

CASE MANAGEMENT PLAN
AND
LOCAL RULES OF CIVIL PROCEDURE FOR
THE SUPERIOR COURT
THIRTY-FIFTH JUDICIAL DISTRICT

ORDER
Civil Case Management Plan
Effective January 1, 2023

Pursuant to the provisions of **Rule 2** of the General Rules of Practice for the Superior Court, IT IS ORDERED that the following local rules are adopted for Judicial District 24, comprised of Watauga, Avery, Mitchell, Yancey, and Madison Counties of the State of North Carolina effective January 1, 2023.

These local rules are to be read in conjunction with, and supplemental to, the General Rules of Superior and District Courts adopted by the North Carolina Supreme Court, the Guidelines of Resolving Scheduling Conflicts, the Rules of Civil Procedure, the Constitution of the United States, the Constitution and Statutes of North Carolina and all Superior Court Administrative Orders in effect. If this plan conflicts with the General Rules of Superior and District Courts or the North Carolina Rules of Civil Procedure the General Rules of Superior and District Courts and the North Carolina Rules of Civil Procedure shall apply.

1 Rule 1. Definitions, Purpose, Policy, and Standards

1.1 **Definitions:**

- 1.1.1 “CM” shall mean Court Manager, formerly referred to as the Trial Court Coordinator.
- 1.1.2 “N.C.R.C.P.” means the North Carolina Rules of Civil Procedure.
- 1.1.3 “Rules of Practice” means the General Rules of Practice for the Superior and District Courts.

1.2 **Policy:** It is the policy of the Superior Courts of the 24th Judicial District to promote and provide justice for citizens without unnecessary appearances, expense, or delay and without undue waste of time and other resources of the Court, the litigants, and other case participants. For all its case types and dockets, and in all its courtrooms, the Superior Court looks with strong disfavor on motions or requests to continue court events. To protect the credibility of scheduled trial dates, trial-date continuances are especially disfavored.

1.3 **Purpose and Construction:** These rules are to implement the above policy, provide for the orderly, just and prompt disposition of the matters to be heard in the Superior Courts of the 24th Judicial District. They shall be at all times construed and enforced in such a manner as to avoid unnecessary delay and to permit just and prompt consideration and determination of all the business before the Court.

1.4 **Modification:** The Senior Resident Superior Court Judge reserves the right to make such modifications or additions to these Local Rules, or application to special cases or circumstances, as he or she deems will promote the efficient administration of the Civil Superior calendar and caseload.

1.5 **Administration:** The CM is responsible for the administration of these rules. Each Clerk of Superior Court should designate one “Civil Calendar Clerk” who will assist in the administration of these rules in their respective county.

1.6 **Citation:** These local rules are to be cited as “24 L.C.R. ____.” Local Civil Rule.

1.7 **Compliance:** It shall be the obligation of all attorneys practicing in the 24th Judicial District to know and comply with these Rules, including any future modifications as well as all current Administrative Orders associated with Civil Superior Court Proceedings.

1.8 **Duty upon Appearance:** Upon making an appearance in a case, the attorney is responsible for ensuring the Clerk, CM, and opposing counsel have all contact information for the attorney, including email, phone, facsimile, and mailing address.

1.9 **Preferred method of communication:** Communication to and from the CM is preferred to be via email, unless the attorney notifies the CM that another method is necessary.

1.10 **Duty to Keep Current:** Attorneys are under a continuing obligation, when practicing in District 24, to keep the Clerk and CM informed of all contact information, including a current email address.

1.11 **Filing and Publication of Rules:** These rules and all amendments thereto shall be filed with the Clerk of Superior Court for Avery, Madison, Mitchell, Watauga, and Yancey Counties and published on the North Carolina Courts website (www.nccourts.org).

1.12 **Copies of Rules and Forms:** The Clerks of Superior Court and the CM shall maintain a supply of the printed rules and a supply of the required associated forms and furnish same to attorneys, judges and pro se parties upon request.

1.13 **Rules may be incomplete:** 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 Court Manager is authorized to act in his or her discretion, in consultation with the Senior Resident Judge or Presiding Judge.

1.14 **Extensions of Time:** 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).

2 Ready Calendar.

2.1 **Maintenance and timing of Ready Calendar:** The Court Manager in Judicial District 24 shall establish and maintain a Ready Calendar of civil cases pending in each county in accordance Rule 2(c) of the Rules of Practice. Five (5) months after the filing of the last responsive pleading, the CM shall place each case on the Ready Calendar, unless the time is extended for good cause by scheduling order or other written order of the Senior Resident Judge.

2.2 **Clerks of Court to Maintain VCAP:** The Clerks of Superior Court shall maintain the VCAP system with up-to-date information for civil cases pending in the Superior Courts.

2.3 **Inquires:** Inquiries concerning the civil Ready Calendar shall be addressed to Gina Byrd, Court Manager II, 842 W. King St, Suite 11, Boone, NC 28607, 828-268-6616 phone 828-268-6617 fax or Gina.M.Byrd@nccourts.org.

3 Rule 3: Mediation.

3.1 **Required mediated settlement conference:** All parties to superior court civil actions in the 24th Judicial District and their representatives, not otherwise exempted by the Supreme Court Rule or statutorily, are hereby ordered to attend a pretrial, mediated settlement conference conducted pursuant to N.C. Gen. Stat. § 7A-38.1.

