

DISTRICT COURT RULES 19C JUDICIAL DISTRICT

RULE 1: AUTHORITY - EFFECTIVE DATE

- 1.1 The Rules are published pursuant to authority vested in the Chief District Court Judge of the 19C Judicial District by Rule 2, General Rules of Practice for the Superior and District Courts supplemental to the Rules of Civil Procedure Adopted by the Supreme Court of North Carolina Pursuant to G.S. 7A-34, as Amended through October 31, 1999.
- 1.2 The Rules supersede all previous civil calendar Rules of the District Court Division from and after their effective date.
- 1.3 The Rules shall serve as the case management plan for the calendaring of civil cases.
- 1.4 The Rules shall be cited as District Court Rules 19C Judicial District. (19C-DCR).
- 1.5 The Rules are effective for cases pending and filed on or after June 1, 2001.

RULE 2: CALENDARING OF CASES

- 2.1 Ordinarily the setting of cases for trial is a function of the trial bar by the service of calendar notice on the attorney of record, or, if none, the opposing party through the office of the Clerk of Superior Court. The Chief District Court Judge has the final authority over the calendaring and management of civil cases.
 - a) All calendar requests for Civil District Court must be filed in writing with the Clerk of Superior Court forty-eight (48) hours in advance of the requested court dates. Calendar requests not filed in a timely manner will be returned to the attorney for resubmission.
- 2.2 The Chief District Court Judge shall publish a clean-up calendar consisting of all cases pending for more than six (6) months. When a case appears on a clean-up calendar, the attorney of record must, consistent with ethical requirements, appear or have a partner, associate, or other attorney present. Failure to conform with the above requirement may result in dismissal of the claim. Cases placed on a clean-up calendar not disposed of at the call of the calendar shall be set for trial on a date certain by the presiding judge, unless a continuance is allowed under another Rule herein.
- 2.3 In all cases in which an Answer or other appropriate pleading has not been filed within the time allowed, the case may be calendared at any time, subject to the discretion of the presiding judge.

RULE 3: JURY TRIAL PROCEDURE

- 3.1 When a complaint or other pleading is filed in which a trial by jury is requested, the phrase "Jury Trial Demanded" (or equivalent language) shall be typed or legibly written under the name of the pleading or complaint. Examples:

COMPLAINT

ANSWER

Jury Trial Demanded

Jury Trial Demanded

- 3.2 Unless a request is made pursuant to Rule 3.3, jury cases more than six (6) months old will be placed on the calendar in numerical order according to the age of the case, unless otherwise provided for in the Rules (see Rule 6 - Peremptory Setting).
- 3.3 Six (6) weeks prior to a jury session a tentative trial calendar shall be prepared by the Chief District Court Judge. Additions will be made only by the Chief District Court Judge upon written request submitted no later than four (4) weeks prior to the first day of the jury session. Other additions to the jury calendar shall be in the discretion of the assigned trial judge.
- 3.4 In order to remove a case from the tentative trial calendar, an attorney of record or unrepresented party must file a motion for continuance within ten (10) calendar days after the publication of the tentative trial calendar, and set the motion for hearing pursuant to the Rules of Civil Procedure.
- 3.5 After publication of the final trial calendar, all motions to continue shall be addressed to the sound discretion of the assigned trial judge at the Pretrial Motion setting.
- 3.6 Attorneys of record shall complete discovery as soon as practical within the Rules of Civil Procedure and shall prepare Pretrial Orders to include such stipulations as are possible to expedite trial of their case. Attorneys who fail to observe this rule may be subject to sanctions.
- 3.7 The jury shall be summonsed to report on Monday morning at 9:30 a.m., unless otherwise ordered by the presiding judge.
- 3.8 District Court Jury Session convenes at 9:30 a.m. and all attorneys with cases calendared for motion or trial will be present and will remain in the Courtroom or its general area unless excused by the presiding judge.
- 3.9 When a case on a published calendar is settled, all attorneys of record or unrepresented parties shall notify the Clerk of Superior Court within twenty-four (24) hours of the settlement and state who will prepare and present a judgment and also state when it will be presented.

RULE 4: PRE-TRIAL CONFERENCES AND ORDERS - JURY TRIALS

- 4.1 In cases on the final trial calendar, Pretrial Conferences shall be held at such times as scheduled by the judge assigned to preside over the jury session.
- 4.2 Failure of counsel for each party to file a proposed Pretrial Order in accordance with the Rules of Civil Procedure or the directions of the presiding judge, constitutes a violation of these Rules and sanctions under Rule 37 of the North Carolina Rules of Civil Procedure may be imposed.

