

NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

JUDICIAL DISTRICT 25A
BURKE AND CALDWELL COUNTIES

IN RE:

ORDER

ADOPTION OF NORTH CAROLINA
SUPREME COURT RULES AND LOCAL RULES
FOR MEDIATED SETTLEMENT CONFERENCES
IN SUPERIOR COURT CIVIL ACTIONS


Whereas, the North Carolina Supreme Court, pursuant to N. C. Gen. Stat. 7A-38.1(c) of the North Carolina General Statutes adopted and published rules and amendments to the Rules Implementing Statewide Mediated Settlement Conferences In Superior Court Civil Actions to facilitate the settlement of Superior Court civil actions as ordered on October 2, 1991 and as amended since that date.

Whereas, Rule 14 of those Rules authorizes the senior resident superior court judge of any district conducting mediated settlement conferences under those Rules to publish local rules, not inconsistent with these Rules and N. C. Gen. Stat. 7A-38.1, to implement mediated settlement conferences in that district.

Now, therefore, it is hereby ordered that the following local rules are adopted for Judicial District 25-A:

1. Pursuant to N. C. Gen. Stat. 7A-38.1(c), the North Carolina Supreme Court's Rules Implementing Statewide Mediated Settlement Conferences In Superior Court Civil Actions are recognized as applicable to all civil actions pending in Judicial District 25-A.
2. The Trial Court Coordinator is specifically assigned the responsibility of managing the Mediated Settlement Conferences process, including the establishment of deadlines, ensuring adherence to those deadlines and issuing appropriate documents in a timely manner.
3. Pursuant to Rule 2C, when the parties do not timely select a mediator, the Trial Court Coordinator for Judicial District 25-A shall appoint the next certified mediator on the list of certified mediators, provided by the Dispute Resolution Commission through its website, who has expressed a willingness to mediate actions within Judicial District 25-A. This list shall be arranged alphabetically and appointments shall be made in consecutive order, without regard to race, gender, religious affiliation, or whether the mediator is a licensed attorney. The Senior Resident Superior Court Judge retains the discretion to depart from a strict rotation when there is good cause to do so, such as the appointment of one mediator to multiple related cases or the appointment of a newly certified mediator.

This the 23rd day of February, 2015.


Robert C. Ervin
Senior Resident Superior Court Judge

CASE MANAGEMENT PLAN AND LOCAL RULES FOR CIVIL ACTIONS IN JUDICIAL DISTRICT 25-A

Pursuant to the provisions of Rule 40(a) of the North Carolina Rules of Civil Procedure and Rule 2 of the General Rules of Practice for the Superior and District Courts (hereinafter the "General Rules"), IT IS ORDERED that the following local rules are adopted for the Superior Court Division in Judicial District 25A effective July 1, 2015.

1. GENERAL RULES

- 1.1 The purpose of these Rules is to institute a Case Management Plan for the Superior Court Division that will provide for the orderly, prompt and just disposition of civil matters.
- 1.2 For the purpose of these rules, except where specified, the term "Court" shall mean the Senior Resident Superior Court Judge and the term "TCC" shall mean the Trial Court Coordinator.
- 1.3 These Rules and all amendments shall be filed with the Clerk of Superior Court of Burke County and Caldwell County and published on the State website (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 address a specific matter, the TCC is authorized to act in her discretion, in consultation with the Court or the Presiding Judge.
- 1.5 The TCC's office is located at the Burke County Courthouse. The TCC's mailing address is 201 South Green Street, Morganton, NC 28655. The telephone number for the TCC is (828)-433-3288 and the TCC's fax number is (828) 433-3217. The TCC's e-mail address is: Justina.A.Tate@nccourts.org.

2. ADMINISTRATIVE OR READY CALENDAR

The TCC shall maintain an administrative or ready calendar for pending civil matters. Cases shall be placed on the administrative or ready calendar six months after the Complaint is filed. All cases on the administrative or ready calendar shall be subject to being placed on a trial calendar pursuant to the provisions of Rule 4 of these Rules.

3. REQUESTS FOR CALENDARING CASES FOR TRIAL

Any attorney or unrepresented party may request that a case be calendared for trial. Any request to calendar a case for trial should be made by communicating the request to the TCC with a copy to opposing counsel and any unrepresented parties. This request should be made prior to the publication of the tentative trial calendar.

4. ADMINISTRATIVE SCHEDULING SESSIONS

4.1 Approximately three times a year at designated times, the Court will conduct an Administrative Scheduling Session for each case on the Administrative or Ready Calendar and will, in cooperation with the parties, assign the case to a specific session of court for trial.

4.2 At least one month prior to the Administrative Scheduling Session, the TCC will post on-line the Administrative or Ready Calendar and will designate the upcoming trial dates to be filled at the Administrative Scheduling Session.