3.2 **Selection of Mediator:** Parties shall have no more than Twenty-one (21) days from the filing of that last responsive pleading or issuance date of the Order for Mediated Settlement Conference, whichever is later, to select a mediator. Otherwise, the Court will issue an order appointing a mediator without further notice pursuant to Rule 2 of the Rules of the North Carolina Supreme Court Implementing Statewide Mediated Settlement Conferences, as amended. Form AOC-CV-812 is to be used for this purpose.

3.3 **Appointment of Mediator:** When the parties have not selected a certified mediator of their choice, a Resident Judge will appoint Mediators pursuant to Rule 2 of the Rules of the North Carolina Supreme Court Implementing Statewide Mediated Settlement Conferences, as amended. The procedure for judicial appointment shall be to appoint the next certified mediator on the list who currently resides or maintains a mediation practice in the 24th Judicial District, who certifies in writing annually to the Senior Resident Judge that he, or she, wishes to mediate in this judicial district, is familiar with the Local Mediation Rules, and will comply with them and the Supreme Court Rules. The list shall also include any retired or emergency judge or justice of the superior or appellant courts, who request to be on the list. The list shall be arranged alphabetically, and appointments shall be made in consecutive order, or at the discretion of the CM. The Senior Resident Judge or the CM shall retain discretion to depart from this procedure in particular circumstances such as the appointment of one mediator to multiple cases, appointment of a newly certified mediator, appointment of a mediator who possesses special skills in a particular kind of case, or to withhold a mediator who has not followed Local or Supreme Court Rules from appointment.

3.4 **Time to Complete Mediation:** The Mediated Settlement Conference (MSC) shall be conducted as soon as practical and, unless approved by a Senior Resident Superior Court Judge, within one hundred-twenty (120) days from issuance of the Order. When parties select a Mediator, they shall also schedule a date for the mediation. The parties shall select a Mediator who can timely schedule the mediation within the lime limits set out herein or in an approved Scheduling Order. Failure to mediate a

matter in accordance with the filed and approved Scheduling Order shall not be grounds for the continuance of the trial.

3.5 **Extension of Time:** No extension of the deadline to complete the Mediated Settlement Conference (MSC) shall be allowed except for good cause shown. Failure to comply with these rules or timely act shall not be considered good cause. Any request for extension shall be in accordance with Mediated Settlement Conference Rule 3.C. AOC Form AOC-CV-835 shall be used for this purpose. In the event counsel for all parties believe that the mediator selected, because of his/her experience, background, or expertise, has a substantially greater likelihood of accomplishing a settlement in a given case than other mediators, the Senior Resident Superior Court Judge will consider an extension of time to complete mediation with the previously selected mediator. The granting of any extensions of time to complete the MSC shall not be the cause for delay in other aspects of the case, including completion of discovery, filing, or hearing of motions, or trial, except by order of a Senior Resident Superior Court Judge by means of an approved amended scheduling order.

3.6 **Compliance with Rules:** All parties, attorneys, and mediators shall comply with The Supreme Court Rules for Mediated Settlement Conferences and these Local Rules. Mediators shall report any failure of the parties to comply.

3.7 **Report of Settled Cases:** All cases settled at mediation shall be reported to the CM by the mediator within two (2) business days, and the Report of Mediator (Form AOC-CV-813) shall be filed within ten (10) days.

3.8 **Responsibilities of CM:** The CM is assigned the responsibility of managing and enforcing the mediation process. The CM is authorized to affix the signature of the Senior Resident Judge to all documents related to mediation.

4 Rule 4: Pre-trial discovery and scheduling orders.

4.1 **Required Pre-trial discovery and scheduling orders:** Pre-trial discovery and scheduling orders (hereinafter Scheduling Order) shall be required in all superior court civil actions in the 24th Judicial District.

4.2 **Minimum Contents:** The Scheduling Order shall be prepared by counsel for the parties and submitted to the Senior Resident Judge for approval prior to the first administrative setting of the case or within thirty (30) days of the last responsive pleading, whichever is later. The form "Order On Case management Conference" attached on the Form Appendix shall be used for the Scheduling Order. At a minimum the Scheduling Order shall contain the following:

4.2.1 Deposition and Other Discovery deadlines. Including deadlines for the Identification of Expert Witnesses, Deposition schedule for Expert Witnesses and other witnesses; Name of Mediator and Mediation Conference Schedule and other deadlines.

4.2.2 A stipulation that all dispositive motions shall be heard no later than the session of court immediately preceding the trial date of the case or said motions will be presumed to have been abandoned by the moving party.

4.2.3 A stipulation that all Motions in Limine shall be filed not less than ten (10) days prior to the trial date and that written responses to any Motions in Limine shall be filed not less than five (5) days prior to the trial date.

4.2.4 The date that the pre-trial order shall be submitted to the court in accordance with the provisions of Rule 19 below.

