

**Civil and Criminal Superior Court
Local Rules And Calendaring Procedures
for the First Judicial District**

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Civil and Criminal Superior Court Local Rules And Calendaring Procedures for the First Judicial District

Camden, Chowan, Currituck, Dare, Gates, Pasquotank and Perquimans Counties

Effective July 1, 1998

Rule 1: AUTHORITY AND PURPOSE

1.1 These rules are adopted pursuant to the provisions of NCGS 1A-1, Rule 40, Rule 2 and Rule 5 of the General Rules of Practice for the Superior and District Courts and may be cited as Civil and Criminal Superior Court Rules, First District.

1.2 The purpose of these rules is to provide for the orderly, fair and prompt disposition of all civil matters pending in the Superior Court Division and to provide the Continuance Policy for Criminal Superior Court of the First Judicial District. These rules shall always be construed and enforced so as to avoid technical delay, maximize efficiency, minimize inconvenience and promote justice.

Rule 2. DEFINITIONS

2.1 **TRIAL COURT ADMINISTRATOR:** The Trial Court Administrator is the person holding the position of "Judicial Assistant: assigned to the office of the Senior Resident Superior Court Judge for the District; such person shall be responsible for the day to day administration of these rules.

2.2 **JURY CASE:** This term shall include all civil cases where a litigant has requested trial by jury.

2.3 **NON-JURY CASE:** This term shall include all civil cases where no litigant has requested a jury trial or the proceeding is the type of action where no jury is required.

2.4 **CLERK:** The term Clerk shall include the Deputy or Assistant Clerk of Court assigned to oversee and manage the Civil Superior Court case files by the Clerk of Superior Court for the County.

2.5 **COUNSEL:** The term counsel shall include attorneys licensed or specially admitted to practice in North Carolina who represent a litigant; the term shall also include a *pro se* litigant who has elected self representation; it does not include an out of state attorney not authorized to appear in this State:

Rule 3. CASE TRACKING SYSTEM

3.1 The Trial Court Administrator will maintain a tracking system for all pending civil cases. The Clerks and counsel will assist in providing tracking information. In order to make the tracking process efficient and effective, early intervention in all cases will be practiced.

3.2 **DUTIES OF COUNSEL:** When a civil action is initiated, counsel filing the case must deliver a completed civil action cover sheet to the Clerk under Rule 5(b) of the General Rules of Practice for the Superior and District Courts. All papers presented to the Clerk for filing shall be accompanied by a completed cover sheet.

3.3 **DUTIES OF TRIAL COURT ADMINISTRATOR:** The Trial Court Administrator will maintain accurate information regarding the status of each pending civil action within the district; such records will be maintained in the form of electronic data. The Trial Court Administrator will confer as necessary with the Senior Resident Judge regarding the appropriate action to be taken and exercise the authority set out in these Rules as directed by the Senior Resident Judge.

Rule 4. CASE MANAGEMENT

4.1 **PROCESS NOT SERVED:** If there has been no service of process or extension of time under G.S. 1A-1, Rule 4(b) issued within the last ninety (90) days, the Trial Court Administrator will prepare an order of discontinuance to transfer the case to an inactive status; the case may be reactivated when service of process has been effected.

4.2 **DEFAULT PROCEDURE:** If there has been service on a party, but no answer or other responsive pleading has been filed and the time for pleading has expired, the Trial Court Administrator will schedule the case for default hearing if necessary. If counsel has not obtained timely entry of default from the Clerk, the case may be dismissed for failure to prosecute.

4.3 **JURY CASES:** A jury case will be presumed ready for trial at the next scheduled civil session for the county of venue when the Trial Court Administrator determines that at least one of the following has occurred:

- A. 150 days have passed since the filing of the last required pleading and no order has been entered extending discovery time pursuant to Rule 5.2 or 5.3 below;
- B. The period of time for discovery pursuant to court order under Rule 5, below, has expired;
- C. The case has been remanded for a new non-jury trial by the Appellate Division;
- D. The case has been transferred to the civil issue docket for non-jury trial on appeal from a ruling by the Clerk of Superior Court;
- E. The case has been transferred to Superior Court for non-jury trial from the District Court Division and 150 days have passed since the filing of the last

required pleading and no order has been entered extending discovery time pursuant to Rule 5.2 or 5.3;

- F. The case is the type of action or special proceeding entitled to a priority hearing by operation of law, *e.g.*, a foreclosure proceeding;
- G. All counsel have filed a calendar request with the Trial Court Administrator seeking placement on a non-jury trial calendar prior to the expiration of the 150 day period.

