

IN THE GENERAL COURT OF JUSTICE
 DISTRICT SUPERIOR COURT DIVISION
FILE NO. _____ --CVD/CVS _____

_____ ,)	
Plaintiff)	STATE COURT INJUNCTION PURSUANT TO
)	11 USC 362, 1201 & 1301
)	AND
V.)	STATE COURT ORDER ENFORCING
_____ ,)	BANKRUPTCY STAY AND
Defendant)	STATE COURT ORDER CLOSING FILE

IT APPEARING to the Court that _____ has filed a petition seeking relief under the Federal Bankruptcy Act.

ALL PARTIES are specifically enjoined from doing any act set forth in 11 USC 326 or 11 USC 1201 or 11 USC 1301, and any other applicable provision of the Federal Bankruptcy Act as it may be amended from time to time.

This injunction is effective from the date of the filing of the Bankruptcy Petition and shall remain in full force and effect until further ORDER of this Court.

IT IS FURETHER ORDERED that this cause be transferred to the "CLOSED" files, without prejudice to previously entered Orders and Judgments..

This, the _____ day of _____ , _____ .

 District Superior Court Judge Presiding

STATE OF NORTH CAROLINA
ROWAN COUNTY

IN THE GENERAL COURT OF JUSTICE
 DISTRICT SUPERIOR COURT DIVISION
FILE NO. _____ CVD _____

_____,)
Plaintiff,)
)
V.)
_____,)
Defendant)

**NOTICE AND ORDER TO APPEAR
AND
ORDER TO PRODUCE RECORDS**

TO THE PLAINTIFF AND DEFENDANT NAMED ABOVE:

The undersigned finds that this is a civil action which involves a claim for a child support obligation, and that G.S. 50-30 requires that a prompt disposition of said child support claim be made.

Therefore, you are ORDERED to appear at the place, date and time indicated below; and unless a previous support order has been entered, you are ORDERED to show cause why the Court should not enter a temporary Order of Support for the child(ren) named below.

You are further ordered to bring with you your last paycheck stub and a copy of your last income tax return or W-2 form.

Failure to appear or failure to bring these records and information may result in an order for your arrest being issued, a citation for contempt being issued, or issuance of an Order for Support based on the information available.

Place: Rowan County Courthouse Date:
Time: 9:30 a.m. (No more than 45 days from filing.)

Name of each child for whose benefit support is due.

This, the _____ day of _____, _____.

District Court Judge
Clerk of Superior Court or
Assistant Clerk of Superior Court

STATE OF NORTH CAROLINA
ROWAN COUNTY

IN THE GENERAL COURT OF JUSTICE
 DISTRICT SUPERIOR COURT DIVISION
FILE NO. _____ CVD _____

_____,)
Plaintiff,)
)
V.)
_____,)
Defendant)

RETURN OF SERVICE

I certify that the Notice and Order to Appear and Order to Produce Records, Motion in the Cause, Order, Temporary Custody Order, and Certificate of Readiness and Request to Calendar, filed in the above action were served on the (Name of Party to be Served) _____, on the _____ of _____, _____ at _____ AM PM at the following place:

by delivering a copy to him/her personally or by leaving a copy with _____ who is a person of suitable age an discretion and who resides in the Defendant's dwelling house or usual place of abode.

Fee: \$ _____
Paid: _____
By: _____

Robert Martin – Sheriff of Rowan County, NC
By: _____
Date: _____

AFTER SERVICE, PLEASE RETURN TO CLERK OF SUPERIOR COUET FOR ROWAN COUNTY, NORTH CAROLINA, 210 N. MAIN STREET, SALISBURY, NC 28144.

STATE OF NORTH CAROLINA
ROWAN COUNTY

IN THE GENERAL COURT OF JUSTICE
 DISTRICT SUPERIOR COURT DIVISION
FILE NO. _____ CVD _____

_____,)
Plaintiff,)
)
V.)
_____,)
Defendant)

**EQUITABLE DISTRIBUTION
AFFIDAVIT
OF**

THE AFFIANT, being duly sworn and under oath as shown below, states as follows:

1. That I am filing with the Court, as required by its Rules, this affidavit for its use in entering final Judgment of Equitable Distribution of Marital Property.
2. That this affidavit consists of this sheet and the attached _____ pages.
3. That I have read and understand the "Instructions" which accompanied this affidavit and the information contained in this affidavit is true, accurate and complete.

This, the _____ day of _____, _____.

SWORN TO AND SUBSCRIBED BEFORE ME
THIS _____ DAY OF _____, _____.

NOTARY PUBLIC
My Commission Expire: _____

DESCRIPTION OF ASSET

ITEM NUMBER

I. Realty

- a. Real property - Residence
- b. Real property – Rental
- c. Real property – Commercial/Business
- d. Real property - Recreational
- e. Real property – Time Share
- f. Real Property - Other

II. Transportation

- a. Automobiles
- b. Trucks
- c. Vans
- d. Motorcycles
- e. Boats
- f. Airplances
- g. Other

III. Stocks and Bonds

- a. Stocks – publicly traded
- b. Stocks – closely held
- c. Bonds and Debentures
- d. Money Market Accounts
- e. Stock - options
- f. Options
- g. Futures
- h. Other

IV. Bank Accounts

- a. Checking Accounts
- b. Savings Accounts
- c. Certificates of Deposit
- d. Cash in hand or held by another
- e. Other

