

**LOCAL RULES OF PRACTICE FOR CIVIL SUPERIOR COURT CASES
JUDICIAL DISTRICT 22A – ALEXANDER AND IREDELL COUNTIES
REVISED January 2015**

The following Local Rules of Practice for the calendaring of civil matters in the Superior Court of Judicial District 22A has been adopted by the Senior Resident Superior Court Judge as required by the General Rules of Practice for the Superior and District Courts (N.C. Gen. Stat. § 1A-1 (hereinafter “G.S.”), Rule 40 and Rule 2) adopted by the Supreme Court of North Carolina and pursuant to the inherent authority of the Court to establish and enforce local rules for the efficient management of cases.

These rules supersede all previous Local Rules for Judicial District 22A, Superior Court Division, and go into effect on January 30, 2015. The rules and all subsequent amendments shall be filed with the Clerk of Superior Court for Alexander and Iredell counties and published at: www.nccourts.org. These rules are not complete in every detail and will not cover every situation that may arise. In the event that a specific matter arises that is not covered by these rules, refer to the North Carolina General Statutes. The Trial Court Coordinator, or designee, is authorized to use discretion in consultation with the Senior Resident Superior Court Judge or Judge Presiding.

RULE 1 – CASE TRACKING SYSTEM

- 1.1 The Superior Court Trial Court Coordinator for Judicial District 22A shall maintain a ready calendar and a case tracking system for civil cases pending in superior court.
- 1.2 The case tracking system must record the filing dates for pleadings, a list of pending motions, and a list of trial continuances.
- 1.3 All cases on the ready calendar shall be subject to be placed on the trial calendar.

RULE 2 – TIME STANDARDS FOR CALENDARING

- 2.1 A case shall be calendared for trial as soon as practical after the following events:
 - (a) the lapse of 120 days after the filing of the answer or last required pleading. The 120-day period shall be reserved exclusively for discovery, unless otherwise ordered by the Court, but the trial of the case shall not thereafter be delayed for failure to complete discovery unless, for good cause shown, the Senior Resident Superior Court Judge extends the discovery period prior to the expiration of the 120-day period. Motions for limitation or extension of the discovery period should be mailed to the Office of the Senior Resident Superior Court Judge. All parties shall proceed promptly and expeditiously with any discovery they feel is necessary. Failure to conduct discovery in the early stages will be grounds for denial of extensions for discovery later in the proceedings;
 - (b) the remand of a case on appeal for re-trial;
 - (c) the docketing of any case having statutory priority; and
 - (d) the filing of a consent request for calendaring signed by all attorneys of record in the case and all parties not represented by attorneys.

Any requests for continuances must comply with Local Rule 8. Motions for limitation or extension of the discovery period should be made to the Senior Resident Superior Court Judge or

Judge Presiding by mailing to the Trial Court Coordinator: 221 East Water Street, Statesville, North Carolina 28677; with a copy to all attorneys of record and *pro se* (unrepresented) parties.

RULE 3 – REQUESTS FOR CALENDARING

- 3.1 **Procedure:** Any attorney or *pro se* (unrepresented) party may request that a case be calendared for trial at any scheduled session of court. Requests for calendaring of superior court cases must be made prior to the publication of the tentative calendar for the session requested and should be submitted to the Office of the Senior Resident Superior Court Judge by mailing the request to the Trial Court Coordinator: 221 East Water Street, Statesville, North Carolina 28677. A copy of the request must also be delivered to all attorneys of record and *pro se* (unrepresented) parties.
- 3.2 **Form of Notice:** Requests for calendaring cases may be made on the Calendar Notice form (Appendix A) or by sending a notice of hearing copy to the Trial Court Coordinator. Calendar notices and requests made by use of the form shall constitute notice of hearing pursuant to Rule 7(b)(1) of the North Carolina Rules of Civil Procedure.

RULE 4 – SUPERIOR COURT TRIAL CALENDARS

4.1 Administrative Weeks (Pretrial Civil Conferences and Calendars)

- (a) **Publication and Location:** Two separate administrative weeks will be designated each year for Civil Superior Pretrial Conferences. The administrative calendar (Pretrial Conference Calendar) will be made available at: <http://www1.aoc.state.nc.us/www/calendars/Civil.html>. Attorneys or *pro se* (unrepresented) parties without internet access, or those who experience difficulty retrieving the calendar, may contact the Trial Court Coordinator at (704) 832-6618 and request the mailing of a calendar via United States Postal Service. **Iredell County Pretrial Conferences** will be held in the Law Library, located on the second floor of the Iredell County Hall of Justice, 221 East Water Street, Statesville, North Carolina 28677, unless otherwise specified. **Alexander County Pretrial Conferences** will be held in the Superior Court Jury Room, located on the second floor of the Alexander County Courthouse, 29 West Main Avenue, Taylorsville, North Carolina 28681, unless otherwise specified.
- (b) **Purpose and Obligations of Attorneys and Pro Se (Unrepresented) Parties:** Pretrial Conferences are held in order to schedule motions and cases for trial during the ensuing six months. During administrative weeks, the Senior Resident Superior Court Judge shall be in District 22A and shall be responsible for reviewing all cases that appear on the administrative calendar. The judge shall take appropriate action to ensure prompt disposition of any pending motions or other matters necessary to move the cases toward a conclusion. Failure to appear at the Pretrial Conference or notify the Trial Court Coordinator of potential absence may result in the case being dismissed. Attorneys should make prior inquiry of personal, client, and witness commitments for the six months that follow the administrative week and arrive at the conference prepared to calendar cases on a date that will not conflict with personal calendar commitments, client and witness commitments, appellate courts schedules, and vacations.
- (c) **Peremptory Settings:** Requests for peremptory settings for compelling reasons will only be considered during administrative hearings and will be calendared in accordance with Local Rule 4.2(c).

