

**CASE MANAGEMENT PLAN AND LOCAL COURT RULES
FOR SUPERIOR CIVIL CASES
JUDICIAL DISTRICT 23**

**ALLEGHANY, ASHE, WILKES AND YADKIN COUNTIES
EFFECTIVE JANUARY 1, 2008**

The following Case Management Plan and Local Court Rules for the calendaring of civil matters in the Superior Court of Judicial District 23 have been adopted by the Senior Resident Superior Court as required by Rule 2 of the General Rules of Practice for the Superior and District Courts adopted by the Supreme Court of North Carolina.

1.0 GENERAL RULES

1.1 The purpose of these rules is to provide for the orderly, just and prompt disposition of matters to be heard in the Superior Courts of Judicial District 23 as required by amended Rule 2, General Rules of Practice. They shall be construed in such manner as to avoid technical delay and to ensure prompt disposition of pending cases.

1.2 The Clerks of Superior Court and the Trial Court Coordinator shall maintain a supply of the printed rules and also a supply of the required associated forms and furnish same to attorneys upon request.

1.3 These rules are not complete in every detail and will not cover all situations. If the rules do not cover a specific situation, the Trial Court Coordinator is authorized to act after consultation with the Senior Resident Superior Court Judge or presiding judge.

2.0 CASE TRACKING SYSTEM

2.1 The Clerks of Superior Court shall maintain the VCAP system with up to date information for civil cases pending in the Superior Courts.

2.2 The Trial Court Coordinator shall maintain a case tracking system for all civil cases pending in the Superior Courts.

3.0 EARLY STAGE CASE MANAGEMENT/TIME STANDARDS FOR TRIAL

3.1 The North Carolina Supreme Court expects 90% of all civil cases in Superior Court to be resolved within a year of filing. The following goals and expectations are established in an effort to meet the Supreme Court's standards.

3.2 The Court expects simple two or three-party cases to be tried no later than 9 months from the filing of the Answer.

3.3 Court expects relatively simple cases with cross-claims, counter-claims, third-party claims, or unnamed defendants to be tried no later than 11 months from the filing of the first Answer.

3.4 The Court expects virtually all cases to be tried no later than two years from the filing of the first Answer. Medical negligence cases with no more than two sets of attorneys should be tried no later than 12 months from the filing of the first Answer; with three to four sets of attorneys, no later than 18 months from the filing of the first Answer; and with more than four sets of attorneys, no later than 24 months from the filing of the first Answer.

3.5 Any case which is not going to be tried within 14 months of Answer should have Discovery Scheduling Order signed by the Senior Resident Superior Court Judge in place. The burden is on counsel to seek such an order within 45 days of the filing of the first Answer, in the same manner as set forth in Rule 4.2 *infra*. Any Discovery Scheduling Order which contemplates trial more than 24 months from the filing of the first Answer is only valid if it is signed by the Senior Resident Superior Court Judge.

3.6 Extension of Time to Answer: Counsel may not stipulate to more than 30 days to file an Answer or other responsive pleading.

3.7 Cases in which no progress is noted by the court will be placed on a clean-up calendar by the Trial Court Coordinator for inquiry as to status, either during a regularly scheduled session before a presiding judge or at an administrative session before the Senior Resident Superior Court Judge, in order that the court may ascertain what impediments to a case reaching timely conclusion may exist and when they may be resolved.

4.0 DISCOVERY

4.1 Discovery shall begin promptly as contemplated by Rule 8 of the General Rules of Practice. For all cases except those which have previously been dismissed and refiled pursuant to Rule 41, N.C.R.Civ.P., discovery should be scheduled so as to be completed within 120 days of the last required pleading. For all cases which have previously been dismissed after Answer was filed and then refiled pursuant to Rule 41, all discovery undertaken in the first case need not be repeated; discovery should be scheduled so as to be completed within 90 days of the last required pleading.

4.2 If additional time for discovery is needed, counsel should promptly move the Court for: (1) A discovery conference pursuant to Rule 26(f) of the Rules of Civil

Procedure and (2) An Order by the Court establishing a plan and schedule for discovery as contemplated by Rule 26(f) of the rules of Civil Procedure.