V. Artwork, Metals, and Other Collectibles

- a. Artwork
- b. Gold
- c. Silver
- d. Firearms
- e. Coins
- f. Other

VI. Miscellaneous Notes and Income-Producing Assets

- a. Promissory Notes
- b. Annuities
- d. Interests in Trust

VII. Silverware, China and Crystal

- a. Silverware
- b. China

- c. Crystal
- VIII. Jewelry (itemize)**
- IX. Animals**
 - a. Dogs
 - b. Cats
 - c. Horses
 - d. Cattle
 - e. Other
- X. Patents, Copyrights**
- XI. Business Interests**
 - a. Partnership interest
 - b. Sole Proprietorship
 - c. Unincorporated Association Interest
 - d. Other
- XII. Household Goods**
 - a. Furniture (including antiques)
 - b. Pictures. Prints and other wallhangings
 - c. Appliances (including dishwasher, washing machine, dryer, etc.)
 - d. Electronics (including TV, radio, stereo, etc.)
 - e. Linens
 - f. Books
 - g. Kitchen Utensils
 - h. Outdoor Furniture
 - i. Sporting Goods
 - j. Tools
 - k. Lawnmowers
 - l. Other
- XII. Any Other Item Not Listed Above**

Affidavit of Husband Wife / Pltf Def.

Part I, Page ____

**PART I – MARITAL PROPERTY
SUMMARY**

(Note: This page is a summary of the values given in the rest of the Affidavit. Complete this page after the rest of the Affidavit is completed. Do not omit or leave this page blank.)

CATEGORY	NET FMV OF PROPERTY AT DATE OF SEPARATION	NET FAMV OF PROPERTY AT PRESENT
	\$ _____	\$ _____
I. Realty	_____	_____
II. Transportation	_____	_____
III. Stocks and Bonds	_____	_____
IV. Bank Accounts	_____	_____
V. Artwork, Metals and Other Collectibles	_____	_____
VI. Miscellaneous Notes and Income-Producing Assets	_____	_____
VII. Silverware, China and Crystal	_____	_____
VIII. Jewelry	_____	_____
IX. Animals	_____	_____
X. Patents, Copyrights	_____	_____
XI. Business Interests	_____	_____
XII. Household Goods	_____	_____
XIII. Any Other Item Not Listed	_____	_____
TOTAL NET FMV –MARITAL PROPETY	\$ _____	\$ _____

PART II– SEPARATE PROPERTY

TOTAL NET FMV – SEPARATE PROPETY \$ _____ \$ _____

PART III– PROPERTY ACQUIRED AFTER SEPARATION

**TOTAL NET FMV – PROPERTY ACQUIRED
AFTER DATE OF SEPARATION** \$ _____ \$ _____

Affdavit of Husband Wife / Pltf Def.

Part I, Page ____

PART I – REALTY

Description of Asset and Location (incl. Category Letter)	Title Owner H / W Or Jt.	Orig. Price	Net FMV on Df/sep (FMV) Less debt Or liens	Net FMV at Present (FMV) Less debt Or Liens	Proposed Dist. (H or W)

**TOTAL NET FMV
DATE/SET**
\$ _____

**TOTAL NET FMV
PRESENT**
\$ _____

PART ii - TRANSPORTATION

Description of Asset and Location (incl. Category Letter)	Title Owner H / W Or Jt.	Orig. Price	Net FMV on Df/sep (FMV) Less debt Or liens	Net FMV at Present (FMV) Less debt Or Liens	Proposed Dist. (H or W)

TOTAL NET FMV DATE/SET
\$ _____

TOTAL NET FMV PRESENT
\$ _____

Affdavit of Husband Wife / Pltf Def.

Part I, Page ____

PART III – STOCKS AND BONDS

Description of Asset and Location (incl. Category Letter)	Title Owner H / W Or Jt.	Orig. Price	Net FMV on Df/sep (FMV) Less debt Or liens	Net FMV at Present (FMV) Less debt Or Liens	Proposed Dist. (H or W)

TOTAL NET FMV DATE/SET
\$ _____

TOTAL NET FMV PRESENT
\$ _____

PART IV – BANK ACCOUNTS

Description of Asset and Location (incl. Category Letter)	Title Owner H / W Or Jt.	Orig. Price	Net FMV on Df/sep (FMV) Less debt Or liens	Net FMV at Present (FMV) Less debt Or Liens	Proposed Dist. (H or W)

TOTAL NET FMV DATE/SET
\$ _____

TOTAL NET FMV PRESENT
\$ _____

Affdavit of Husband Wife / Pltf Def.

Part I, Page ____

PART V. – ARTWORK, METALS AND OTHER COLLECTIBLES

Description of Asset and Location (incl. Category Letter)	Title Owner H / W Or Jt.	Orig. Price	Net FMV on Df/sep (FMV) Less debt Or liens	Net FMV at Present (FMV) Less debt Or Liens	Proposed Dist. (H or W)

TOTAL NET FMV DATE/SET
\$ _____

TOTAL NET FMV PRESENT
\$ _____

PART VI – MISCELLANEOUS NOTES AND INCOME-PRODUCING ASSETS

Description of Asset and Location (incl. Category Letter)	Title Owner H / W Or Jt.	Orig. Price	Net FMV on Df/sep (FMV) Less debt Or liens	Net FMV at Present (FMV) Less debt Or Liens	Proposed Dist. (H or W)

TOTAL NET FMV DATE/SET
\$ _____

TOTAL NET FMV PRESENT
\$ _____

PART VII – SILVERWARE, CHINA AND CRYSTAL

Description of Asset and Location (incl. Category Letter)	Title Owner H / W Or Jt.	Orig. Price	Net FMV on Df/sep (FMV) Less debt Or liens	Net FMV at Present (FMV) Less debt Or Liens	Proposed Dist. (H or W)

