

RULES OF PRACTICE AND PROCEDURES FOR CIVIL NON-DOMESTIC CASES

Eighth Judicial District District Court Division Wayne, Lenoir, and Greene Counties

(See Separate Local Rules Governing Domestic and Juvenile Court)

Effective March 1, 2003

RULE 1: GENERAL RULES

- 1.1 **Purpose.** The purpose of these Rules is to implement a case management plan to provide for the fair, just, and timely disposition of civil matters in the District Court Division of the Eighth Judicial District. These Rules are in compliance with the North Carolina Rules of Civil Procedure, the General Rules of Practice for the Superior and District Courts, and the Rules Implementing Court Ordered Arbitration in District Court General Civil Actions.
- 1.2 **Applicable Rules.** These Rules supersede all previous Civil Non-Domestic Local Rules of the Eighth Judicial District, District Court Division. See separate Local Rules governing Domestic and Juvenile Court.
- 1.3 **Compliance.** It is recognized that these Rules are not complete in every detail and will not cover every situation that may arise. In the event that the Rules fail to address a specific matter, they should be construed in such a manner as to avoid technical or unnecessary delay. The Chief District Court Judge's Judicial Support Staff (hereinafter referred to as Judicial Support Staff) is authorized to act in his/her discretion subject to consultation with the Chief District Court Judge or the Presiding Judge.
- 1.4 **Citation.** These Rules, and all amendments hereafter, shall be filed with the Clerk of Superior Court of each county in the Eighth Judicial District and the Administrative Office of the Courts, and may be cited accordingly.
- 1.5 **Availability of Rules.** The Judicial Support Staff shall distribute a copy of these Rules and any subsequent amendments hereafter to each member of the Eighth District Bar. The Chief District Court Judge shall maintain a supply of printed rules, as well as associated forms, to be provided upon request.

RULE 2: CIVIL ACTION COVER SHEET

- 2.1 All pleadings filed in any civil action with the Clerk of Superior Court shall be accompanied by an original and a copy of the State mandated cover sheet.
- 2.2 The Clerk of Superior Court shall refuse to accept for filing any pleading not accompanied by an original and a copy of the State mandated cover sheet.
- 2.3 The Clerk of Superior Court shall forward to the Judicial Support Staff the copy of the State mandated cover sheet filed with every pleading.

RULE 3: CALENDARING

- 3.1 **Case Tracking.** The Judicial Support Staff shall establish and maintain a case tracking system in an effort to monitor the number, age, type, and procedural status of all pending civil non-domestic cases, and to provide for calendaring of same.
- 3.2 **Readiness for Trial.** A case shall be deemed ready for trial when the Judicial Support Staff has determined at least one of the following has occurred:
 - a) One hundred and twenty (120) days or more has elapsed since the case filing.
 - b) A case has been transferred to the District Court Division on an appeal from the Magistrate Court and does not qualify for, or has been waived from Court Ordered Arbitration.
 - c) A case has been remanded for trial by the Appellate Division.
 - d) A case is entitled to a priority hearing by statute.
 - e) A calendar request has been filed with the office of the Chief District Court Judge by counsel or unrepresented parties, and served upon opposing party, requesting that the case be placed on a trial calendar prior to the expiration of the one hundred and twenty (120) day period.

If at the end of one hundred twenty (120) days:

- a) There is no service on the parties, pursuant to N.C.G.S. § Rule 4(e) the case will be discontinued.
- b) There is service on the parties, but an answer has not been filed and time has expired, the Judicial Support Staff shall place the case on a motion calendar for default, whether or not the attorney has moved for an entry of default. If the attorney does not obtain the default, the case will be dismissed for failure to prosecute.