4.3 The Court expects counsel to conduct discovery in good faith and to cooperate and be courteous with each other in all phases of the discovery process. Depositions shall be conducted in accordance with the following guidelines:

- i. Counsel shall not direct or request that a witness not answer a question, unless counsel has objected to the question on the ground that the answer is protected by a privilege or a limitation on evidence directed by the Court, or unless that counsel has objected to the question on the ground that such objection is necessary to present a motion under subdivision (vi) of this Rule.
- ii. Counsel shall not make objections or statements which might suggest an answer to a witness. Counsels' statements when making objections should be succinct, stating the basis of the objection and nothing more.
- iii. While counsel has the right and duty to prepare a client for a deposition, once the deposition begins counsel and their witness-clients shall not engage in private, off-the-record conferences while the deposition is proceeding in session, except for the purpose of deciding whether to assert a privilege.
- iv. Deposing counsel shall provide to all counsel present copies of all documents shown to the witness during the deposition. The witness and the witness's counsel do not have the right to discuss documents privately before the witness answers questions about them.
- v. Upon motion, the Court may limit the time permitted for a deposition. If a deponent or other party impedes or delays the examination, the Court shall allow additional time if needed for a fair examination. If the Court finds such an impediment, delay, or other conduct has frustrated the fair examination of the deponent, it may impose upon the persons responsible an appropriate sanction, including reasonable cost and attorney's fees incurred as a result thereof.
- vi. At any time during the taking of a deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, any Resident Judge, Special Judge, or Presiding Judge may order the person before whom the examination is being taken to cease from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Rule 26(c) of the Rules of Civil Procedure. If the order made terminates the examination, it shall be resumed thereafter only upon the order of a Resident Judge, Special Judge, or Presiding Judge. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of Rule 37(a)(4) of the Rules of Civil Procedure apply to the award of expenses incurred in relation to the motion. Requests for Court intervention pursuant to this Rule shall be directed to the Trial Court Coordinator pursuant to Rule 7 *infra*.

- vii. Counsel shall not make long speeches and shall avoid arguments on the record. Counsel shall not call names, use demeaning, rude, or insulting language, or question the professional competence of other lawyers or judges.

4.4 No party may seek an extension of time from the Clerk to answer discovery which extended date to answer is within 30 days of the date trial is scheduled to begin, or, if a Discovery Scheduling Order has been entered, after the date discovery is scheduled to be completed. No party may serve interrogatories or requests to produce documents or requests for admission if the date to answer said discovery would be within 30 days of the date trial is scheduled to begin or, if a Discovery Scheduling Order has been entered, after the date discovery is scheduled to be completed.

4.5 Discovery Scheduling Orders may be considered only by the Senior Resident Superior Court Judge. In a case in which a DSO is signed, counsel for the plaintiff shall provide a copy to the Trial Court Coordinator. Amendments or changes to such Orders may only be allowed by the Senior Resident Superior Court Judge.

4.6 Failure to timely undertake, answer, or otherwise complete discovery is not grounds for delaying trial. Scheduling delays and problems are normal, should be planned for and expected, and are not grounds for delaying trial.

4.7 In any medical negligence case subject to Rule 9(j) of the Rules of Civil Procedure:

- (a) Within 15 days of the date Answer or other responsive pleading is filed by the last defendant, the parties shall either 1) present a Consent Discovery Scheduling Order to the Trial Court Coordinator, or 2) advise the Trial Court Coordinator that the parties have been unable to agree on a DSO. The parties shall proceed with discovery while awaiting resolution of this dispute by the Court.
- (b) No later than ten days after a defendant files Answer, the parties shall exchange copies of all relevant medical records. The parties are under a continuing duty to make relevant medical records available to all other parties, and each party is required to comply with this rule even if other parties do not so comply and in the absence of any formal discovery requests. Violations may be brought to the attention of the Senior Resident Judge by Motion to Compel.
- (c) At the time a party discloses its expert witness(es), that party shall on that same date provide to all other parties at least three possible dates and times for the deposition of each expert witness within the time frame allowed by the Discovery Scheduling Order. Counsel shall be prompt in responding to inquiries concerning and cooperative in the scheduling of depositions, consistent with the terms of the Discovery Scheduling Order.
- (d) To reduce delays and minimize costs, the parties are encouraged to exchange detailed affidavits of expert witnesses, to agree to time limits for expert depositions, such as ninety minutes per deposition, and to take non-

local expert depositions via telephone, video conferencing or similar method.