TOTAL NET FMV DATE/SET
\$ _____

TOTAL NET FMV PRESENT
\$ _____

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PART VIII – JEWELRY (itemize)

Description of Asset and Location (incl. Category Letter)	Title Owner H / W Or Jt.	Orig. Price	Net FMV on Df/sep (FMV) Less debt Or liens	Net FMV at Present (FMV) Less debt Or Liens	Proposed Dist. (H or W)

TOTAL NET FMV DATE/SET
\$ _____

TOTAL NET FMV PRESENT
\$ _____

PART IX - ANIMALS

Description of Asset and Location (incl. Category Letter)	Title Owner H / W Or Jt.	Orig. Price	Net FMV on Df/sep (FMV) Less debt Or liens	Net FMV at Present (FMV) Less debt Or Liens	Proposed Dist. (H or W)

TOTAL NET FMV DATE/SET
\$ _____

TOTAL NET FMV PRESENT
\$ _____

PART X – PATENTS, COPYRIGHTS

Description of Asset and Location (incl. Category Letter)	Title Owner H / W Or Jt.	Orig. Price	Net FMV on Df/sep (FMV) Less debt Or liens	Net FMV at Present (FMV) Less debt Or Liens	Proposed Dist. (H or W)

TOTAL NET FMV DATE/SET
\$ _____

TOTAL NET FMV PRESENT
\$ _____

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PART XI – BUSINESS INTERESTS

Description of Asset and Location (incl. Category Letter)	Title Owner H / W Or Jt.	Orig. Price	Net FMV on Df/sep (FMV) Less debt Or liens	Net FMV at Present (FMV) Less debt Or Liens	Proposed Dist. (H or W)

TOTAL NET FMV DATE/SET
\$ _____

TOTAL NET FMV PRESENT
\$ _____

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PART XII – HOUSEHOLD GOODS

(Note: Using this form only, use as many additional pages as are necessary to list, item by item, all household goods. List ALL marital property, not just personal property that is in your possession. Do not list items previously listed in sections VI, VII or IX.)

Description of Asset and Location (incl. Category Letter)	Title Owner H / W Or Jt.	Orig. Price	Net FMV on Df/sep (FMV) Less debt Or liens	Net FMV at Present (FMV) Less debt Or Liens	Proposed Dist. (H or W)

TOTAL NET FMV DATE/SET
\$ _____

TOTAL NET FMV PRESENT
\$ _____

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PART XIII – ANY OTHER ITEM NOT LISTED ABOVE

Description of Asset and Location (incl. Category Letter)	Title Owner H / W Or Jt.	Orig. Price	Net FMV on Df/sep (FMV) Less debt Or liens	Net FMV at Present (FMV) Less debt Or Liens	Proposed Dist. (H or W)

**TOTAL NET FMV
DATE/SET**
\$ _____

**TOTAL NET FMV
PRESENT**
\$ _____

VESTED PENSION OR RETIREMENT ACCOUNTS
(including IRA accounts and deferred compensation benefits)
(Complete a separate sheet for each account or plan)

Complete the following concerning all VESTED pension or retirement rights (including IRA accounts or deferred compensation benefits) which are marital property and which you now receive or expect to receive. Complete this section in consultation with your attorney. You must complete either Part A or Part B. You may complete Parts and B if you wish the Court to have available to it both types of valuation information. For the Part(s) you complete, do not leave any column blank.

PLAN:

PART A

“Present Value” as of Date of Separation \$ _____

Name and Address of Expert Who Computed “Present Value.”

OR

PART B

How paid (weekly, monthly, etc.) _____
\$ _____

Amount Paid or to be Paid (if known) _____

Month and Year Your Participation in this Plan Began: _____

No. Months You Participated in this Retirement Plan during the Marriage (from date of marriage until date of separation) _____

Total No. Months You Participated in this Retirement Plan _____

Are you currently in this Plan? _____

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1. Income and Expenses.

GROSS INCOME STATEMENT	<input type="checkbox"/> Weekly	<input type="checkbox"/> Monthly	<input type="checkbox"/> Bi-Monthly
Salary & Wages (include bonuses, commissions, overtime)			\$ _____
And tips)			
Pensions and Retirement			\$ _____
Social Security			\$ _____
Disability and Unemployment Benefits			\$ _____
Public Assistance (AFDC payments)			\$ _____
Food Stamps, etc.			\$ _____
Rents			\$ _____
Dividends and Interest			\$ _____
Income from All Other Sources (list each)			\$ _____
TOTAL GROSS INCOME			\$ _____ -

DEDUCTIONS FROM GROSS INCOME

Federal Income Taxes	\$ _____
State Income Taxes	\$ _____
Social Security	\$ _____
Medical Insurance	\$ _____
Union or Other Dues	\$ _____
Retirement or Pension Fund	\$ _____
Savings	\$ _____
Other Deductions (specify)	\$ _____
TOTAL DEDUCTIONS	\$ _____

EXPENSES Weekly Monthly Bi-Monthly

Residence Payments	
Rent or Mortgage	\$ _____
Taxes and Insurance	\$ _____
Maintenance	\$ _____
Food & Household Supplies	\$ _____
Utilities and Telephone	\$ _____
Clothing and Laundry	\$ _____
Medical and Dental	\$ _____
Child Care	\$ _____
Other	\$ _____
.....	\$ _____
TOTAL EXPENSES	\$ _____

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2. List all real or personal property which is your separate property. This does not include property acquired after separation. This means property owned by you as of the date of separation which is NOT marital property and was not listed in Part I of this Affidavit.