- 3.3 **Establishment of Trial Calendar.** The Judicial Support Staff shall place those cases that he/she has determined to be ready for trial on the trial calendar. Requests for the setting of cases on the calendar shall be made in writing no later than four weeks prior to the beginning of the calendar call for the session of court. Calendars shall be published three weeks prior to the scheduled session. Copies of all requests shall be sent to opposing counsel or pro se party and the Judicial Support Staff. Should a party desire to do so, the party may notice the other side into court after the calendar is published but before two weeks from the calendar call for the sessions. Parties have the responsibility of keeping informed concerning the status of the docket. No case will be put on the trial calendar without the permission of the Chief District Court Judge or by agreement with, or consent of the opposing party.
- 3.4 **Calendar Call.** Calendar Call for general civil jury cases will be held on the Thursday immediately prior to the scheduled jury session of court and conducted by the Judicial Support Staff. All attorneys and pro se litigants are expected to be present or represented at the calendar call. After the call of the calendar, the Judicial Support Staff in consultation with the presiding judge will set all cases on the calendar for jury trials on a date certain.
- 3.5 **Jury Requests.** Attorneys calendaring a civil matter in which a jury trial has been requested must, in the calendar request, indicate that a jury will be necessary so that the Judicial Support Staff can make the appropriate arrangements to have a sufficient number of jurors available for the session. If the calendar request does not indicate that a jury is required, then the opposing party receiving notice of the calendar must immediately notify the Chief District Court Judge's Judicial Support Staff that a jury is required. Any party failing to comply with this requirement is deemed to have waived a jury for the session during which it is calendared.
- 3.6 **Civil Non-Domestic Motions.** Civil Non-Domestic Motions shall be filed in accordance with the Rules of Civil Procedure and the General Rules of Practice and may be scheduled for any civil session prior to the trial session or on the first day of the session in which civil matters are scheduled for trial.
- 3.7 **Calendar Responsibility.** The responsibility for distributing the published calendar shall be with the Judicial Support Staff. For all matters added to the calendar after the cut off date, the responsibility for notice to all attorneys and parties entitled to notice shall be with the attorney or party scheduling any motion after the cut off date. Before scheduling a matter for hearing, the requesting party must obtain a hearing date from the Judicial Support Staff.
- 3.8 **Court Minutes.** The clerk shall provide the Judicial Support Staff with a copy of the official court minutes from the term not later than five business days after the expiration of the term.

RULE 4: DISCOVERY

- 4.1 **Completion**. All discovery must be completed no later than 120 days from the date of the filing of the complaint.
- 4.2 **Order Requiring Compliance**. If a party has difficulty obtaining properly requested discovery, the assigned judge shall issue an order requiring compliance. A schedule for discovery may be set upon request of either party.
- 4.3 **Incomplete Discovery**. Once scheduled from the calendar call, a trial will not be delayed because discovery has not been completed, except by the trial judge in his or her discretion.
- 4.4 **Pre-Trial Procedure**. Upon the request of counsel for either party, a judge will be available to hold a pre-trial conference in any civil case. The Court may dispense with or limit the scope of the pre-trial conference, upon request or upon its own motion. However, a pre-trial conference shall be held in all civil cases in which a jury trial is requested. A pre-trial conference should be held at least 14 days prior to the calendar call for the session in which the case is set for trial in order to determine all matters to which stipulations may be made. On the first day of the civil session, counsel shall present a proposed order on stipulated issues. The presiding judge in his or her discretion may hold a conference or hearing to further narrow or clarify any contested issues.
- 4.5 **Pre-Trial Order**. A Pre-Trial Order is not mandatory. After identifying the issues to be addressed, the judge should prescribe what kind of affidavits should be submitted.
- 4.6 **Continuance**. A party who has not requested a pre-trial conference may not move for a continuance on the grounds that it has not been held.

RULE 5: MAGISTRATE (SMALL CLAIMS) APPEALS

- 5.1 **Notice and Calendaring**. The appellate in a small claims appeal to district court shall be responsible for completing and filing a cover sheet and a small claims notice of calendaring form at the time notice of appeal was entered or perfected and the matter shall be set with the priority established by law for the first day of the next available term for which a calendar is to be published for the trial of civil actions. The case shall be calendared for the first day of such civil session. The Judicial Support Staff shall provide the small claims magistrates and clerks with a listing of available dates for the setting of appeals for trials. The appellant shall serve the calendar notice upon all opposing parties and this notice shall constitute sufficient notice of the calendar of the matter for hearing.

- 5.2 **Motions to Re-plead Required**. Following the entry of notice of appeal from the magistrate, the case will be tried upon the original pleadings unless otherwise ordered, and no further pleadings should be filed without leave of court unless the time for filing a pleading has not expired under the regular Rules of Civil Procedure. A Motion to Re-plead shall state concisely the issues that the moving party anticipates developing in the action. An Order Allowing Re-pleading may also set a trial date and establish a requirement for Pre-Trial Orders. The issue of summary ejection may be severed from other issues by the Court on the Court's own motion if justice so requires. No Pre-Trial Order shall be required in magistrate appeal cases unless a Motion to Re-plead has been made and the Court so orders.
- 5.3 **Notice of Settlement**. When a case is settled, all attorneys of record and pro se litigants must notify the Judicial Support Staff within 24 hours of the settlement and advise who will prepare and present the judgment or dismissal, and when such judgment or dismissal will be presented. Judgments or dismissals must be filed in accordance with Rule 6 as set forth below.

