

**CASE MANAGEMENT PLAN AND
LOCAL RULES OF CIVIL PROCEDURE FOR
THE SUPERIOR COURT 27B JUDICIAL DISTRICT
CLEVELAND COUNTY & LINCOLN COUNTY**

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CLERK OF SUPERIOR COURT

PURSUANT to the authority granted to the Senior Resident Superior Court Judge by the North Carolina General Statutes and the North Carolina Rules of Civil Procedure, and General Rules of Practice, the following Local Rules of Civil Procedure are hereby established. All those having business in the Superior Courts of 27B Judicial District are responsible for knowledge of and compliance with the North Carolina Rules of Civil Procedure, General Rules of Practice and Local Rules. These Rules shall be interpreted to be consistent with all rules promulgated by the North Carolina Supreme Court.

Rule 1. GENERAL RULES

- 1.1 The purpose of these Rules is to institute a Case Management Plan for the Superior Court that will provide for the orderly, prompt, and just disposition of civil matters. These Rules are promulgated pursuant to GS 1A-1, Rule 40 (a) of the North Carolina Rules of Civil Procedure and Rule 2(a) of the General Rules of Practice.
- 1.2 For the purpose of these Rules, except where specified the term Court shall be the Senior Resident Superior Court Judge.
- 1.3 These Rules and all amendments hereafter shall be filed with the Clerk of Superior Court for Cleveland County and Lincoln County and published on the State Web site (www.nccourts.org).
- 1.4 These Rules are not complete in every detail and will not cover every situation that may arise. In the event that these rules do not cover a specific matter, the Trial Court Administrator is authorized to act in his or her discretion, in consultation with the Senior Resident Superior Court Judge or Presiding Judge.
- 1.5 Attorneys shall file a written Notice of Appearance with the Clerk of Superior Court immediately after agreeing to represent a party in a civil matter, and shall serve a copy upon each attorney of record or un-represented party, and the TCC, as prescribed in the N.C. Rules. The notice shall indicate the name(s) of a specific attorney(s), not merely the name of a law firm, attorneys who file suit for a plaintiff or who file a timely answer or other responsive pleading for a defendant need not file a Notice of Appearance. However, if a plaintiff or defendant adds or changes attorneys, the additional or new attorney shall file said notice. No trial will be continued if an attorney does not receive a calendar due to failure to comply with this rule.
- 1.6 Pursuant to Rule 12(a)(1) and Rule 6(b) of the N.C. Rules, no attorney, party appearing *pro se*, or Clerk of Superior Court shall consent to an extension of time to file answer or other responsive pleading beyond the thirty (30) additional days allowed by Rule 6(b) of the Rules of Civil Procedure. Application for extension of time beyond the first additional thirty (30) days shall be made to the Senior Resident Superior Court Judge pursuant to the provisions of Rule 6(b).
- 1.7 All sessions of Superior Court shall be "mixed" with the priority to be determined by the Senior Resident Superior Court Judge. Trial Court shall convene on the first day at 10:00 a.m. Subsequent Trial Court days shall convene at 9:30 a.m.

- 1.8 The calendar for the disposition of civil cases in 27B Judicial District, Superior Court Division, shall be set and maintained by the Trial Court Coordinator (TCC) in accordance with these rules and under the supervision of the Senior Resident Superior Court Judge. The TCC office is located in the Cleveland County Courthouse; the mailing address is: 100 Justice Place, Shelby, NC 28150; the telephone number is: (704) 476-7878; the facsimile number is: (704) 476-7817; and the e-mail address is: kinsley.e.mashburn@nccourts.org.