4.2.5 The scheduled trial date.

4.3 **Medical Malpractice Cases:** In all medical malpractice actions as defined in G.S. 90-21.11, the Senior Resident Judge in accordance with the provisions of G.S. 7A-47.3(e), in consultation with the parties and in accordance with the Superior Court's Fifth Division's Plan and Strategy for Medical Malpractice shall appoint one of the Resident Judges in the 24th Judicial District to preside over all proceedings that occur one hundred fifty (150) days after the case was filed. (Form attached on Form Appendix). Upon the case coming at issue or the filing of a responsive pleading or motion requiring a determination by the Court, the Court, shall within 30 days after any such action, direct the attorneys to appear for a discovery conference pursuant to N.C.R.C.P. Rule 26(f1). The conference may be a telephone conference. At the conclusion of the conference, the Court shall enter orders as provided in N.C.R.C.P. Rule 16 and Rule 26(f1) (2) and (3). In lieu of appearing for a Rule 26(f1) conference, counsel for the parties may, within thirty (30) days of being directed to appear, submit to the court a consent Scheduling Order setting forth all matters required by this rule that specifically addresses subdivisions (2) and (3) of subsection (f1) of N.C.R.C.P. Rule 26. The consent Scheduling Order shall be submitted to the CM for approval, amendment, or denial by the Court.

4.4 **Failure to Timely Prepare Scheduling Order:** The failure of the attorneys of record to enter an agreed Scheduling Order acceptable to the Senior Resident Judge within thirty (30) days of the last responsive pleading or prior to the first administrative setting, whichever is later, will result in the Senior Resident Judge entering an order on his or her own motion setting forth deadlines for discovery, mediation, motions, and trial of the case.

4.5 **Amendment of Pre-Trial Discovery and Scheduling Orders:** Amendment of Scheduling Orders may be by mutual consent of all parties subject to Court approval or pursuant to a motion to any Resident Superior Court Judge. All amended Scheduling Orders shall be filed with the CM and the Court.

5 Rule 5: Administrative Scheduling Sessions.

5.1 **Scheduling of Administrative Sessions:** In accordance with the provisions of the Rules of Practice **Rule 2**, the Senior Resident Judge will conduct an Administrative Scheduling Session for each case pending on the Ready Calendar in each county during the first and seventh month of each calendar year and/or during such other weeks as the Senior Resident Judge shall designate.

5.2 **Action to be taken:** During such administrative terms in a county, the Senior Resident Judge shall review with counsel and/or pro se litigants the status of all cases on the Ready Calendar of the county. The Senior Resident Judge shall take appropriate actions to ensure prompt disposition of any pending motions or other matters necessary to move the cases toward a conclusion, including but not limited to the ordering of scheduling orders and the setting of trial dates.

5.3 **Attendance at Administrative Sessions:** Upon notification to appear for the Administrative Scheduling Session, an attorney must, consistent with ethical requirements, appear at the Administrative

Scheduling Session, or have present a partner, associate, or another attorney familiar with the case, unless excused in advance by the Senior Resident Judge and with appropriate prior notice to the opponent. At administrative terms where a matter is only on for the entry of a Scheduling order, or any other order or judgment due, counsel will not need to appear provided that they have submitted the appropriate Scheduling order, or other order or judgment no later than 5:00 P.M. on the Wednesday preceding the scheduled administrative term in Avery, Mitchell, Yancey and Madison Counties and no later than 5:00 P.M. on the Monday of the week of the scheduled administrative term in Watauga County. Failure to meet these deadlines shall require attorneys to be present as provided above.

6 Rule 6 Certificate of Readiness: In addition to the maintenance of the Ready Calendar by the CM, an attorney for a party may file a certificate of readiness at any time requesting that the case be placed on the trial calendar. See Rules of Practice **Rule 2**. The form to be used is attached on the Form Appendix.

7 Rule 7. Case Management Conferences.

7.1 **Scheduling Conferences:** If the Senior Resident Judge or a Presiding Judge determines, *sua sponte* or upon motion of a party, that a pending case is not moving forward toward conclusion in accordance with the Scheduling Order, he or she may schedule a case management conference to determine what actions, if any, need to be taken and what orders, if any need to be entered.

7.2 **Status Reports:** A Status Report shall be provided by the attorneys of record upon request of the Senior Resident Judge, Presiding Judge, or the CM. The Status report shall contain at a minimum the status of the case as it relates to all of the deadlines set out in the scheduling order and such other matters as may requested by the Senior Resident Judge, Presiding Judge, or the CM. The Report shall be submitted within ten (10) days of the request and may be submitted via email, facsimile, or regular mail.

7.3 **Telephone, Webex Conferences:** The Court may direct that case management conferences, hearing of specified motions and other matters take place by telephone conference call or WebEx.

8 Rule 8. Calendaring of Civil Cases.

8.1 **Preparation of Calendars:** The Civil Calendars for the 24th Judicial District shall be prepared by the CM under the supervision of the Senior Resident Judge in accordance with these Local Rules.

8.2 **Civil Case Management Schedules:** The CM shall maintain all Civil Case Trial Schedules in accordance with the Scheduling Orders entered pursuant to the provisions of Local Rule 4 above.

8.3 **Order of Cases:** Cases shall be calendared by the CM or the Senior Resident Judge according to prior ordered preemptory setting, statutory priority, and the age of the case unless a different setting is ordered by the Senior Resident Judge. In addition to cases set by court order or by approved scheduling order, attorneys may request that any pending case be set for trial. A request for such a setting of a case on the trial calendar shall be made no later than sixty (60) days prior to the beginning of the court session and shall be set in the following priority: 1) cases in which all parties have agreed upon a trial date; 2) cases requested to be on the trial calendar by only one party; 3) cases requested for setting by neither party, but due to age and status should be set for trial. Cases of equal priority under this rule will be set in numerical sequence. Cases set for trial for a term may be called for trial any time during the term and shall be ready for trial at any time during the term. 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.