4.2 Tentative Superior Court Trial Calendar

- (a) **Calendar Publication:** Immediately following the administrative week of pretrial conferences, the Trial Court Coordinator shall prepare a tentative calendar of cases for trial at each session of court. Distribution of the tentative calendars shall be made by posting on the internet at:
www.nccourts.org (direct link: <http://www1.aoc.state.nc.us/www/calendars/Civil.html>).
- (b) **Attorney Query:** Attorneys may search cases on published calendars by using the Civil Calendar Attorney Query by Bar Number at:
<http://www1.aoc.state.nc.us/www/calendars/CivilQuery.html>.
- (c) **Peremptory Settings:** Requests for peremptory settings for compelling reasons will be considered during the administrative hearings, scheduled in December and June, before the Senior Resident Superior Court Judge. No more than two peremptory settings shall be made during any session of court. If a peremptorily set case is continued, attorneys in that case shall not be entitled to a second priority setting unless another request is approved.
- (d) **Case Monitoring:** The Trial Court Coordinator shall continually monitor the tentative trial calendar to determine settlements, conflicts that develop, cases not reached or continued from previous sessions, motions, additions, deletions or changes in parties or attorneys, or any other factors affecting the readiness of cases for trial.

4.3 Revised Tentative and Final Superior Court Calendars

- (a) **Revised Tentative Civil Calendar:** Approximately four weeks prior to the first day of each session, the Trial Court Coordinator shall prepare a revised tentative calendar of cases for trial at that session.
- (b) Distribution of the revised tentative calendar shall be made by posting on the internet at: <http://www1.aoc.state.nc.us/www/calendars/Civil.html>. The Trial Court Coordinator shall also distribute a copy of the revised tentative calendar to each law firm with one or more cases listed thereon and to each party not represented by an attorney, provided that such party has provided to the Court a correct mailing address. Distribution to local attorneys may be by means of attorney distribution boxes maintained in the courthouse facility. Each attorney and each *pro se* (unrepresented) party shall be responsible for seeing that the correct mailing address is provided to the Court and appears in the record.
- (c) **Add-Ons:** At any time after the publication of the revised tentative calendar, and prior to the publication of the final calendar, attorneys may request that additional cases be added to the calendar for hearing or trial. Motions may be added if notice requirements of the North Carolina Rules of Civil Procedure are met. Requests for the addition of trials must have the approval of opposing counsel and should be directed to the attention of the Trial Court Coordinator in the Office of the Senior Resident Superior Court Judge.
- (d) **Final Civil Calendar:** During the week prior to the first day of each session, the Trial Court Coordinator shall prepare a final civil calendar of cases for hearing or trial at that session. Distribution of the final calendar shall be made by posting on the internet at: <http://www1.aoc.state.nc.us/www/calendars/Civil.html>. The final civil calendar shall contain all cases on the revised tentative civil calendar unless they are removed by the Trial Court

Coordinator in consultation with the Senior Resident Superior Court Judge, or the cases have previously been terminated. In addition, the final civil calendar shall contain any motions that have matured or have been requested by an attorney of record and cases for trial not reached or continued at a previous session after consultation with attorneys of record as to their conflicts and convenience. The final civil calendar shall contain a sufficient number of cases to ensure full use of available time, but not an excess number of cases that will result in numerous cases being consistently not reached or witnesses being unnecessarily inconvenienced. The final civil calendar shall contain any cases having statutory priority as required by law.

- (e) **Order of Listing for Trial:** Peremptorily set cases shall be calendared at the top of the final trial calendar and marked accordingly. Thereafter, cases shall be set by date of filing in chronological order unless otherwise ordered by the Senior Resident Superior Court Judge. The Judge Presiding shall have the authority to exercise discretion and call any case out of order as deemed appropriate.
- (f) **Carry-Over Cases Not Tried:** If a case is not reached for trial during the session of court for which it is set, the Court may choose to re-calendar for the next session of court or place on the next administrative calendar. With the consent of all attorneys and *pro se* (unrepresented) parties of record, the Judge Presiding may place the case on the final calendar for the next session of court even though the tentative calendar for the session had already been published without listing that case for trial. Otherwise, any case not reached shall be re-calendar as provided by these rules.