Rule 2. READY CASES

- 2.1 The TCC shall establish and maintain a case tracking system pursuant to Rule 2c of the General Rules of Practice. This system shall be used to monitor the number, age, type, and procedural status of all pending cases and to provide the calendaring of said cases.
- 2.2 A case shall be considered ready to set for trial when the TCC determines the following:
- (a) Service has been perfected as to all parties, the time period for filing answer or other responsive pleading has expired with regard to all parties and any applicable discovery period has expired;
 - (b) The case has been transferred by, or appealed from, the Clerk of Superior Court;
 - (c) The case has been remanded for trial by the Court of Appeals or Supreme Court;
 - (d) The case is entitled to priority by statute.
- 2.3 Counsel for the appellant shall notify the TCC in writing of the transfer, appeal, remand or priority status of any case described in 2.2(b), 2.2(c), 2.2(d). Said notification shall include all names and addresses of affected parties or other counsel.
- 2.4 Upon filing of a caveat to a will, the Clerk of Superior Court shall contact the TCC to determine the next available date for the parties to appear in Court and align themselves. Notice of the proceeding shall be issued to all devisees, legatees and others as provided in GS 31-33. To the extent possible, the TCC shall give priority for calendaring purposes to caveat proceedings in which the parties have been aligned and are ready for trial.
- 2.5 The TCC shall place those cases determined to be ready for trial on trial calendars pursuant to Local Rule 3.

Rule 3. SCHEDULING ORDERS AND TRIAL CALENDARS

- 3.1 Medical malpractice actions shall be scheduled for discovery conference pursuant to the provisions of GS 1A-1, and Rule 26(f) of the North Carolina Rules of Civil Procedure. Discovery Orders prepared pursuant to Rule 26(f) may govern in place of the Scheduling Order provided for in Rule 3.1. Modifications of Discovery Orders prepared pursuant to Rule 26(f) shall be made in accordance with Local Rule 3.2. Counsel for the plaintiff shall send a copy of the Discovery Order to the TCC when the Order has been signed. Trial dates in these actions will be established upon the completion of the Mediated Settlement Conference.
- 3.2 The TCC shall publish a trial calendar for each session of Court for which cases are scheduled. Trial calendars shall be published no later than four weeks before the first day of each scheduled session.

- 3.3 A trial calendar is published on the date it is posted to the internet website address for the 27B Judicial District (www.nccourts.org).
- (a) Attorneys without Internet access shall notify the TCC in writing, and copies of trial calendars will be published by regular mail or by being placed in the attorney's courthouse mailbox.
 - (b) Trial calendars will be mailed to pro se litigants, unless those individuals notify the TCC that they have Internet access. Each pro se litigant shall be responsible for keeping the Clerk's office advised of a current mailing address. Any attorney withdrawing from the representation of a client shall, as a condition precedent to being allowed to withdraw, provide in the Motion to Withdraw and proposed order a statement of the current mailing address of the client from whose representation the attorney is withdrawing.
 - (c) Trial calendars will be updated giving the current status of all cases appearing on the final trial calendar on the AOC internet website through the end of the last business day preceding the beginning of the session of court. Paper copies will not be provided.
- 3.4 Cases defined as preemptory in accordance with Local Rule 3.1 or cases having statutory priority shall appear at the top of each trial calendar. To the extent possible, the TCC shall set other cases so that the oldest-numbered cases from the calendars will appear as the first cases, after those designated as preemptory or given statutory priority. Cases previously calendared will also be given priority.
- 3.5 Though older cases will generally receive priority on a calendar, counsel in newer cases may request that the TCC include a case on a trial calendar, subject to the following:
- (a) Counsel making the request shall contact the TCC by telephone to determine the available and feasible future trial dates;
 - (b) The telephone request shall be followed by a written request to the TCC including the proposed trial date;
 - (c) Before granting a request, the TCC may consider the number and status of older cases in which the attorney making the request is involved, and whether other counsel or non-represented parties have reasonable objections to the proposed trial date;
 - (d) If a case is placed on a trial calendar upon request of a party and is subsequently continued at the request of or with the consent of, the same party, the case will not be eligible for further consideration for an expedited setting, except if the continuance was requested because of unforeseeable circumstances.
- 3.6 Requests for preemptory setting shall be made to the TCC, specifically stating the reason for the request, with copies to all counsel of record.
- 3.7 Preemptory setting shall be granted in the discretion of the TCC with the approval of the Senior Resident Superior Court Judge, but only for good and compelling reasons. Among the reasons which may warrant a preemptory setting are:
- (a) It is impossible or impractical for a witness or litigant to appear for the trial except by air travel. In cases where litigants or witness live close enough to travel by land to the trial, the Court will not ordinarily grant preemptory settings.
 - (b) The case involves numerous expert witnesses.
 - (c) Severe adverse economic consequences will result from delay of the trial.