5.0 MEDIATION

5.1 Upon the filing of a responsive pleading, all eligible cases shall be ordered into Mediation. The Senior Resident Superior Court Judge will follow the Supreme Court's rules on appointment of mediators when the parties do not select a mediator, and retains discretion to depart from the general list in particular circumstances, such as, *inter alia*, the appointment of one mediator to multiple related cases, or to skip a mediator who has not followed Local or Supreme Court Rules.

5.2 The Court expects the parties and mediators to observe all deadlines in the Supreme Court's Rules governing mediated settlement conferences. Counsel/parties shall cooperate with the mediator in scheduling mediated settlement conferences.

5.3 Any party filing any designation of mediator or any pleading concerning mediation shall file the original in the Superior Court Judge's Chambers, where staff will then place a copy in the Court file.

5.4 The deadline for completion of the Mediated Settlement Conference will usually be 120 days from the date of the Order sending the case to mediation. Short extensions may be granted for good cause shown so long as the trial itself is not delayed. AOC Form AOC-CV-835 should be used for this purpose.

5.5 Requests to dispense with mediation are not favored and will not be allowed absent extraordinary circumstances.

5.6 Litigants are encouraged to select a mediator appropriate for the case. Once a mediator is appointed by the Court, motions to substitute a different mediator will only be allowed if promptly filed, the appointed mediator has been paid the Administrative fee, and such substitution is otherwise appropriate.

5.7 If parties wish to delay discovery until after mediation, then the parties should promptly schedule the mediated settlement conference and may ask the Court for an early Order sending the case to mediation. Failure to complete discovery while "waiting on" mediation is not good cause to delay trial.

5.8 Mediators who do not live or practice in the 23rd Judicial District, or a county contiguous to the judicial district, and who wish to be appointed to mediate cases in which the parties do not select a mediator must annually so advise the Trial Court Coordinator by letter between March 1 and May 1 of each year, for the upcoming Fiscal Year beginning July 1.

6.0 MOTIONS AND NON-JURY MATTERS

6.1 Counsel may request the scheduling of non-jury civil matters by completing a Calendar Request form, attached hereto in Appendix A; submitting it to the Trial Court Coordinator, and sending it to all other parties.

6.2 Motions may be calendared for a session of court upon the filing of a written request to calendar, attached hereto in Appendix A, with the Clerk of Superior Court and notification by faxed copy of request to the Trial Court Coordinator. Notice of hearing of motion must be given to all opposing parties as required by the Rules of Civil Procedure. If a written request to calendar a motion is not received prior to the time the final calendar is posted, a supplemental calendar for those motions will be published and posted online, provided the calendar request is received by the third Friday preceding the week of court requested. Motions may be calendared by the Senior Resident Judge and/or Trial Court Coordinator on their own initiative in order to ensure timely case management. Distribution of supplemental motion calendars shall be made by posting on the Internet at www.nccourts.org and notification by postcard as hereinafter described in Rule 9.1, no later than fourteen days before the term begins.

6.3 Motions will generally be calendared for 10:00 a.m. on Monday at a regularly scheduled civil priority term of court. However, upon request, or in the discretion of the Senior Resident Judge or Trial Court Coordinator, motions may be calendared during a criminal priority session with the time of hearing to be set at the end of the criminal docket or at a time to be determined by the presiding judge that will not interfere with the criminal court schedule. Motions may also be calendared by the Trial Court Coordinator at any Administrative Session as scheduled by the Senior Resident Superior Court Judge.

6.4 Motions filed with the Clerk of Superior Court of a county within the 23rd Judicial District may be scheduled for hearing in any county in the district in accordance with G. S. 1A-1, Rule 7(b)(4) and as deemed necessary by the Trial Court Coordinator.

6.5 A Calendar Request must be submitted for each motion filed with the Court, including motions contained within other pleadings and preliminary injunctions and other motions scheduled by a Superior Court Judge. Any motion filed is presumed to be ready for hearing.

6.6 No Motion may be calendared until it has been filed.

6.7 Any Calendar Request for motions filed within ten (10) days of the first day of the requested session shall be honored only if all parties and the Court consent or if the Court determines that justice requires that the motion be heard on less than ten (10) days notice.

6.8 Motions may be heard by consent out of term and in chambers by any presiding or resident judge, subject to the requirements of Rule 6 herein.

