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A case management plan for the calendaring of civil cases must be developed by the Senior Resident Judge . . .

Rule 2(a), General Rules of Practice

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**CIVIL CASE MANAGEMENT PLAN  
FOR THE SUPERIOR COURT DIVISION**

**JUDICIAL DISTRICT 29B**

**HENDERSON, POLK, TRANSYLVANIA COUNTIES**

**NORTH CAROLINA SUPREME COURT TIME GUIDELINES FOR DISPOSITION  
OF CIVIL ACTIONS IN SUPERIOR COURT**

**90 % WITHIN 365 DAYS**

This Case Management Plan (this Plan) shall apply to cases filed in or transferred to the Superior Court. This Plan shall not be interpreted in any way that conflicts with the General Rules of Practice, nor the Rules of Civil Procedure. Neither is this Plan intended to duplicate the General Rules of Practice or the Rules of Civil Procedure; on any question; one should look first to those sources for guidance. An index accompanies this Plan, with links to the referenced authority as existed at the time of the effective date of this Plan.

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The primary goal of this Plan is to promote the orderly progression of a civil action filed in this judicial district to complete resolution within 365 days. This Plan shall be read and interpreted with that goal in mind, and all attorneys accepting representation of a party shall endeavor to proceed consistent with that goal. Not all cases will accommodate achieving this goal; especially those involving certain categories of claims. However, all counsel of record should establish their own “tickler” system for dates and deadlines, and make a concerted and professional effort to meet those deadlines in every case in which they appear as attorney of record.

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Responsibility for administering this Case Management Plan is assigned to the Office of the Trial Court Coordinator for this district (TCC). All communications concerning civil matters should be addressed to the Trial Court Coordinator, whose office is located in the Henderson County Courthouse.

**The mailing address of the Trial Court Coordinator is**

**Ms. Daphne Carland  
Trial Court Coordinator  
200 North Grove Street  
Hendersonville, NC 28792**

**Telephone: 828.694.4230      Facsimile: 828.694.4229**


**E-mail address of the Trial Court Coordinator is: [Daphne.P.Carland@nccourts.org](mailto:Daphne.P.Carland@nccourts.org).**

This Plan is general in nature and will not cover every situation that may arise. In the event that these rules do not cover a specific matter, the TCC is authorized to act in her discretion, in consultation with the Resident Judge or the Presiding Judge.

As with the General Rules of Practice for Superior and District Courts, and the Rules of Civil Procedure, this Case Management Plan shall apply without differentiation to all counsel for any party to a proceeding as well as to the individual parties themselves if not represented by counsel (referred to as

*pro se*). This Plan is set out in the form of series of sections denominated as “Rules;” this Plan may sometimes be referred to informally by some counsel as the “local rules.”

This Plan shall also be interpreted in like fashion to Rule 1 of the General Rules:



The Rules “shall at all times be construed and enforced in such manner as to avoid technical delay and to permit just and prompt consideration and determination of all the business” before the Superior Court.

Rule 1, General Rules of Practice

#### **RULE 1: APPEARANCE/WITHDRAWAL OF COUNSEL**

A. **Notice of Appearance.** Attorneys shall file a written Notice of Appearance with the Clerk of Superior Court immediately after agreeing to represent a party in a civil matter, and shall serve a copy upon each attorney of record or unrepresented party, and the TCC. Attorneys who file any pleading on behalf of a party need not also file a Notice of Appearance.

B. **Motions to Withdraw.** Motions to withdraw as counsel of record must be accompanied by a statement signed by the party whom the lawyer represents. The party’s statement shall confirm that party’s address for purposes of service, and shall note the party’s understanding that: (1) such address shall be the official address of that party for notice purposes until such time as that party files in writing a notice of a change of official address or retains new counsel, and (2) withdrawal of that party’s attorney shall not be the basis for delay of any portion of the proceedings for the action.

Motions to Withdraw may be considered by the presiding or resident judge in chambers if all parties or their counsel consent in writing. Facsimile signatures are acceptable. Consent motions shall be subject to the same requirements for the withdrawing counsel’s client as set out in the preceding paragraph. Such consent Motions to Withdraw shall be sent to the TCC who shall submit them to the presiding or resident judge for consideration in Chambers. Motions not meeting each of the criteria will be scheduled for a hearing.