Description of Asset and Location (incl. Category Letter)	Title Owner H / W Or Jt.	Orig. Price	Net FMV on Df/sep (FMV) Less debt Or liens	Net FMV at Present (FMV) Less debt Or Liens	Proposed Dist. (H or W)

TOTAL NET FMV DATE/SET
\$ _____

TOTAL NET FMV PRESENT
\$ _____

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2. List all real or personal property having a value in excess of \$500 *per item) acquired after the date of separation and which you contend is your separate property..

Item No.	Description and Location	Orig. Price	Net FMV at Present (FMV) Less debt Or liens

TOTAL NET FMV
DATE/SET
\$ _____

4. a) have you been married prior to your marriage to the opposing party in this case?

- b) If so, what support obligations do you have arising out of that marriage?

5. a) State the date of marriage and number of years married to the opposing party”
(date:)) _____ years.
- b) Name and describe all physical or mental disorders, illnesses, diseases or conditions
which you now have.
6. a) Do you now have custody of any children born of your marriage to the opposing
party?

- b) If so, do you want and need to own or occupy the marital residence and to use or own
its household effects?
i. _____
- c) If so, state reasons: (you may refer to complaint/answer in existing case file).

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7. Complete the following concerning all Non-Vested Pension or Retirement Rights which are separate property and which you will receive or expect to receive. Complete this section in consultation with your attorney. Do not leave any space blank.

Full Name of Retirement Plan with Name, Address of Plan Administrator:

Month and Year You Began Participation in this Plan:

Are you currently in this Plan?

Total of Your Individual Contributions to this Plan
as of the date of separation?

\$ _____

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(Leave Blank; for use by Court only)

8.

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

9. Did you, by direct or indirect contribution, help educate or develop the career potential of the other spouse?

If so, describe in detail:

10. It there was an increase in value during the course of your marriage of an item claimed by the opposing party as "Separate Property," did you make a direct contribution to that increase in value? _____

If so, complete the following:

Description of Property:

Amount of your contributions to increase in value

\$ _____

Time of your contribution:

Detailed Explanation:

11. Complete the following concerning all marital debts. These are debts which were incurred during the marriage and before the date of separation and which were unpaid as of the date of separation. Using this form only, use as many additional pages as are necessary to list all marital debts

Full Name and Address of Creditor	Mo/Yr Debt Incurred	Exact Amt. Owed: (a)* (b)**	Reason Incurred	Secured by Lien on Property? Describe:
		(a) \$ _____ (b) \$ _____		
		(a) \$ _____ (b) \$ _____		
		(a) \$ _____ (b) \$ _____		
		(a) \$ _____ (b) \$ _____		
		(a) \$ _____ (b) \$ _____		
		(a) \$ _____ (b) \$ _____		
		(a) \$ _____ (b) \$ _____		
		(a) \$ _____ (b) \$ _____		
		(a) \$ _____ (b) \$ _____		
		(a) \$ _____ (b) \$ _____		
		(a) \$ _____ (b) \$ _____		
		(a) \$ _____ (b) \$ _____		
		(a) \$ _____ (b) \$ _____		
		(a) \$ _____ (b) \$ _____		
		(a) \$ _____ (b) \$ _____		
TOTALS:		(a) \$ _____ (b) \$ _____		

LOCAL RULES OF PRACTICE ~ AMENDED

The local Rules of Practice are herein amended as the same are applicable in the Superior Court of Rowan County and are effective as of July 1, 1998.

Rule 1: Motions for Continuance – Civil Cases

1.1 Appropriate Judicial Official

Prior to the opening of court for 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 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 on state form AOC-CV-1997.

1.3 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 motion to the appropriate judicial official. Distribution of the motion may be by US mail, facsimile transmission, hard 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.)

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 justice.

In addition to other factors, the appropriate judicial office 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 of future inconvenience or unavailability of witness/parties; and
- any other matter that promotes the ends of justice.

Reasons that shall 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, and only after such consultation, 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.

(The authority to decide all continuances 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-1997.

2.3 Notification of Opposing Counsel/Unrepresented Parties

A copy of the completed form AOC-CR-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 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. Generally, a written statement of the reasons for the motion is to be attached to the form.

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 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.")

(If there is opposition to the motion, the same is to be heard in open court on the first day of the session in which it is calendared unless otherwise stipulated in writing by the parties.)

Rule 3: Continuances

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.

This the 31st day of March, 1998.

Thomas W. Seay, Jr.
Senior Resident Superior Court

Judge

**SUPERIOR COURT CRIMINAL CASE DOCKETING PLAN
District 19-C**

This plan is submitted to comply with the provisions of G.S. 7A-49.4. It is effective January 1, 2000, and applies both to pending cases and cases that are filed in the Superior Court Division on and after that date.

The Administrative settings and hearings authorized by this plan may be conducted by any Superior Court Judge resident within this District, or by any Superior Court Judge duly assigned to hold Court within this District.

The appearance of the defendant for the Initial Administrative Hearing may be waived by the defendant in writing through counsel. The defendant's presence for all other administrative and trial settings is required.

A separate calendar for probation violation hearings will be prepared for each week of Superior Criminal Court.

Nothing in this plan shall be construed to deprive any victim of the rights granted under Article I, Section 37 of the North Carolina Constitution and Article 46 of Chapter 15A of the General Statutes.

I. **Initial Administrative Hearing** – each felony indicted by the Grand Jury and each Misdemeanor appealed from District Court to Superior Court will be scheduled for an Initial Administrative Hearing.