- 6.9** By agreement of all counsel and the Court, motions may be heard by way of telephone.
- 6.10** Scheduling within the term of court for motions on a published calendar shall be in the manner prescribed by and in the discretion of the presiding judge.
- 6.11** All uncontested motions shall be submitted to the Trial Court Coordinator for referral to a presiding or Senior Resident Judge for review and decision, as set forth in Rule 6 herein.
- 6.12** A party filing any one or more of the following motions must make a good faith effort to determine whether or not the motion will be opposed: (a) motion to amend a pleading or add a party; (b) motion to transfer to Superior Court; and (c) motion for pro hac vice admission. If the Motion is uncontested or consented to, the procedures set forth in Rule 7 shall apply.
- 6.13** Motions to withdraw as counsel must comply with Rule 16 of the Rules of Practice of the Superior and District Courts. The motion must set forth the name and address of substitute counsel, if known, and the current mailing address of the party from whom representation is being withdrawn. No judicial action will be taken on a motion to withdraw as counsel that does not contain the consent of the client or a certificate of service of the motion on the client.
- 6.14** Motions for Pro Hac Vice Admission must include a statement under oath that the statutorily required fee has been paid.
- 6.15** If a party responding to a complaint, counterclaim, cross-claim, or third-party complaint does not file Answer but instead files a dispositive motion, said moving party must immediately schedule the motion for hearing. A DISPOSITIVE MOTION ON WHICH A HEARING IS NOT REQUESTED BY THE MOVANT WITHIN 30 DAYS OF THE FILING WILL BE DEEMED WAIVED AND DENIED WITHOUT FURTHER NOTICE.
- 6.16** Motions shall be filed and scheduled promptly. Delays in scheduling motions for hearing, particularly after a trial date has been set, may be grounds for denial of any motion which will delay trial. Failure to schedule a motion for hearing may result in the motion being denied or deemed withdrawn without a hearing or in the imposition of sanctions such as, *inter alia*, limiting or prohibiting discovery. Any motion filed after a trial date has been set shall include the date of trial in the motion.
- 6.17** When a filed motion no longer requires a hearing, the party that filed the motion shall file a notice withdrawing said motion. If the motion has been calendared, the movant shall immediately notify the Trial Court Coordinator.

6.18 Motions to add parties and to amend pleadings shall be filed promptly so as not to delay scheduling a case for trial. Once a case is set for trial, all Motions to Amend the Pleadings or to Add Parties will be heard by the Senior Resident Superior Court Judge.

6.19 When a party has been served and has not filed answer or otherwise responded, the party seeking relief shall seek entry of default and default judgment promptly, but in no event longer than four months from service. Failure to so act may result in dismissal for failure to prosecute without notice of counsel for the plaintiff.

6.20 Motions to Transfer Cases from District Court to Superior Court: When a motion to transfer a District Court civil case to the Superior Court Division is filed, the attorney for the moving party or moving party appearing pro se, shall immediately notify the Trial Court Coordinator of the filing of the motion by furnishing her with a copy of said motion. The motion to transfer shall be submitted to the Senior Resident Superior Court Judge who shall rule on the motion and notify the attorneys and/or pro se party accordingly. ANY MOTION TO TRANSFER TO SUPERIOR COURT THAT IS NOT BROUGHT TO THE ATTENTION OF THE TRIAL COURT COORDINATOR IN SUCH MANNER WITHIN 30 DAYS FROM THE DATE IT IS FILED WITH THE CLERK SHALL BE DEEMED WAIVED AND DENIED WITHOUT FURTHER NOTICE.

7.0 OFF CALENDAR MATTERS: CONSENT, UNCONTESTED, AND PURPORTED EMERGENCIES

7.1 All consent or uncontested matters requiring judicial action or judicial approval and all matters an attorney believes require expedited or emergency hearing shall be submitted to the Trial Court Coordinator for scheduling and for assignment to the Senior Resident Superior Court Judge or presiding judge. Attorneys and litigants may not submit matters directly to a judge for ruling or approval.

7.2 Counsel filing uncontested or consent motions shall so state in the motion and shall include with the filing a proposed Order which shall recite that the motion is consented to or otherwise unopposed. Signatures on the proposed Order are not required, except that the signature of a party is required before counsel representing that party can withdraw without a hearing.

7.3 If a party believes a matter requires expedited or emergency hearing, that party must make a written request for such a hearing to the Trial Court Coordinator, except for requests pursuant to Rule 4.3(vi) *supra*.

