

AMENDED CASE MANAGEMENT PLAN FOR SUPERIOR COURT CIVIL CASES JUDICIAL DISTRICT 30A

(CHEROKEE, CLAY, GRAHAM, MACON, & SWAIN COUNTIES)

The following case management plan ("Plan") for the calendaring of civil matters in the Superior Courts of Judicial District 30A has been adopted by the Senior Resident Superior Court Judge ("Resident Judge") as required by the General Rules of Practice for the Superior and District Courts adopted by the Supreme Court of North Carolina ("General Rules"). It is not the intention of this Plan to eliminate, abrogate, or amend the General Rules, or any other Rules of Statewide application, which shall control in the event of an irreconcilable conflict with this Plan.

- 1) INITIAL CALENDARING FOR TRIAL. On the "calendaring date" the Resident Judge will set the initial trial date and other dates. The calendaring date will be triggered by any of the following events:
 - a) The filing of the answer or last required pleading, or the expiration of the deadline for the filing of such pleading (e.g., non-answering defendants);
 - b) The Appellate Division's remand of the case for re-trial;
 - c) The filing of a request for calendaring by a party in the case, in the discretion of the Resident Judge.
- 2) DISCOVERY PERIOD. On or about the calendaring date, the Resident Judge will issue an order setting a deadline for completion of discovery. Normally, the discovery deadline will be 180 days from the calendaring date. The trial of a case shall not be delayed for failure to complete discovery before the deadline, unless good cause can be shown as to why the discovery is necessary and could not have been obtained before the deadline. A request to extend the discovery deadline must be in writing to the Resident Judge, and must be made before the expiration of the deadline.

3) MEDIATION -- Deadline. Reference is made to the "Rules Implementing Statewide Mediated Settlement Conferences in Superior Court Civil Actions". On the calendaring date, the Resident Judge will also set a deadline for the completion of mediation. Normally, this date will be 45 days prior to the tentative trial date. A motion to extend the deadline for mediation shall be made on form AOC-CV-835. A stipulation to extend said deadline shall be made on form AOC-DRC-19.

4) MEDIATION - Motions to Dispense. For good cause shown, upon written motion to the Resident Judge, the Court may dispense with the requirement for a mediated settlement conference.

a) "Good cause" includes any of the following:

(1) The parties have participated in a settlement procedure such as nonbinding arbitration or early neutral evaluation prior to the court's order to participate in a mediated settlement conference;

(2) The parties have elected to resolve their case through arbitration; or

(3) The parties reside more than 200 miles by driving distance from the nearest location at which the parties have agreed to conduct the mediation (or the county seat where the action is filed if no such agreement has been made) *and* the amount in controversy is less than \$25,000 *and* the financial resources of any party would make the cost of travel a financial burden. (If the amount in controversy is less than \$25,000 the jurisdiction of the Superior Court division will be based on something other than the amount in controversy.)

b) "Good Cause" shall not include:

- (1) That the parties are too far apart in their demands or offers of settlement;
- or
- (2) That the attorneys for the parties have discussed settlement and were unable to reach an agreement.
- 5) ADMINISTRATIVE SESSIONS. Reference is made to the Administrative Order entered on October 8, 2014, and as it may be amended from time to time. *You may obtain a copy of the Administrative Order at www.nccourts.org under Local Rules.*
- 6) "CASE STATUS CONFERENCES". Reference is made to Rule 16 of the North Carolina Rules of Civil Procedure ("Pre-trial procedure; formulating issues"), and Rule 2.1 of the General Rules ("Designation of exceptional civil cases and complex business cases").
- 7) PREEMPTORY SETTINGS. At any time prior to publication of a civil calendar, an attorney or unrepresented party may request a preemptory setting. Such request must be in writing, directed to the Resident Judge, and must state the reasons supporting the request. Reference is made to Rule 2(f) of the General Rules for the handling of such requests. Additionally, the request must state whether the request is approved by all other attorneys or parties in the case. If a preemptorily set case is continued, it will not retain its preemptory status, but may be set preemptorily only upon another written request.
- 8) TRIAL CALENDARS. Preemptorily set cases shall be calendared at the top of the trial calendar and marked accordingly. Thereafter, cases shall be set by date of filing in chronological order unless otherwise ordered by the Resident Judge. Cases shall ordinarily be called for trial in the order shown on the calendar.
- 9) The motion and trial calendar is published on the date it is posted to the internet website for the 30A Judicial District (www.nccourts.org). Attorneys without internet access shall notify the

Judicial Assistant in writing, and copies of the initial motion and trial calendar will be sent to such attorneys by regular mail. Calendars will be mailed to pro se litigants, unless those individuals notify the Judicial Assistant that they do have internet access. Each pro se litigant shall be responsible for keeping the Clerk's office and Judicial Assistant advised of a current mailing address, telephone numbers and email address. Any attorney withdrawing from the representation of a client shall, as a condition precedent to being allowed to withdraw, provide in the Motion to Withdraw and proposed Order a statement of the current mailing address of the client from whose representation the attorney is withdrawing, including all telephone numbers and email addresses. The Motion and Trial Calendars will be updated giving current status of all cases on the AOC internet website through the end of the last business day preceding the beginning of the session of court. Paper copies of the updated calendar will not be provided after the first posting.