#### **RULE 2: EMAIL ADDRESS**

Any initial pleading or Notice of Appearance shall include the email address of the attorney or *pro se* party, and thereafter each attorney or *pro se* party shall include their email address in any filing.

Email shall be used by the TCC or presiding judge to communicate with such party, for delivery of calendars, and for use by the Clerk of Superior Court, including for WebEx proceedings. As electronic filing through the Odyssey system becomes available in this judicial district, email addresses employed by counsel and parties for filing purposes shall become the email addresses used by the TCC, presiding judge, and the Clerk for all official purposes. Any counsel or party seeking to change their email address

shall file a notice thereof with the Clerk to be time-stamped into the court file, and the counsel or party shall simultaneously file the same notice with the TCC.

Any attorney or unrepresented party not having internet access will file with the TCC a written affirmation before a Notary Public confirming that they do not have any source of internet access. The TCC shall forward a copy of such written affirmation to the Clerk for inclusion in the court file.

### **RULE 3: SECURE LEAVE**

A. **Pro se parties.** Rule 26 of the General Rules which provides for secure leave shall be available to *pro se* litigants, who shall be subject to the same requirements of Rule 26 as are attorneys.

B. **Notice of Possible Conflict.** Notice to the Resident Judge shall include notice of any apparent conflict with scheduling in a pending action.

### **RULE 4: ENLARGEMENT OF TIME BY STIPULATION**

All stipulations made pursuant to Rule 6(b) of the RCP shall be in writing and filed with the Clerk.

### **RULE 5: ADMINISTRATIVE DISCONTINUANCE**

Civil actions in which there has been no activity for one year, actions subject to bankruptcy stay, and actions in which no summons has been served and the time for such has expired, are subject to administrative order for discontinuance of the action, without notice to any party. Civil actions which have reported to the TCC as being fully settled are likewise subject to administrative order for discontinuance if voluntary dismissal is not timely filed pursuant to this Plan.

### **RULE 6: REQUESTS FOR CALENDARING CASES FOR TRIAL**

Any attorney or *pro se* party may request that a case be placed on the trial calendar. Any request to calendar a case for trial should be made by communicating the request in writing to the TCC with a copy to opposing counsel and any *pro se* parties. The case will be placed on the next trial calendar which is not already published, and shall remain on a trial calendar until the case is reached and all issues are resolved.

### **RULE 7: SCHEDULING ORDERS**

7.1 The TCC shall issue a Scheduling Order at an appropriate time as determined by the TCC, typically after service of the Complaint. The order will establish a deadline for the completion of mediation, and will establish a date upon which the action will first appear on a trial calendar.

7.2 Medical malpractice actions shall be scheduled for a discovery conference pursuant to the provisions of Rule 26(f) of the North Carolina Rules of Civil Procedure. Counsel for the plaintiff shall send a copy of the discovery order to the TCC when it has been signed by a judge.

### **RULE 8: ALTERNATIVE DISPUTE RESOLUTION**

8.1 All parties to civil cases, except matters exempted by G.S. 7A-38, will be required to participate in a Mediated Settlement Conference, which shall be conducted pursuant to Rules of the North Carolina Supreme Court Implementing Statewide Mediated Settlement Conferences.

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8.2 The TCC is specifically delegated and assigned the authority and responsibility of managing the mediation process, including establishment of deadlines and ensuring adherence to those deadlines. The TCC is authorized to sign all orders and other documents related to Mediated Settlement Conferences.

8.3 Originals of the Designation of Mediator form, all motions, the Report of Mediator and any other documents are to be sent directly to the TCC for review and processing, after which the TCC will send the documents to the Clerk of Superior Court for filing.

8.4 The following Local Rules shall supplement the Mediation Rules:

A. Timing of the Order for Mediated Settlement Conference. An Order for Mediated Settlement Conference shall be included as one of the provisions of the Scheduling Order described in this Plan.

B. Motion to Authorize the Use of Other Settlement Procedures.

(1.) A party may move to use the arbitration program existing in Judicial District 29B, or any other settlement procedure provided for in Rule 10 of North Carolina Supreme Court Rules for Mediated Settlement procedure in lieu of a mediated settlement conference by submitting a motion to the TCC.