RULE 6: ARBITRATION

- 6.1 **Court Ordered**. The Eighth Judicial District is a jurisdiction covered by the Rules adopted by the Supreme Court for Court-Ordered Arbitration in certain civil cases wherein the amount in controversy does not exceed \$15,000. Unless otherwise ordered, all cases qualifying shall be referred to arbitration at the time of filing, or as soon thereafter as is practicable. Notice of referral shall be given to the parties by the Arbitration Coordinator. Cases appealed from the magistrate's small claims court, which qualify, shall be referred at the time of the filing of the notice of appeal. Other cases may be referred for arbitration by order of the Court and by consent of the parties.
- 6.2 **Delay**. Unless otherwise ordered, the referral of a case for arbitration shall not delay hearings on motions filed by any party. However, hearings on motions for summary judgment shall ordinarily not be heard until after arbitration is completed. A motion to exclude a case from arbitration shall be entitled to an expedited hearing.

RULE 7: BANKRUPTCY CASES

- 7.1 Civil actions in which one of the parties is adjudicated bankrupt will be disposed of in accordance with the following authority and procedure:
- (a) Rule 401 of the Federal Bankruptcy Act.
 - (b) 11 U.S. Code 362

- (c) 11 U.S. Code 1301
- (d) Whitehurst v. Virginia Dare Transportation Co. 19 N.C. App. 352 (1973)
- (e) N.C.G.S. 1-23

- 7.2 Any request to continue, hold, or in any other way delay disposition of a case due to bankruptcy of one of the parties must be accompanied by a certificate of bankruptcy filing or stay of proceeding from the United States Bankruptcy Court having jurisdiction.
- 7.3 The Judicial Support Staff will refer the case to the Chief District Court Judge for execution of an injunction pursuant to the above authority. After reasonable notice, the judge may dismiss the civil action without prejudice. Said notice may be in writing via letter or in the form of a calendar.
- 7.4 Notwithstanding any provisions of Rule 15 or any subdivisions thereof, the presiding judge will enter such order(s) as may be necessary to enforce the bankruptcy stay, enjoin the state action, and administratively close the file in question.
- 7.5 After reasonable notice, the presiding judge will dismiss/close the civil action in state court without prejudice. Said notice may be in writing in the form of a letter or by placing the case on a civil calendar.

RULE 8: SUBMISSION OF PROPOSED ORDERS AND JUDGMENTS

- 8.1 **Orders Due.** All proposed orders prepared by counsel must be presented to the Court within 30 days from the announcement of the decision of the Court or at such other time as the Court may designate. The Court shall set a date certain for the submission of the proposed order at the time the decision is announced, and may schedule the matter on a calendar for the entry of the order or judgment.
- 8.2 **Submission of Orders.** Unless an alternative schedule is set by the trial judge, the attorney or party whose responsibility it is to draft a proposed order shall deliver a copy of the proposed order to opposing counsel or party 15 days after the announcement of the decision; and the other party shall deliver any proposed changes within 10 days thereafter.
- 8.3 **Unresolved Orders.** If the parties cannot resolve their differences in the proposed draft to be presented to the Court within 5 days, counsel or any pro se party shall appear at a time and place to be set by the Court for the Court to consider the positions and determine what actions should be taken. The presentation by counsel of a letter or faxed copy showing the exchange of

proposed drafts occurred within the time frame established by these Rules shall constitute *prima facie* evidence of compliance with this Rule.

- 8.4 **Sanction.** Unless an extension of the time for exchanging or submitting the proposed order has been obtained from the Court before the date the proposed order is due, all counsel shall appear on the scheduled date to show cause why the automatic sanctions provided for herein should not be imposed. The submission of a proposed order in final form agreed to be appropriate for signing before a sanction is imposed shall constitute full compliance.

If the person responsible for exchanging or filing the proposed order has failed to present the order by the time set, the person or persons held responsible shall be subject to the sanction of a \$50 fine for each failure to comply.