8.4 **Calendar:** The trial calendar for a session shall be set no later than four (4) weeks prior to the first day of each session of court. However, the Senior Resident Judge reserves the right to alter the date of publication or to publish a supplemental calendar if deemed necessary to fulfil the purpose and policy of these rules.

8.5 **Scheduling of Motions, administrative appeals, and non-jury matters:** Motions, administrative appeals, and other non-jury matters shall be set for hearing on the first day of a Civil Session or as otherwise scheduled by the CM or the Court and in accordance with any Administrative Orders in effect. Those matters not heard on the first day may be heard at any time during the term in the discretion of the Presiding Judge.

8.6 **Publication of Calendar:** The calendar shall be published by posting to the internet website for the respective county on www.nccourts.org no later than four (4) weeks prior to the first day of Court. Rules of Practice **Rule 2.**

8.7 **Distribution:** Unless an attorney has notified the CM and the Clerk of Court that the attorney does not have internet access, distribution to the attorneys of record shall be deemed accomplished by the publication of the calendar on www.nccourts.org. Attorneys who have given such notification shall be provided copies of the trial calendars by regular mail or by a copy of the calendar being placed in the attorney's courthouse mailbox, or any other manner as determined by the CM. The Clerk of Court will mail trial calendars to *pro se* litigants unless those litigants have notified the CM and the Clerk of Court that they have internet access. Each *pro se* litigant shall be responsible for keeping the CM and the Clerk's Office advised of a current mailing address and email address. Any attorney withdrawing from the representation of a client, as a condition precedent to being allowed to withdraw, shall provide in the Motion to Withdraw and Proposed Order a statement of the current mailing and email address of the client.

8.8 **Inquires:** Inquiries concerning the civil calendar shall be addressed to Gina Byrd, Court Manager II, 842 W. King St, Suite 11, Boone, NC 28607, 828-268-6616 phone 828-268-6617 fax or Gina.M.Byrd@nccourts.org.

9 Rule 9 Peremptory Settings. Requests for a peremptory setting for cases involving persons who must travel long distances or numerous expert witnesses or other extraordinary reasons for such a request must be made to the Senior Resident Judge. A peremptory setting shall be granted only for good and compelling reasons. A Senior Resident Judge may set a case peremptorily on his own motion. Peremptory settings are solely in the discretion of the Senior Resident Judge. Requests for a peremptory setting should be made to the Senior Resident Superior Court Judge or the CM at least ten (10) weeks prior to the proposed trial date.

10 Rule 10 Re-scheduling Cases Not Reached. Cases scheduled for trial not reached at a session shall be re-scheduled as additional cases for trial at another regularly scheduled session if feasible considering the availability of counsel, parties, and witnesses in consultation with CM. Re-scheduled cases have no priority over scheduled cases.

11 Rule 11 Motions Practice.

11.1 **Contact Court Manager:** Parties **must** contact the Court Manager by telephone or email at least ten (10) days prior to the term of court requested to secure a hearing date and set the motion on a calendar for hearing. The requesting party shall provide the following information to the CM: 1) the case file number, 2) type of motion to be heard, 3) the estimated length of time needed for the motion to be heard, and 4) the date and time of the motions session requested and a 5) Notice of Hearing. Failure to provide the CM with the ten (10) days notice required hereunder and a copy of a Notice of Hearing may result in the motion being set for a later term of court in the sole discretion of the CM.

11.2 **Scheduling of Motions:** Pending motions shall be scheduled for hearing in the discretion of the Senior Resident Judge or by the CM in the order of receipt of notification and/or the urgency of the motion or statutory priority and in accordance with all applicable Administrative Orders. Motions will be set on Monday or the first day of the civil session if Monday is a holiday, at 10:00 A.M. or as otherwise determined by the CM or the Court. The number of motions scheduled for a session shall be based on the nature of the motions filed, the anticipated time required for hearings, and the time available for hearing of motions at each session. Motions may be calendared for any trial session of superior court in another county in the judicial district only upon approval of the CM or Senior Resident or by order of the Court. Notwithstanding the foregoing, it is expected and strongly recommended that parties use the civil priority designated terms in the county where the matter is pending for motions. Motions may not be calendared for Administrative Sessions in Watauga County except upon approval of the Senior Resident Superior Court Judge.

11.3 **Filing and Service of Motion and Notice of Hearing:** Notice of hearing and the Motion shall be filed and served as provided in Rule 5 and Rule 6(d) of the N.C.R.C.P. A copy of the Notice shall be provided to the CM by fax or email attachment. The Notice shall contain the following information:

- 11.3.1 Case caption;
- 11.3.2 The nature of the motion and the Rules pursuant to which it is filed;
- 11.3.3 An estimate of the length of time the hearing will require;
- 11.3.4 The date, time, and location of the hearing;
- 11.3.5 Certificate of Service reflecting all parties served and the manner of service

11.4 **Duty of Movant when motion heard out of county:** The moving party is responsible to present to the Court all pleadings material to the hearing, including the file if necessary.

11.5 **Dispositive Motions and Motions in Limine:** See Rule 13 below.

11.6 **Pending Pre-trial Motions:** Pending pre-trial motions may be scheduled at the administrative scheduling session only in the discretion of the CM or Senior Resident Judge or his, or her, designee. Counsel who intend to file pretrial motions in cases being scheduled for trial shall inform the Court at the administrative scheduling session.