4.5 ADMINISTRATIVE DISCONTINUANCE: Any case shall be subject to an administrative discontinuance at any time for the following reasons:

- A. Bankruptcy proceedings have been filed and a “stay” order entered (a copy of the stay order must be promptly provided to the Trial Court Administrator);
- B. The case has been removed to the United States District Court;
- C. The case is on appeal to the Appellate Division;
- D. Plaintiff’s counsel certified in writing that the defendant is making regular, timely installment payments upon an indebtedness which is the subject of the action; provided, an administrative discontinuance for installment payments may not exceed twenty-four (24) months;

4.6 EXTENSIONS OF TIME: The time for answering a complaint, enlarging time periods for responding to discovery requests or filing any other pleading shall not be extended for more than thirty (30) days by any Clerk whether consented to by counsel or otherwise [See G.S. 1A-1, Rule 6(b)]. Requests for extension of time to file pleadings greater than the single thirty (3) day period of time where the failure to act was the result of excusable neglect shall only be allowed by order of a judge.

4.7 PRETRIAL CONFERENCES AND ORDERS: An informal pretrial conference between counsel should be held in every case. A pretrial order signed and approved by all counsel should be delivered to the Trial Court Administrator no less than twenty-one (21) days prior to the session of court at which the matter has been scheduled for trial. If counsel cannot agree upon a pretrial order, plaintiff’s attorney must immediately notify the Trial Court Administrator who will arrange a formal pretrial conference between a Judge and counsel. No case will be called for trial unless a pretrial order has been filed and approved by the Court.

Rule 5. DISCOVERY PROCEDURES

5.1 TIME LIMITS: Discovery pursuant to G.S. 1A-1, Article 5, shall be completed within 150 days of the filing of the last required pleading, unless extended by court order under Rule 5.2 or Rule 5.3 below.

5.2 DISCOVERY CONFERENCE AND CONSENT ORDERS: Counsel are encouraged to confer and agree upon a specific discovery schedule tailored to the particular

needs of the case and to submit a proposed consent discovery order to the Trial Court Administrator for approval by a Judge. If counsel can not agree upon a discovery plan, the Trial Court Administrator, on request, will schedule a discovery conference pursuant to the provisions of G.S. 1A-1, Rule 16 and Rule 26(f), to establish appropriate discovery deadlines by court order.

5.3 ADDITIONAL DISCOVERY: A request for an extension of time for additional discovery, following the expiration of a discovery time period established by Rule 5.1, above, or set by prior order of the Court, must be by motion containing a specific schedule showing when the additional discovery will be completed. Extensions of time for discovery which delay a scheduled trial will only be granted for good cause shown and to avoid manifest injustice to a party. Counsel may request supplementation of prior discovery under G.S. 1A-1, Rule 26(e), but no scheduled trial will be continued to permit such a request. Counsel should always be mindful of their duty to voluntarily supplement prior discovery which is no longer complete or accurate.

5.4 FORMAT OF DISCOVERY PROCEDURES; Each time a particular discovery procedure is used, it shall be sequentially numbered (*i.e.*, “First Set,” “Second Set,” “First Request,” etc.) so that it will be distinguishable from a prior procedure. Counsel serving interrogatories or requests for admission shall leave sufficient space after each question for the response to be inserted. If the space provided is inadequate, answering counsel should respond on a separate sheet with the interrogatory or request stated immediately above the answer.

5.5 DEPOSITIONS FOR USE AT TRIAL: Depositions *de bene esse* shall not be regarded as being within the Rules applicable to discovery; provided, no scheduled trial will be continued to allow the taking of a deposition *de bene esse* without specific leave of court.