RULE 5: CONTINUANCES - NON-JURY CASES

- 5.1 Motions for continuance on the regular District Civil Court trial calendar shall be oral or in writing and shall be addressed to the sound discretion of the presiding trial judge. Prior to making such a continuance motion an attorney shall be responsible for notifying opposing counsel of his intention to make the motion, shall whenever possible obtain a response of opposing counsel and shall be prepared to report to the Court on the opposing counsel's position as to the Motion to Continue.
- 5.2 The party moving for and receiving a continuance must file a calendar notice for rescheduling of the case, including cases continued to a date certain, with a copy to the attorney of record or unrepresented opposing party.

RULE 6: PEREMPTORY, PRIORITY AND REMANDED CASES (ALL CASES)

- 6.1 Motions for peremptory settings shall be in writing to the Chief District Court Judge. A peremptory setting shall be granted only for good and compelling reason. The Chief District Court Judge may set a case peremptorily upon her or his own motion.
- 6.2 In order to ensure the timely setting of cases with priority status according to the General Statutes, the requesting attorney or unrepresented party shall notify the Chief District Court Judge or the trial judge, in writing, of his request for a peremptory setting, and cite statutory authority thereto, and shall provide a copy of same to opposing attorney or unrepresented party.
- 6.3 When a case is remanded by the Appellate Division, the prevailing party or other litigant shall promptly notify the Chief District Court Judge who shall place the case on the appropriate trial calendar.

RULE 7: NON-JURY CALENDARS AND MOTIONS (NON-DOMESTIC RELATIONS CASES)

- 7.1 An attorney of record or unrepresented party may request that a case be placed on a non-jury trial calendar by making a written request to the District Court Calendar Clerk no later than fourteen (14) calendar days prior to the scheduled session unless a shorter period of time is allowed by North Carolina General Statutes, and the request shall be served upon opposing attorney of record or unrepresented party (see also Rule 2.3).
- 7.2 Motions for Continuance shall be directed to the sound discretion of the presiding judge.
- 7.3 When all attorneys or unrepresented parties of record agree, a case may be placed on a non-jury calendar with less than fourteen (14) days' notice subject to the discretion of the presiding judge.

RULE 8: NON-JURY DOMESTIC RELATIONS CASES

- 8.1 An attorney of record or unrepresented party may file a request to have a case placed on the non-jury calendar by delivery of a calendar request to the District Court Calendar Clerk prior to the session and notifying opposing attorney of record or unrepresented party in accordance with appropriate statutory provisions.
- 8.2 All cases in which child custody/visitation is in question shall be referred to custody mediation unless exempted by statute. This provision applies to modifications and contempt as well as initial determinations.
 - a) A custody case shall not be set for trial until the custody mediator has, by written notice, notified all parties and the clerks that the mediation attempt was unsuccessful.
- 8.3 Only one failed custody mediation case may be set for trial per day in any civil district court. Once such a case has been calendared for trial, it may not be removed from the trial calendar or continued without the permission of the presiding judge.
- 8.4 In cases dealing with custody or visitation, an affidavit containing the information required by G. S. 50A-209 shall be attached to or incorporated in the initial pleading filed by each party.
- 8.5 In all child support and postseparation support cases, when responsive pleadings are filed in the case, the pleading shall contain a financial status affidavit of responding party. If the responsive pleading is not filed before the scheduled hearing date, the financial affidavit shall be served upon opposing attorney of record or unrepresented party within a reasonable time before the hearing.
- 8.6 In all postseparation support cases, both parties shall bring to the hearing records of their earnings for the past two (2) years, including tax returns, pay stubs and other records.
- 8.7 When a civil action seeking child support is filed by Complaint, Petition, Answer, Motion or Counterclaim, the attorney or unrepresented party seeking child support must serve a NOTICE AND ORDER TO APPEAR AND ORDER TO PRODUCE RECORDS Form 19C-CSE-1 (see attached) simultaneously with the Complaint, Summons, Answer, Counterclaim or Notice of Motion upon the opposing party or his attorney of record. Form 19C-CSE-1 sets a hearing date which must be within forty-five (45) days of the filing of the first pleading or motion and must be signed by a District Court Judge, the Clerk of Court, or an Assistant Clerk of Court.
- 8.8 Hearings of child support cases must be completed within forty-five (45) days of the filing of the first pleading or motion asking for child support except by order of the presiding judge upon motion of a party stating the statutory reasons for the request or upon the court's own motion.
- 8.9 All non IV-D Orders for child support must contain language which includes the following information:
 - a) Each party's name, date of birth, social security number and docket number.
 - b) That Payor must keep Clerk of Court informed of his current residence and mailing address; and

