

CIVIL CALENDAR PROCEDURE

ORDER
EFFECTIVE JULY 1, 1988

THE COURT enters the attached Order pursuant to Rule 40 of G.S. 1A-1, G.S. 7A-34, and Rule 2 of the General Rules of Practice of Civil Procedure. It establishes the procedure to attain the trial or dismissal of civil actions in the Superior Court Division of the First Judicial District.

Each Clerk shall:

1. Deliver or mail a copy of the attached Order to each member of the Bar residing or maintaining an office in his County.
2. When an attorney takes his oath and is admitted to practice, or when an attorney opens an office in the Clerk's County, the Clerk shall deliver to such attorney a copy of this Order together with copies of all standing Orders of the First Judicial District.
3. Attach to the copy of each Civil Calendar delivered to a Presiding Judge a copy of the attached order.
4. Maintain on file in his office a copy of this and the attached Order with other standing Orders of the First Judicial District.

Entered this 11th day of May, 1988.

Herbert Small
Senior Resident Superior Court Judge

CIVIL CALENDAR PROCEDURE

ORDER
EFFECTIVE JULY 1, 1988

1. ADDING CASES:

After the Tentative Calendar is published, parties may add a case for trial when all pretrial proceedings have been completed by filing a request signed by all parties, or their attorneys, with the Clerk in sufficient time to allow the Clerk to include it on the Final Calendar. Motions may be added by giving the requisite notice, and by notifying the Clerk that such procedure requires it to be heard. The Presiding Judge, in his discretion, may add any case for any purpose.

2. ADMINISTRATIVE WEEK:

All civil cases, except those on appeal, pending more than 90 days shall be listed in numerical order on the calendar for this session. This calendar will be called and cases will be set for trial or motion hearing. If a case cannot be set for trial or hearing, inquiry will be made and appropriate orders entered to prepare it for trial. This calendar shall be published on the 3rd Friday before the session.

3. ATTENDING COURT:

All attorneys are expected to be in court at the time a case is scheduled on the calendar. Attorneys having a conflict with an Appellate Court should notify the Clerk before the Final Calendar is prepared. Notice of conflict with other courts, illness or other interferences with court appointments should be given to the Clerks as soon as a party learns of such. Attorneys are reminded, a case may be tried in your absence when it has not been continued by court order. All attorneys should remember the ruling in Chris vs. Hill, 45 NCA 287, (1980).

4. CONTINUANCE:

Once a case has been preemptorily set, or scheduled by other court order, only the Presiding or Resident Judge may continue it. Before the Final Calendar is published any other case on the Tentative Calendar may be continued by filing with the Clerk a stipulation signed by all parties or their attorneys.

5. DUAL SETTING:

A case will not be placed on the Calendar for trial and motion unless unusual circumstances justify a dual setting. When there are insufficient cases on a Calendar to utilize a full session, then cases may be placed on the calendar for both purposes.

6. FINAL CALENDAR:

The Clerk of Court shall prepare a Final Calendar and publish it on the 3rd Friday prior to each session of court. On the first (1st) day of the session non-jury matters shall be listed ahead of jury trials. Jury trials and judicial arbitration hearings shall be listed ahead of all other days of the session.

a. The Clerk shall consult with the Trial Court Administrator and arrange the order of cases for each day of Court. Appropriate abbreviations should show why the case is on the calendar.

- (1) Pretrial Conferences shall be set first.
- (2) Motions shall be set second.
- (3) Judicial Arbitration shall be set third. These are authorized by following the order entered April 15, 1988.
- (4) Non-jury trials shall be set fourth if sufficient time remains on the first day of the session.
- (5) Jury trials shall be set fifth if scheduled on the first day of a session. After the first day, jury trials and judicial arbitration hearings shall be set ahead of all other matters.
- (6) Cases from other Counties when venue is waived may be added at the end of the Calendar if time permits.

b. Cases consolidated shall be listed together and treated as one case in determining the setting of other cases. The Calendar shall indicate which cases are consolidated.