RULE 9: CONTINUANCES AND CONFLICTS

- 9.1 **General Continuance Rules.** To be considered timely made, a motion to continue a case which has been calendared must be filed in writing, directed to the judge assigned to preside with a copy to the Judicial Support Staff; and must, absent good cause, be filed by 9:00 a.m. on the Thursday before the beginning of the term in which the case is set. The Judicial Support Staff will maintain an updated calendar and record thereon the status of cases, including special circumstances, which will enable other parties to determine which cases have been continued or settled. The procedure for obtaining a continuance depends upon the age of the case as follows:

- a) **Cases pending under 120 days.** Any matter which has been calendared with the consent of all parties may be continued by the consent of all parties if the case has been pending for 120 days or less, provided the consent to the continuance is in writing and delivered to the Judicial Support Staff by 9:00 a.m. on the Thursday before the beginning of the term.
- b) **Cases pending between 120 and 180 days.** Cases which have been pending more than 120 days but less than 180 days may ordinarily be continued by consent; however, notice and an opportunity for the Judicial Support Staff to object to the continuance shall be given by 9:00 a.m. of the preceding Thursday. If the Judicial Support Staff objects, then a conference shall be scheduled with the trial judge and the Court will enter such order as is appropriate.
- c) **Cases pending more than six months.** Cases which have been pending for more than 180 days and which have been set by the Judicial Support Staff may not be continued without the consent of the Judicial Support Staff unless ordered by a judge. Requests for continuances shall be

submitted in writing to the Judicial Support Staff and the Judicial Support Staff shall inform counsel promptly whether the request has been granted or denied. If any party objects to the action of the Judicial Support Staff, a written request that the Court review the action of the Judicial Support Staff must be promptly delivered to the judge who is scheduled to preside over the term. The request for a review of the Judicial Support Staff's action must state in detail the reason why the action should be modified.

- 9.2 **Duty to Inform of Conflicts.** All attorneys appearing in any calendared case have an informative duty to notify the Judicial Support Staff promptly upon learning of any potential conflicts. Court scheduling conflicts shall be resolved in accordance with the General Rules of Practice. Attorneys may not rely upon conflict as a ground for continuance unless prompt notice of a potential conflict was given so that the Judicial Support Staff might have an opportunity to assist in resolving the conflict. Within the district courts, juvenile adjudicatory and dispositional hearings shall have priority over other district court matters unless otherwise ordered.
- 9.3 **Motions for Continuance - General Civil and Magistrate Appeals Cases.** Civil cases should be disposed of at the earliest opportunity, including the first trial setting. However, when compelling reasons for continuance are presented which would affect the fundamental fairness of the trial process, a continuance may be granted for good cause. Requests for continuances that will delay the resolution of the case beyond the established time standards shall only be granted for extraordinary cause.
- 9.4 **Appropriate Court Official.** All applications for continuance shall be made to the Judicial Support Staff. The Judicial Support Staff is the appropriate court official to whom motions should be initially addressed before the calendar call at the beginning of any session, and he or she shall make a recommendation to the presiding judge for the session.
- 9.5 **Court Conflict.** The various levels of court should work together to try to move cases as expeditiously as possible. Age of case, subject matter and priority of setting should be given as much primacy as a level of court when resolving conflicts. Attorneys shall notify the Court and opposing counsel of any other court conflict(s) as they become known and shall keep the Court advised of the resolution of that conflict. All judges shall communicate with other judges to resolve such conflicts. In resolving court conflicts, juvenile cases shall take precedence over all matters unless otherwise agreed among the presiding judges.

All requests for continuance shall be by written motion. However, oral motions may be allowed when the reason for the continuance did not become known until immediately preceding the start of court.

9.6 **Notification of Opposing Counsel/Unrepresented Parties/Witnesses.** All parties must be notified of a motion to continue. A copy of the motion to continue must be distributed to all counsel of record and/or unrepresented parties prior to ruling on the motion. In addition to the service requirement set out in the statute, distribution of the motion must be made by the quickest means feasible, including facsimile transmission, electronic mail or hand delivery.

9.7 **Objections to Motions for Continuance.** All parties should have an opportunity to be heard on a motion to continue. When a motion to continue is made more than seven working days prior to trial, opposing counsel and/or unrepresented party shall have a period of four working days, following completion of distribution, to communicate objections to the motion for continuance to the moving party and the presiding district court judge or his/her designee. Objections not raised in writing within this time period are deemed waived.