10) MOTIONS. Reference is made to Rule 6 of the General Rules ("Motions in civil actions") and Rule 7 of the North Carolina Rules of Civil Procedure ("Pleadings allowed; motions"). A copy of the motion and notice of hearing for that motion must be sent to the Resident Judge. The judicial assistant for the Resident Judge will normally email the movant to determine the estimated length of the hearing. All motions pending in a case are subject to being listed on the civil calendar for the regular sessions of court, if approved by the Resident Judge. Motions may also be listed on a calendar for an administrative term. Please review the current Administrative Order for additional information on administrative sessions available at www.nccourts.org (under "local rules"). A civil motion to be heard during an administrative session (which are all criminal priority) must be heard in its originating county. If the Resident Judge provides for the hearing of a civil motion at a specific time during an administrative session, or regular session,

counsel and unrepresented parties should be present and prepared to proceed at that time.

Otherwise, motions will be heard immediately after the call of the calendar, and in the order they appear on the calendar, or in the discretion of the presiding judge. Motions filed after distribution of the calendar will not be heard unless noticed in accordance with the Rules of Civil Procedure, with a copy to the Resident Judge. A telephone call to the Judicial Assistant, requesting to be placed on any calendar is not sufficient. The requesting party must forward a copy of the notice and motion to the Judicial Assistant by mail, email transmission or facsimile in order to be placed upon a calendar. A copy of the notice and motion must also be transmitted appropriately to opposing counsel. The presiding judge shall have the discretion to deny a hearing of any motion that is not properly noticed or calendared.

- 11) A motion may be set for hearing at a civil priority session outside the county in which venue lies only with prior approval of the Judge¹, which will normally be granted only when all parties indicate a willingness to travel to a distant county and otherwise abide by the provisions of this paragraph. When an out-of-county hearing is scheduled, counsel shall prepare, serve and file an appropriate notice of hearing. Such notice shall include a list of the documents from the court file that will be presented at the hearing. If opposing counsel believes the court should consider additional documents, opposing counsel shall be responsible for obtaining copies of the documents from the Clerk in the county of origin. Certified copies may be obtained and presented if questions of

¹ Rule 7. Pleadings allowed; motions.

(b) Motions and other papers. -

(4) A motion in a civil action in a county that is part of a multicounty judicial district may be heard in another county which is part of that same judicial district with the permission of the senior resident superior court judge of that district or of that judge's designee. Except for emergencies as determined by the senior resident superior court judge or that judge's designee, a motion in a civil action to be heard outside the county in which the case is filed shall be heard at a civil session of court.

authentication are anticipated. Or, if the absence of a document (such as the lack of an answer) is at issue, counsel may make whatever arrangement as may seem appropriate with the Clerk and opposing counsel as to this issue, such as obtaining a certified copy of the entire file or a stipulation from opposing counsel. If the presiding judge determines that the copies provided by the parties are inadequate, the case may be continued or the motion may be denied in his discretion. The Judicial Assistant shall not be responsible for transporting files from county to county.

12) EX-PARTE COMMUNICATIONS. There shall be no ex-parte communication about pending matters with the Resident Judge or the Judicial Assistant. Any communication to the Resident Judge or Judicial Assistant including email transmissions, shall show that all parties are copied or a copy of the communication is to be delivered by mail. The following communications shall not be considered ex-parte communications for the purposes of this rule:

- a) Setting the initial trial date; and
- b) Scheduling of motions.

13) BRIEFS. Parties are encouraged (but not required) to prepare briefs and submit them to the presiding judge in advance of the hearing. Parties should consult with the presiding judge's assistant concerning the format for submissions of briefs. Possible formats could include printed copies mailed to the judge, email attachments, or facsimile transmissions. Briefs that are emailed to the presiding judge must be in "Word" format.

14) CONTINUANCES. The State of North Carolina Superior Court Model Continuance Policy rules are hereby incorporated by reference and adopted. All motions to continue civil matters must be made on form AOC-CV-221. Motions not made on this form will be summarily denied. When submitting the request to the Resident Judge for review and consideration, the requesting party shall simultaneously submit copies of all consents and objections to the

continuance request for the Judge's review. If there are no submission of consents/objections, the motion will be denied.