7.4 The Trial Court Coordinator is responsible for promptly submitting uncontested, consent, and purported emergency matters to a presiding judge or the Senior Resident Superior Court Judge and for working with that judge to resolve any scheduling issues therein arising. Typically such matters shall be resolved by the Senior Resident Superior Court Judge or presiding judges who have finished courtroom work for the week.

7.5 While the Trial Court Coordinator and the Court will make reasonable efforts to deal with uncontested and emergency matters promptly, counsel should be aware that judges have courtroom duties and other office responsibilities that may take priority. Counsel should allow sufficient time for the Court to give these matters appropriate consideration and should make every effort not to wait until the last minute to seek the Court's assistance.

7.6 Modifications to Discovery Scheduling Orders, even if by consent, will be heard only by the Senior Resident Superior Court Judge. Motions for continuances by consent made before the first day of the session will be ruled on by the Trial Court Coordinator.

8.0 SCHEDULING CASES/CASES READY FOR TRIAL

8.1 A case is ready for trial when:

- (a) 180 days have elapsed since the filing of the complaint and no extension has been granted pursuant to Rule 4.2 or Rule 3.5; or
- (b) All counsel of record have filed with the Trial Court Coordinator a Certificate of Readiness for trial before the expiration of the 180 day period, or
- (c) For cases which have once before been filed and dismissed after Answer was filed pursuant to Rule 41, when 90 days have elapsed since the filing of the last required pleading and no extension of the readiness period has been granted pursuant to Rule 4.2 or Rule 3.5.

8.2 All counsel of record may at any time during the discovery period file a joint calendar request for trial for a specific trial calendar within six months of the date of the request. Such early calendar requests are favored by the Court and will be honored if they are filed within the discovery period, absent unusual circumstances.

8.3 **Trial Setting.** At the time a case is ordered to mediation, the Trial Court Coordinator will set a trial date during a term following the expiration of the period reserved for mediation. The trial date will appear on the Order to Mediated Settlement Form AOC-CV-811.

8.4 Cases that are continued will be rescheduled for trial by the Senior Resident Superior Court Judge or Trial Court Coordinator after consulting with all counsel and the new trial date will appear on the Order of Continuance Form AOC-CV-221. Cases not reached during the session for which they are scheduled will be rescheduled by the Trial Court Coordinator as set out in Rule **10.5**.

8.5 Cases not ordered to mediation, such as administrative appeals, for judicial review, cases which have been appealed and remanded, and any other cases that have not been assigned a trial date will be set for trial by the Trial Court Coordinator after

consultation with the attorneys of record. Notice of trial setting will be distributed to attorneys of record and pro se parties.

9.0 CALENDARS

9.1 The Trial Court Coordinator shall prepare a final trial calendar of cases for trial, for status review and motions at that session no later than four weeks prior to the first day of court. Distribution of the trial calendar shall be made by posting on the Internet at www.nccourts.org by the Trial Court Coordinator. The Clerk shall mail a postcard to each out-of-town attorney with one or more cases listed thereon and to each party not represented by an attorney if such party's address appears of record, and distribute a postcard to each in-town attorney of record's distribution folder maintained in the Clerk's office, notifying them that the calendar has been posted to the Internet. Each attorney and unrepresented party shall be responsible for seeing that his correct mailing address appears in the record.

(Note: <http://www1.aoc.state.nc.us/www/calendars/Civil.html> is the direct link for calendars.)

9.2 Calendars for administrative sessions shall be prepared and distributed in the manner as set out in Rule 9.1.

9.3 Attorneys shall proceed on the assumption that all cases on the Final Trial Calendar will be tried at the scheduled session unless resolved by consent order or dismissal.

9.4 When a case on a published calendar is settled, all attorneys of record **MUST** notify the Trial Court Coordinator within twenty-four (24) hours of the settlement and must, before the time the case is to be called for trial or hearing, complete and file with the Trial Court Coordinator a Case Settlement Report similar to that attached hereto as **Appendix B** which informs the Court of the way the case will be closed. Failure to file the Case Settlement Report may result in a court order establishing dates as the Court sees fit or in dismissal of all claims.

9.5 Failure to present such pleadings as are necessary to close a case reported as settled within thirty days within the time as indicated on the Report of Case Settlement may result in summary dismissal without further notice unless the Trial Court Coordinator is notified of the reason to justify an extension of time to file the final closing paperwork.