(2.) The motion should state that all parties consent to the use of the alternative procedure. In the event arbitration is selected, the case will be subject to the rules governing that process. The use of another settlement procedure will not delay the trial date.

(3.) If a case is removed from the pending trial docket so the parties may engage in binding arbitration, said arbitration shall be completed within six months from the date of the order of removal.

C. Designation of Mediator. Counsel for the plaintiff(s) is responsible for completing the appropriate portions of the Designation of Mediator form (AOC-CV-812, available at [nccourts.org](http://nccourts.org)) and returning the original to the TCC within 21 days of the date of the Scheduling Order.

D. Appointment of Mediator by the Court. If the parties have been unable to agree on a mediator, or if the form is not returned within the time prescribed, the TCC shall appoint a mediator by selecting the next available name on the appropriate list of certified mediators. The TCC may depart from the general procedure in certain instances, in the TCC's discretion.

E. Mediator Directory. The list of mediators who are willing to accept appointment in Judicial District 29B consists of those who live within geographical proximity of at least one of the counties within the district. However, any certified mediator may be included on the list if he or she contacts the TCA in writing and requests inclusion, and if he or she acknowledges familiarity with the District's Local Rules and agrees to abide by them. A list of all mediators certified in the State of North Carolina is available through the AOC website ([nccourts.org](http://nccourts.org)). The parties may not agree to utilize a non-certified mediator.

F. Motion to Extend Deadline for Completion of Mediation. A party, or the mediator, may move to extend the deadline for completion of the mediated settlement conference by submitting the motion to the TCC in the manner described in Local Rule 4.4(B). Said motion should propose a new District 29B Local Rules – Page 6 deadline. After determining whether there are any objections to said motion, the

TCC will issue an order either granting or denying the motion. A motion to extend the deadline beyond the trial date will not be granted.

G. Report of Mediator. The mediator shall complete form [AOC-CV-813](#), available through the AOC website ([nccourts.org](http://nccourts.org)) and send the original to the TCC.

#### **RULE 9: TRIAL CALENDAR**

9.1 Cases are subject to being placed on the Trial Ready Calendar by the TCC as follows:

- A. The Trial Date named in the Discovery Scheduling Order has arrived.
- B. It has been transferred by, or appealed from, the Clerk of Superior Court.
- C. It has been remanded for trial by the Court of Appeals or Supreme Court.
- D. It is entitled to a priority hearing by statute.

9.2 Upon the filing of a caveat to a will, the Clerk of Superior Court shall contact the TCC to determine the next available date for the parties to appear in Court and align themselves. Upon the conclusion of the proceeding to align parties, the TCC shall issue a Scheduling Order.

9.3 A trial calendar will be considered to have been published on the date it is posted to the website of the Administrative Office of the Courts ([www.nccourts.org](http://www.nccourts.org)).

9.4. It is the responsibility of the counsel or *pro se* party to determine whether, as the result of settlement, sudden illness, or otherwise, cases ahead of their case have moved off of the trial calendar. Typically, counsel accomplishes this by communicating regularly with counsel in cases which precede their own case on the trial calendar, and by communicating with the TCC. It has been observed by the undersigned that counsel will know the status of cases on the trial calendar in advance of the TCC. Trial calendars on the website will not be updated unless the TCC is aware of changes in status at least five business days prior to the first day of the trial term.

9.5 Requests for Peremptory Setting

A. Medical malpractice cases will be presumed to require a peremptory setting unless the TCC is notified otherwise by counsel.

B. Requests for a peremptory setting in all other cases shall be made in writing to the TCC, shall include the specific reasons for the request, and shall include confirmation that advance notice of the request has been given to opposing parties and shall state what response the opposing party has made. Written requests may also take the form of Consent Motions (which shall also recite the specific reasons for the request), with proposed order to be entered by a judge assigned from time to time to sessions of court in this district, in the discretion of such judge.

9.6 Dismissal for Failure to Prosecute

Any case listed on a published trial calendar is subject to dismissal for failure to prosecute if at calendar call or at the time it is called for trial the attorneys (or the parties themselves, if *pro se*) are not present or ready to proceed. All cases on a calendar shall be ready for trial at any time during the session.