RULE 5 – SUPERIOR COURT MOTION CALENDARS

- 5.1 **Motions and Non-Trial Matters:** All tentative, revised tentative, and final civil calendars shall contain motions and non-trial matters to be heard at each session. This shall include any motions or non-trial matters that the Court records as pending at the time the calendar is prepared, as well as other motions or non-trial matters calendared by request. The final civil calendar shall not contain more than can reasonably be expected to be heard in the time designated by the Senior Resident Superior Court Judge for the hearing of such matters. Calendar requests for motions and non-jury matters must be made in writing prior to the publication of the final civil calendar. The request should be mailed to the Trial Court Coordinator: 221 East Water Street, Statesville, North Carolina 28677; as well as a copy to all attorneys of record and *pro se* (unrepresented) parties. No motions will be added after the publication of the final calendar without the approval of the Trial Court Coordinator.
- 5.2 **Forms of Notice:** Requests for calendaring of motions and non-trial matters may be made by sending a notice of hearing copy or a copy of the Calendar Notice form (Appendix A) to the Trial Court Coordinator by electronic mail, facsimile, United States Postal Service, or hand delivery. Calendar requests and notices made by use of the form shall constitute notice of hearing pursuant to Rule 7(b)(1) of the North Carolina Rules of Civil Procedure. For motions calendared by the Senior Resident Superior Court Judge or the Trial Court Coordinator, posting of the final calendar to the internet shall constitute notice of hearing to attorneys of record or *pro se* (unrepresented) parties.
- 5.3 **Briefs, Responses, & Memoranda:** Briefs, responses, memoranda and supporting cases, or any other materials intended to be used in oral argument or submitted to the Court are to be delivered to the Judge Presiding no later than three business days prior to the hearing of the motion.

Supplemental materials may not be submitted once the deadline has passed. Acceptable forms of delivery include hand delivery, express delivery, or United States Postal Service. Facsimile or electronic mail may not be used without the permission of the Judge Presiding. Pursuant to G.S. § 1A-1, Rule 5(d), briefs and memoranda provided to the Court may not be filed with the Clerk of Superior Court unless ordered by the Court.

Please note that all hearing materials delivered to the Court in accordance with this rule shall be delivered to counsel for the opposing party or parties by hand delivery, electronic mail, facsimile, express delivery, or United States Postal Service, such that the opposing counsel receives the materials no later than three business days before the hearing date. If any hearing materials to which this rule applies are not served on opposing counsel within the time and the manner specified herein, the Court may continue the hearing for a reasonable period of time, proceed with the hearing without considering the untimely served materials, or take such other action as justice requires.

- 5.4 **Withdrawals of Motions:** Once a motion has been noticed, or the final calendar has been published, any party requesting removal of a motion from the calendar shall submit a withdrawal of the motion to the Clerk of Superior Court and provide a copy to the Trial Court Coordinator. If the motion needs to be rescheduled instead of withdrawn, the Trial Court Coordinator shall be contacted to schedule a new date and time for the motion. An amended notice of hearing or calendar request shall then be filed with the Clerk of Superior Court and a copy sent to the Trial Court Coordinator.

RULE 6 – PROCEDURES FOR SESSIONS OF COURT

- 6.1 **Convening of Court:** Superior court will convene at 10:00 a.m. on Monday, or the opening day of each session, and on each day thereafter at 9:30 a.m., unless changed by the Judge Presiding for good cause. The jury shall be summoned to report at 1:30 p.m. on Monday unless otherwise ordered by the Judge Presiding or the Senior Resident Superior Court Judge.
- 6.2 **Calendar Call:** Calendar call will begin at 10:00 a.m. on the first day of each civil session. Attorneys of record and *pro se* (unrepresented) parties are required to attend calendar call at the designated time. The purpose of this call will be:
- (a) to notify parties with cases scheduled of dispositions made since the publication of the final calendar;
 - (b) to consider any requests for continuance; and
 - (c) to give parties an indication of when cases are expected to be reached.
- 6.3 **Motions:** Motions shall be set for hearing as the first order of business on Monday morning. Motions not heard on Monday may be heard at any time during the term in the discretion of the Judge Presiding. Any dispositive motions must be noticed and calendared no later than the session of court immediately preceding the trial.
- 6.4 **Trials:** Any case listed for trial on the final civil calendar is subject to being called for trial during that session. Unless otherwise directed by the Judge Presiding or noted on the final calendar, cases will be called for trial in the order in which they appear on the calendar. Cases not

reached on the day on which they are set will be carried over from day to day during the term and will be called when reached any day thereafter.

- 6.5 **Cases Not Reached:** Cases not reached during the session shall be re-calendared according to Local Rule 4.3(f).

RULE 7 – PRETRIAL ORDERS

- 7.1 There shall be a written pretrial order filed in every case on the trial calendar before the trial begins. Pretrial orders are to be reduced to writing and signed by a superior court judge, all of the attorneys, and any *pro se* (unrepresented) parties before the trial begins. The pretrial conference and the pretrial order shall be done in accordance with the provisions of Rule 7 of the General Rules of Practice for Superior and District Courts as they appear in the North Carolina General Statutes (ref. G.S. § 1A-1, Rule 16).

RULE 8 – CONTINUANCES

Continuances will generally not be granted except for a cause that could not have been reasonably foreseen. The advance notice provided to counsel by the Trial Court Coordinator, along with the opportunity to modify all trial dates within 30 days after receipt of such notice, is deemed as a reasonable and sufficient opportunity to accommodate the majority of conflicts. Personal conflicts such as vacations, family commitments, and continuing legal education opportunities do not constitute a cause that could not have been reasonably foreseen. Unavailability of a peremptory setting date is not grounds for continuance of the trial date.

