

TWELFTH JUDICIAL DISTRICT
SUPERIOR COURT DIVISION
CIVIL CASE MANAGEMENT PLAN

I. CIVIL CALENDARING RULES

Adopted March 9, 1999

Table of Rules

[RULE 1. GENERAL RULES](#)

[RULE 2. READY CASES](#)

[RULE 3. DISCOVERY PERIOD](#)

[RULE 4. ESTABLISHMENT OF THE TRIAL CALENDAR](#)

[RULE 5. TIME STANDARDS FOR SCHEDULING ORDERS AND FINAL CASE DISPOSITION](#)

[RULE 6. ALTERNATIVE DISPUTE RESOLUTION PROGRAM](#)

[RULE 7. PRE-TRIAL CONFERENCES](#)

[RULE 8. PRIORITY, REMANDED AND PEREMPTORY CASES](#)

[RULE 9. MOTIONS FOR CONTINUANCE](#)

[RULE 10. CALENDARING OF MOTIONS](#)

[RULE 11. NOTICE OF SETTLEMENT](#)

[RULE 12. DELINQUENT ORDERS OR JUDGMENTS](#)

[RULE 13. JUDICIAL REVIEW OF CASE STATUS](#)

[RULE 14. SERVICE OF NOTICE](#)

[RULE 15. NOTICE OF CALENDARING TO ATTORNEYS](#)

[RULE 16. SANCTIONS](#)

[RULE 17. ENFORCEMENT OF LOCAL RULES OF PROCEDURE](#)

[RULE 18. FORMS](#)

RULE 1. GENERAL RULES

1.1 The purpose of these rules is to institute a Case Management Plan that will provide for the orderly, prompt, and just disposition of civil matters. These rules are promulgated in compliance with the North Carolina Rules of Civil Procedure, the General Rules of Practice for the Superior and District Courts and the Rules Implementing Mediated Settlement Conference in Superior Court Civil Actions.

1.2 These rules supercede all previous calendar rules and mediated settlement conference rules implemented in the Twelfth Judicial District, Superior Court Division.

1.3 These rules shall, at all times, be construed in such a manner as to avoid technical delay.

1.4 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/her discretion, subject to consultation with the Senior Resident Superior Court Judge or the Presiding Judge.

1.5 The calendar for the disposition of civil cases in the Twelfth Judicial District, Superior Court Division, shall be set and maintained by the Trial Court Administrator in accordance with these rules and under the supervision of the Senior Resident Superior Court Judge.

1.6 These rules and procedures, and all amendments hereafter, shall be filed with the Clerk of the Superior Court for Cumberland County and may be cited accordingly.

1.7 The Trial Court Administrator for the Twelfth Judicial District shall distribute a copy of these rules and subsequent amendments hereafter to each member of the Cumberland County Bar. The Trial Court Administrator shall maintain a supply of printed rules, as well as associated forms to be provided upon request.

1.8 The Clerk of Superior Court shall provide a case number at the time of filing and place the number upon the summons. All subsequent pleadings and papers filed with the Clerk and all subsequent communications to opposing counsel/unrepresented parties, the Trial Court Administrator, or court personnel shall contain the case number.

1.9 All papers filed in civil actions, to include special proceedings and estates, shall include as the first page of the filing an original plus one copy of the appropriate cover sheet in a format prescribed by the Administrative Office of the Courts. The cover sheet shall be fully completed and summarize the critical elements of the filing. The Clerk of Superior Court shall refuse to accept for filing any paper that does not include an original plus one copy of the appropriate cover sheet.

1.10 All pleadings and papers, except wills and exhibits, filed with the Clerk of Superior Court shall comply with the 8 1/2 x 11 standards as specified by Rule 5, General Rules of Practice of Superior and District Courts.

RULE 2. READY CASES

2.1 The Trial Court Administrator shall establish and maintain a case tracking system pursuant to Rule 2(c), General Rules of Practice for Superior and District Courts and in accordance with these rules. This system shall be used to monitor the number, age, type, and procedural status of all pending cases and provide for the calendaring of the same.