A. Purpose and Scope of Initial Administrative hearing:

- (1) The Court shall determine the status of defendant's representation by counsel.
- (2) In felony cases, after hearing from the parties, the Court shall set deadlines for the delivery of discovery and the filing of motions. In both felonies and misdemeanors the Court shall either arraign the defendant or schedule arraignment for a subsequent administrative setting.
- (3) The District Attorney may advise the defendant of any proposed plea arrangement.
- (4) The Court may conduct a plea conference if supported by the interests of justice and requested by both parties.
- (5) The Court may hear pending pre-trial motions, set such motions for hearing at a subsequent administrative setting, or defer ruling on such motions until the trial of the case.
- (6) The Court may schedule additional administrative settings if requested by the parties or if such additional setting is found to be necessary to promote the fair administration of justice in a timely manner.
- (7) Cases appearing on this calendar may not be called for jury trial without the consent of both parties.

- B. Calendaring of Initial Administrative Hearing
 - (1) Cases scheduled for an Initial Administrative Hearing will be calendared only on the first day of the first week of each term of Superior Court.
 - (2) This calendar will be published at least ten working days before the date scheduled for such hearings.
 - (3) Cases appearing on this calendar will be listed in alphabetical order.

II. **Administrative Trial Setting** – any case not finally disposed at the Initial Administrative Hearing will be scheduled for an Administrative Trial Setting.

- A. Purpose and Scope of Administrative Trial Setting:
 - (1) Completion of administrative matters not resolved at the Initial Administrative Hearing:
 - (2) negotiate of guilty pleas; and/or,
 - (3) setting tentative trial dates.
 - (4) Cases appearing on this calendar may not be called for jury trial without the consent of both parties.
- B. Cases not disposed by guilty plea will be:
 - (1) Either continued to a subsequent Administrative Trial Setting by consent of the parties or Order of the Court;
 - (2) or, scheduled for a tentative trial date not sooner than 30 days after the Administrative Trial Setting.
- C. Procedure for setting a tentative trial date:
 - (1) Either the parties will agree to a tentative trial date; or,
 - (2) upon failure of the parties to agree upon a tentative trial date, the District Attorney will propose a tentative trial date. The Court will set that date as the tentative trial date unless, after providing the parties with an opportunity to be heard, the Court determines that the interests of justice require the setting of a different trial date. In that event the District Attorney shall set another tentative trial date.
- D. Calendaring of Administrative Trial Setting
 - (1) Cases scheduled for an Administrative Trial Setting will be calendared for the first day of each week of Superior Criminal Court.
 - (2) This calendar will be published at least ten working days before the date scheduled for such hearing.
 - (3) Cases appearing on this calendar will be listed in alphabetical order.

III. **Definite date established by the Court** – when a felony case has not otherwise been scheduled for trial within 120 days of indictment or service of notice of indictment, the Court may establish a trial date as follows:

- A. The defendant must file a written motion for establishment of a trial date..
- B. The District Attorney must schedule said motion for hearing during the next successive Administrative Trial calendar.
- C. The Court may hold a hearing upon defendant's motion to establish a trial date.

IV. **Trial Calendar** – a trial calendar will be published for each week of Superior Criminal Court.

- A. Use of “tentative trial dates” in preparation of the trial calendar. Unless the parties agree otherwise, all cases placed on the trial calendar will be cases previously assigned that tentative trial date. However, not all cases assigned that tentative trial date will necessarily be placed on the trial calendar, since G.S. 7A-49.4(e) prohibits the District Attorney from scheduling cases that he does not reasonably expect to be called for trial.
- B. Scheduling of cases not scheduled for trial on the designated “tentative trial date.”
 - (1) Such cases will be scheduled for a new tentative trial date by consent of the parties; or
 - (2) If the parties cannot agree on a new tentative trial date, the District Attorney will place the case on the next Administrative Trial calendar for the establishment of another tentative trial date.
- C. Publishing the trial calendar:
 - (1) The trial calendar will be published not less than 10 working days before the calendar date;
 - (2) the trial calendar will contain only cases that the District Attorney reasonably expects to be reached for trial; and,
 - (3) the trial calendar will list cases in the order in which the District Attorney expects they will be called for trial.
- D. Order of trial:
 - (1) After calling the trial calendar and determining cases for plea or other disposition, the District Attorney will announce the order in which the District Attorney intends to call for trial the cases remaining on the trial calendar;
 - (2) deviations from the announced order require approval of the presiding judge if the defendant whose case is called for trial objects;
 - (3) a case may be continued from the trial calendar as follows:
 - a. by consent of the parties either before or during the term;
 - b. before the beginning of the term, by either the assigned trial judge or the resident Superior Court judge after notice to both parties with an opportunity to be heard; and,
 - c. during the term, by the trial judge after notice to the parties with an opportunity to be heard.
 - (4) The District Attorney, after consultation with the parties, shall schedule a new trial date for cases not reached during that term of Court.

Submitted this the 6th day of December 1999.

William D. Kenerly
District Attorney, District 19-C

STATE OF NORTH CAROLINA DISTRICT COURT MODEL CONTINUANCE POLICY

In order to utilize the resources of North Carolina's judicial system more effectively and efficiently, it is incumbent upon all judicial districts within the state to apply uniform standards of calendar management and evaluation of continuance requests in a fair and consistent manner. To assist the key court officials in each district, these model continuance policies were created by a committee of District Court Judges, District Attorneys, Public Defenders and private attorneys. It is the recommendation of this committee that each judicial district consider enacting this model policy as a portion of the local rules of that district.