The Guidelines for Resolving Scheduling Conflicts as adopted by the State-Federal Judicial Council of North Carolina and Rule 3.1 of the General Rules of Practice for the Superior and District Courts will govern rulings regarding professional conflicts. Witness unavailability, incomplete medical treatment, personal emergencies, and outstanding discovery issues will be handled on an individual basis. The timeliness of counsel in identifying and addressing each one of these issues will be a major determining factor in any ruling.

- 8.1 **Applications/Motions for Continuance:** Applications for continuance made prior to the opening of court for the session in which the case is calendared shall be submitted to the Senior Resident Superior Court Judge, or his designee, of the judicial district in which the case is filed. Applications for continuance made after the opening of court for the session in which the case is calendared shall be submitted to the Judge Presiding of the court in which the case is calendared.
- 8.2 **Form of Motion:** Applications and motions for continuance may be submitted in writing or on a motion form (AOC-CV-221, available for download at: www.nccourts.org) and delivered to the Trial Court Coordinator prior to filing with the Clerk of Superior Court. Faxed and electronically mailed copies are not acceptable and will not be signed or filed.
- 8.3 **Notification of Attorneys of Record and Pro Se (Unrepresented) Parties:** The party requesting a continuance is responsible for distributing a copy of the motion or completed motion form (AOC-CV-221) to all counsel of record and *pro se* (unrepresented) parties prior to presentation of the motion to the appropriate judicial official. The requesting party may include a separate, self-addressed, postage-paid envelope for return by the Trial Court Coordinator. *Ex parte* continuance requests will not be considered by the Court.

8.4 **Objections to Motion for Continuance:** Opposing counsel and *pro se* (unrepresented) parties shall have a period of two business 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 designee. Objections not raised within this time period are deemed waived.

8.5 **Evaluation of Motions for Continuance:** Continuance requests are presumptively disfavored. However, when compelling reasons for continuance are presented that 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.

Factors that will be considered when deciding whether to grant or deny a motion for continuance include, but are not limited to:

- 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 be resolved prior to the scheduled trial date;
- the length of the continuance requested, if applicable;
- the position of opposing counsel;
- whether the parties themselves consent to the continuance;
- present or future inconvenience or unavailability of witnesses or other parties; and
- any other matter that promotes the ends of justice.

Factors that will not be considered as a valid basis for allowing a continuance motion include, but are not limited to:

- first time scheduling of the case for trial;
- potential scheduling conflicts of other trials in other courts;
- failure to complete discovery; and
- whether counsel of record has received payment.

In addition, voluntarily switching counsel on the eve of a court-ordered or court-mandated trial date shall not be a valid basis for allowing a continuance motion and thereby nullifying said trial date.

(See also [Superior Court Continuance Policy-Civil and Criminal](http://www.nccourts.org/Courts/CRS/Policies/LocalRules/Documents/218.pdf) posted at: <http://www.nccourts.org/Courts/CRS/Policies/LocalRules/Documents/218.pdf>)

8.6 **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 designee, should reschedule the trial of the case only after receiving scheduling input from all counsel.

RULE 9 – SCHEDULING CONFLICTS

- 9.1 Scheduling conflicts shall be resolved in accordance with the provision of Rule 3.1 of the General Rules of Practice for Superior and District Courts.

RULE 10 – SETTLEMENT OF CASES

- 10.1 **Notification of Settlement:** It shall be the responsibility of the attorney of record in the case to either notify the Trial Court Coordinator or to appear at the calendar call on the first day of the session to announce the settlement of a case on a calendar. When notice of settlement is given, the Trial Court Coordinator must be advised as to preparation of the judgment or dismissal.
- 10.2 **Failure to File Settlement Documents:** Failure to file a settlement judgment or dismissal within the time frame indicated upon notice of settlement to the Trial Court Coordinator may result in the dismissal of the case for failure to timely file the settlement documents. In such an event, the Trial Court Coordinator is authorized to place the case on the regular or supplemental motion calendar for a later session of court and any attorney or party in the case may appear and show cause why the case should not be dismissed. If no good cause is shown, or no appearance is made, the case may be dismissed in the discretion of the Judge Presiding.

RULE 11 – DELINQUENT ORDERS OR JUDGMENTS

- 11.1 Cases or motions scheduled on trial calendars and removed due to consent or settlement shall be considered delinquent if the order or judgment of disposition is not filed within fifteen working days after the case was last calendared.
- 11.2 Cases identified as delinquent pursuant to Local Rule 11.1 may be dismissed at the discretion of the Senior Resident Superior Court Judge or Judge Presiding if counsel has not filed the required order or judgment by the beginning of a session. In addition, the Senior Resident Superior Court Judge or Judge Presiding shall order such sanctions or impose such penalties as are deemed appropriate and allowed by law.
- 11.3 Cases or motions scheduled on trial calendars and heard by the judge or by the jury shall be considered delinquent if the order or judgment of disposition is not filed within fifteen working days after the hearing, unless otherwise directed by the Judge Presiding.
- 11.4 Cases identified as delinquent pursuant to Local Rule 11.3 may be dismissed by the Senior Resident Superior Court Judge, either upon motion by the party against whom the judgment or order was to be taken or by the Trial Court Coordinator bringing the cases to the attention of the Judge.