4.3 Four weeks prior to the Administrative Scheduling Session, the TCC will send an e-mail to every attorney appearing in a case on the Administrative or Ready calendar asking the attorney to confer with other counsel or parties in the case to select a trial date among the available trial dates designated by the TCC.

4.4 Letters will be mailed to pro se litigants and attorneys without e-mail addresses to advise them of the posting of the Administrative or Ready Calendar and to notify them to confer with the other parties in the case to select a trial date.

4.5 If the parties to a case can agree on a trial date, then the parties may communicate that agreed upon date to the TCC. Every effort will be made to set the case on that agreed-upon trial date. Attorneys appearing in cases in which the TCC has been advised of the preferred trial date are not expected to be present at the Administrative Scheduling Session.

4.6 In the event that the parties cannot agree on a trial date, then the parties may appear at the Administrative Scheduling Session and the Court will set a trial date after hearing from the parties. In the alternative, the parties may request that the TCC arrange a conference call with the Court to resolve their disagreement over a trial date. In the event the parties do not communicate an agreed upon trial date to the TCC and do not appear at the Administrative Scheduling Session, then the Court will set a trial date. Requests to continue that trial date for reasons that could have been submitted to the TCC or the Court at or prior to the Administrative Scheduling Conference will be entertained with some skepticism.

5. PREEMPTORY SETTINGS

5.1 Requests for preemptory settings should be made to the Court.

5.2 In accordance with Rule 2(f) of the General Rules of Practice, a request for a preemptory setting shall be granted only for good and compelling reasons.

6. DISTRIBUTION AND PUBLICATION OF COURT CALENDARS

6.1 Not less than four weeks prior to the first day of each session, the TCC shall prepare a tentative calendar of cases for trial at that session. The trial calendar is published on the date it is posted to the Internet.

6.2 Publication of calendars shall be made by posting on the Internet at www.nccourts.org. (<http://www1aoc.state.nc.us/www/calendars/Civil.html> is the direct link for calendars. Attorneys without internet access shall notify the TCC in writing and copies of trial calendars will be published for such attorneys by regular mail or by being placed in the attorney's courthouse mailbox. 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 of Superior Court advised of a current mailing address.

6.3 Cases set peremptorily in accordance with Rule 5 or cases having statutory priority shall appear at the top of the trial calendar. To the extent possible, the TCC shall set other cases so that the oldest-numbered cases on the calendar will appear as the first cases after those designated as peremptorily set or given statutory priority.

6.4 The TCC shall continually monitor the tentative trial calendar to determine settlements, conflicts that develop, motions that are filed, and other factors affecting the readiness of cases for trial.

7. MOTIONS

7.1 A request to schedule a motion for hearing shall be made to the TCC. A notice of hearing shall also be filed and served as provided in Rule 6(d) of the Rules of Civil Procedure.

7.2 Motions shall be scheduled for hearing by the TCC in her discretion and in the order of the receipt of the request for a hearing.

7.3 Motions for Summary Judgment should be scheduled and heard prior to the week of trial.

7.4 The TCC shall publish and distribute, by posting on the Internet, a regular calendar for motions to be heard at each trial session. This motion calendar should not contain more motions that can reasonably be expected to be heard during the morning session of the first day of the term of court.

7.5 All briefs, responses and memorandums and supporting authorities and any other materials intended to be used in oral argument or submitted to the Presiding Judge for consideration shall be delivered at least two days prior to the hearing of the motion. Acceptable forms of delivery include hand-delivery, express delivery, mail or e-mail.

Facsimile or e-mail may not be used for this purpose without the permission of the Presiding Judge.

8. 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 requested injunction. The presentation of testimony from witnesses will be received only in exceptional circumstances or when the party offering the witness' testimony has been unable to obtain an affidavit from the witness in advance of the hearing.

9. PRE-TRIAL CONFERENCES AND ORDERS

9.1 Rule 16(b) of the Rules of Civil Procedure and Rule 7 of the Rules of General Practice requires the parties to conduct a pre-trial conference unless the court approves the parties' joint stipulation to the contrary.

9.2 The Court suggests that the preparation of a pre-trial order in the form set out in the General Rules of Practice would generally be beneficial to the parties and the Presiding Judge.

10. CONTINUANCES

10.1 Motions for a continuance and objections to such motions should be communicated to the TCC and copied to opposing counsel and unrepresented parties.

10.2 Prior to the opening of court for the session in which the case is calendared, all motions for continuance shall be made to the Court or his designee. Following the opening of the session of court in which the case is calendared, any motion for a continuance shall be made to the Presiding Judge.

10.3 In accordance with Rule 40(b) of the Rules of Civil Procedure, a continuance may be granted only for good cause shown and upon such terms and conditions as justice may require. As provided by Rule 3E of the Rules Implementing Statewide Mediated Settlement Conferences in Superior Court Civil Actions, the mediated settlement conference shall not be cause for the delay of other proceedings in the case, including the completion of discovery, the filing or hearing of motions, or the trial of the case.