2.2 A case shall be ready to set for trial when the Trial Court Administrator has determined at least one of following has occurred:

- (a) A case has been on file for one hundred and twenty (120) days or more;
- (b) A case has been transferred to the Superior Court Division on an appeal from the Clerk of Superior Court;
- (c) A case had been remanded for trial by the Appellate Division;
- (d) A case is entitled to a priority hearing by statute;
- (e) Prior to the Notice of Calendar Setting Conference, all counsel/unrepresented parties have signed and filed with the Trial Court Administrator a written *Notice To Calendar* certifying the case is ready for trial and requesting that it be expedited and placed on a trial calendar. [The Notice To Calendar shall be on a form [CCLF-CV-001](#) as prepared and distributed by the Trial Court Administrator's Office.]

Counsel shall forthwith provide written notice to the Trial Court Administrator of any case identified in Rule [2.2 \(b\)](#), [2.2 \(c\)](#), or [2.2\(d\)](#) above.

2.3. No case shall be continued or relieved from calendaring because additional time is needed to file an answer, even if all parties agree, unless for a crucial case that could not have been foreseen.

2.4 In medical malpractice cases scheduling deadlines and trial settings shall be made in accordance with [Rule 3.4](#), [Rule 4.11](#) and [Rule 5.2](#) below.

2.5 The Trial Court Administrator shall place those cases that he/she has determined to be ready for trial on the trial calendar pursuant to [Rule 4](#) below.

RULE 3. DISCOVERY PERIOD

3.1 Discovery must be completed within one hundred twenty (120) days after the last required pleading is filed. An extension of time to complete discovery may be granted by the Trial Court Administrator, for good cause.

3.2 A motion requesting additional time to complete discovery must be filed with the Trial Court Administrator prior to the expiration of the statutory one hundred and twenty (120) day period or the expiration of any discovery periods allowed. Any date established for the trial of the action shall be noted in the motion.

3.3 Additional extensions of time to complete discovery will only be granted when the trial will not be delayed. Requests by the same party will be granted only in exceptional circumstances.

3.4 A Medical Malpractice case will be set for a discovery conference within thirty (30) days of the case coming at issue, or the filing of the last responsive pleading, or a motion requiring determination by the court.

- (a) Counsel shall notice the conference for hearing pursuant to [Rule 9](#) below. Failure of counsel to hold the discovery conference within the time period specified will not serve to delay the trial of the action and may subject counsel to such other sanctions deemed appropriate and allowed by law.

RULE 4. ESTABLISHMENT OF THE TRIAL CALENDAR

4.1 The *Civil Calendar Notice (Notice of Trial)* shall serve as the final calendar and shall be distributed to all parties, not less than four (4) weeks prior to trial.

4.2 Once the Trial Court Administrator has determined a case to be ready for trial under the guidelines set forth in [Rule 2](#) above, the Trial Court Administrator shall notice all parties that a calendar setting conference will be held at the courthouse to establish scheduling deadlines and a trial date, as well as determination of Mediated Settlement Conference requirements. Attorneys for all parties appearing in the case shall participate in this conference. A party shall participate in person if he/she has no attorney.

4.3 The calendar setting conference date shall not occur less than one hundred and eighty (180) days after the filing of the complaint unless set by special order or application of parties.

4.4 At the calendar setting conference, every case shall be set for trial no sooner than thirty (30) days, but not later than four (4) months for non-jury cases and six (6) months for jury cases.

4.5 Any case currently on file for two hundred and ten (210) days or more will be subject to the expedited assignment of a trial date.

4.6 At the calendar setting conference, each party shall be prepared to certify to the Court that:

- No additional parties are necessary;
- Experts, if any, have been disclosed;
- Discovery has been completed;

- Pleadings are closed;
- Dispositive motions have been filed and ruled upon by the Court.

As an alternative to the certification, the parties may report the terms of a mutual, scheduling agreement that accomplishes all the foregoing matters necessary to bring the parties into compliance with [Rule 5](#) set forth below.

4.7 At the calendar setting conference, all counsel must have knowledge of their personal, clients' and witnesses' schedules or have a partner, associate, or other attorney present who is familiar with these schedules. This will allow for the setting of reasonable scheduling deadlines and firm trial dates.