RULE 12 – REMOVAL OF INACTIVE CASES

The Supreme Court of North Carolina expects 90% of all civil cases in superior court to be resolved within a year of filing. (See Court Performance Management System at: <http://www1.aoc.state.nc.us/cpms/login.do>) Absent exigent circumstances, cases must be tried or disposed of within the following deadlines: 90% within 365 days of filing, 98% within 545 days of filing, and 100% within 730 days of filing (exceptional cases beyond 24 months).

- 12.1 **Removal by Request of Parties:** If all parties and attorneys in a case agree that the dispute between the parties is no longer active, that trial of the case will not be necessary, and that the ends of justice will best be served by declaring the case inactive and removing it from the trial docket, they may prepare a joint motion to that effect and submit it with the proposed order for the approval and signature of the Senior Resident Superior Court Judge.
- 12.2 **Contents of Proposed Order:** The proposed order removing a case from the trial docket shall specifically state the reasons why all parties contend justice will best be served by declaring the case inactive and removing it from the trial docket. The order shall also state that the case shall be closed without prejudice to any party's right to have the matter reopened upon a motion in the cause. Provided that the order is not inconsistent with the provisions of Rule 41 of the North Carolina Rules of Civil Procedure concerning dismissal, the Judge Presiding will sign the order and file it with the Clerk of Superior Court. If the motion is not allowed, the Judge Presiding will return it with a notation that the motion is denied.
- 12.3 **Removal by Motion of Superior Court Judge:** Cases that have been ordered to or are undergoing binding arbitration, that are on appeal or otherwise have long-term issues which prevent final resolution, or that have other circumstances which prevent trial may be placed on inactive status and closed by order of the Senior Resident Superior Court Judge. Such cases may be reopened by the Senior Resident Superior Court Judge upon motion of any party for good cause shown.
- 12.4 **Removal to Federal Court:** When a case is removed to federal court (United States District Court), notice of such removal must be provided to the Trial Court Coordinator. The state court case will be inactivated and removed from the docket of cases pending before the Superior Court.
- 12.5 **Remands:** When a case is remanded for trial from the appellate division or federal court, counsel shall promptly notify the Trial Court Coordinator for placement on the next administrative calendar, or on a specified trial calendar as mutually agreed by counsel and parties.

RULE 13 – BANKRUPTCY

- 13.1 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
- 13.2 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 Trial Court Coordinator. The Senior Resident Superior Court Judge may then place the case on inactive status. Upon

resolution of the bankruptcy proceedings or dissolution of the stay, the case may be reopened upon motion to the Court and placed on the active docket of cases pending before the Superior Court.

RULE 14 – OUT-OF-STATE SUBPOENAS / PRO HAC VICE

- 14.1 This procedure for the issuance of non-North Carolina action subpoenas is established pursuant to G.S. § 1A-1, Rule 28(d)(1) and Rule 45.
- 14.2 The party seeking the subpoena shall deliver to the Office of the Clerk of Superior Court the following items:
- (a) A letter or memorandum requesting the issuance of a subpoena and instructions for processing when completed;
 - (b) a check made payable to “Iredell County Clerk of Superior Court” or “Alexander County Clerk of Superior Court” in the appropriate amount to open a superior court file (current cost available at: <http://www.nccourts.org/Courts/Trial/Costs/Default.asp>);
 - (c) a copy of the signed Notice of Deposition or Notice to Produce Documents and Certificate of Service [or other authority permitted by Rule 28(d)(1)] generated by the out-of-state party seeking the deposition or documents in North Carolina. Rule 45(b)(2) requires that a copy of the subpoena served shall also be served upon each party in the manner prescribed by Rule 5(b). Rule 5(b1) requires a Certificate of Service on all parties; and
 - (d) both sides of the North Carolina subpoena form (AOC-G-100) with side one completed as follows: at the top of the form, designate “Iredell” or “Alexander” as the county, check the block labeled “Superior Court Division,” and leave the space for “File No.” blank (a file number will be assigned by the Clerk of Superior Court). Complete the remainder of the subpoena, leaving the date and signature lines blank. Provide three copies of each subpoena.
 - (e) If documents or testimony covered under HIPAA are being subpoenaed, prepare a separate order addressing the HIPAA regulations. Provide three copies of each order (if submitted).
 - (f) The mere filing of the out-of-state subpoena and the request for issuance of the North Carolina subpoena does not constitute an appearance in the courts of this state, and therefore no *pro hac vice* fee is necessary. However, if the out-of-state attorney intends to make an appearance in North Carolina in connection with the matter (such as attending the deposition), submit every item specified in G.S. § 84-4.1 and Local Rule 14.7 to admit the out-of-state attorney *pro hac vice*, including a check made payable to “Iredell County Clerk of Superior Court” or “Alexander County Clerk of Superior Court” in the appropriate amount.
 - (g) Submit two copies of all required documents and an adequate self-addressed, postage-paid envelope for the return of all filings.
 - (h) Documents shall be delivered to the following address: Iredell County Clerk of Superior Court - Civil Division, 221 East Water Street, Statesville, North Carolina 28677; or Alexander County Clerk of Superior Court - Civil Division, Post Office Box 100,

Taylorsville, North Carolina 28681 (29 West Main Avenue, Taylorsville, North Carolina 28681).