Rule 1: Motions for Continuance – Criminal Cases

Criminal cases should be disposed at the earliest opportunity, including the first trial setting. However, when compelling reasons for continuance are presented which would affect the fundamental fairness of the trial process, a continuance may be granted for good cause. Request for continuances that are made after 90 days from the first calendaring before a judge (including Magistrate and Administrative Court) shall be granted for extraordinary cause.

1.1 Appropriate Court Officials

Rulings on any request for continuance made on the day of court for the session in which the case is calendared shall be the responsibility of the presiding trial judge of that court. The Chief District Court Judge shall establish a written policy identifying the appropriate court official to address the motions for continuance made prior to the session of court during which the case is calendared.

[Commentary: This section recognizes the authority and responsibility of the trial judge to address all matters which are set before him or her, and also recognizes the demands and realities of North Carolina's 39 district court judicial districts: urban or rural, multi-county or single-county, daily sessions of court or non-daily sessions of court. The policy should clearly state to whom applications should be made prior to the court session and the parameters under which continuances should and should not be granted.]

1.2 Court Conflicts

The various levels of court should work together to try to move cases as expeditiously as possible. Age of case, subject matter, and priority of setting should be given as much primacy as the level of court when resolving conflicts.

Attorneys shall notify the court and opposing counsel of any other court conflict(s) as they become known and shall keep the court advised of the resolution of that conflict. All judges

shall communicate with other judges to resolve such conflicts. In resolving court conflicts juvenile cases shall precedence over all other matters.

1.3 Documentation of Continuance

All orders for continuance shall be documented in or on the file, and shall include the name of the moving party, any objections to the continuance, and the basis for the continuance.

[Commentary: Requests for continuances beyond 90 days from the first calendar date before a judge shall be in writing.]

1.4 Notification of Opposing Counsel/Unrepresented Parties/Witnesses

All applications for continuance shall be made as soon as a conflict is identified, and all impacted – opposing counsel, unrepresented parties, subpoenaed witnesses, or court staff charged with subpoenaing witnesses – shall be notified as soon as possible by the moving party.

1.5 Objections to Motion for Continuance

All parties should have an opportunity to be heard on a motion to continue.

1.6 Evaluation of Motions for Continuance

Factors to be considered by the appropriate court official when deciding whether to grant or deny a motion for continuance should include:

- the opportunity to exercise the right to effective assistance of counsel;
- the age of the case and seriousness of the charge;
- the incarceration status of the defendant;
- the effect on children and spouses if the issue is continued and not resolved;
- the impact of a continuance on the safety of the parties or any other persons;
- the status of the trial calendar for the session;
- the number, moving party and grounds for previous continuances;
- the due diligence of counsel in promptly making a motion for continuance as soon as practicable and notifying opposing counsel and witnesses;
- the period of delay caused by the continuance requested;
- the presence of witnesses, including the defendant;
- the availability of witnesses for the present session, or for a future session;
- whether the basis of the motion is the existence of a legitimate conflict with another court setting;
- the availability of counsel;
- consideration of the financial consequences to the public, the parties, the attorneys, or witnesses if the case is continued; and
- any other factor that promotes the fair administration of justice.

1.7 Case Rescheduling

Upon granting a motion for continuance, the judge should reschedule the case, taking into consideration the availability of counsel, defendant, and witnesses.

1.8 Time Standards

All criminal and motor vehicle cases should be disposed within 120 days from the first appearance in Administrative Court.

[Commentary: Meeting this deadline may not be possible in instances in which a defendant fails to appear and is “called and failed.” In these matters, it is the responsibility of the district attorney to determine when it is appropriate to dismiss these matters.]

Rule 2: Motions for Continuance – General Civil and Magistrate Appeal Cases

Civil cases should be disposed at the earliest opportunity, including the first trial setting. However, when compelling reasons for continuance are presented which would affect the fundamental fairness of the trial process, a continuance may be granted for good cause. Requests for continuances that will delay the resolution of the case beyond the established time standards shall only be granted for extraordinary cause.

2.1 Court Conflicts

All applications for continuance shall be made to the District Court Judge presiding over the session of court for which the case is calendared, or his/her designee. If the trial judge is not known at the time the request is made, the application should be addressed to the Chief District Court Judge.

2.2 Court Conflicts

The various levels of court should work together to try to move cases as expeditiously as possible. Age of case, subject matter, and priority of setting should be given as much primacy as the level of court when resolving conflicts.

Attorneys shall notify the court and opposing counsel of any other court conflict(s) as they become known and shall keep the court advised of the resolution of that conflict. All judges shall communicate with other judges to resolve such conflicts. In resolving court conflicts juvenile cases shall take precedence over all matters.

[Commentary: All attorneys are reminded of the requirements of Rule 2(e) of the General Rules of Practice regarding their appearance, or the appearance of a

partner, associate, or another attorney familiar with the case, if there is another court that requires his or her presence in court simultaneously.]

2.3 Documentation of Continuance

Requests for continuances shall be by written or oral motion. As soon as an attorney is aware of a need for a continuance he/she shall immediately advise the opposing attorney.

[Commentary: Written motions are encouraged in the model policy as well as in this district.]

2.4 Notification of Opposing Counsel/Unrepresented Parties/Witnesses

All parties must be notified of a motion to continue. A copy of the motion to continue must be distributed to all counsel of record and/or unrepresented parties prior to ruling on the motion. In addition to the service requirements set out in the statute, distribution of the motion must be made by the quickest feasible, including facsimile transmission, electronic mail, or hand delivery.

[Commentary: The burden is on the moving party to advise the court and opposing counsel of any motion for a continuance. The goal of this provision is to avoid any continuance surprises and provide notice as expeditiously as possible to the court and to the opposing party and/or their counsel.]