4.8 At the calendar setting conference, all attorneys should be prepared to address requests for exemption from mediation, special scheduling deadline requests, peremptory settings, requests for exceptional case status, or any other similarly situated case management matters.

4.9 Failure of counsel to appear at the calendar setting conference will result in the automatic assignment of a trial date, scheduling order, mediation conference deadline date and assignment of a mediator, by the Trial Court Administrator. Continuances will not be granted even if all parties agree, unless for a crucial cause that could not have been foreseen.

4.10 "*Participation*" at the calendar setting conference shall be defined as appearing in person at the time, date and place as indicated on the *Notice of the Calendar Setting Conference*. Unless prior to the date of the conference the party has communicated with the office of the Trial Court Administrator by means of U.S. Mail, telephone, facsimile, or hand delivery concerning preferences as to the trial date and mediator selection.

4.11 A Medical Malpractice case shall be set for trial by the Trial Court Administrator contemporaneously with the establishment of the Medical Malpractice Discovery Scheduling Order or consistent with [Rule 2](#) above whichever occurs first.

- (a) At the time the Medical Malpractice Scheduling Order is presented for signature to the court, counsel shall also submit to the Trial Court Administrator in writing no more than three (3) agreed upon trial dates.
- (b) The dates submitted shall not exceed eighteen (18) months from the time of filing.
- (c) The sequence of the dates submitted shall be deemed the priority order of the request, and shall be taken into consideration by the Trial Court Administrator in establishing a trial date.
- (d) Any request for a peremptory setting shall be made in compliance with [Rule 8.3](#) below.

4.12 Any case not in compliance with [Rule 5.2](#) below, shall be subject to trial scheduling in the discretion of the Trial Court Administrator.

4.13 The trial date that is set shall be a firm date. Continuances will not be granted, even if all parties agree, unless for a crucial cause that could not have been foreseen.

4.14 Pursuant to Rule 2(e) General Rules of Practice for Superior and District Courts and consistent with ethical requirements, counsel for all parties in an action, when notified to appear for the setting of the trial date, pre-trial conference, mediated settlement conference or for hearing of a motion or trial, must appear as scheduled or have a partner, associate, or other attorney familiar with the case present.

4.15 It shall be the ongoing duty of all counsel/unrepresented parties to notify the Trial Court Administrator of any addition(s) or deletion(s) of counsel/ unrepresented parties.

RULE 5. TIME STANDARDS FOR SCHEDULING ORDERS AND FINAL CASE DISPOSITION

5.1 The scheduling order deadline dates shall be established by the Trial Court Administrator, and noticed to all counsel/unrepresented parties on the *Civil Calendar Notice (Notice of Trial)*, or incorporated thereto. Failure to comply with the scheduling order deadlines may result in the imposition of such sanctions or penalties as deemed appropriate by the court, and allowed by law.

- (a) Extensions of established deadline dates shall only be granted by the Trial Court Administrator when the trial will not be delayed. Requests by the same party will be granted only in exceptional circumstances.

5.2 A Medical Malpractice Scheduling Order may be presented by consent of all parties or pursuant to hearing as set forth in Rule 26(f1) of the Rules of Civil Procedure. The scheduling order shall;

- Be amended only by court order, and not by consent of counsel;
 - Establish deadlines to insure that a trial date may be set not to exceed eighteen (18) months from the date of filing;
 - Be presented to the Trial Court Administrator by counsel to determine compliance, prior to presentation to the judge for signature.
- (a) A final copy of the scheduling order, after court signature, shall be provided to the Trial Court Administrator by counsel within five (5) working days.
 - (b) At the time of presentation of the proposed scheduling order counsel shall be prepared to establish a trial date in compliance with [Rule 4.11](#) above.
 - (c) Failure to comply with these provisions may result in the voiding or amending of the scheduling order by the Senior Resident Superior Court Judge, or such other sanctions deemed appropriate and allowed by law.

5.3 Absent exigent circumstances, all cases filed must be tried or disposed of within the following deadlines: Civil non-jury, twelve (12) months; and civil jury, eighteen (18) months.