- 14.3 The Clerk of Superior Court shall open a file and review all documentation. If the documentation is in order, the Clerk will sign the subpoenas and, if required, secure appropriate signatures for the order granting admission *pro hac vice*, and the HIPAA order, if required.
- 14.4 If a self-addressed, postage-paid envelope is provided, the documents will be mailed to the requesting party or its designee. If the requesting party prefers to engage a private process server, said party shall make appropriate arrangements with the process server and indicate such in the cover letter. Documents may also be picked up by the requesting party at the Superior Court Judges Office, Iredell County Hall of Justice: 221 East Water Street, Statesville, North Carolina 28677.
- 14.5 If the requesting party desires the Sheriff's Department to serve the subpoena(s), the party shall provide three copies of the subpoena, include a self-addressed, postage-paid envelope, and attach a check payable to "Office of the Sheriff of Iredell County" or the "Office of the Sheriff of Alexander County" in the amount required by the Sheriff for service of out-of-state subpoenas. (Refer to the website of the Iredell County Sheriff, <http://www.iredellsheriff.com/> Divisions > Civil Process Unit; or the Alexander County Sheriff, <http://alexandersheriff.org/divisions/records/> for specific instructions and cost.) If the requesting party desires the Clerk of Superior Court to forward the documents to the Sheriff's Department, it must be so noted in the cover letter and a postage-paid envelope addressed to "Office of the Sheriff of Iredell County" or "Office of the Sheriff of Alexander County" must be included. The Sheriff's Department shall send one copy of the return(s) of service to the court file and the other to the requesting party in the envelope provided by the requesting party.
- 14.6 After service is completed, a copy of the subpoena shall be sent to the Clerk of Superior Court - Civil Division to be placed in the court file.
- 14.7 Attorneys appearing *pro hac vice* shall adhere to G.S. § 84-4.1 and the North Carolina State Bar regulations regarding attorneys appearing *pro hac vice*. Copies of the North Carolina State Bar Rules and the required registration form are available for download at: <http://www.ncbar.gov/menu/rules.asp>.

RULE 15 – MINOR AND STRUCTURED SETTLEMENTS

- 15.1 Minor and structured settlements are scheduled through the office of the Trial Court Coordinator.
- 15.2 All settlements will be heard in open court and recorded by a court reporter.
- 15.3 The minor and his or her Guardian ad Litem shall be present at the minor settlement, unless excused in advance by the Judge Presiding.
- 15.4 Counsel shall state on the record the total and complete amount of insurance coverage afforded in the settlement.
- 15.5 To the extent potential damages exceed insurance coverage, plaintiff's counsel shall make independent inquiry of defendant's other assets that are reasonably available, other than insurance, and be prepared to report his or her findings to the Court.

- 15.6 To the extent a minor or other settlement is to be structured, plaintiff's counsel shall certify to the Court the present value of the settlement and the tax liability, if any, to the minor.

RULE 16 – JUDICIAL REVIEW OF ADMINISTRATIVE ACTION (ref. G.S. § 150B-43-52)

- 16.1 The judicial review of a final agency decision shall commence by the filing of the Petition for Judicial Review with the Clerk of Superior Court or by the filing of a Petition for Writ of Certiorari. The petitioner shall serve a copy of the petition upon the agency. Within 30 days after receipt of the petition, the agency shall file with the Clerk of Superior Court the original or a certified copy of the official record in the case under review from which the final agency decision was entered. The agency or petitioner may move for additional time within which to file the record. Counsel for the agency shall notify the petitioner in writing when the record is filed with the Clerk.
- 16.2 The petitioner shall have 30 days from notice of the record being filed to serve its brief on counsel for the agency. The agency shall have 30 days from receipt of the petitioner's brief to serve its response brief on the petitioner. The brief of any intervenor shall be served on all parties concurrently with the motion to intervene. No reply brief shall be allowed except by order of the Court. The Court, for good cause, may alter or enlarge the times provided for the filing of briefs.
- 16.3 Judicial review proceedings shall be set by the Trial Court Coordinator upon the submission of a written request or Calendar Notice (Appendix A). Such proceedings are not subject to mandatory mediation unless ordered by the Senior Resident Superior Court Judge.

RULE 17 – INJUNCTIVE RELIEF

- 17.1 Applications for Temporary Restraining Orders made pursuant to Rule 65 of the North Carolina Rules of Civil Procedure will be heard after the commencement of a civil action through the filing of a complaint and/or issuance of summons.
- 17.2 Litigants requesting injunctive relief must notify opposing counsel, if any, that such judicial action is being requested and shall certify to the Trial Court Coordinator that notice was given before the request for hearing was made. Requests for hearings on Applications for Temporary Restraining Orders shall be presented to the Trial Court Coordinator for scheduling. Upon scheduling of the motion, counsel shall notify opposing counsel in writing of the hearing location and time.
- 17.3 Motions for Preliminary Injunction that are set by the Court during a hearing on the Application for Temporary Restraining Order must be presented to the Trial Court Coordinator's office to ensure that the motion is properly set for hearing. No preliminary injunction shall be issued without notice to the adverse party. Preliminary injunctions are set for hearing on the next available session of court.

