

**CASE MANAGEMENT PLAN
AND
LOCAL RULES OF CIVIL PROCEDURE
FOR THE DISTRICT COURT DIVISION
40TH JUDICIAL DISTRICT**

GENERAL RULES

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DISTRICT COURT DIVISION
CIVIL JURY and NON-JURY
CASE MANAGEMENT PLAN
And
LOCAL RULES OF CIVIL PROCEDURE

GENERAL RULES:

The purpose of these rules is to institute a case management plan for the Fortieth Judicial District, which will allow for the just, orderly and prompt resolution of civil jury and non-jury cases in compliance with Rule 40(a) North Carolina Rules of Civil Procedure and in compliance with the Supreme Court's direction in Rule 2, General Rules of Practice, requiring all Chief District Court Judges to adopt and administer a case management plan for the calendaring of civil cases.

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 these rules do not cover a specific matter, the Trial Court Administrator is authorized to act in his discretion subject to consultation with the Chief District Court Judge.

Responsibility for implementing this case management plan is assigned to the office of the Trial Court Administrator. All communications concerning civil matters should be addressed to the Trial Court Administrator located in the Buncombe County Courthouse. The mailing address is 60 Court Plaza, Asheville, NC 28801-3574. The telephone number is 828/259-3418.

All district court matters shall be commenced by filing with the clerk of superior court of Buncombe County and shall be accompanied by an AOC cover sheet. The clerk of superior court shall provide a case number at the time of an initial filing and

place the number upon the summons. All subsequent communications to opposing counsel or parties or court personnel shall contain the proper case number.

Civil jury and nonjury cases are held in District Court of the Buncombe County Courthouse. The telephone number of the clerk for that court is 828 259-3403.

RULE 1 READY CASES

A case shall be ordered ready to set for trial when one of the following has occurred:

- 1 The Court of Appeals or Supreme Court has remanded it for trial;*
- 2 All parties have been served and the time period for filing answer has expired;*
- 3 It is entitled to a priority by statute.*

RULE 2 PREPARATION AND PUBLICATION OF CALENDARS

The Trial Court Administrator under the supervision of the Chief District Court Judge shall prepare the District Court Civil Calendars.

One hundred twenty days (120) after the date of the filing of the last pleading, the Trial Court Administrator shall place civil cases on the next available trial calendar. All civil sessions for district court will be Mixed Sessions with cases requiring a jury trial having first priority for trial. Nonjury matters will be called for trial at the discretion of the presiding judge. All cases will be subject to being called for trial at any time during the term.

To the extent possible, the Trial Court Administrator shall set cases by case number, oldest case first and newest last (except for peremptorily set cases and statutory priority settings which will be first) unless otherwise directed by the Chief District Court Judge.

When cases have been consolidated for trial, they will be regarded as one case for calendaring purposes, and will be listed under the oldest case number.

Upon publication of trial calendars, all written correspondence, telephone inquiries and case updates should be directed to the office of the Trial Court Administrator.

The courtroom clerks shall pull the files for the jury and nonjury trial terms not more than 3 days prior to the calendar call to ensure that last-minute filings will be added to the files.

RULE 3 CALENDAR CALLS

The Trial Court Administrator shall publish and distribute trial calendars to all counsel of record or unrepresented parties no later than four (4) weeks prior to the beginning of the trial session. Approximately one week prior to the first day of the term, the calendar will be called by the presiding judge over the term. At the early calendar call, attorneys can indicate to the presiding judge the days convenient for them to try the case during the term, and the presiding judge will set the set the order of trial at the early calendar call. Where counsel cannot be present at the early calendar call they shall call the Trial Court Administrator's office and advise the status of the case and availability of the attorney during the trial term. Beginning with the first day of the trial term counsel shall communicate with the clerk for civil district court regarding the progress of the trial calendar. Attorneys or pro se litigants who do not appear or otherwise communicate as required by these rules will have their case subject to being dismissed by the Court.

In the absence of the presiding judge or the Chief District Court Judge, the Trial Court Administrator (or his designee) shall conduct the calendar call. At the time of conducting these calendar calls, the Trial Court Administrator (or his designee) will have the discretion of granting/denying motions for continuance. The results of the calendar calls conducted by the Trial Court Administrator will be furnished to the presiding judge and the courtroom clerk for civil district court.

RULE 4 CONTINUANCES

Motions for continuance will not be granted except for unforeseeable cause. The advance notice provided by the distribution of trial calendars four weeks prior to the start of the trial session is deemed a reasonable and sufficient period to accommodate the majority of conflicts.

Motions for continuance shall be made in writing and presented to the presiding judge at the calendar call, and a copy sent to the Trial Court Administrator's office prior to the calendar call.

Ex parte requests for continuances, without notice to opposing counsel or unrepresented party, or without an opportunity for opposing counsel or unrepresented party to be heard, will not be considered by the Court.