10.0 CALENDAR CALL AND WEEKS OF COURT

10.1 Superior Court will convene at 10:00 a.m. on Monday or the opening day of each session. Thereafter, court will convene on each day at 9:30 a.m. unless otherwise

directed by the presiding judge. The jury shall be summoned to report at 1:30 p.m. on Monday unless otherwise ordered by the presiding judge or the Senior Resident Judge. There will be a calendar call at 10:00 a.m. on Monday morning for each session of court. The first jury trial will begin at 2:00 p.m. on Monday. Non-jury trials are calendared for 10:00 a.m. Monday but are subject to be heard at any time during the session in the discretion of the presiding judge.

All motions not reached or pre-trial conferences not conducted during the morning session shall remain on a stand-by status and shall be disposed of at other times during the week in the discretion of the presiding judge.

10.2 TWO-WEEK SESSIONS SHALL UTILIZE ONE CALENDAR AND CASES NOT REACHED THE FIRST WEEK WILL BE CARRIED OVER TO THE SECOND WEEK WITHOUT ANY ADDITIONAL NOTICE.

10.3 Generally cases shall be called for trial in the order in which they appear on the Final Trial Calendar. However, after the first case is tried or resolved, cases may be called for trial in such order as appears appropriate to the presiding judge.

10.4 Counsel must have a Pre-Trial Order ready at the beginning of calendar call.

10.5 If a case is not reached for trial, then no later than Friday 3 p.m. of that week counsel/parties shall communicate with the Trial Court Coordinator concerning an appropriate week to reschedule the matter for trial, and the Senior Resident Superior Court Judge will thereafter enter an appropriate order rescheduling the case for trial.

11.0 PEREMPTORY OR PRIORITY SETTINGS

11.1 Request for a peremptory setting for cases involving persons who must travel long distances, 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, provided he shall give the parties at least four (4) weeks prior notice.

11.2 When the North Carolina General Statutes provide for a priority setting, all counsel are mutually and individually responsible for bringing this fact to the attention of the Trial Court Coordinator within 30 days.

11.3 Once a case has received a peremptory setting ordered by the Court with the consent of all parties and attorneys, it should rarely, if ever, be continued from the session at which it is ordered to trial.

11.4 When a case has been peremptorily set for trial with the consent of all parties and attorneys by the Senior Resident Judge, and the case is continued from the Session at

which it was ordered for trial for any reason other than (1) counsel being in trial in another case which carried over from the previous week; (2) a conflict with the North Carolina Supreme Court, North Carolina Court of Appeals, or a United States federal court; (3) serious medical emergency involving counsel or a party, or (4) not being reached due to trial of other cases higher on the calendar, then the case should not again be granted a priority setting. Rather, the case will be set, in the discretion of the Court, at any subsequent session, or upon a "Clean-Up" calendar, without any designated priority.

12.0 CONTINUANCE POLICY

12.1 Once a case has been set for trial, no party or attorney will thereafter schedule any vacation, elective medical procedure, secured leave, or business trip which would be advanced as a basis to seek a continuance. All parties and attorneys have a continuing duty to take affirmative steps to obtain the testimony by deposition or otherwise of any party or witness who becomes unavailable subsequent to the Order of the Court setting a trial date and have an affirmative duty to respect the Order of the Court setting the date for trial and not to undertake to schedule any matter or event which would conflict with or abort the Court Ordered trial date. Should any attorney choose to undertake employment in any matter or engage in any activity which will conflict with his or her availability for trial as ordered by the Court, another member of the firm must be ready, willing and able to carry on in the case without delay and appear for trial at the scheduled time.

12.2 Before the opening of court for the session in which the case is calendared, all applications for continuance shall be delivered to the office of the Senior Resident Judge and addressed to the attention of the Trial Court Coordinator. Motions for Continuance made prior to the opening of court for the session in which the case is calendared shall be ruled upon by the Trial Court Coordinator. Either party may appeal the ruling of the Trial Court Coordinator to the Senior Resident Judge. 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.

12.3 All applications for continuance shall be by written motion made on state form AOC-CV-221. A party seeking a continuance must make all reasonable efforts to confer with all other parties before seeking the Motion to Continue and the Motion must state explicitly the position of all other parties as to the Motion to Continue.