7. JUDGE'S CHAMBERS:

They are the private office of the Presiding Judge. You should treat it in the same manner as you expect your office or residence to be treated. It is not a lounge, conference room, telephone booth, or your private office.

8. PEREMPTORY SETTING:

Supplemental Rule 2 (f) provides, "Request for a peremptory setting...must be made to the Senior Resident Judge". If a case is set peremptorily, or as the first jury trial at one session of

court and is not tried for any reason, the court will consider this a valid reason to deny such favorable setting at subsequent sessions.

9. PRIORITY OF CASES:

When a statute, rule or court order designates where a case is to be placed on a Calendar, it shall control, and the Calendar shall so indicate. Other cases will be placed on the Calendar in such order as the Clerk and Court Administrator shall determine after giving consideration to the orderly use of the court's time. Unless such consideration dictates otherwise, cases will be in numerical order.

10. PRETRIAL CONFERNCES AND ORDERS:

a. Before a pretrial conference, the parties shall prepare a proposed pretrial order pursuant to Supplemental Rule 7, and G.S. 1A-1, Rule 16. If the parties are unable to agree upon the Order, the plaintiff shall tender a proposed Order to the Court.

b. Before attending any pretrial conference, each attorney should check his personal calendar, compare it with the annual Court Calendar published by AOC and determine whether he has any conflict with probable trial dates. He should make appropriate inquiry of clients and essential witnesses. If witnesses may be unable to attend the trial, plans for preserving their testimony by deposition should be made.

11. PUBLICATION:

A Calendar shall be published by the Clerk of Court and a copy mailed to each attorney of record representing a party. If a party does not have an attorney, a copy shall be mailed to the party. When a firm represents a party, a copy shall be mailed to the member of the firm signing the most recent document filed with the Court.

12. SETTLEMENT:

a. When a case is settled before court, the plaintiff's attorney shall notify the Clerk within one (1) working day after the agreement is made. If the Final Calendar has been published, the Clerk shall notify by telephone each party to all cases on the Calendar following the case settled. If the Final Calendar has not been published, the Clerk shall remove the case from it.

b. If a settlement is announced for the first time at the call of the Calendar on the first day of court, counsel shall:

- (1) File with the Court simultaneously with the announcement a written agreement of the settlement signed by the attorneys, or
- (2) File at that time a voluntary dismissal with the Court, or
- (3) When the parties are unable to comply with sub-paragraphs (1) or (2), they shall dictate to the Court Reporter the settlement agreement and the Court Reporter shall keep said notes until the parties are able to comply with sub-paragraphs (1) or (2). (This will enable parties to settle a case without publishing its term.)
- (4) If final disposition of the case has not been filed within forty-five (45) days after the settlement has been announced in open court, the Court will dismiss the case with prejudice at the ensuing Administrative Session of Court, except for good cause shown.

13. TENTATIVE CALENDAR:

a. The Clerk shall prepare a Tentative Calendar and publish it on the 6th Friday prior to each session of Court. Within each category cases should be listed so the case numbers are in sequence. Appropriate abbreviations shall indicate why a case is on the Calendar.

- (1) Pretrial Conference shall be listed first.
- (2) Motions shall be listed second.
- (3) Judicial Arbitration shall be listed third. These are authorized by following the Order entered April 15, 1988.
- (4) Non-jury trials shall be listed fourth.
- (5) Jury cases shall be listed fifth.
- (6) Cases from other Counties where venue is waived may be added by consent of the Presiding or Resident Judge.
- (a) Cases consolidated shall be listed together and treated as one case in determining the setting of other cases. The Calendar shall indicate which cases are consolidated.

14. TRIAL COURT ADMINISTRATOR:

Court Administrator and Judicial Secretary are the same person.

15. WAIVER OF VENUE:

a. When all parties agree to waive venue or consent to a specific venue, they may request the Court Administrator will then arrange for the hearing.

b. Chamber hearings and conferences, approval of settlements, sale confirmations, temporary restraining orders, and other ex parte proceedings.

This Order is entered this 11th day of May, 1988, to become effective July 1, 1988.

Herbert Small
Senior Resident Superior Court Judge