- c) That Payor will be subject to income withholding under a separate Order unless the Court shall have determined that there is good cause not to require immediate income withholding or unless a written agreement has been reached between the parties that provides for an alternative arrangement (G.S. 110-136.5 c.1).
- d) That Payor shall cooperate fully with Payee in verifying the amount of Payor's disposable income.
- e) That the custodial party shall keep non-custodial party informed at all times of the residence and mailing address of the minor child/children, unless the Court has determined that such notice is inappropriate due to verbal or physical threats which constitute domestic violence under Chapter 50B.

RULE 9: MEMORANDA OF SETTLEMENTS (ALL CASES)

- 9.1 At any time the parties execute a Memorandum of Settlement, if all parties are represented by counsel the Memorandum may provide that it may be entered by the judge presiding out of the presence of the parties.
- 9.2 If any party is not represented by counsel, the parties shall remain in the courtroom to allow the presiding judge to address the unrepresented parties to determine whether they understand the terms of the Memorandum and whether they have executed the same voluntarily and knowingly.

RULE 10: BANKRUPTCY CASES

- 10.1 Civil actions in which one of the parties has filed a petition under the Federal Bankruptcy Act, or who has been adjudicated bankrupt, will be disposed of in accordance with the following authority and procedure:
 - (a) 11 U.S. Code § 362; 11 U.S. Code § 1301;
 - (b) *Whitehurst v. Virginia Dare Transport Co.*, 19 NCA 352 (1973);
 - (c) N.C.G.S. § 1-23.
- 10.2 Any request to continue, hold, or in any other way delay disposition of a case due to bankruptcy of one of the parties, must be accompanied by a certificate of bankruptcy filing or "filed" copy of the first page of the bankruptcy petition or by a Notice of Bankruptcy stay utilizing Form CCF-15-1 (see attached). The movant will serve a copy of Form CCF-15-1 upon all parties of record and will send a copy to the Office of the Chief District Court Judge.
- 10.3 Upon receipt of notification by any method set forth in Rule 10.2, or by verification of the office of the Chief District Court Judge that a Bankruptcy Petition has been filed by a party to a state action, the Office of the Chief District Court Judge will refer the case to the appropriate judge for the entry of such Order(s) as may be necessary.
- 10.4 Notwithstanding any provisions contained in this Rule 10, the Court will enter such Order(s) as may be necessary to enforce the bankruptcy stay, enjoin state action, and administratively close the file in question.
- 10.5 After reasonable notice, the Court will dismiss or close the civil action in state court without

prejudice. Notice may be in writing via letter, or by placing the case on a civil calendar.

RULE 11: MISCELLANEOUS

- 11.1 Unless an attorney's appearance in court for trial has been excused by the trial judge for good cause shown in advance and he/she has given notice to opposing attorney of record or unrepresented party, sanctions under these Rules may be considered.
- 11.2 An Order shall be due within twenty-one (21) days of the entry of (a) Memorandum of Judgment/Order or (b) of an oral announcement by a District Court Judge of the terms of an Order following a hearing. A particular attorney shall either take or be given responsibility for the typewritten Order.
- a) Forty-five (45) days after the initial Memorandum or trial, a delinquent notice will go to the attorney responsible for the typewritten Order.
 - b) Sixty (60) days after the original Memorandum or trial, an Order to Show Cause will be issued and served on the responsible attorney requiring his appearance in Court before a District Court Judge for a Criminal/Civil contempt hearing. If the attorney is found to be in contempt for willful failure to complete the Order in the prescribed time limit, a fine up to Five Hundred (\$500.00) Dollars may be imposed upon that attorney.
- 11.3 In all cases where an Order is drawn pursuant to a Memorandum of Judgment/Order, a copy shall be attached for review by the judge when the Order is presented for signature.
- 11.4 All District Criminal Courts will begin at 9:00 a.m. and all District Civil Court will begin at 9:30 a.m.
- 11.5 All written designations of secure leave for attorneys shall comply with Rule 26 of the General Rules of Practice for the Superior and District Courts and shall be filed with the office of the Chief District Court Judge ninety (90) days in advance of the leave period.

RULE 12 SANCTIONS

- 12.1 Failure to comply with any section of these Rules shall subject an action to dismissal at the discretion of the presiding judge.
- 12.2 Sanctions may also include any set out in Rules 37 and 41 of the North Carolina Rules of Civil procedure.