12.4 A copy of the completed form AOC-CV-221 must be served on all counsel of record and/or unrepresented parties before presentation of the motion to the Court. Distribution of the motion may be by US mail, facsimile transmission, hand delivery, or distribution by means of attorney distribution folders maintained in the courthouse facility, except that Motions filed the week immediately before trial must be served by hand, by facsimile, or electronically, or such other method as insures receipt on the day the motion is filed.

12.5 Motions to continue shall be filed as soon as the need for the continuance becomes clear.

12.6 Opposing counsel and/or unrepresented parties shall have a period of three (3) working days following completion of distribution to communicate in writing objections to the motion for continuance to the moving party and the office of the Senior Resident Superior Court Judge. Objections not raised within this time period are deemed waived. If the Motion is filed in the week immediately preceding trial, opposing counsel/parties may communicate the fact of an objection orally to the Trial Court Coordinator and shall file a written objection as soon as practicable.

12.7 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. In addition to other factors, the appropriate judicial official shall consider the following when deciding whether to grant or deny a motion for continuance.

- the age of the case;
- the status of the trial calendar for the week;
- the order in which the case appears on the trial calendar, including whether the case is preemptorily 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 before the scheduled trial date;
- the length of the continuance requested, if applicable;
- the position of opposing counsel;
- whether the parties themselves consent to the continuance;
- present or future inconvenience or unavailability of witnesses/parties; and
- any other matter that promotes the ends of justice.

Reasons that shall not be considered a valid basis for allowing a continuance motion include: first time scheduling of the case for trial; potential conflicting scheduling of other trials in other courts; failure to complete discovery; failure to obtain depositions or evidence needed for trial; whether counsel of record has received payment; and voluntarily switching counsel on the eve of trial.

12.8 When a case is continued, another trial date will be set and shall appear on form AOC-CV-221. When a presiding judge grants a motion for continuance, the parties shall immediately consult with the Trial Court Coordinator concerning available trial dates. The Senior Resident Judge will enter an Order rescheduling the case for trial within three

days of the date the case was continued. Parties who were first for trial and whose case is continued should not expect to receive another first setting.

NOTE: Alleghany County has only two regularly scheduled civil priority Superior Court sessions each year, Ashe County has three civil priority sessions and Yadkin County has four. One continuance means a delay of several months in these counties; therefore, no continuances will be granted by reason of conflicts in other courts, except as set out by statute or rule, nor shall any case be continued by reason of a personal conflict, except under extraordinary circumstances. Attorneys who practice in these counties are requested to take these facts into consideration when planning vacations for which they expect secured leave.

13.0 BANKRUPTCY

13.1 When a defendant files bankruptcy while his/her/its case is pending, the defendant or, if represented, counsel for the defendant shall immediately provide a certified copy of the bankruptcy filing to the Trial Court Coordinator and to the Clerk; upon receipt, plaintiff or plaintiff's counsel shall insure the Trial Court Coordinator has a copy. 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 of stay of proceeding from the United States Bankruptcy Court having jurisdiction.

13.2 The Trial Court Coordinator will refer the case to the Senior Resident Judge for evaluation of whether execution of an injunction/stay is appropriate.

13.3 Cases in which a defendant is in bankruptcy ordinarily will be placed on inactive status and the file closed. Upon completion of the bankruptcy proceedings or the lifting of the stay, any party may seek to reopen the case by filing an appropriate motion.

14.0 EXPEDITED TRIAL PROCEDURE

14.1 Parties are encouraged to consider and use an expedited or alternative trial procedure in appropriate cases. A form order is attached hereto at **Appendix C** for the consideration of litigants, but parties are not limited to this form order. The Court will entertain other proposals which are designed to reduce delays and speed resolution of cases. All such requests shall be heard by the Senior Resident Superior Court Judge or his designee.

15.0 INACTIVE STATUS

15.1 Cases which have been ordered to or are undergoing binding arbitration; which have long-term issues which prevent final resolution; or which have other circumstances which prevent trial, may be placed on inactive status and closed by Order of the Senior

Resident Judge. Such cases may be reopened by the Senior Resident Judge upon motion of any party for good cause shown.

15.2 When a party to a lawsuit demands binding arbitration under an insurance policy, the attorney for the party (or the pro se litigant) making such demand shall notify the Trial Court Coordinator by written notice within thirty days of their decision to do so.

16.0 SANCTIONS

16.1 Should counsel or a pro se litigant fail to comply in good faith with any provision of these local rules, or the General Rules of Practice, the Court may, in its discretion, impose appropriate sanctions.