- 15) SETTLEMENT OF CASES. Reference is made to Rule 2(g) of the General Rules, which requires a date certain for the filing of settlement documents. If the attorney responsible for preparing and presenting a judgment or dismissal fails to do so within the time indicated when he notified the Clerk of Court or the Resident Judge, the case shall thereafter be placed on the regular or administrative calendar for entry of dismissal(s). Any attorney or party in the case may appear and show cause why the case should not be dismissed. If no good cause is shown, the case may be dismissed as the presiding judge may determine in his or her discretion.
- 16) INACTIVE CASES. Reference is made to Rule 41(b) of the Rules of Civil Procedure, which allows a judge to dismiss a case with prejudice for failure to prosecute or failure to comply with the civil rules or any court order. Additionally, a judge may discontinue a case for failure to serve process, under G.S. 1A-1, Rule 4(e). Finally, a judge may declare a case "inactive" and remove it from the trial calendar because of the filing of a bankruptcy petition. Any request to continue, stay, or in any way delay disposition of a case due to bankruptcy of one of the parties must be accompanied by a copy of the stay order from the United States Bankruptcy Court and shall apply only to cases involving the party filing for relief in Bankruptcy. Any case that has been the subject of an approved request shall be placed on inactive status and removed from the active docket of cases pending with the Clerk of Superior Court. Upon resolution of the bankruptcy proceedings or dissolution of the stay, the case may be reopened upon motion to the Court and placed on the active docket of cases pending before the Superior Court. If the parties have resolved their controversy, or there is any other reason the case should not be calendared for trial, a motion should be filed to that effect. Otherwise,

the case will be calendared as any other case and the parties will be expected to bring the case to close by trial or other disposition.

17) PRETRIAL ORDERS AND STIPULATION TO JURY OF LESS THAN TWELVE.

Reference is made to the mandatory requirements of a pretrial order under Rule 7 of the General Rules. In addition to the matters set forth in said rule, parties are encouraged to consider the savings in time and expense that may result from a trial by a jury of less than twelve. If trial by less than twelve is acceptable, the parties shall enter into a written stipulation, which shall be modifiable and revocable (in good faith) at any time prior to jury selection, which shall be subject to review and revision by the presiding judge, and which shall cover the following matters:

- a) The number of jurors to serve;
- b) The number of alternates to be selected, or the number of jurors whose verdict will constitute the verdict in the case; and
- c) The number of peremptory challenges for each party. (With less than 12 jurors, it would be appropriate to reduce the normal number of 8.)

A form for such stipulation will be sent with the notice establishing the initial trial date. The contents of the form may be incorporated into the pretrial order required under Rule 7 of the General Rules.

18) CASES REMOVED TO FEDERAL COURT. When a case is removed to federal court

(United States District Court), notice of such removal must be provided to the Clerk of Court with a copy to the Judicial Assistant. The state court case will be inactivated and removed from the docket of cases pending before the Superior Court.

- 19) COURT REPORTER TRANSCRIPTION OF PROCEEDINGS. Absent request by attorneys, opening and closing statements in civil trials shall not be recorded. The Court Reporter will not record motions in civil cases unless the attorney requests, in writing, that a motion is to be recorded and the written request is provided to the Court Reporter prior to the commencement of the hearing.
- 20) ADVERSE WEATHER. In the event of adverse weather, a decision to cancel or delay a session of Superior CoUii shall be made by the Resident Judge. The Judicial Assistant will communicate the decision to the Clerk of Superior Court. If the Resident Judge is not available to make the decision, the Clerk of Court of each county in District 30A will make the decision. In the event circumstances do not allow advance notice of inclement weather, the policy shall be as follows:
- (a) On the first day of inclement weather, the Superior Court will following the decision of the public school system of the county. If schools are cancelled, court is cancelled. If the opening of schools are only delayed, court will operate on a normal schedule.
 - (b) For subsequent days of inclement weather, a decision will be made by the Clerk of Superior Court, in consultation with the Resident Judge or presiding Judge.
 - (c) This plan does not limit the discretion of the presiding Judge to deviate from this policy to adjust to particular trial situations.
 - (d) The decision on cancellation of Superior CoUii does not control the decision of District Court, Clerk or other court offices in regard to their operations.
- 21) INDIGENT DEFENSE SERVICES. Attorneys should refer to the Regulations for Appointment of Counsel in the 30A and 30B Judicial Districts under the Indigent Defense Services Act. Said Act and additional information are available at www.ncids.org.
- 22) EFFECTIVE DATE and APPLICATION OF THESE RULES. These Rules shall be effective as of the date of adoption shown below, and shall be applied and interpreted so as to provide a

framework for the prompt and fair disposition of cases in District 30A, and may be amended from time to time.

IT SHALL BE THE OBLIGATION OF ALL ATTORNEYS WHO APPEAR IN JUDICIAL DISTRICT 30A TO KNOW AND COMPLY WITH THESE RULES INCLUDING ANY MODIFICATIONS.

Adopted this the 1st day of June 2017.



William H. Coward, Senior Resident Superior Court Judge
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Communications with Judge Coward may also be made through his Judicial Assistant, Ciara Brown, Ciara.J.Brown@nccourts.org