RULE 18 – MEDIATION

- 18.1 **Mediated Settlement Conference:** Pursuant to G.S. § 7A-38.1, Judicial District 22A has adopted the North Carolina Supreme Court Rules Implementing Statewide Mediated Settlement Conferences and Other Settlement Procedures in Superior Court Civil Actions as the Local Rules

for Mediated Settlement Conference Rules in this district. A complete copy of these rules may be found at: <http://www.nccourts.org/Courts/CRS/Councils/DRC/MSC/Rules.asp>.

- 18.2 **Eligible Cases:** All civil actions in superior court shall be ordered into the mediation process except: administrative appeals; appeals from the revocation of a motor vehicle operator's license; declaratory judgment actions; and actions in which a party is seeking the issuance of an extraordinary writ. Requests to dispense with mediation are generally disfavored and may only be granted by the Senior Resident Superior Court Judge.
- 18.3 **Time Standards for Scheduling Mediation:** A case shall be calendared for mediation as soon as practicable after the following events:
- (a) the filing of the answer or the last required pleading;
 - (b) the filing of a consent request for mediation signed by all attorneys of record and all parties not represented by attorneys; and
 - (c) the filing of a request by one or more of the attorneys or *pro se* (unrepresented) parties, with notice to all other attorneys or *pro se* (unrepresented) parties, setting forth good cause for an expedited mediation and a finding by the Senior Resident Superior Court Judge of good cause for the expedited mediation.
- 18.4 **Designation of Mediators:** Parties are encouraged to timely select a mediator for cases that been ordered into the mediation process. The Designation of Mediator form shall be delivered to the Trial Court Coordinator for filing with the Clerk of Superior Court and distribution to the parties and mediator. Parties are encouraged to consider the availability and schedule of the mediator during the selection process. Scheduling conflicts concerning the mediated settlement conference will not serve as a basis to continue trial.
- 18.5 **Court Appointment of Mediators:** If the parties cannot agree upon the designation of a mediator, the plaintiff or plaintiff's attorney shall so notify the Court and request, on behalf of the parties, that the Senior Resident Superior Court Judge appoint a mediator. The motion must be filed within 21 days after the Court's order and shall state that the attorneys for the parties have been unable to agree, or that communication has been attempted but unsuccessful. The motion shall be on a form approved by the North Carolina Administrative Office of the Courts (NCAOC).

Upon receipt of a motion to appoint a mediator, or failure of the parties to file a designation of mediator by agreement with the Court within 21 days of the Court's order, the Senior Resident Superior Court Judge shall appoint a mediator, certified pursuant to these rules, who has expressed a willingness to mediate actions within Judicial District 22A.

In making such appointments, the Senior Resident Superior Court Judge shall rotate through the list of available certified mediators. Appointments shall be made without regard to race, gender, religious affiliation, or whether the mediator is a licensed attorney. The Senior Resident Superior Court Judge shall retain discretion to depart in a specific case from a strict rotation when, in the judge's discretion, there is good cause to do so.

Certified mediators who do not reside in the judicial district or a county contiguous to the judicial district shall be included in the list of mediators available for appointment only if, on an annual

basis as determined by the North Carolina Dispute Resolution Commission (NCDRC), they request from the Senior Resident Superior Court Judge of Judicial District 22A to be put on the appointment list. Letters of request shall be mailed to the North Carolina Dispute Resolution Commission, Post Office Box 2448, Raleigh, North Carolina 27602. The Commission will then compile and furnish to the Senior Resident Superior Court Judge a list of those certified superior court mediators requesting appointment in Judicial District 22A.

- 18.6 **Will Caveats** (ref. G.S. § 31-33): Cases involving caveats to Wills shall be placed on the next available motions calendar for parties to be aligned, and motions to be addressed in accordance with Rule 16 of the North Carolina Rules of Civil Procedure. Caveats will subsequently be ordered into the mediation process and will not be placed on a trial calendar until a mediated settlement conference is conducted or the matter has been removed from mediation by order of the Court. It shall be the responsibility of the attorney for the caveator(s) to notify the Trial Court Coordinator of the filing of the case and the names and addresses of all parties or attorneys to whom correspondence should be sent.

RULE 19 – OBLIGATIONS OF ATTORNEYS AND *PRO SE* (UNREPRESENTED) PARTIES

- 19.1 It is expected that all attorneys of record or *pro se* (unrepresented) parties with cases calendared for motion or trial will be present at the convening of court for the calendar call and will remain in the courtroom or its immediate proximity unless excused by the Judge Presiding.
- 19.2 The only legitimate excuses for not being in court when a case is calendared are those that are of unexpected or urgent need, such as serious illness, death, or conflicts with other courts.
- 19.3 In the rare event that absence from court becomes a necessity, attorneys of record and *pro se* (unrepresented) parties must notify the appropriate judicial official to avoid last minute calendaring issues. Absences in civil superior court must be reported to the Trial Court Coordinator. Conflicts with other courts must be resolved in accordance with Rule 3.1, Guidelines for Resolving Scheduling Conflicts, of the North Carolina General Rules of Practice.
- 19.4 With the exception of unexpected and urgent emergencies, attorneys and *pro se* (unrepresented) parties must exercise due diligence in providing written notification to opposing counsel, the Clerk of all courts, and the appropriate judges in accordance with Rule 3.1, Guidelines for Resolving Scheduling Conflicts, of the North Carolina General Rules of Practice.
- 19.5 Attorneys residing outside of Judicial District 22A who accept employment to represent clients in Judicial District 22A must arrange their schedules to be present when their cases are calendared. Conflicts must be worked out with the Trial Court Coordinator and the Senior Resident Superior Court Judge before the case is calendared for trial and the calendar published.
- 19.6 Electronic and telephonic appearances at civil superior court proceedings by attorneys, parties, and witnesses are not permitted.
- 19.7 To avoid conveying an impression and attitude of partiality, attorneys, witnesses, and other officers of the court shall not congregate in judges' chambers or in hallways immediately outside of the courtrooms and chambers.