The Trial Court Administrator is authorized the discretion to continue a non-peremptorily set case from a published trial calendar in advance of the early calendar call and secure agreement from the attorneys on a date certain for a future trial setting. Continuances granted by the Trial Court Administrator prior to the early calendar call will relieve counsel from appearing at calendar calls

Pursuant to Rule 2(g) General Rules of Practice for Superior and District Courts, when a case on a calendar is settled, all attorneys of record must notify the Trial Court Administrator's office within twenty-four (24) hours of settlement and

advise who will prepare and present judgment or dismissal. All judgments and/or dismissals shall be filed within 30 days of the date the case was reported settled.

Cases continued or not reached during a scheduled trial session shall be rescheduled by the Trial Court Administrator's office with the input of all counsel and pro se litigants, when possible, to another scheduled trial session. The courtroom clerk for civil District Court shall provide the Trial Court Administrator's office a copy of the Minutes no later than Wednesday after the last day of trial or motion sessions.

An attorney or pro se party may, in writing to the Trial Court Administrator, with copy to the opposing party, request that a case be calendared during the next scheduled trial session of court.

RULE 5 ALTERNATE DISPUTE RESOLUTION

The Court will look favorably upon resolution of civil matters other than by jury or nonjury trial. If counsel choose to pursue resolution of a civil case by mediation, counsel shall notify the Trial Court Administrator in writing of their choice to mediate and the name of the mediator chosen by the parties. From the date of notification to the Trial Court Administrator, the mediation should be completed within sixty (60) days and counsel shall provide the Trial Court Administrator with the results of the mediation conference within 10 days of the completion of the conference.

The Court may order a civil case into mediation upon properly noticed motion to the Court or shall have the discretion to order a civil case into mediation from a civil trial calendar. When a civil case appears on a trial calendar, the Trial Court Administrator shall defer any motions for mediation to the presiding judge.

RULE 6 PEREMPTORY SETTINGS

Requests for a peremptory setting for District Court cases involving persons who must travel long distances, numerous expert witnesses, statutorily mandated reasons, or other reasons for such a request must be made to the Trial Court Administrator's office. A peremptory setting shall be granted only for good and compelling reasons. Once a peremptory setting is given to a case, only the judge presiding will hear motions to continue those cases, and only upon written motion by the moving party to opposing counsel.

RULE 7 MOTIONS:

Civil motions will be scheduled for hearing by the Trial Court Administrator's office on certain mornings beginning at 9:30 a.m. Civil motions will only be heard on regularly scheduled motion days and only after proper notice. The Trial Court Administrator's office will publish a printed calendar for use by the Court and the clerk for civil district court no more than five (5) working days prior to the date of the

motion hearings. Upon a case being placed on a trial calendar, motions will not be heard at the calendar call for the trial term, nor will they be heard during the trial term, unless directed by the presiding judge; however, in civil cases for collection on and account where the defendant is not represented by counsel, the Trial Court Administrator will have the discretion of removing these cases from trial calendars and rescheduling hearing of dispositional motions on a regular motions calendar date. Such motions shall be properly noticed by counsel requesting the motion hearing.

Counsel noticing motions for hearing in civil district court are required to file copy of a notice of hearing with the Trial Court Administrator's office a minimum of 10 days before the date the motion is scheduled to be heard. If the Notice of Hearing is not received by the Trial Court Administrator's office before publication of the motions calendar, such motions will not appear on the printed motion calendar.

The motions calendar will not serve as a substitute for a properly served notice of hearing. Rather, the calendar will be a listing of the motions scheduled through the Trial Court Administrator's office. The Trial Court Administrator may, in its discretion, add motions onto already published motion calendars and will provide an Addendum to such motion calendar to the clerk for civil district court.

The Trial Court Administrator's office will not continue a properly noticed dispositive motion after the calendar is published. The moving party desirous of the continuance shall file a formal motion to continue detailing the reason(s) for the continuance and present it to the Trial Court Administrator for presentation to the Presiding Judge.

Courtroom clerks will pull files for the Motion calendars not more than 3 days prior to the date the motion is scheduled for hearing.

RULE 8 REQUESTS FOR WITHDRAWAL OF COUNSEL

No attorney who has entered an appearance in any civil action shall withdraw his appearance, or have it stricken from the record, except by Order of the Court after proper notice to all parties.

Orders allowing counsel to withdraw from any civil action MUST contain a mailing address for the litigant whose attorney is requesting to withdraw. A copy of this Order allowing withdrawal of counsel must be provided to the Trial Court Administrator by the courtroom clerk or the clerk shall enter such address on the Minutes.

RULE 9 CANCELLATION OF CIVIL TERMS

If it becomes necessary for a civil session of civil district court to be cancelled, the presiding judge will notify the Trial Court Administrator and the clerk for civil district court as soon as it becomes evident that the cancellation is necessary.

IT IS ORDERED that the above case management plan and the Local Rules of Civil Procedure for the District Court of the 40th Judicial District be, and hereby are, ADOPTED, PUBLISHED AND DECLARED EFFECTIVE NOVEMBER 14, 2005.

This the 1st day of November 2005.

**HON. GARY S. CASH,
CHIEF DISTRICT COURT JUDGE**