Rule 6. MOTION PROCEDURES

6.1 HEARING REQUEST: When counsel files a motion in a pending case, a copy of the Motion Cover Sheet required by Rule 5(b) must be sent by mail or fax to the Trial Court Administrator. The Trial Court Administrator shall add the requested motion to the next scheduled session of court. Such request must be filed with the Trial Court Administrator by the fourth Friday prior to such session.

6.2 Chamber hearings and conferences, approval of settlements, sale confirmations, and temporary restraining orders may be scheduled by counsel contacting the Trial Court Administrator; generally, settlements involving minor children will only be approved in open court.

Rule 7. TRIAL CALENDARS

7.1 FINAL CALENDAR: All final trial calendars will be prepared by the Trial Court Administrator. A master copy of each trial calendar will be forwarded to the Clerk of the county where the session will be held who shall distribute copies to all counsel residing in that county. The Trial Court Administrator shall distribute copies to all non-resident counsel. After the final calendar has been distributed **NO MATTER WILL BE ADDED** except for minor settlements or temporary restraining orders unless ordered by a judge.

7.2 JURY TRIAL SESSIONS: Civil jury trial sessions shall be as scheduled on the Calendar of Courts published by the Administrative Office of the Courts. All requests for additional special jury sessions should be directed to the Trial Court Administrator. Whenever specific arrangements for special sessions have been approved by the Chief Justice, the Trial Court Administrator will immediately notify counsel and court personnel. At jury trial sessions jury matters will have precedence unless otherwise provided by law.

7.3 CALENDAR NOTICE: It is the intent of these Rules that calendaring be a continuous process of establishing a trial date for a case whenever the prerequisites of Rules 4.3 or 4.4 have been met. Not tentative calendar will be published. The final calendar prepared under Rule 7.1 will be published at least three (3) weeks before the scheduled session. Counsel may request a setting at a particular session in order to accommodate the schedule of counsel, clients or witnesses, but such request must be filed with the Trial Court Administrator not later than the fourth Friday prior to such session

7.4 PRIORITY OF CASES/PEREMPTORY SETTINGS: When a statute, rule or order of the Senior Resident Judge specifies a special setting the final calendar will so indicate. Other cases will be placed on the calendar in a generally chronological order as determined by the Trial Court Administrator, giving due consideration to the efficient use of time. Consolidated cases will be listed together as one trial matter. Generally these Rules preclude preemptory settings; however, counsel should always notify the Trial Court Administrator of special needs. Cases may be set for specific times throughout a session.

MOTIONS FOR CONTINUANCE

7.5 APPROPRIATE JUDICIAL OFFICIAL: Prior to the opening of court for the session in which the case is calendared, all applications for continuance shall be made to the Senior Resident Superior Court Judge of the judicial district in which the case is filed, or his designee. Following the opening of court for the session in which the case is calendared, any application for continuance shall be made to the presiding judge of the court in which the case is calendared.

7.6 FORM OF CONTINUANCE MOTION: All applications for continuance shall be by written motion made on state form AOC-CV-221.

7.7 NOTIFICATION OF OPPOSING COUNSEL/UNREPRESENTED PARTIES: A copy of the completed AOC-CV-221 must be distributed to all counsel of record and/or

unrepresented parties prior to presentation of the motion to the appropriate judicial official. Distribution of the motion may be by US mail, facsimile transmission, hand delivery, or distribution by means of attorney distribution boxes maintained in the courthouse facility.

7.8 OBJECTIONS TO MOTION FOR CONTINUANCE: Opposing counsel and/or unrepresented parties shall have a period of three (3) working days following completion of distribution to communicate, by any means, objections to the motion for continuance to the moving party and the office of the Senior Resident Superior Court Judge or the office of his designee. Objections not raised within this time period are deemed waived.

7.9 EVALUATION OF MOTIONS FOR CONTINUANCE: CONTINUANCE REQUESTS ARE PRESUMPTIVELY DISFAVOAED. However, when compelling reasons for continuance are presented which would affect the fundamental fairness of the trial process or when a continuance clearly is in the interest of justice, a continuance may be granted in the exercise of judicial discretion to further the best interest of the fair administration of justice.