RULE 6. ALTERNATIVE DISPUTE RESOLUTION PROGRAM

6.1 By order of the Senior Resident Superior Court Judge all civil actions filed in the Superior Court for the Twelfth Judicial District, are subject to a Mediated Settlement Conference under the rules as set forth in the attached Section II of this Case Management Plan. The requirements of the Mediated Settlement Conference Rules shall run concurrent with these Civil Calendaring Rules and are hereby incorporated by reference into this Case Management Plan.

RULE 7. PRE-TRIAL CONFERENCES

7.1 There shall be a pre-trial conference and order in every civil case. The purpose of the conference is to define and narrow the issues for trial and explore carefully the prospects of settlement.

7.2 The pre-trial conference shall be held by the parties at least twenty-one (21) days prior to the trial date and a pre-trial order prepared and signed by all attorneys of record shall be filed with the Clerk of Superior Court. A copy of the pre-trial order shall be presented to the Trial Court Administrator no later than Wednesday proceeding the session on which the case is set for trial.

7.3 The pre-trial order shall substantially conform to Rule 7, General Rules of Practice for Superior and District Court.

7.4 Failure to comply with these provisions may result in the Presiding Judge, in his/her discretion, entering an order to exclude certain evidence, an order of dismissal, or order such other sanctions deemed appropriate and allowed by law.

RULE 8. PRIORITY, REMANDED AND PEREMPTORY CASES

8.1 Cases entitled to priority settings by statute shall be brought to the attention of the Trial Court Administrator in writing, with copies to all counsel of record/unrepresented parties and cite the statutory authority for such setting.

8.2 When a case is remanded for trial from the Appellate Division, appellate counsel shall promptly notify the Trial Court Administrator in writing, who shall assign the case a trial date after all parties have an opportunity to express scheduling preferences.

8.3 A peremptory setting shall be granted only for good cause and compelling reasons. Requests should be made at the calendar setting conference or thereafter in writing with copies to

all counsel of record/unrepresented parties. The Trial Court Administrator may set a case preemptorily on his/her own motion.

RULE 9. MOTIONS FOR CONTINUANCE

9.1 All requests for continuance shall be directed to the Trial Court Administrator by written motion on a *Motion for Continuance* form and shall set forth with particularity the reason for the continuance, consent if given by opposing party(ies), and a requested reschedule date. [*The Motion for Continuance* shall be on form [CCLF-CV-002](#) as prepared and distributed by the Trial Court Administrator's Office, or in letter form which essentially provides the same information.] Motions shall be presented;

- (a) As soon as counsel/unrepresented parties become aware of the reason for the motion for continuance.
- (b) Any motion made within ten (10) working days of the beginning of the scheduled session shall be for an exigent cause that could not have been foreseen.

9.2 Opposing counsel/unrepresented parties must be notified of the motion for continuance prior to the delivery of the request to the Trial Court Administrator. The manner and date of notice to opposing counsel/unrepresented parties shall be indicated on the motion.

9.3 Opposing counsel/unrepresented parties shall thereafter have three (3) working days to file an objection to the motion for continuance with the Trial Court Administrator. All objections shall be made by written motion on the *Objection to Motion for Continuance* form setting forth the particular reasons for objection and served on opposing counsel/unrepresented parties. [*The Objection to Motion for Continuance* shall be on form [CCLF-CV-003](#) as prepared and distributed by the Trial Court Administrator's Office, or in letter form which essentially provides the same information]. If a response is not received from the opposing counsel/parties within three (3) working days of the receipt of the motion to continue, it will be assumed that the opposing counsel/ parties do not object.

9.4 Motions for continuance pursuant to [Rules 9.1\(a\)](#) shall be ruled upon by the Trial Court Administrator within five (5) working days.

9.5 Motions for continuance pursuant to [Rule 9.1\(b\)](#) may be ruled upon by the Trial Court Administrator provided all provisions of [Rule 9](#) are met, and all parties may be notified of the ruling prior to the scheduled court session.