11.7 **Briefs Responses, Memorandums:** A copy of any briefs, memoranda and supporting cases in support or opposition of pre-trial motions shall be delivered to the Hearing Judge at least five (5) days before the hearing of the motion. For the purpose of this five-day requirement only, service shall mean personal delivery, facsimile transmission, or email delivery, or other means such that the Hearing Judge

receives the brief or memoranda within the required time. Briefs that are emailed must be in “Word” format. If a brief is not timely delivered hereunder, the Hearing Judge, in his or her discretion, may proceed with the matter without considering the untimely brief or memorandum or take such other action as the ends of justice require. Pursuant to N.C.G.S. 1A-1, Rule 5(d), briefs, and memoranda and supporting cases provided to the Court may not be filed with the Clerk unless ordered by the Court. All hearing materials delivered to the Hearing Judge in accordance with this Rule shall be delivered to counsel for the opposing party or any unrepresented party by hand-delivery, email, facsimile, express delivery or mail, such that the opposing counsel or party receives the materials no later than at least two (2) days before the hearing date. If any hearing materials to which this rule applies are not served on the opposing counsel or party within the time and manner specified herein or in accordance with the Rules of Civil Procedure, the Court may continue the matter for a reasonable period of time, proceed with the matter without considering the untimely brief or memorandum or take such other action as the ends of justice require.

11.8 **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.

11.9 **Withdrawal of Motion:** 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 CM.

11.10 **Failure to Appear/Argue Motion:** 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.

12 Rule 12 Preliminary Injunction Hearings: The evidence in a preliminary injunction hearing shall be presented in the form of affidavits in support of or in opposition to the injunction. The presentation of testimony from witnesses will be received only in exceptional circumstances, or when the party offering the witnesses’ testimony has been unable to obtain an affidavit from the witnesses in advance of the hearing.

13 Rule 13 Dispositive Motions and Motions in Limine.

13.1 **Dispositive Motions:** Any dispositive motions must be noticed and calendared no later than the session of court immediately preceding the trial date of the case or said motions will be presumed to have been abandoned by the moving party. The failure to notice a dispositive motion in advance of the trial date shall not be considered grounds for the continuation of the trial. Dispositive motions upon which a request for a hearing date is not requested by the movant to the CM by the filing of a Notice of Hearing within 30 days of the filing of the dispositive motion will be deemed waived and denied without further notice.

13.2 **Motions in Limine:** Must be filed no less than ten (10) days prior to the trial date and responses thereto shall be filed no less than five (5) days prior to the trial date.

14 Rule 14: Motions for Admission Pro Hac Vice. Any motion for the admission of an out of state attorney in any matter must, in addition to meeting all other necessary statutory requirements, be appropriately noticed for hearing in accordance with the Rules of Civil Procedure and shall be heard on the record. Any attorney seeking such admission must be present in court for said hearing. Motions not accompanied by the statutory fee will be summarily denied without notice.

15 Rule 15 Settlement Notification.

15.1 **Timely notice of Settlement:** Upon the settlement of a case on the printed trial calendar, attorneys of record must notify the CM within twenty-four (24) hours of the settlement and advise the court as to who will prepare and present a judgment or dismissal and when. Form to be used attached on the Form Appendix.

15.2 **Filing of Settlement Documents:** If no voluntary dismissal nor memorandum of judgment is filed during the session in which the case is set for trial, unless extended to a date certain by the Senior Resident Judge or the Presiding Judge, all necessary papers regarding the settlement must be filed in the Clerk's office within thirty (30) days from the date of notification to the CM or Presiding Judge unless a shorter time is ordered by the Presiding Judge. Should the appropriate paperwork not be timely filed closing out the case, then the case will appear on the calendar of the next trial session of court after thirty (30) days, or the next administrative session, whichever occurs first.

15.3 **Sanctions:** If the case has not been timely closed, the Presiding Judge or the Senior Resident Judge, in his or her discretion, may take such other administrative action as appears appropriate to give the case prompt disposition, including dismissal pursuant to Rule 41, and shall be grounds for the imposition of such sanctions and penalties as deemed appropriate by the Court and as allowed by law.

16 Rule 16 Continuances.

16.1 **Motion to be in writing:** Except in extraordinary circumstances, any continuance motion regarding a civil superior matter shall be in writing and filed not later than ten (10) days prior to the scheduled trial date for which rescheduling is requested. Each continuance motion or request shall state reasons and be signed by the attorney/ party making the request and be submitted to the Senior Resident Superior Court Judge on AOC form AOC-CV-221 together with the client Acknowledgment form attached on the Form Appendix.

16.2 **Notice, Consent, Objection:** Motions for continuance must affirmatively set forth whether the opposing party has been given actual notice and whether the opposing party consents or objects to the motion. Opposing parties shall have three days to respond to the motion for a continuance and the failure to timely respond will provide the presumption that the opposing party consents to said motion. Continuances on agreement of counsel or the parties shall not be automatically granted.

