

CASE MANAGEMENT PLAN

AND

LOCAL RULES OF CIVIL PROCEDURE FOR

THE SUPERIOR COURT

TWENTY FOURTH JUDICIAL DISTRICT

ORDER
Civil Case Management Plan
Effective July 1, 2011

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 July 1, 2011. The following references apply: “TCC”: Trial Court Coordinator; “N.C.R.C.P.”: North Carolina Rules of Civil Procedure; “Rules of Practice”: General Rules of Practice for the Superior and District Courts.

1. Ready Calendar.

The Trial Court Coordinator in Judicial District 24 shall maintain a Ready Calendar of civil cases pending in each county. Three months after the filing of the last responsive pleading, the TCC shall place each case on the Ready Calendar, unless the time is extended for good cause by written order of the Senior Resident Judge.

2. Mediation.

The Rules implementing Statewide Mediated Settlement Conferences in Superior Court Civil Actions as adopted and published by the North Carolina Supreme Court “Mediation Rules” shall be observed in this district as amended herein.

Pursuant to Rule 2.c, when the parties do not timely select a mediator, 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 Judicial District 24, 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 appellate courts, who request to be on the list. The list shall be arranged alphabetically and appointments shall be made in consecutive order. The Senior Resident Judge 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.

The TCC is assigned the responsibility of managing and enforcing the mediation process.

In addition, pursuant to Rule 5 and 7.G of the State rules, the following policy is adopted. Upon failure of the parties in a case to meet mediation deadlines, the Senior Resident Superior Court Judge will notify counsel to immediately come into compliance. Upon failure to come into compliance, a contempt citation to show cause why sanctions should not be imposed will be issued.

3. Administrative Scheduling Sessions.

At designated times, the Senior Resident Judge will conduct an Administrative Scheduling Session for each case pending on the Ready Calendar in each county, and will, in cooperation with the Bar of said county, assign the case to a specific session of the Court. 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.

4. Certificate of Readiness.

In addition to the maintenance of the Ready Calendar, an attorney for a party may file a certificate of readiness at any time requesting that the case be placed on the trial calendar.

5. Peremptory Settings.

A request for peremptory setting for cases involving extraordinary reasons must be made in writing to the Senior Resident Judge and will be granted in his, or her, sole discretion.

6. 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 before the Administrative Scheduling Session if feasible considering the availability of counsel, parties and witnesses. Re-scheduled cases have no priority over scheduled cases. For good cause shown, the TCC may remove a case from re-scheduling. When an Administrative Scheduling Session occurs before the next trial session, cases not reached at a prior session shall be re-scheduled at the Administrative Scheduling Session.

7. Motions Practice.

Movant's counsel shall notify the TCC of desired dates for hearing motions. Pending motions shall be scheduled for hearing in the discretion of the Senior Resident Judge or by the TCC in the order of receipt of notification and/or the urgency of the motion. Notice, of hearing shall be filed and served as provided in Rule 6 (d) of the N.C.R.C.P. 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 particular session. If calendared by the TCC or the Senior Resident Superior Court Judge, civil motions may be heard during criminal sessions and may be heard in any county within the Judicial District. The moving party is responsible to present to the court all pleadings material to the hearing, including the file if necessary.

Pending pre-trial motions may be scheduled at the administrative scheduling session only in the discretion of the Senior Resident Judge or his, or her, designee. Counsel who intend to file pre-trial motions in cases being scheduled for trial shall inform the Court at the administrative scheduling session. Any dispositive motions must be noticed and calendared no later than the session of court immediately preceding the trial date of the case or will be presumed to have been abandoned by the moving party.

A copy of any briefs or memoranda in support or opposition of pre-trial motions shall be delivered to the Hearing Judge at least five days before the hearing of the motion. For the purpose of this five-day requirement only, service shall mean personal delivery, facsimile transmission, or other means such that the Hearing Judge actually receives the brief or memoranda within the required time.

A Hearing Judge shall not be obliged to consider briefs or memoranda not received as required by this Rule. Due to budget restraints, briefs in excess of five pages must be submitted in written form and will not be accepted via email or facsimile transmission.

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 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.

9. 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.

10. 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 requirements, be appropriately noticed for hearing as set forth herein and shall be heard on the record. Any attorney seeking such admission must be present in court for said hearing unless excused by the Senior Resident Judge or by the presiding Judge.