- (d) The case has been repeatedly scheduled for trial without being reached.
- (e) The case is more than two years of age.
- (f) Any other extraordinary reasons requiring a prompt resolution of the case.

- 3.8 When an attorney is notified to appear before the Court, the attorney must, consistent with ethical requirements, appear or have a partner, associate, or another attorney familiar with the case present.
- 3.9 Any case listed on a published trial calendar is subject to dismissal for failure to prosecute if, at the time it is called for trial, the attorneys (or the parties themselves, if not represented by counsel) are not present or ready to proceed. All cases calendared shall be ready for trial at any time during the session.
- 3.10 To achieve a balanced docket, the TCC shall re-calendar cases "not reached" or continued by the Court to future trial sessions based upon calendar availability. Counsel shall promptly contact the TCC to obtain the date of the next setting and to advise the TCC of any future conflicts.

Rule 4. PRE-TRIAL CONFERENCES

- 4.1 Pursuant to Rule 7 of the General Rules of Practice, there shall be a pre-trial conference for every medical malpractice case, unless the Court orders otherwise.
- 4.2 The pre-trial conference shall be held at any civil session preceding the trial date. At the pre-trial conference the parties shall provide a pre-trial order or memorandum of order which shall contain the following information:
- (a) A list identifying all exhibits the party may offer at trial. All exhibits shall be numbered in accordance with the exhibit list. Photocopies of all exhibits shall be attached to the order or memorandum of order.
 - (b) A list of witnesses, organized in the order to be called to testify on the trial date. If a witness will be offered as an expert, the witness' specific area of expertise shall be stated along with a brief statement of the witness' qualifications.
 - (c) A list of issues each party contends should be submitted to the jury.
- 4.3 At the beginning of the trial, counsel shall provide the courtroom clerk a list of all exhibits with sequential numbers as listed in the pre-trial order.
- 4.4 Prior to commencement of trial, copies of all exhibits and documents shall be made to provide a set for the judge, courtroom clerk, opposing counsel, and each juror.
- 4.5 Counsel may request to dispense with or to limit the scope of the pre-trial conference order by submitting a motion to the TCC more than 21 days prior to the trial date.
- 4.6 Any party failing to comply with any provision of this rule shall be subject to sanctions in the discretion of the Senior Resident Superior Court Judge or the Presiding Trial Judge, including exclusion from trial of any unidentified witness or document.

Rule 5. TIME STANDARDS

- 5.1 Absent exigent circumstances, cases must be tried or disposed of within the following deadlines: 90% within twelve (12) months, 98% within eighteen (18) months, and 100% within twenty-four (24) months from the point of filing.