11. SCHEDULING CONFLICTS

Scheduling conflicts should be resolved in accordance with the provisions of Rule 3.1 of the General Rules of Practice.

12. PROCEDURES FOR SESSIONS OF COURT

12.1 Superior Court will convene at 10:00 a. m. on the first day of each term and thereafter on each day at 9:30 a. m. unless changed by the Presiding Judge. The jury shall be summoned to report on the opening day of each session at such time set by the Clerk of Superior Court unless otherwise ordered by the Court.

12.2 There will be a calendar call at 10:00 a. m. on the first day of each civil session. The purpose of calendar call is to ascertain the status of cases on the calendar, to consider requests for continuance, to give the parties and counsel an indication of when their case may be reached, and to address other matters.

12.3 Motions shall be set for hearing as the first order of business after the calendar call. Motions not heard on the morning of the first day of each session may be heard at any time during the session in the discretion of the Presiding Judge.

12.4 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 and ready to proceed. All cases calendared for trial shall be ready for trial at any time during the term.

13. JUDICIAL REVIEW OF ADMINISTRATIVE ACTION

13.1 Pursuant to N. C. Gen. Stat. 150B-47, the agency making the final decision shall file the original or certified copy of the official record with the Clerk of Superior Court and shall serve a copy upon all interested parties with thirty (30) days after receipt of the petition for review or as provided by a writ of certiorari.

13.2 The matter shall be set for hearing on the first available motions calendar more than thirty days from the date of the filing of the official record.

14. SETTLEMENTS

14.1 When a case on the published trial calendar has been settled, all attorneys of record must notify the TCC within 24 hours of the settlement and advise the TCC who is responsible for the preparation of the documents necessary to dispose of the case and the time at which the documentation will be filed.

14.2 If the documents provided for in Rule 14.1 are not filed in a timely fashion, the TCC may thereafter place the case on a trial or motion calendar for further proceedings including the dismissal of the action at the discretion of the Court or the Presiding Judge.

15. DELINQUENT ORDERS OR JUDGMENTS

15.1 Cases or motions heard on trial or motion calendars whether decided on the merits or resolved by the parties' consent shall be considered delinquent if the appropriate documentation is not filed within fifteen working days (15) from the date of resolution of the matter.

15.2 Matters determined to be delinquent by the TCC may be placed on a trial or motions calendar by the TCC for an inquiry into the status of the appropriate documentation.

15.3 If the appropriate documentation is not filed prior to the hearing scheduled under Rule 15.2, then the Court or Presiding Judge may take appropriate action including the dismissal of the proceeding for failure to prosecute pursuant to Rule 41(b) of the North Carolina Rules of Civil Procedure.

16. BANKRUPTCY CASES

16.1 Civil actions in which one or more of the parties declares or files a bankruptcy will be dealt with in accordance with the following authority:

- (a) Rule 401 of the Bankruptcy Act;
- (b) 11 U. S. C. 362;
- (c) 11 U. S. C. 1301; and
- (d) N. C. Gen. Stat. 1-23.

16.2 Any requests to continue, hold or in any other way delay disposition of a case due to the bankruptcy of one or more of the parties, should be accompanied by a certification of the bankruptcy filing or stay of the proceeding from a United States Bankruptcy Court. The attorney appearing for the party filing for bankruptcy should forward the appropriate documentation to the TCC. The Court will then enter an order to place the case in an inactive status. Once relief from a stay has been granted, a dismissal has been entered or other relief has been granted, then a request may be made by any party to return the case to the active calendar.

17. ADMINISTRATIVE DISPOSITION OR INACTIVE STATUS

17.1 The following types of cases are not deemed to be pending for trial. Cases in these categories shall be eligible for removal by order of the Court from the list of pending cases:

- (a) Cases in bankruptcy;
- (b) Cases removed to the Federal Courts;
- (c) Case ordered into binding arbitration.

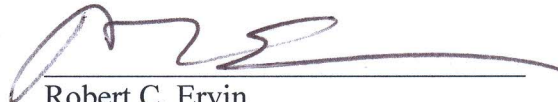
18. APPEARANCE OF COUNSEL

Consistent with Rule 2(e) of the General Rules of Practice, when an attorney is notified to appear in court, the attorney must consistent with ethical requirements appear or have a partner, associate or another attorney familiar with the case present. Unless an attorney has been excused in advance by the judge before whom the matter is scheduled and has given prior notice to his opponent, a case will not be continued.

19. SANCTIONS FOR VIOLATIONS OF RULES

An attorney's or unrepresented party's 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 Court or the Presiding Judge.

This the 13th day of April, 2015.



Robert C. Ervin
Senior Resident Superior Court Judge