

STATE OF NORTH CAROLINA
COUNTIES OF
EDGECOMBE AND WILSON

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DISTRICTS 7B & 7C

ORDER

Pursuant to Rule 40 of the North Carolina Rules of Civil Procedure, and Rule 2 of the General Rules of Practice for the Superior Courts, the attached Rules are hereby adopted for Superior Court Districts 7B & 7C.

This the 7th day of February, 2000.

FRANK R. BROWN
SENIOR RESIDENT SUPERIOR COURT JUDGE

SUPERIOR COURT CIVIL CALENDAR RULES

**SUPERIOR COURT DISTRICTS 7B & 7C
EDGECOMBE AND WILSON COUNTIES**

PURPOSE:

The purpose of these Rules is to provide for the just and prompt disposition of civil matters in Superior Court Districts 7B & 7C.

I. GENERAL RULES

1.1 CALENDARS SET BY TRIAL COURT ADMINISTRATOR:

Caleendars for the disposition of civil cases and motions in the Superior Courts shall be set by the Trial Court Administrator in accordance with these Rules.

1.2 TRIAL COURT ADMINISTRATOR TO SUPPLY RULES:

A copy of these Rules and amendments shall be mailed to the members of the 7th Judicial District Bar and to other attorneys practicing in the Superior Courts of Districts 7B & 7C. These Rules and amendments shall be filed with the Clerks of Superior Court in the 7th Judicial District.

1.3 CALENDARS POSTED BY CLERK:

Caleendars shall be posted by the Clerk in a prominent place for all counsel and the public to review.

II. CIVIL SUPERIOR COURT

2.1 SCHEDULING CALENDAR:

Civil cases shall be placed on scheduling calendars for the purpose of setting tentative trial calendars. Scheduling calendars shall be provided to attorneys and unrepresented parties by the Trial Court Administrator.

2.2 SCHEDULING CONFERENCE:

A scheduling conference will be held in May and November. The Senior Resident Superior Court Judge or his designee will set cases from the scheduling calendar onto tentative calendars. Counsel and unrepresented parties may have input at the scheduling conference by attending or through submission of a Case Status Report. CCF-1(2/00)

2.3 PUBLICATION OF TENTATIVE CALENDARS:

Tentative calendars shall be published by the Trial Court Administrator and provided to attorneys and unrepresented parties.

2.4 DISTRIBUTION OF FINAL CALENDARS:

Final calendars shall be published by the Trial Court Administrator and provided to counsel of record, unrepresented parties and the presiding judge at least 2 weeks prior to the beginning of the session.

2.5 CALENDAR REQUESTS:

Request for a case to be added to a final calendar prior to its publication shall be in writing and directed to the Trial Court Administrator with a copy to all parties. The Trial Court Administrator shall act upon the request by written response. If calendared, it will be placed on the calendar following cases previously set.

2.6 PEREMPTORY SETTING REQUESTS:

Request for a peremptory setting shall be made in writing to the Trial Court Administrator prior to the scheduling conference. CCF-2(2/00)

2.7 PRIORITY SETTINGS:

Cases entitled to a priority setting shall be brought to the attention of the Trial Court Administrator, with a copy to all parties, citing the authority for such setting.

2.8 CONTINUANCE REQUESTS:

Continuance requests prior to a session of court shall be directed to the Trial Court Administrator or the Senior Resident Superior Court Judge. Continuance requests after the beginning of a session of court shall be directed to the presiding judge.

Continuance requests, except those for personal emergencies, must be in writing with a copy to all parties. Requests should be in letter form rather than a motion.

2.9 PRE-TRIAL ORDERS:

There shall be a pre-trial conference in civil cases pursuant to Rule 7 of the General Rules of Practice for the Superior and District Courts. A pre-trial order must be filed before the beginning of the scheduled session.

2.10 PROBLEMS WITH DISCOVERY:

When a case is continued because of problems with discovery, the Trial Court Administrator may set the case before the Senior Resident Superior Court Judge or his designee for the entry of a discovery and scheduling order. The attorneys or parties will be given ten days written notice of said setting.

2.11 CASES WITH ORDER DUE:

When a case is reported settled, the attorney responsible for submitting the order shall be identified and the date by which the order is to be filed indicated. If the order is not timely filed and no extension has been obtained, the Trial Court Administrator shall place the case on a motion calendar for the attorney to show cause for the failure to comply.

2.12 OPPORTUNITY TO REVIEW ORDERS:

Attorneys for the parties and unrepresented parties are entitled to review orders assigned for preparation. Unless otherwise ordered, the attorney shall provide a copy of the order to counsel and unrepresented parties at least twenty-four hours prior to its submission to the judge.

1.13 MOTIONS:

Pre-trial motions in the Superior Court shall be calendared by the Trial Court Administrator as follows:

- a. By request in writing or by telephone to the Trial Court Administrator. The Trial Court Administrator shall notify counsel or parties of a hearing date by letter or telephone.
- b. By the presiding judge who, at the time of the hearing, re-calendars the motion, or
- c. By the Trial Court Administrator, confirmed in writing to counsel and unrepresented parties.

2.14 PREPARATION OF MOTION CALENDARS:

Motions scheduled for hearing at sessions of court shall appear on the final trial calendar.