Rule 6. ALTERNATIVE DISPUTE RESOLUTION

- 6.1 The TCC is specifically assigned the responsibility of managing the Alternative Dispute Resolution (ADR) process, including establishment of deadlines, insuring adherence to those deadlines and issuing appropriate documents in a timely manner. The TCC is authorized to affix the signature of the Senior Resident Superior Court Judge to all documents related to Alternative Dispute Resolution.
- 6.2 All parties to civil cases, except matters exempted by GS 7A-38, are required to participate in one of the forms of ADR, which shall be conducted pursuant to Rules of the North Carolina Supreme Court implementing Statewide Mediated Settlement Conferences (hereafter called Mediation Rules).
- 6.3 The original of all ADR forms, all motions, the Report of Mediator/Neutral and any other related documents shall be sent directly to the TCC for review and processing, after which the TCC will file the documents with the Clerk of Superior Court.
- 6.4 The following Local Rules shall supplement the Mediation Rules:
- (a) Motion to Dispense with Mediated Settlement Conference. It is the policy of 27B Judicial District that ADR is an integral part of the progress of a civil case toward resolution, and a motion to dispense with ADR is generally disfavored. However, a party may move to dispense by submitting the original motion to the TCC and sending copies to all opposing attorneys or pro se parties. The motion shall list specific reasons for the relief sought. The non-moving party will be allowed seven (7) days from the date the TCC receives the motion to submit written objections and the grounds for said objections to the TCC. Thereafter, the TCC will issue an order granting or denying the motion to dispense. If a mediator/neutral is appointed by the Court before the filing of the motion to dispense, the parties will be ordered to compensate the mediator/neutral in the amount of the administrative fee in the event the motion is granted.
 - (b) Designation of Mediator/Neutral. Counsel for the plaintiff(s) will receive a Designation of Mediator/Neutral form with the Order for Mediated Settlement Conference (FormAOC-CV-811), and shall complete the appropriate section of the form and return the **original** to the TCC **within 21** days of the date of the order. The 21-day time period will not be tolled when a form is improperly sent to the Clerk of Superior Court or to the TCC at an improper address.
 - (c) Appointment of Mediator/Neutral by the Court. If the parties have been unable to agree on a mediator/neutral, or if the form is not returned **within** the time prescribed, the TCC shall appoint a mediator/neutral by selecting the next name on the appropriate list of certified mediators/neutrals. The TCC may depart from the general procedure in certain instances, such as the appointment of one mediator/neutral to multiple related cases, to appoint a newly certified mediator/neutral to a case, or to withhold a mediator/neutral from appointment pursuant to Rule 2(E) of the Mediation Rules.
 - (d) Mediator/Neutral Directory. A directory of mediators/neutrals certified in the State of North Carolina is available at the internet website of:
<http://www.nccourts.org/Citizens/Cprograms/MS/Mediators/Default.asp>.

- (e) The list of mediators/neutrals used for appointment in 27B Judicial District includes those who live within geographical proximity of at least one of the counties within the district. However, any certified mediator/neutral may be included on the list if he or she contacts the TCC annually in writing and requests inclusion, and if he or she acknowledges familiarity of the District's Local Rules and agrees to abide by them.
- (e) Report of Mediator. Upon the conclusion of the mediated settlement conference, the mediator shall complete Form AOC-CV-813 and send the original to the TCC. For a copy of the form access the following website: <http://www.nccourts.org/Forms/Documents/825.pdf>.
- (f) Motion to authorize the use of other settlement procedures. A party may move to request another form of alternative dispute resolution such as arbitration, early neutral evaluation, summary jury trial, or any other settlement procedure, in lieu of a mediated settlement conference by submitting a motion to the TCC in the manner described in Local Rule 6.4(b).
- (g) If a case is removed from the pending trial docket so the parties may engage in binding arbitration, said arbitration shall be completed, and the arbitrator's report shall be tendered, within six months from the date of the order of removal.

Rule 7. MOTIONS

- 7.1 Motions may be calendared for any session of Superior Court upon request to the TCC, or by order of the Court. If motions in Superior Court civil cases are not scheduled through the office of the TCC, the Presiding Judge will not hear the motion.
- 7.2 Counsel shall cause all motions to be filed, properly noticed, and heard prior to the date of trial, except the motions which must be heard by the Trial Judge. Motions shall be scheduled for hearing at 10 a.m. on Monday of each scheduled civil session.
- 7.3 A motion shall be placed on a calendar for hearing only when one of the following has occurred:
 - (a) The TCC receives a copy of the notice of hearing from the moving party no later than 12:00 Noon seven (7) calendar days before the hearing date; or
 - (b) The Presiding Judge has ordered a hearing continued and a copy of the order has been provided to the TCC. Do not send copies of affidavits, briefs or lengthy motions to the TCC with the notice of hearing. Send Notices of hearing to the TCA by regular mail, electronic mail or fax.
- 7.5 The motions calendar posted on the AOC website will not serve as a substitute for a properly served notice of hearing. Rather, the calendar will be a listing of the notices of hearing issued as provided in the N. C. Rules and Local Rule 7.4.
- 7.6 When a motion to dismiss is filed under Rule 12(b) of the N. C. Rules, the moving party shall cause the motion to be heard within thirty (30) days of filing by issuing notice of hearing to opposing counsel and to the TCC, unless the motion is filed as part of the answer. The motion may be heard in another county in the district if all parties agree.