2.5 Objections to Motion for Continuance

All parties should have an opportunity to be heard on a motion to continue.

When a motion to continue is made more than seven (7) working days prior to trial, opposing counsel and/or unrepresented parties shall have a period of four (4) working days, following completion of distribution, to communicate objections to the motion for continuance to the moving party and the presiding District Court Judge or his/her designee. Objections not raised in writing within this time period are deemed waived.

When a motion to continue is made within seven (7) working days of the trial term (other than an oral motion as provided in Rule 2.3, above), the moving party shall include in the written motion a statement that the opposing counsel or party has been contacted and a short statement on opposing party's position on the motion (including whether the opposing party or counsel consents or objects, and whether or not he or she desires to be heard on the motion). If the moving party is unable to contact the opposing counsel or unrepresented parties, the motion shall state what efforts were made and why contact was not possible.

[Commentary: The writing requirement of this rule may be in the form of a letter.]

2.6 Evaluation of Motions for Continuance

Factors to be considered by the appropriate court official when deciding whether to grant or deny a motion for continuance should include:

- the effect on children and spouses if the issue is continued and not resolved;
- the impact on a continuance on the safety of the parties or any other persons;
- the age of the case;
- the status of the trial calendar for the session;
- 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 would resolve prior to the scheduled trial date;
- whether the basis of the motion is the existence of a legitimate conflict with another court setting;
- the period of delay caused by the continuance requested;
- the position of opposing counsel of unrepresented parties; for a future session;
- whether the parties themselves consent to the continuance;
- present or future inconvenience or unavailability of witnesses/parties;
- consideration of the financial consequences to the public, the parties, the attorneys, or witnesses if the case is continued;
- compliance with any law relating to the scheduling and trial of civil cases (such as, summary ejection appeals); and
- any other factor that promotes the fair administration of justice.

2.7 Case Rescheduling

Upon granting a motion for continuance, the judge should reschedule the case to a specific trial date after receiving input from all parties.

2.8 Time Standards

All general civil and magistrate appeal cases should be disposed within 24 months of filing, with 90% of all cases disposed within 12 months of filing.

[Commentary: These are the standards adopted by the Supreme Court of North Carolina in the caseload management plan provided 1 May 1996 to the General Assembly, pursuant to Chapter 333 of the 1995 Session Laws.]

Rule 3: Motions for Continuance – Domestic Cases

Domestic cases should be disposed at the earliest opportunity, including the first trial setting. However, when compelling reasons for continuance are presented which would affect the fundamental fairness of the trial process, a continuance may be granted for good cause. Requests for continuances that will delay the resolution of the contested issues beyond the established time standards shall only be granted for extraordinary cause.

[Commentary: Domestic cases can involve disputes that directly impact children (especially their living arrangements and support) and that prevent the parties and their family members from moving on with their lives. Therefore, they should be resolved expeditiously.]

3.1 Appropriate Court Official

All applications for continuance shall be made to the District Court Judge presiding over the session of court for which the case is calendared, or his/her designee. If the trial judge is not known at the time the request is made, the application should be addressed to the Chief District Court Judge.

3.2 Court Conflicts

The various levels of court should work together to try to move cases as expeditiously as possible. Age of case, subject matter, and priority of setting should be given as much primacy as the level of court when resolving conflicts.

Attorneys shall notify the court and opposing counsel of any court conflict(s) as they become known and shall keep the court advised of the resolution of that conflict. All judges shall communicate with other judges to resolve such conflicts. In resolving court conflicts juvenile cases shall take precedence over all other matters.

[Commentary: All attorneys are reminded of the requirements of Rule 2(e) of the General Rules of Practice regarding their appearance, or the appearance of a partner, associate, or another attorney familiar with the case, if there is another court that requires his or her presence in court simultaneously.]

3.3 Documentation of Continuance

Requests for continuances shall be by written or oral motion. As soon as an attorney is aware of a need for a continuance, he/she shall immediately advise the opposing attorney.

[Commentary: Written motions are encouraged in the model policy as well as in this district.]

3.4 **Notification of Opposing Counsel/Unrepresented Parties/Witnesses**

All parties must be notified of a motion to continue. A copy of the motion to continue must be distributed to all counsel of record and/or unrepresented parties prior to ruling on the motion. In addition to the service requirements set out in the statute, distribution of the motion must be made by the quickest means feasible, including facsimile transmission, electronic mail, or hand delivery.

[Commentary: The burden is on the moving party to advise the court and opposing counsel of any motion for a continuance. The goal of this provision is to avoid any continuance surprises and to provide notice as expeditiously as possible to the court and to the opposing party and/or their counsel.]

3.5 **Objections to Motion for Continuance**

All parties should have an opportunity to be heard on a motion to continue.

When a motion to continue is made more than seven (7) working days prior to trial, opposing counsel and/or unrepresented parties shall have a period of (4) working days, following completion of distribution, to communicate objections to the motion for continuance to the moving party and the presiding District Court Judge or his/her designee. Objections not raised in writing within this time period are deemed waived.

When a motion to continue is made more than seven (7) working days of the trial term (other than an oral motion as provided in Rule 3.3, above), the moving party shall include in the written motion a statement that the opposing counsel or party has been contacted and a short statement on opposing party's position on the motion (including whether the opposing party or counsel consents or objects, and whether or not he or she desired to be heard on the motion). If the moving party is unable to contact the opposing counsel or unrepresented parties, the motion shall state what efforts were made and why contact was not possible.

[Commentary: The writing requirement of this rule may be in the form of a letter.]