11. Settlement Notification.

Upon the settlement of a case on the printed trial calendar, attorneys of record must notify the TCC within twenty-four (24) hours of the settlement and advise the court as to who will prepare and present a judgment or dismissal, and do so immediately.

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 TCC or Presiding Judge. Should the appropriate paperwork not be 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.

If the case has not been closed by that time, in the discretion of the Court, the presiding judge or the Senior Resident Superior Court Judge may take such other administrative action as appears appropriate to give the case prompt disposition, including dismissal pursuant to Rule 41, or may enter an appropriate Show Cause Order for the attorneys of record.

12. Continuances.

Upon the calendaring of a case on the final trial calendar, such case will not be continued except for compelling reasons addressed to the Senior Resident Judge at least ten days prior to the commencement of the session, or to the Presiding Judge during the session. Motions for continuance must affirmatively set forth whether or not the opposing party has been given actual notice and whether or not 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.

13. Will Caveats.

Cases involving caveats to Wills will be placed on the first available motions docket for the alignment of the parties. Thereafter, the case shall be ordered into the mediation process within 60 days of filing, and will not be placed on a trial calendar until a mediated settlement conference is conducted or the matter has been removed from mediation by order of the Court. It shall be the responsibility of the attorney for the Caveator(s) to notify the TCC of the filing of the case and the names and addresses of all parties or attorneys to whom notices should be sent.

14. Inquiries.

Inquiries concerning the civil calendar shall be addressed to Shannon Hamby-Stapleton, TCC, 842 W. King St, Suite 11, Boone, NC 28607, 828-268-6616 phone 828-268-6617 fax or shannon.h.stapleton@nccourts.org.

15. Pre-Trial Conferences, Orders.

Pre-trial orders as provided by Rule 7 of the General Rules of Practice are strongly encouraged. The Senior Resident Superior Court Judge or the Presiding Judge may require and conduct a pre-trial conference for any case in which such conference appears appropriate. In addition to the subjects set out in Rule 7 and the Sample Form, 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 subsequent to the beginning of trial.

Pre-trial discovery and scheduling orders are also strongly encouraged in a form approved by the Senior Resident Judge. The failure of the attorneys of record to enter into an agreed scheduling order acceptable to the Senior Resident Judge within thirty (30) days of the last responsive pleading may 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.

In addition, no later than 10 days prior to any trial setting, 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 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.

16. 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, the following rules of procedure shall be followed in District 24:

- a. Upon filing of a Petition for Review, the Petitioner shall have thirty days in which to serve a proposed Record on Appeal upon opposing counsel.
- b. Opposing Counsel shall have twenty days from the date of service to serve Petitioner with an alternative Record on Appeal, or object to the form or content of the Petitioner's Proposed Record on Appeal.
- c. Counsel will undertake to resolve disputes as to the content of the Record on Appeal. The TCC will be kept informed of the status of the Record on Appeal.
- d. Upon settling of the Record on Appeal, all Counsel shall sign an attached certificate of settlement of the Record. It shall then be filed with the Clerk of Court of the County in which the action is filed, and a copy for the presiding judge delivered to the TCC by the Petitioner.
- e. Petitioner shall have twenty days from the filing of the Record on Appeal to file and serve any brief or memoranda. A copy for the presiding judge will be delivered to the TCC.
- f. Opposing party shall have twenty days from the service of the last Petitioner's brief or memoranda to file responsive brief or memoranda with a copy for the presiding judge to the TCC. If Petitioner does not file a brief within the time allowed in (e) above, opposing party shall file a brief at any time after twenty days from the filing of the Record on Appeal.
- g. Failure of Petitioner to file a brief within the time required will be deemed abandonment of the Petition, and the Senior Resident Judge shall dismiss the Petition.
- h. The Appeal shall be placed on the next Administrative Scheduling Session docket more than sixty days from the date of the filing of the Petition, for scheduling of the final hearing.

- i. 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.

17. Appeals from the Clerk of Court and Division of Motor Vehicles.

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 more than 60 days after the date of filing of the Petition in Superior Court. Appeals from any proceeding originally heard by the Clerk of Court shall appear on the docket at the first Administrative Scheduling Session more than 60 days after the date of filing of the appeal in Superior Court.

This the 1st day of July, 2011 .

C. PHILIP GINN
Senior Resident Superior Court Judge
Twenty-Fourth Judicial District