16.3 **Factors to be Considered:** Motions for Continuances before the Presiding Judges during the session shall only be granted for good cause shown including good cause being shown as to why the motion had not been presented to the Senior Resident Superior Court Judge as provided in Rule 16.1 above. Again, continuances on agreement of counsel or the parties shall not be automatically granted. In an effort to further reduce backlog with regard to Civil Superior Court matters, continuances of trial dates in cases more than eighteen (18) months old are specifically disfavored and shall only be granted in

extraordinary circumstances. In addition to the above, the Presiding Judge shall consider the following when deciding to grant or deny a motion to continue:

- 16.3.1 the age of the case with particular attention given to cases more than 18 months old;
- 16.3.2 state of the trial calendar for the term;
- 16.3.3 order in which the case appears on the trial calendar, including whether it is peremptorily scheduled;
- 16.3.4 number of previous continuances;
- 16.3.5 extent to which counsel had input into scheduling the trial date;
- 16.3.6 due diligence of counsel in promptly filing a motion for continuance as soon as practical;
- 16.3.7 length of continuance requested;
- 16.3.8 position of opposing counsel and parties;
- 16.3.9 present or future inconvenience or unavailability of witnesses or parties, and;
- 16.3.10 any other matter that promotes the ends of justice.

Any grant of a continuance motion shall be made in writing filed in the court file, with an indication of who requested it and appropriate findings. Whenever possible, the Court shall reschedule the trial date within the subsequent two months from which it was continued.

16.4 **Semi-Annual Review**: Information about the source of each continuance motion or request in a case, and the reason for any continuance granted by the Court, shall be entered for that case in the Court's computerized case management information system. At least semi-annually, the Senior Resident Superior Court Judge, or designee, shall promote the consistent application of this continuance policy by reviewing and discussing a report of civil superior cases pending, and the number of continuances requested and granted during the previous period, especially as they relate to the incidence and duration of trial-date continuances.

17 **Rule 17 Will Caveats**: It shall be the responsibility of the attorney for the Caveator(s) to notify the CM of the filing of the case and to serve the caveat and Notice of Hearing on alignment in accordance with G.S. 31-33. Cases involving caveats to Wills will be placed on the first available motions docket for the alignment of the parties after the CM has been advised by counsel for the Caveator(s) that all interested parties have been served in accordance with G.S. 1A-1, Rule 4 of the Rules of Civil Procedure. Thereafter, the case shall be ordered into the mediation process in accordance with the provisions of and time constraints set forth in Rule 3 above. Will caveat cases are entitled by statute to a priority trial calendar setting. Therefore, to every extent possible, the CM shall give priority for calendaring purposes to caveat proceedings in which the parties have been aligned and are ready for trial. In any event, the matter shall be placed upon the first trial session after the expiration of one hundred and eighty (180) days from the date that the matter was ordered to mediation, unless otherwise ordered by the Court.

18 **Rule 18 Minor/Incompetent Settlements**: All requests for review of Minor/Incompetent Settlements shall be submitted to the Court Manager by Notice of Hearing at least ten (10) days prior to the requested scheduled term.

18.1 **Priority**: Minor/Incompetent Settlement matters will be given priority and will be set for hearing at the next available trial court session provided timely request is made as provided above.

18.2 **Hearings in Open Court on the record:** All hearings for judicial approval of Minor/Incompetent settlements shall be held in open court and shall be recorded by a court reporter.

18.3 **Presence Required:** The Minor/Incompetent and his/her Guardian Ad Litem must be present at the hearing, unless excused in advance by the Presiding Judge.

18.4 **Statement of Insurance Coverage:** Defense counsel shall state on the record the total and complete amount of insurance coverage afforded to a Defendant in the matter in question.

18.5 **Structured Settlements:** To the extent a Minor/Incompetent settlement is to be structured, Plaintiff's counsel shall certify to the Court on the record the present value of the settlement to the Minor/Incompetent.

18.6 **Filing of Documents, Sealing File:** All documents submitted to the Court for consideration shall be placed in the court file and may be placed under seal in the discretion of the Court.

19 Rule 19 Pre-Trial Conferences, Order.

19.1 **Pre Trial Orders Required:** Pre-Trial orders as provided by Rule 7 of the General Rules of Practice are required in all bench and jury trials unless waived in writing by the Presiding Trial Judge. Unless extended by the Presiding Judge in writing, the Pre-Trial order shall be submitted to the presiding judge no later than 5:00 P.M. of the Wednesday preceding the week of trial. The Presiding Judge may require and conduct a pre-trial conference for any case in which such conference appears appropriate in accordance with Rule 16 of the North Carolina Rules of Civil Procedure. The form of the Pre-Trial Order shall be as set out on the Form Appendix.

19.2 **Stipulations as to number of jurors:** In addition to the subjects set out in Rule 7 and this Local Rule, Counsel should determine if the parties will stipulate to a unanimous verdict of any number less than twelve, in the event jurors become ill or otherwise unable to continue to serve after the beginning of trial.

19.3 **Pre-trial Attorney meeting:** At least ten (10) days prior to any trial setting but no later than seven (7), attorneys for each party shall meet together by agreement instigated by counsel for the Plaintiffs to discuss the possibility of settlement; stipulate to as many facts and issues as possible; examine all documents which may be used at trial; furnish opposing counsel the names and addresses of all witnesses who may testify at trial; review all video depositions or exhibits to be used at trial; and complete all other matters which may expedite both the pretrial order, pretrial conference and the trial of this cause. Any witness not disclosed, and any document not furnished as required herein, will not be admitted into evidence unless there is a showing of exceptional reason for noncompliance with this order.