7.7 Motions to Transfer:

- (a) The moving party shall cause a motion to transfer a case from District Court to Superior Court to be scheduled for hearing within sixty (60) days of filing. Failure to schedule such a hearing will cause an order denying the motion to be entered by the Court.**
- (b) If a case appears on a District Court trial calendar, a motion to transfer the matter to Superior Court will be considered untimely filed. The Court will enter an order denying the motion.**
- (c) Except as provided in subsection (b), if all parties consent to the transfer of a case from District Court to Superior Court, a consent order may be sent to the TCC, who shall present same to the Senior Resident Superior Court judge for consideration in Chambers.**

7.8 Motions to withdraw as attorney of record in civil cases which have been pending for more than six months generally will not be allowed except in situations where the client is in agreement and has signed a statement to be included with the motion and/or consent order. In the statement, the client must acknowledge that he or she understands that the attorney's withdrawal will not be grounds for delaying any hearing or trial date that may already be scheduled in the case. In all cases, the mailing address of the client must be included in any motion or consent order before being considered by a Judge. Motions meeting the above criteria shall be sent to the TCC, who shall submit them to the Senior Resident Superior Court Judge for consideration in chambers.

7.9 No continuance of a trial or delay in any alternative dispute resolution proceeding will be granted due to the belated filing of a procedural or dispositive motion, or because a motion is pending for which a hearing date has not been requested.

7.10 If the moving party fails to appear to argue a motion when scheduled, the motion will be considered denied or withdrawn, whichever the Court deems appropriate.

7.11 The TCC will not continue a properly noticed motion, except at the request of the moving party.

7.12 Any motion may be set for hearing at a session within 27B Judicial District, but outside the county in which venue lies, only with prior approval of the TCC.

7.13 Summary Judgment Motions:

- (a) Summary Judgment Motions shall be filed in sufficient time to allow a hearing to be held no later than thirty (30) days prior to the trial date, unless otherwise allowed by the Senior Resident Superior Court Judge or the Trial Judge. The TCC is authorized to waive the time requirement or to utilize the provisions of Local Rule 7.13 if the master court schedule hinders compliance with the 30-day requirement. However, no summary judgment motions will be scheduled for hearing at the trial session unless otherwise allowed by the Trial Judge.**
- (b) Counsel shall prepare and exchange briefs according to the provisions of the Rules of Civil Procedure and the General Rules of Practice, and are encouraged to submit copies to the appropriate Judge. When a motion is scheduled to be heard outside the county of its origin, as provided in Local Rule 8, counsel for the moving party shall be responsible for delivering the court file to the county in which the motion is to be heard. If the court file is not presented to the Presiding Judge, the motion shall not be heard.**

- 7.14 Motions calendars will be kept updated, giving the current status of all motions appearing on the final motions calendar, on the AOC website through the end of the last business day preceding the beginning of the administrative session or the session of court.

Rule 8. JUDICIAL REVIEW OF ADMINISTRATIVE ACTION

- 8.1 Pursuant to GS 150B-47, the agency making the final decision shall file the original or a certified copy of the official record with the Clerk of Superior Court, and shall serve a copy upon all interested parties within thirty (30) days after receipt of the petition for review, or as provided by a Writ of Certiorari.
- 8.2 The petitioner/appellant shall file a brief with the Clerk of Superior Court and serve same upon all parties to the proceeding within twenty (20) days after the record is filed.
- 8.3 The respondent/appellee shall have twenty (20) days from the date of the filing of the petitioner's brief in which to prepare and file a brief with the Clerk of Superior Court and to serve same upon all parties.
- 8.4 Unless the Court, in its discretion, shall order to the contrary, there shall be no reply briefs filed by any party to the review proceedings.
- 8.5 The matter shall be set for hearing at the first available session of court after the last date for filing and exchanging briefs.
- 8.6 Nothing contained in these rules shall prohibit the Court, in its discretion, and for good cause shown, from enlarging or shortening the times provided for filing briefs, or from continuing and rescheduling review hearings.