9.6 Requests for continuance will only be granted when compelling reasons are presented which affect the fundamental fairness of the trial and it is clearly in the interest of justice. In addition, consideration will be given to the following factors:

- Age of the case;
- Status of the trial calendar for the session;

- The order in which the case appears on the calendar, to include peremptory setting status;
- Number of previous continuances;
- The extent to which counsel had input into the scheduling of the trial date;
- The diligence of counsel in promptly filing the continuance motion;
- The reason for continuance and length of the continuance requested;
- Consent or opposition by other counsel/parties to the continuance motion;
- Present or future inconvenience or unavailability of witnesses/parties;

9.7 Reasons that shall not be considered valid bases for allowing a continuance motion include:

- First time scheduling of the case for trial,
- Failure to calendar a motion,
- Failure to mediate the case,
- Potential conflicting scheduling of other trials in other courts.

9.8 Should an objection arise, any failure on the part of moving counsel to comply with the rules concerning written motion and notice to opposing counsel/unrepresented parties shall result in the voiding of any continuance granted.

9.9 The Trial Court Administrator, under the supervision of the Senior Resident Superior Court Judge, has sole authority to continue cases prior to the scheduled trial session. At no time shall any counsel/unrepresented parties present any motion to continue to the presiding judge prior to the opening of the scheduled trial session.

9.10 Appeals from the decision of the Trial Court Administrator shall be directed to the Senior Resident Superior Court Judge.

9.11 When a case has been continued or not reached during a trial session the Trial Court Administrator shall issue a *Notice of Rescheduling*, providing an opportunity of five (5) days for input from parties on setting a new trial date. Failure of parties to respond to the Notice of Rescheduling will result in the automatic setting of a trial date by the Trial Court Administrator.

9.12

RULE 10. CALENDARING OF MOTIONS

10.1 All motions shall be scheduled for hearing through the Trial Court Administrator's Office.

10.2 In advance of filing a motion, the moving party shall [contact the Trial Court Administrator's Office, to receive a date and time certain for hearing](#). This date and time certain shall be cited in the *Notice of Hearing* filed with the Clerk.

10.3 To appear on the printed calendar, the moving counsel/ unrepresented party shall deliver a copy of the Notice of Motion Hearing to the office of the Trial Court Administrator by U.S. Mail, hand delivery or fax, no later than 5:00 p.m. on the Tuesday prior to the scheduled Monday court session. Motions not appearing on the printed calendar, may only be added for hearing in the discretion of the Trial Court Administrator.[The Notice of Motion Hearing shall be on form [CCLF-CV-004](#) as prepared and distributed by the Trial Court Administrator's Office or in letter form, which essentially provides the same information.]

10.4 Moving counsel/party shall serve all counsel/unrepresented parties with the date, time and location of the hearing.

10.5 Moving counsel is responsible for notification to their client of the date, time and location of hearing with respect to Motion to Withdraw as Counsel.

10.6 Failure of moving counsel to notify all counsel/unrepresented parties will result in an automatic denial of the motion upon objection of opposing counsel/ party.

10.7 Any motion that is not calendared pursuant to [Rule 10.2](#) and [10.3](#) above may, in the discretion of the presiding judge, be summarily denied or have such other sanctions imposed as deemed to be appropriate and allowed by law.

10.8 Failure of counsel to calendar motions for hearing in a timely manner will not delay the trial date assigned.

10.9 The Trial Court Administrator may in his/her discretion calendar pending motions on a timely basis to insure the progression of the calendar.

10.10 Prior to the beginning of the scheduled court session, the moving party may remove any motion he/she has noticed for hearing from the calendar by providing the Trial Court Administrator with notification of intent to withdraw the notice of hearing and verification that such withdrawal has been communicated to all party(ies).

RULE 11. NOTICE OF SETTLEMENT

11.1 Pursuant to Rule 2(g) General Rules of Practice for Superior and District Courts, when a case is settled all attorneys of record must notify the Trial Court Administrator within twenty-four (24) hours of the settlement and advise who will prepare and present the judgment or dismissal, and when. Judgments or dismissals must be filed in accordance with [Rule 12](#) set forth below.