9.7 When cases are not reached or are continued by the Presiding Judge at calendar call, they shall appear on the next published calendar in the discretion of the TCC, unless earlier resolved.

9.8 “Short Notice” Cases. If all parties consent, a case may be placed on a list of “short notice” cases maintained by the TCC. When the cases appearing on the regular calendar are disposed before the end of the session, including a mixed session of the kind commonly referred to as a “criminal term,” the TCC will notify counsel in any “short notice” case.

9.9 Trial Continuance Motions are not favored by this Plan, and the procedure for considering such motions is set out in Rule 12 herein.

#### RULE 10: MOTIONS

10.1 The scheduling of Motions is accomplished through the efforts and discretion of the TCC and is governed by a separate document, revised from time to time, which appears on the North Carolina courts website (nccourts.org) for each of the three counties of this judicial district (Henderson, Polk, Transylvania). Motions in civil action may be heard in any of the three counties of this district; still, however, there are a limited number of days which may be scheduled in advance for this purpose and the waiting time for hearing a motion is often two or more months. This Plan requires that counsel and *pro se* parties review and comply with the Motions practice document for this district.

Discovery-related motions in particular slow down the movement of the case towards resolution if not timely considered. All counsel are advocates for the parties they represent, but they are also professionals whose conduct is subject to standards when engaging with other professionals. The number of such motions which are withdrawn on the day of hearing leads one to believe that one or both of the parties has failed to communicate in good faith. If this district’s case-resolution goal is to be reached and the parties properly served, counsel must engage in good-faith discussion throughout the term of their representation.

10.2 All motions must be filed and heard prior to the date of trial, except those which must be heard by the Trial Judge. With respect to those motions which must be heard by the Trial Judge, the parties shall communicate with the TCC to schedule the pre-trial motions if at all possible, for hearing in advance of the arrival of the jury pool.

#### RULE 11: ORDERS OR JUDGMENTS

11.1 Counsel for cases which are removed from a trial calendar due to a reported resolution shall file a dismissal of all claims within ten business days. When dismissal has not been timely filed, the action may be ordered to be placed on the inactive docket.

11.2 Counsel in motions withdrawn from hearing shall promptly file written notice of such withdrawal of notice, even if notice is withdrawn on the record.

11.3 Counsel in cases which are reported settled at mediation shall promptly file a dismissal of claims. When dismissal has not been timely filed, the action may be ordered to be placed on the inactive docket.

#### RULE 12: TRIAL CONTINUANCE POLICY - CIVIL

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12.1 The Senior Resident Superior Court Judge shall have exclusive control over the status of trial calendars once established by the TCC pursuant to this Plan, including the authority to consider continuances until the trial session begins. The trial judge is not bound by previous order of the Senior Resident, but is requested to take such order into account. It is the philosophy of this Plan that very few reasons will support a motion to continue. The authority to consider trial continuance motions may be delegated to the Trial Court Coordinator from time to time.

12.2 All motions for continuance shall be in writing on [AOC-CV-221](#), and shall be received by the TCC no later than 10 calendar days prior to the opening of the trial session. A copy must be sent to all counsel of record and *pro se* parties by hand delivery, U.S. mail, facsimile, or electronic transmission, simultaneous with or prior to presentation to the TCC. The motion shall specify the reasons for the request, and a new trial date shall be proposed.

12.3 Opposing counsel and *pro se* parties shall have a period of two (2) business days following the date upon which the TCC receives the motion shall signal the beginning of the period in which to object. Objections not raised within this time period shall be deemed waived.

12.4 Motions for continuance will not be granted except for crucial, unforeseeable cause. The advance notice provided in the Scheduling Order is deemed a reasonable and sufficient period to accommodate the majority of conflicts. Personal conflicts such as vacations, family commitments and continuing legal education opportunities do not rise to the level of crucial, unforeseeable cause. The Guidelines for Resolving Scheduling Conflicts appearing as Rule 3.1 of the General Rules of Practice for the Superior and District Court will govern rulings regarding professional conflicts.

This Case Management Plan shall become effective July 1, 2023.

  
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PETER KNIGHT  
Senior Resident Superior Court Judge  
Judicial District 29B



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