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

- the age of the case
- the status of the trial calendar for the week;
- the order in which the case appears on the trial calendar, including whether the case is peremptorily scheduled;
- the number of previous continuances;
- the extent to which counsel had input into the scheduling of the trial date;
- the due diligence of counsel in promptly filing a motion for continuance as soon as practicable;
- whether the reason for continuance is a short lived event which could resolve prior to the scheduled trial date;
- the length of the continuance requested, if applicable;
- the position of opposing counsel;
- whether the parties themselves consent to the continuance;
- present or future inconvenience or unavailability of witnesses/parties; and
- any other matter that promotes the ends of justice.

Reasons that shall not be considered valid bases for allowing a continuance motion include first time scheduling of the case for trial, potential conflicting scheduling of other trials in other courts and whether counsel of record has received payment.

7.10 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 after receiving scheduling input from all counsel.

7.11 **CASES NOT REACHED:** A case which is not disposed of during the session to which it has been assigned will be re-scheduled by the Trial Court Administrator.

7.12. **SETTLED CASES:** When a settlement is reached before a trial date, counsel for plaintiff must immediately notify the Trial Court Administrator. The Trial Court Administrator will attempt to notify counsel of settlements, but counsel must verify their position on the calendar by maintaining contact with the Trial Court Administrator. If a settlement is announced for the first time at trial, counsel must immediately file a written agreement of the settlement signed by counsel, or file a voluntary dismissal, or dictate the terms of the settlement to the court reporter pending preparation of a voluntary dismissal or consent order. If no final disposition of a case announced as settled has been filed within forty-five (45) days, an order will be entered dismissing the case with prejudice for failure to prosecute unless good cause to the contrary is shown.

MOTIONS FOR CONTINUANCE – CRIMINAL CASES

7.13 **APPROPRIATE JUDICIAL OFFICIAL:** Prior to the opening of court for the session in which the case is calendared, all applications for continuance shall be made to the Senior Resident Superior Court Judge of the judicial district in which the case is filed, or his designee. Following the opening of court for the session in which the case is calendared, any application for continuance shall be made to the presiding judge of the court in which the case is calendared.

7.14 **FORM OF MOTION:** All applications for continuance shall be by written motion on the proper state form.

7.15 **NOTIFICATION OF OPPOSING COUNSEL/UNREPRESENTED PARTIES:** A copy of the completed form must be distributed to all counsel of record and/or unrepresented parties prior to presentation of the motion to the appropriate judicial official. Distribution of the motion may be by US mail, facsimile transmission, hand delivery, or distribution by means of attorney distribution boxes maintained in the courthouse facility.

If the motion is filed by defense counsel, the motion must be presented to the District Attorney prior to presentation to the appropriate judicial official.

7.16 **OBJECTIONS TO MOTION FOR CONTINUANCE:** The Senior Resident Superior Court Judge or his designee shall establish an appropriate method of obtaining information from all counsel concerning positions on the motion to continue.

If the District Attorney consents to the continuance and such consent is indicated by signature of the District Attorney on the continuance form, the continuance is allowed and the continuance form shall be filed in the court file. If no District Attorney signature appears on the continuance form, the District Attorney's opposition to the motion is presumed.

7.17 EVALUATION OF MOTIONS FOR CONTINUANCE: When compelling reasons from continuance are presented which would affect the fundamental fairness of the trial process or when a continuance clearly is in the interest of justice, a continuance may be granted in the exercise of judicial discretion to further the best interest of the fair administration of justice.

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

- the age of the case
- the pre-trial detention status of the defendant
- the status of the trial calendar for the week;
- the order in which the case is designated for trial, including whether the case has a priority designation;
- the number of previous continuances;
- the number of times the case has been designated for trial and not reached;
- the extent to which counsel had input into the scheduling of the trial date;
- the due diligence of counsel in promptly filing a motion for continuance as soon as practicable;
- whether the reason for continuance is a short lived event which could resolve prior to the scheduled trial date;
- the length of the continuance requested, if applicable;
- the position of opposing counsel;
- whether the motion has been considered by another judge (Senior Resident or designee) on the same grounds;
- 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 valid bases for allowing a continuance motion include first time scheduling of the case for trial, potential conflicting scheduling of other trials in other courts and whether counsel of record has received payment.