RULE 20 – DESIGNATION OF SECURE LEAVE

Designations of secure leave must be in accordance with Rule 26 of the General Rules of Practice for the Superior and District Courts as amended by the North Carolina Supreme Court: (<http://www.aoc.state.nc.us/www/public/aoc/rule26.htm>).

- 20.1 Attorneys may designate three weeks each calendar year as secure leave during which time they shall not be required to appear before the Superior Court in Judicial District 22A. A secure leave period shall consist of one or more complete calendar weeks beginning on Monday and ending on Friday.
- 20.2 Each attorney practicing in Judicial District 22A may secure leave either consecutively or at intervals. Notice must be provided 90 days or more in advance of such vacation periods, must include information as noted in Rule 26, and shall not conflict with a trial or other matter which has already been set by a Judge Presiding. Thus, the designation of a secure leave period shall precede such setting of trials and other matters, and the attorney may be assured that the designated time shall be available for vacation periods.
- 20.3 Attorneys may designate periods of secure leave by providing a letter to the Trial Court Coordinator and the District Attorney designating such weeks. The Trial Court Coordinator shall maintain a record of when such letters are received and the periods of leave secured.
- 20.4 The policy and procedures described herein are not exclusive. In extraordinary circumstances, the time limitations for notification of designated weeks may be waived by the Court as has been done in the past when attorneys have been faced with particular or unusual situations – and further, attorneys shall be able to make other requests to be excused from appearing before a tribunal for personal and other reasons as has been the custom in the past.

This policy is adopted in recognition of the need for time away from the demands of professional responsibilities to improve the overall professional performance of the bar as well as the quality of life of members of the profession and their families, and this policy is adopted for that purpose. It may be modified or amended by the Senior Resident Superior Court Judge by subsequent modification orders.

RULE 21 – ADMISSION / SWEARING IN OF ATTORNEYS

- 21.1 Candidates who successfully pass the North Carolina Bar Exam are eligible to take the oath of office as an attorney at law. The oath of office must be administered in open court by either a district court judge or superior court judge. Judicial District 22A requires the presentation of the license to practice law in North Carolina or a letter from the North Carolina Board of Law Examiners giving notice of admission to the North Carolina State Bar, along with two copies of the oath of office form. The oath of office form is included with the law license mailed from the North Carolina Board of Law Examiners. It may also be downloaded and printed directly from the State Bar website and is listed on the Forms page under the “Membership” heading.
- 21.2 Candidates must contact the Office of the Senior Resident Superior Court Judge or Chief District Court Judge to arrange a ceremony time. Please note that appropriate court attire is required for this ceremony. Additionally, although not required by statute, it is the preference of the resident judges and the responsibility of the candidate to secure a member of the bar in Judicial District 22A who will provide introduction of the candidate to the Court.

21.3 After the oath is taken and forms completed, one copy of the oath should be filed with the Clerk of Superior Court - Civil Division in the county in which the oath was taken. The other copy shall be retained as the attorney's personal record.

The Local Rules of Practice for Civil Superior Court Cases for Judicial District 22A may be modified or amended by the Senior Resident Superior Court Judge by subsequent modification orders. Suggested changes or amendments to the rules may be addressed to the Senior Resident Superior Court Judge of District 22A.

Adopted this the 30th day of January, 2015.

Joseph N. Crosswhite
Senior Resident Superior Court Judge
Judicial District 22A
221 East Water Street
Statesville, North Carolina 28677
Telephone: (704) 832-6616

STATE OF NORTH CAROLINA
COUNTY OF

ALEXANDER IREDELL

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

File Number: _____

_____ Plaintiff(s)

vs.

_____ Defendant(s)

CALENDAR NOTICE

Please place the above-captioned matter on the Alexander / Iredell County Civil Superior Court calendar for the _____ session for the following:

- Motion Type of Motion _____
- Trial
 - Jury
 - Non-jury

Estimated Length of Hearing: _____

Nature of Case: _____

Date: _____

Attorney for Plaintiff(s) / Defendant(s)

Address: _____

Telephone: _____

send Calendar Notice via mail or fax: Tueresa P. Hayden, Superior Court Trial Court Coordinator
221 East Water Street
Statesville, North Carolina 28677
Facsimile: (704) 832-6617

and mail a copy to: *(name and address(es) of opposing counsel and/or unrepresented parties)*

This Calendar Notice shall constitute notice of hearing pursuant to Rule 7(b)(1) of the North Carolina Rules of Civil Procedure.