Rule 9. DELINQUENT ORDERS OR JUDGMENTS

- 9.1 Cases or motions removed from a calendar due to a reported resolution are delinquent if the order, judgment or settlement agreement signed by all parties is not filed within ten (10) days after the first day of the trial session.
- 9.2 Cases or motions heard by the Judge or by a jury are delinquent if the order or judgment is not filed within ten (10) working days after the hearing, unless the Presiding Judge grants additional time.
- 9.3 Cases reported settled at mediation shall be delinquent if closing documents are not filed within 30 days of the settlement, or before expiration of the mediation deadline, whichever is longer.
- 9.4 Delinquent cases will be brought before the Senior Resident Superior Court Judge, following proper notice, either upon motion by either party or by the Clerk or TCC. Cases found to be delinquent may be dismissed at the discretion of the Senior Resident Superior Court Judge, or the Judge may order any sanctions or impose penalties deemed appropriate or lawful. Any attorney or party in the case may appear and show cause why the case should not be dismissed.

Rule 10. CONTINUANCES

The Senior Resident Superior Court Judge or TCC shall have control over the status of trial calendars, including the authority to consider continuances, until the trial session begins. Thereafter, control of the trial calendar, including the authority to consider continuances shall vest with the Trial Judge.

- 10.1 All continuance motions shall be submitted in writing to the TCC on AOC-CV-221 Form by U.S. Mail or hand delivery. (A self-addressed, postage-paid envelope shall be provided to allow return of the filed Motion/Order.) The original shall be received by the TCC no later than five (5) working days prior to the opening of the trial session. A copy must be sent to all counsel of record and/or un-represented parties by U.S. Mail, facsimile transmission, hand delivery or by the use of attorney mailboxes maintained in each Courthouse, prior to submitting the original to the TCC. The motion shall specify clearly the reasons for the request, and a new trial date shall be proposed.
- 10.2 Opposing counsel and un-represented parties shall have a period of two (2) working days following submission to communicate objections to the moving party and the TCC. The date upon which the TCC receives the motion shall begin the period in which to object. Objections not made within this time period shall be deemed waived. The TCC will submit the Motion to the Senior Resident Superior Court Judge upon the expiration of the two-day objection period, or sooner if the position of the opposing party is known.
- 10.3 Continuance motions will not be granted absent exigent circumstances, except for crucial cause that could not have been reasonably foreseen. The advance notice of the trial date provided by the Administrative Calendar is deemed a reasonable and sufficient period to accommodate the majority of conflicts. Personal conflicts such as vacations (see Rule 26 of the General Rules of Practice for Superior and District Courts), family commitments, and continuing legal education opportunities do not rise to the level of crucial cause that could not have been reasonably foreseen. 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 a case-by-case basis.
- 10.4 Continuance motions may be presented to the Presiding Judge after the beginning of the trial session, only if it can be shown that circumstances made it impossible for counsel to have complied with the above Rules.
- 10.5 Reasons which shall not be cited as valid bases for moving for a continuance, and which shall not be considered, include first-time scheduling of the case for trial, potential conflicting scheduling of other trials in other courts and whether counsel has received payment.

Rule 11. PRESENTATION OF EX PARTE MATTERS AND DEFAULTS

In the event any *ex parte* matter or default proceeding has been presented by any person to any Judge and the requested relief is denied for any reason, such matter shall not be presented to any other Judge without making full disclosure of the prior presentation. For a failure to comply with the provisions of this Rule, the order or judgment made on such subsequent application may be vacated at any time as a fraud upon the Court.

Rule 12. ADMINISTRATIVE DISPOSITION

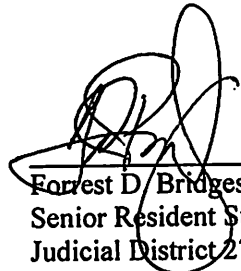
The following types of cases are deemed not to be pending for trial. Cases in these categories shall be eligible for removal by order, without prejudice, from the list of pending cases.

- (a) Cases in bankruptcy (unless relief from the stay has been granted);
- (b) Defendants making payments;
- (c) Service not made and time expired;
- (d) Cases deemed inactive for any other reason.

Rule 13. SANCTIONS

Failure to comply with any section of these Rules shall subject an action to dismissal or other sanctions allowed by law and deemed appropriate at the discretion of the Senior Resident Superior Court Judge or Presiding Judge.

This 9th day of April, 2013.



Forrest D. Bridges
Senior Resident Superior Court Judge
Judicial District 27B