3.6 **Evaluation of Motions for Continuance**

Factors to be considered by the appropriate court official when deciding whether to grant or deny a motion for continuance should include:

- the effect on children and spouses if the issue is continued and not resolved;
- whether there is in effect a temporary order dealing with the issue that is the subject of the continuance request;
- the impact of a continuance on the safety of the parties or any other persons;
- whether the issue has been identified statutorily as an issue which should be addressed expeditiously, i.e., child support, post-separation support;
- the age of the case or motion;
- the status of the trial calendar for the session;

- the number of previous continuances OR the number, moving party, and grounds for previous continuances;
- the extent to which counsel had input into the scheduling of the trial date;
- the due diligence of counsel in promptly making a motion for continuance as soon as practicable;
- whether the reason for continuance is a short-lived event which would resolve prior to the scheduled trial date;
- whether the basis of the motion is the existence of a legitimate conflict with another court setting;
- the period of delay caused by the continuance requested;
- the position of opposing counsel or unrepresented parties;
- whether the parties themselves consent to the continuance;
- present or future inconvenience or unavailability of witness/parties;
- consideration of the financial consequences to the public, the parties, the attorneys, or witnesses if the case is continued; and
- any other factor that promotes the fair administration of justice.

3.7 Case Rescheduling

Prior to granting a motion for continuance, the appropriate judicial should reschedule the trial or pre-trial of the contested issues to a specific date after receiving scheduling input from all parties.

3.8 Time Standards

All domestic cases should be disposed of within 18 months of filing, with 90% disposed within six months. Issues of child support should be resolved and a temporary or permanent order entered within 60 days of service. Post-disposition issues, such as contempt and motions to modify existing orders, should be resolved within 60 days of the filing of such actions.

[Commentary: These are the standards adopted by the Supreme Court of North Carolina in the caseflow management plan provided 1 May 1996 to the General Assembly, pursuant to Chapter 333 of the 1995 Session Laws.]

Rule 4: Motions for Continuance – Juvenile Cases

For an abused or neglected child, the courts are his or her source of protection and the source of services. For a delinquent child or youth, the courts provide the opportunity for rehabilitation. The goal of a case management plan for juvenile court is to put the courts in the best position to ensure the safety of children and to give them the best possible chance of living in stable, permanent families. Therefore continuances should be allowed only when it serves the child's best interest. Participants must come to court prepared to meet each statutory obligation that is required for resolution of these matters.

Accordingly, juvenile cases, including motions for review in neglect and abuse matters should be disposed at the earliest opportunity, including the first setting for hearing. Requests for continuances that are made after the first setting for hearing on the merits of the case shall only be granted for extraordinary cause.

4.1 Appropriate Court Official

All applications for continuance shall be made to the District Court Judge presiding over the session of court for which the case is calendared. If the trial judge is not known at the time the request is made or is unavailable, the application should be addressed to the Chief District Court Judge, or his or her designee.

4.2 Court Conflicts

The various levels of court should work together to try to move cases as expeditiously as possible. Age of case, subject matter, and priority of setting should be given as much primacy as the level of court when resolving conflicts.

Attorneys shall notify the court and opposing counsel of any other court conflict(s) as they become known and shall keep the court advised of the resolution of that conflict. All judges shall communicate with other judges to resolve such conflicts. In resolving court conflicts juvenile cases shall take precedence over all other matters.

4.3 Documentation of Continuance

All orders by a judge for continuance shall be documented in writing, and shall include the name of the moving party, any objections to the continuance, and the basis for the continuance.

4.4 Notification of Opposing Counsel/Unrepresented Parties/Witnesses

All applications for continuance shall be made as soon as a conflict is identified, and all impacted – opposing counsel, unrepresented parties, subpoenaed witnesses, or court staff charged with subpoenaing witnesses – shall be notified as soon as possible by the moving party.

4.5 Objections to Motion Continuance

All parties should have an opportunity to be heard on a motion to continue.

4.6 Evaluation of Motions for Continuance

Factors to be considered by the appropriate court official when deciding whether to grant or deny a motion for continuance should include:

- the best interest of the child;
- the opportunity to exercise the right to effective assistance of counsel;
- the age of the case and seriousness of the charge;

- the incarceration status of the juvenile;
- the effect on children and spouses if the issue is continued and not resolved;
- the impact of a continuance on the safety of the parties or any other persons;
- the status of the trial calendar for the session;
- the number, moving party, and grounds for previous continuances;
- the due diligence of counsel in promptly making a motion for continuance as soon as practicable and notifying opposing counsel and witnesses;
- the period of delay caused by the continuance requested;
- the presence of witnesses, including the juvenile;
- the availability of witnesses for the present session, or for a future session;
- whether the basis of the motion is the existence of a legitimate conflict with another court setting;
- the availability of counsel;
- consideration of the financial consequences to the public, the parties, the attorneys, or witnesses if the case is continued; and
- any other factor that promotes the fair administration of justice.

4.7 **Case Rescheduling**

Upon granting a motion for continuance, the judge shall reschedule the case for a specified date, taking into consideration the availability of counsel, parties, and witnesses.

4.8 **Time Standards**

All undisciplined cases should be disposed within 30 days of service of the petition. All delinquency cases involving misdemeanor offenses should be disposed within 90 days of service of the petition and those involving felony offenses within 120 days of service of the petition.

All adjudication of neglect and abuse cases should be within 60 days of service of the petition. All terminations of parental rights (TPRs) should be disposed within 120 days after service of the petition.

[Commentary: These are the standards recommended by juvenile experts who served on Juvenile Task Force on Case Flow Management, part of the Court Improvement Project.]