RULE 12. DELINQUENT ORDERS OR JUDGMENTS

12.1 Cases or motions scheduled on the trial calendar and removed due to consent or settlement shall be considered delinquent if the order of judgment or dismissal is not filed within fifteen (15) working days after the matter was announced as settled.

12.2 Cases or motions scheduled on the trial calendar and heard by the Judge or by jury shall be considered delinquent if the order or judgment of disposition is not filed within fifteen (15) working days after the hearing, unless otherwise directed by the Presiding Judge.

12.3 Upon motion of the party against whom the judgment or order was to be taken, cases identified delinquent pursuant to [Rule 12.2](#) above, may be dismissed by the Senior Resident Superior Court Judge or Presiding Judge.

12.4 The Trial Court Administrator shall identify those cases which are delinquent, pursuant to [Rule 12.1](#) and [12.2](#) above, and bring them to the attention of counsel/unrepresented parties by means of a *Notice of Delinquent Order*. After such notice, cases remaining delinquent may be dismissed at the discretion of the Senior Resident Superior Court Judge or Presiding Judge. The court may alternatively order such sanctions or impose such penalties as deemed appropriate and allowed by law.

RULE 13. JUDICIAL REVIEW OF CASE STATUS

13.1 The Trial Court Administrator may, as necessary, set cases for the purpose of judicial review of case status.

13.2 Cases involving, but not limited to, the following matters shall be eligible for judicial review and appropriate disposition:

- Bankruptcy;
- Service not made and summons expired;
- Binding Arbitration by consent;
- Removal to Federal Court;
- Soldiers' and Sailors' Relief Act (50 USCS Appx. 501)
- Periodic Settlement Payments;
- Exceptional or Complex Business Status Designation;

13.3 The Trial Court Administrator, upon review of the cases pending in categories identified in [Rule 13.2](#) and after consultation with counsel, if necessary, shall prepare orders to be signed by the Senior Resident Superior Court Judge or Presiding Judge disposing of such matter appropriately.

13.4 In cases in which answers have not been filed and time has expired, Plaintiff's attorney shall file an entry of default prior to the date of the assigned trial. Failure to comply may result in an entry of dismissal with prejudice, or any other sanctions allowed by law and deemed appropriate.

RULE 14. SERVICE OF NOTICE

14.1 Notice to or by the Trial Court Administrator shall be accomplished in the following manner:

- U.S. Mail;
- Facsimile;
- Hand Delivery;
- Courthouse attorney mailbox .

14.2 Providing Notice to the Clerk of Superior Court does not constitute providing Notice to the Trial Court Administrator.

14.3 Service to opposing counsel shall be defined as service to all attorneys of record as well as unrepresented parties proceeding pro se.

RULE 15. NOTICE OF CALENDARING TO ATTORNEYS

15.1 The Civil Calendar Notice (Notice of Trial) shall serve as the final calendar and shall be distributed to all parties, not less than four (4) weeks prior to trial.

15.2 Published calendars are also available for inspection in the Trial Court Administrator's Office. Published calendars, forms and local rules may be downloaded from the following web site:

- <http://www.aoc.state.nc.us>

Select: Cumberland

15.3 It is the responsibility of counsel and unrepresented parties to be aware of cases appearing on trial calendars, and to contact the office of the Trial Court Administrator to determine trial order in advance of the scheduled trial session.

RULE 16. SANCTIONS

16.1 Failure to comply with any section of these rules shall subject an action to dismissal, or such other sanctions allowed by law and deemed appropriate in the discretion of the Senior Resident Superior Court Judge or presiding judge.

RULE 17. ENFORCEMENT OF LOCAL RULES OF PROCEDURE

17.1 The signature of Trial Court Administrator shall be considered the same, and have the same full force and effect as that of the Senior Resident Superior Court Judge for the purposes of all scheduling order deadlines, trial settings, preemptory settings, compliance with alternate dispute resolution programs, extensions of time both within and beyond scheduling order deadlines, and any similarly situated case management matters.

RULE 18. FORMS

18.1 Local forms for use by counsel/unrepresented parties in accordance with these rules are attached hereto and are subject to change as legislation and/or policy dictates.