When a motion to continue is made within seven working days of the trial term (other than an oral motion made in open court), the moving party shall include in the written motion a statement that the opposing counsel or party has been contacted and a short statement on opposing party's position on the motion (including whether the opposing party or counsel consents or objects, and whether or not he or she desires to be heard on the motion). If the moving party is unable to contact the opposing counsel or unrepresented parties, the motion shall state what efforts were made and why contact was not possible.

9.8 **Evaluation of Motion for Continuance.** Factors to be considered by the appropriate court official whether to grant or deny a motion for continuance should include:

- the impact of a continuance on the safety of the parties or any other person;
- the age of the case;
- the status of the trial calendar for the session;
- 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 would resolve prior to the scheduled trial date;
- whether the basis of the motion is the existence of a legitimate conflict with another court setting;
- the period of delay caused by the continuance requested;
- the position of opposing counsel or unrepresented parties;

- the availability of witnesses for the present session, or for a future session;
- whether the parties themselves consent to the continuance;
- present or future inconvenience or unavailability of witnesses/parties;
- consideration of the financial consequences to the public, the parties, the attorneys, or witnesses if the case is continued;
- compliance with any law relating to the scheduling and trial of civil cases (such as, summary ejection appeals); and
- any other factor that promotes the fair administration of justice.

RULE 10: CASE RESCHEDULING

- 10.1 **Case Rescheduling.** Upon granting a motion for continuance, the judge should reschedule the case to a specific trial date after receiving input from all parties.
- 10.2 **Time Standards.** All general civil and magistrate appeal cases should be disposed of within 24 months of filing with 90 percent of all cases disposed of within 12 months of filing.

RULE 11: COURT SCHEDULING AND JUDGE ASSIGNMENTS

- 11.1 **Delegation of General Authority.** The Chief District Court Judge shall prepare courtroom assignments for each judge and designate those matters to which each judge should give primary emphasis. Each District Court Judge is hereby authorized by the Chief District Court Judge, subject to further orders, to hear all matters within the jurisdiction of the District Court Division, in session or out of session, including in chambers matters, temporary restraining orders, injunctions, and any other matter which can be delegated, authorized, or assigned. The court assignment is intended to designate those matters to which the assigned judge shall give primary attention. The conduct of the Court, once assigned, is solely within the discretion of the presiding judge. All assignments are subject to change, and a judge assigned to any court has full authority to hear matters assigned to other courts upon conferring with the judge having primary authority over the matter, and all judges are authorized to preside over any session, and may open and operate such courtroom sessions as may be appropriate to dispose of all pending matters in the most expeditious manner. No actions of any judge shall be subject to collateral attack or jurisdictionally challenged for the reason that authority was not delegated or assigned by the Chief District Court Judge, it being the intent of this provision to fully confer such jurisdiction as may be allowed by law, unless and until such authority is divested by a specific order subsequently entered.
- 11.2 **Delegation of Authority to Act in Absence of Chief Judge.** In the absence of the Chief District Court Judge from the district, the duties of the Chief District

Court Judge may be performed by the next most senior judge available in the county in which the issue to be considered is pending; and if no judge is available in that county, then the next most senior judge who is available within the district.

- 11.3 **Request for Judge from Outside District.** All motions or requests for assigning an out-of-district judge to hear any matter shall be made to the Chief District Court Judge.
- 11.4 **Courtroom Designations.** The Chief District Court Judge shall from time to time designate the terms of court and types of cases to be assigned to the various district court courtrooms.
- 11.5 **Judicial Assignments.** Judges shall have primary assignments as set out in the weekly assignments published by the Chief District Court Judge, which shall be available in the office of the Chief District Court Judge. The weekly assignments do not limit the jurisdiction of any judge, but the judges shall give primary attention to the matters assigned and shall defer appropriate matters to the judges primarily assigned to hear the matters in question.

RULE 12: SANCTIONS

- 12.1 **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 Chief District Court Judge or presiding judge.

RULE 13: RELIEF UPON A SHOWING OF GOOD CAUSE

- 13.1 **Good Cause.** The purpose of these Local Rules is to establish appropriate procedures, which balance a need for the orderly and efficient administration of justice with the rights of the parties to have access to justice. Where the enforcement of any rule would lead to an unjust result or bestow an unfair advantage, the Court may exercise its sound discretion to excuse or relieve any party of the burden of these rules.