2.15 ADMINISTRATIVE DISPOSITIONS:

The following categories of cases are deemed not pending for trial and are subject to be removed from the list of pending cases, without prejudice in categories (a) through (e).

- a. cases in bankruptcy
- b. defendants making payments
- c. service never made and time expired
- d. removal for any other specified cause
- e. answer never filed and time expired

2.16 REMOVAL BY ORDER:

Cases will be removed by orders prepared by the Trial Court Administrator after consultation with counsel, if necessary. The orders will be signed by the Senior Resident Superior Court Judge, and copies sent to counsel and unrepresented parties.

2.17 REINSTATEMENT TO ACTIVE DOCKET:

Cases in category (a) through (e) may be returned to active status on motion of a party.

2.18 OBJECTIONS TO ADMINISTRATIVE DISPOSITIONS:

Objections to an administrative disposition of a case should be addressed with the Trial Court Administrator.

III. MEDICAL MALPRACTICE CASES

3.1 APPLICABLE STATUTE:

North Carolina G.S. 90-21.11 is hereby incorporated as applicable to the Courts of Superior Court Districts 7B & 7C.

3.2 IDENTIFYING MEDICAL MALPRACTICE CASES TO BE SCHEDULED:

The Trial Court Administrator will regularly review all medical malpractice cases in each county to determine if a discovery conference or a final conference should be scheduled. A discovery conference shall be scheduled with the Senior Resident Superior Court Judge within thirty days of the case coming at issue, the filing of a responsive pleading or the filing of a motion requiring a determination by the Court. A final conference shall be scheduled with the Senior Resident Superior Court Judge at the close of the discovery period.

3.3 DISCOVERY CONFERENCE:

The Judge shall:

- a. Rule on all motions.
- b. Establish an appropriate schedule for designating expert witnesses.
- c. Establish by order an appropriate discovery schedule for the completion of discovery within one hundred fifty (150) days after the order is entered. Nothing herein shall be construed to prevent any party from utilizing any procedures afforded under Rules 26 through 37 of the N. C. Rules of Civil Procedure; and
- d. Review and approve consent orders presented by counsel.

3.4 CONSENT DISCOVERY SCHEDULE:

Counsel for parties may submit written orders for the Senior Resident Superior Court Judge in lieu of the discovery conference. These orders must be signed by each counsel or party and must address each of the statutory mandates set out in G.S. 90-21.11 and the Rules of Civil Procedure 1A-1, Rule 26(f). Counsel shall advise the Trial Court Administrator of their intention to comply by consent.

3.5 SANCTIONS:

When a party fails to identify an expert witness as ordered, the court shall, upon motion by the moving party, impose an appropriate sanction, which may include dismissal of the action, entry of default against the defendant, or exclusion of the testimony of the expert witness at trial.

3.6 FINAL CONFERENCE:

At the close of the discovery period, the Trial Court Administrator shall schedule a final conference for the purpose of calendaring the case for trial. The parties may agree on a trial date subject to the approval of the Senior Resident Superior Court Judge.

The Court shall consider the complexity of the case, the convenience of witnesses, the schedules of counsel, and such other matters as the court may deem proper in calendaring the case for trial.

IV. MEDIATED SETTLEMENT CONFERENCES

4.1 GENERAL:

Mediated Settlement Conferences are authorized in all cases filed in the Superior Court Districts 7B & 7C, pursuant to the provisions of G.S. 7A-38.1 et seq. and the Rules for Mediated Settlement Conferences adopted by the North Carolina Supreme Court.

4.2 CASE SELECTION FOR MEDIATION:

Pending cases that are not exempted from mediation by the Rules for Mediated Settlement Conferences will be assigned to mediation.

Cases may be voluntarily mediated. If the case is on a final calendar, the agreement to mediate shall be submitted to the Trial Court Administrator who will prepare an order for the Senior Resident Superior Court Judge's signature assigning the case to mediation.

4.3 ASSIGNMENT OF MEDIATOR:

The parties shall designate a mediator within twenty-one (21) days of the entry of an order of mediation. If the parties fail to designate a mediator and or notify the Trial Court

Administrator within the time required, the Court will appoint a mediator . All mediators in Superior Court Districts 7B & 7C, whether designated by the parties or assigned by the Court, shall meet the standards for certification adopted by the Supreme Court pursuant to G.S. 7A-38.2.

4.4 COSTS OF MEDIATED SETTLEMENT CONFERENCES:

Costs shall be borne by the parties and paid in equal shares unless otherwise ordered or agreed. Multiple parties shall be considered one party when represented by the same counsel. Parties unable to pay costs shall be permitted to participate without costs pursuant to the Rules for Mediated Settlement Conferences.

4.5 GOOD FAITH PARTICIPATION:

Such persons or entities having authority, by law or by contract, to settle the parties' claims, and their attorneys, shall attend the Settlement Conference unless excused by the Rules or by an order of the Senior Resident Superior Court Judge. Persons who fail to attend shall be subject to any appropriate monetary sanction imposed by the Senior Resident Superior Court Judge, following notice and hearing, pursuant to G.S. 7A-38.1(g), including but not limited to attorney's fees, mediator fees, and expenses incurred in attending the conference.