Rule 8. ADMINISTRATIVE WEEK

8.1 All civil cases, except those on appeal, pending more than ninety (90) days shall be listed in numerical order on the calendar for this session. This calendar will be called and cases will be set for trial or motion hearing. If a case cannot be set for trial or hearing, inquiry will be made and appropriate orders entered to prepare it for trial. This calendar shall be published on the 3rd Friday before the session by the Trial Court Administrator.

Entered on this 8th day of April, 1998.

J. Richard Parker
Senior Resident Superior Court Judge

CIVIL ACTION COVER SHEET

(Calendar Rule 3)

STATE OF NORTH CAROLINA
COUNTY OF _____

GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO.: _____

DATE FILED: _____

Jury Requested **Non-Jury**

1. List all parties in the action:
Plaintiff/Petitioner

Defendant/Respondent

vs.

2. Type of Pleading

- Complaint
- Reply
- Third Party Complaint

Answer

Contains:

- Counterclaim
- Crossclaim

3. Are any motions requiring a court hearing contained in the above pleadings?

- Yes No If yes, please specify _____
- _____
- _____
- _____

4. Nature of Action:

- Motor Vehicle Negligence
- Medical Malpractice
- Products Liability
- Other Negligence
- Contract
- Suit on Account or Note
- Other (specify) _____

- Real Property
- Condemnation
- Premises Liability
- Declaratory Judgment
- Administrative Appeal
- Will Caveat

5. Companion case to File # _____ CVS _____, _____ County

6. Name of Attorney: _____

Address: _____

Telephone: _____

Counsel for: Plaintiff
 Defendant

Third Party Defendant

Appendix "A"

STATE OF NORTH CAROLINA
_____ COUNTY

GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. _____

Plaintiff(s)
vs.

NOTICE OF MOTION
(Calendar Rule 6.1)

Defendant(s)

The undersigned has this date filed and served a motion: *(check type)*

- | | |
|--|--|
| <input type="checkbox"/> To withdraw as attorney. | <input type="checkbox"/> For a protective order. |
| <input type="checkbox"/> To dismiss under Rule 12. | <input type="checkbox"/> For sanctions under Rule 11. |
| <input type="checkbox"/> To amend the _____. | <input type="checkbox"/> To limit or exclude evidence. |
| <input type="checkbox"/> To compel discovery. | <input type="checkbox"/> To continue. |
| <input type="checkbox"/> For sanctions under Rule 37. | <input type="checkbox"/> For a discovery schedule. |
| <input type="checkbox"/> For summary judgment under Rule 56. | |
| <input type="checkbox"/> Other _____ | |

I estimate it will take _____ (hrs) _____ - (mins) to hear all pending motions in this cause.

- A court reporter will not be required. A court reporter will be required.
- This motion should only be heard by the presiding trial Judge.
- I request that this motion be set for hearing on _____ beginning at _____.
- I request that this motion only be heard in _____ County because _____

- I object to hearing this motion in any county other than the county of venue

This _____ day of _____, 2____.

Attorney for _____

Address: _____

Telephone No. _____

Copy sent to opposing attorney.

Name, Address and Telephone No.

Appendix "B"

FIRST JUDICIAL DISTRICT

Local Rules for Court Appointment of Mediators

1. All communications concerning mediated settlement conferences in the First Judicial District should be addressed to Ms. Judy Stallings, Judicial Assistant, Post Office Box 1761, Manteo, NC, 27954, telephone number (262) 473-1998. This Order is entered for the purpose of informing and directing members of the Bar and parties in litigation of the civil procedure to be followed in equitable distribution hearings and trials in the First Judicial District.
2. The Judicial Assistant shall maintain a list of certified mediators who have indicated a willingness to serve in the First District
3. Appointments shall be made from the list of certified mediators by simply going down the list in order. Two or three cases may be assigned to a mediator at one time.
4. The Senior Resident Superior Court Judge, when in his opinion a particular case has a special need for a particular mediator, may vary from the regular order and appoint a particular mediator for a particular case.
5. All procedures regarding mediated settlement conferences shall comply with the Rules set forth in the "Rules Governing Mediated Settlement Conferences" adopted September 17, 1995, by the North Carolina Supreme Court, which rules are attached.

Adopted this day the 19th day of December, 1995.

Richard Parker
Senior Resident Superior Court Judge