16.2 An order entered in substantial violation of these rules is subject to modification or vacation by the Senior Resident Judge without notice to the parties.

17.0 MISCELLANEOUS

17.1 Pro Hac Vice. Motions to be admitted Pro Hac Vice must be accompanied by the fee required by the North Carolina General Statutes. Motions not accompanied by the fee will be denied without notice. Should a motion not accompanied by the fee be inadvertently allowed, the Order allowing the admission will be revoked without notice.

17.2 Removal to Federal Court. When a party removes a case to Federal Court, counsel for that party shall contemporaneously provide a copy of the pleading to that effect to the Trial Court Coordinator.

17.3 Cases Initiated Other Than By Complaint. Upon initiating any matter in civil Superior Court by the filing of any pleading which is not a Complaint, (i.e, Will Caveat, Administrative Appeal, Certiorari), said party/counsel shall provide a copy of this pleading to the Trial Court Coordinator. Upon refileing a case previously dismissed pursuant to Rule 41, the plaintiff shall provide a copy of the new complaint to the Trial Court Coordinator, along with a reference to the first case number.

17.4 Notice of Appearance. Any attorney filing a Notice of Appearance, Substitution of Counsel, or similar document, shall provide a copy to the Trial Court Coordinator.

17.5 Service. A party filing a lawsuit is expected to promptly undertake reasonable efforts to obtain service. If personal service is not obtained within five months after undertaking reasonable efforts, the party shall seek service by publication. Failure to undertake reasonable efforts to obtain service or to keep summonses alive may result in dismissal for failure to prosecute.

17.6 Rule 2.1 Requests. All requests for complex case designation pursuant to Rule 2.1 of the General Rules of Practice shall be determined by the Senior Resident Judge or his designee. Any party filing a pleading with the Business Court asserting jurisdiction there shall provide a copy to the Trial Court Coordinator.

17.7 Remands from Appellate Courts. Upon remand of a case from an appellate court, the prevailing party before the appellate court shall notify the Trial Court Coordinator of the remand within thirty days.

17.8 Matters for the Senior Resident Judge. To Summarize, matters which must be heard by the Senior Resident Judge include:

- (a) Discovery Scheduling Orders contemplating trial more than 24 months after the first Answer is filed (Rule 3.5);
- (b) Amendments or changes to Discovery Scheduling Orders (Rule 4.5)
- (c) Violations of Rule 4.7(b)
- (d) Once a case is set for trial, all Motions to Amend the Pleadings or to Add Parties (Rule 6.18).
- (e) Motions to continue trials, except on the day of trial. (Rule 7.6, 12.2)
- (f) All matters concerning scheduling of trials, inactive orders, and mediation orders.
- (g) Rule 2.1 Recommendations (Rule 17.6)

17.9 Copies to Trial Court Coordinator. To Summarize, copies of the following pleadings must be delivered to the Trial Court Coordinator:

- (a) Discovery Scheduling Orders and amendments thereto (Rule 4.5)
- (b) Calendar Requests (Rule 6.2, 6.7)
- (c) Designation of Mediator or any pleading concerning mediation (Rule 5.3)
- (d) Certificate of Readiness for Trial (Rule 8.2)
- (e) Case Settlement Reports (Rule 9.4)
- (f) Certified Copies of Initial Bankruptcy Filings (Rule 13.1)
- (g) Removal to Federal Court Petitions (Rule 17.2)
- (h) Will Caveats, Petitions, Administrative Appeals, and any other pleading initiating a Superior Court case which is not a complaint (Rule 17.3)
- (i) Copies of complaints refiled cases dismissed per Rule 41 (Rule 17.3)
- (j) Notice of Appearance by Counsel, Substitution of Counsel, or other similar pleadings (Rule 17.4).
- (k) Pleadings seeking mandatory Business Court Jurisdiction (Rule 17.6)
- (l) Decisions remanding a case from an appellate court to the Superior Court (Rule 17.7)
- (m) Notice of Party Demanding Binding Arbitration (Rule 15.2)

Adopted this the _____ day of October, 2007.

Edgar B. Gregory
Senior Resident Superior Court Judge
500 Courthouse Drive, Suite 2064
Wilkesboro, NC 28697
Telephone No.: 336-667-4706
Fax No.: 336-667-1067