19.4 **Sanctions:** A failure to follow the requirements of this Local Rule, Rule 7 of the General Rules of Practice and Rule 16 of the Rules of Civil Procedure shall be grounds for sanctions against the party whose conduct occasioned the failure. Appropriate sanctions shall be in the discretion of the Court and may include a dismissal of the action or the striking of pleadings or portions thereof and such other sanctions as authorized by law.

20 Trial Issues.

20.1 **Copies of Exhibits:** If counsel intends to submit exhibits to the jury, sufficient copies must be made to provide the Court, the court reporter and each juror and alternate juror with a copy of the exhibit.

20.2 **Jury Instructions:** Typed proposed jury instructions and verdict forms shall be submitted to the Presiding Judge and served on opposing counsel at the commencement of the trial and may be supplemented prior to the jury instruction conference.

20.3 **Trial notebook/Expert Witness Reports:** If a trial notebook or expert witness report is submitted to the Court, a copy of the same shall be provided to the Court Reporter.

20.4 **Audio/Visual:** If counsel intend to use audio/visual tools and equipment in the presentation of the case, counsel must make certain that all such tools and equipment are working properly before being offered.

21 **Rule 21 Procedure Rules when the Superior Court acts as an Appellate Court:** In those cases in which the Superior court is called upon to act as an appellate court of quasi-judicial decisions when the appeal is in the nature of certiorari pursuant to the provisions of Chapter 160D of the North Carolina General Statutes the following rules of procedure shall be followed in the 24th Judicial District.

21.1 **Petition and issuance of writ:** Upon the proper filing of a petition and submission of a proposed writ of certiorari proper in form, the Clerk of Superior Court shall issue and file a writ directing the respondent to prepare and certify to the court a record of proceedings (hereinafter Record) within forty-five (45) days. A copy of both the petition and writ shall be provided to the CM and served upon the Respondent(s).

21.2 **Record of Proceedings:** The record of proceedings shall contain at a minimum all documents and exhibits submitted to the decision-making board, minutes of all meetings at which the decision was considered and an audio or videotape of the meetings if one has been made. Notwithstanding the provisions of 160D-1402(h), the Senior Resident Judge or Presiding Judge, in his or her discretion, may order that a transcript of the audio or videotape of the meetings be prepared and order that the costs of the transcript be borne by the Petitioner. The record shall be bound and paginated. The Petitioner shall have thirty (30) days from the date of service of the Respondent's proposed Record to object to the form or content of the Respondent's Proposed Record of Proceedings. If an objection is filed to the Record of Proceedings, the parties shall have thirty (30) days to resolve disputes concerning the Record and keep the CM informed of the status and the need for the court's intervention in settling the Record. Upon settling of the Record all Counsel shall sign a certificate of settlement of the Record and file it with the Clerk of Court and provide a copy of the certificate and Record to the CM for the presiding judge.

21.3 **Briefs, Petitioner(s)/Appellant(s):** The Petitioner shall have twenty (20) days from the later of 1) the expiration of thirty (30) days following the filing of the Record of Proceedings by the Respondent; or 2) the Settlement of the Record of Proceedings by consent or Court Order, to file and serve any brief or memoranda. A copy of the brief or memorandum will be delivered to the CM for the presiding judge.

21.4 **Briefs, Respondent(s)/Appellee(s):** Opposing party shall have twenty (20) days from the service of the last Petitioner's brief or memoranda to file responsive brief or memoranda. A copy of the brief or memorandum will be delivered to the CM for the presiding judge. If Petitioner does not file a

brief within the time allowed in 21.3 above, opposing party may file a brief at any time after twenty (20) days from the filing of the final Record of Proceedings.

21.5 **Reply Briefs:** Unless the Presiding Judge in his or her discretion shall order to the contrary, there shall be no reply briefs allowed.

21.6 **Effect of Failure to File Brief:** Failure of Petitioner to file a brief within the time required will be deemed abandonment of the Petition, and the Senior Resident Judge or Presiding Judge shall dismiss the Petition.

21.7 **Scheduling of Final Hearing:** The Appeal shall be placed on the next Administrative Scheduling Session docket or Trial Session, whichever occurs first, more than sixty days from the date of the filing of the Petition, for scheduling of the final hearing.

21.8 **Discovery and Supplement of Record at the Final Hearing:** Discovery shall be limited to those issues delineated in G.S. 160D-1402(i). When discovery is statutorily allowed, a Discovery Scheduling Order shall be submitted to the Senior Resident Judge or Presiding Judge for approval. The Court shall allow and consider evidence supplementing the Record at the Final Hearing only as to those issues delineated in G.S. 160-1402(i).

21.9 **Modification of Deadlines:** All deadlines set by these rules may be modified by the Senior Resident Judge upon motion by any party, after opportunity has been given to opposing counsel to be heard.

21.10 **Exempt for MSC:** Judicial Reviews of quasi-judicial decisions as well as Administrative Actions are exempt from Mediated Settlement Conferences.

22 Rule 22 Appeals from the Clerk of Court and Division of Motor Vehicles.

22.1 **DMV Appeals:** Appeals from Division of Motor Vehicles for hearing on revocation of driving privileges pursuant to G.S. 20-16.2(d) or 20-25 shall appear on the docket at the first Administrative Scheduling Session or Trial Session, whichever occurs first, more than sixty (60) days after the date of filing of the Petition in Superior Court.

22.2 **Appeals from Clerk:** Appeals from any proceeding originally heard by the Clerk of Court shall appear on the docket at the first Administrative Scheduling Session or Trial Session, whichever occurs first, more than 60 days after the date of filing of the appeal in Superior Court.

23 Rule 23 Ex-Parte Communications: There shall be no ex-parte communications about pending matters with the Senior Resident Superior Court Judge, Resident Judge, Presiding Judge, or the Court Manager. Any communication to the Senior Resident, Resident Judge, Presiding Judge or Court Manager including email transmissions shall show that all parties are copied, or a copy of the communication is to be delivered by mail. The scheduling of motions shall not be considered ex-parte communication for purpose of this rule.

24 Rule 24 Inactive Cases, Bankruptcy, Arbitration. (Form to be used on Form Appendix)

24.1 **Failure to Prosecute, Comply with Rules or Court Order:** Rule 41(b) of the Rules of Civil Procedure allows the Court to dismiss a case with prejudice for failure to prosecute, or failure to comply with the civil rules or any court order.

24.2 **Bankruptcy:** The Senior Resident or Presiding Judge may declare a case “inactive” and remove it from the trial calendar because of the filing of a bankruptcy petition. Any request to continue, stay, or in any way delay the disposition of a case due to bankruptcy of one of the parties must be accompanied by a copy of the stay order for the United States Bankruptcy Court and shall apply only to cases involving the party filing for relief in Bankruptcy. Any case that has been the subject of an approved request shall be placed on inactive status and removed from the active docket of cases pending with the Clerk of Superior Court in the respective county. Upon resolution of the bankruptcy proceedings or dissolution of the stay, the case may be reopened upon motion to the Court and placed on the active docket of cases pending in Superior Court in the respective county.

24.3 **Arbitration:** The Senior Resident or Presiding Judge may declare a case inactive and remove it from the trial calendar when the matter is being stayed pending arbitration. Upon the granting of a motion to stay litigation pending arbitration, the case shall be placed on inactive status and removed from the active docket of cases pending with the Clerk of Superior Court in the respective county. The case may be reopened upon appropriate motion to the Court and placed on the active docket of cases pending in Superior Court in the respective county. 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 CM by written notice within thirty (30) days of their decision to do so.

25 **Rule 25 Cases Removed to Federal Court:** When a case is removed to United States District Court notice of such removal shall be provided to the Clerk of Court and a copy provided to the CM. The Senior Resident will enter an order inactivating the state case and it will be removed from the docket of cases pending before the Superior Court.

26 **Rule 26 Enforcement:** In accordance with the provisions of Rules of Court **Rule 22**, a Presiding Judge must enforce these local rules of the 24th Judicial District. Provided however, this provision shall not apply to cases designated as “complex business” or to cases assigned to a Business Court Judge or assigned under Rule 2.1.

27 **Rule 27. Orders, Judgments or Dismissals.**

27.1 **Attorney to File or Submit:** Unless otherwise ordered by the Court, attorneys shall file a dismissal, settlement agreement, or submit a proposed order or judgment within thirty (30) days after any settlement or court hearing or trial.

27.2 **Delinquent Orders or Judgments:** The CM will bring delinquent orders or judgments to the attention of the Senior Resident Judge. The Senior Resident may order such sanctions and impose such penalties as he or she deems appropriate and as allowed by law.

27.3 **Cases under advisement:** Attorneys or unrepresented parties should notify the CM of cases that have been heard and taken under advisement when a period of more than sixty (60) days has passed since the hearing without a ruling by the Court. The CM shall then contact the Presiding Judge to seek an update for the parties as to when an anticipated decision will be forthcoming.

28 Rule 28 Secured Leave.

28.1 **Designation and Notice:** Pursuant to Rules of Practice, **Rule 26**, attorneys may designate periods of secured leave in writing. Attorneys appearing in cases pending before the Civil Superior Court in the 24th Judicial District shall submit their Notice of Secure Leave to the Clerk of Superior Court of the respective county and to the CM. Service to the CM shall constitute service to the office of the Senior Resident Superior Court Judge under the rule. Service upon the Senior Resident or at his or her personal address is strongly disfavored and contrary to this rule and **Rule 26**.

28.2 **Designations not Filed:** Secured leave designations are not filed in court files. The CM shall enter and maintain a database used to track periods of secure leave.

28.3 **Waiver of Time limitations:** In extraordinary circumstances, the time limitations for notification of designated weeks may be waived by the Senior Resident Judge when attorneys have been faced with particular or unusual situations.

29 Rule 29 Rule 2.1 Requests, Business Court: All requests for complex case designation pursuant to **Rule 2.1** of the Rules of Practice shall be determined by the Senior Resident Judge. Any party filing a pleading with the Business Court asserting jurisdiction there shall provide a copy to the CM.

30 Rule 30. Remands from Appellate Courts: Upon remand of a case from an appellate court, the prevailing party before the appellate court shall notify the CM of the remand within thirty (30) days from the date of the mandate of the appellate court.

31 Rule 31 Sanctions: 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 for the Superior and District Courts, the Senior Resident Judge or Presiding Judge may, in his or her discretion, impose appropriate sanctions.

32 Rule 32 Effective Date: These Rules shall be effective as of January 1, 2023 and shall be applied and interpreted to meet the policy and purpose provisions of these rules.

This the 4th day of November 2022.

Gary M. Gavenus
Senior Resident Superior Court Judge
Twenty-Fourth Judicial District