This the _____ day of June, 2001.

ANNA MILLS WAGONER
CHIEF DISTRICT COURT JUDGE

RULES FOR COURT DISTRICT 19C EQUITABLE DISTRIBUTION

I. CAPTION

All cases in which an ED claim is asserted must have the words "ED Claim Asserted" in the caption. Failure to follow this rule will result in the ED claim being dismissed by the Court.

II. INVENTORY AFFIDAVITS

1. Within ninety (90) days after the service of a CLAIM for ED, the party who asserts that CLAIM shall prepare and serve upon the opposing party an ED Inventory Affidavit. Within thirty (30) days after service of the Inventory Affidavit, the responding party shall prepare and serve an Inventory Affidavit upon the other party.
2. In all absolute divorce cases in which ED is requested, the presiding judge at the time of the absolute divorce shall set a date for the initial scheduling conference within ninety (90) days of the divorce judgment.
3. In all other cases involved requesting ED (not absolute divorce), the following rules will apply:
 - a. Within ninety (90) days after service of a CLAIM for Equitable Distribution, the party who asserts the CLAIM shall prepare and serve upon the opposing party an ED Inventory Affidavit. The responding party shall file and serve within thirty (30) days after service of the inventory affidavit on him, his inventory affidavit upon the other party.
 - b. Within one hundred twenty (120) days of the filing of the initial pleading, the party first seeking Equitable Distribution SHALL apply to the Court for the initial scheduling and discovery conference. If that party fails to make application, then the other party may do so.

III. INITIAL SCHEDULING CONFERENCE

By the date of the initial scheduling conference both parties will have prepared and exchanged inventory affidavits. At the conference the Court shall determine a schedule of discovery as well as consider and rule upon any motions for appointment of expert witnesses or other applications, including applications to determine the date of separation. All attorneys and parties shall be present at the initial scheduling conference in the courtroom. At the conclusion of the scheduling conference all dates shall be set out in a Court Order, including discovery completion date, the date by which all motions must be resolved, and dates for further pretrial conferences at which time lawyers and parties shall be present. The judge may order further conferences if needed.

IV. FINAL PRETRIAL CONFERENCE

One hundred and eighty (180) days after the initial filing, the judge shall conduct a final pretrial conference in the courtroom with lawyers and parties present. The final pretrial order shall be entered at that time and the court date for the trial shall be set.

V. TRIAL MANAGEMENT CONFERENCE

Ten (10) days to two weeks prior to the trial of the Equitable Distribution, the judge shall hold a Trial Management Conference with the attorneys, at which time exhibits, etc. shall be reviewed by the parties and the court. (If not conducted at final pretrial.)

VI. SANCTIONS

Upon motion of either party or upon the Court's own motion, the Court SHALL impose an appropriate sanction for willful or unreasonable delay of discovery proceedings, including failure to make discovery and for the willful obstruction or unreasonable delay of proceedings that is or would be prejudicial to the interests of the opposing party. Sanctions may include an order to pay the other party the amount of the reasonable expenses and damages incurred because of the obstruction or delay, including attorney fees and including appointment by the Court, at the offending party's expense, of an accountant, appraiser, or other expert whose services the Court finds are necessary to secure an order for the discovery or other ED proceeding to be timely conducted.

VII. JURISDICTION

Once the initial pretrial proceeding is held before a judge, that judge shall retain jurisdiction of the case until the ED trial has been concluded. These rules will be effective beginning January 1, 1996.

VIII. DUTY OF CLERK OF SUPERIOR COURT

- a. The Clerk of Superior Court shall be directed to place all equitable distribution cases over one hundred and twenty (120) days of age in which the above guidelines have not been complied on the Cleanup Calendar for dismissal.
- b. The Clerk of Superior Court shall maintain copies of these rules in the Office of the Clerk of Superior Court for review.

This the _____ day of June, 2001.

ANNA MILLS WAGONER
CHIEF DISTRICT COURT JUDGE

STATE OF NORTH CAROLINA
COUNTY OF ROWAN

IN THE GENERAL COURT OF JUSTICE
9C JUDICIAL DISTRICT

TO: THE CLERK OF SUPERIOR COURT OF
ROWAN COUNTY AND ALL ATTORNEYS
PRACTICING IN ROWAN COUNTY

ORDER

The undersigned Chief District Court Judge has formulated the attached revised local rules for practice, District 19C.

It is ORDERED that these revised rules are applicable to all Judicial Officials holding office or presiding in this District except as otherwise provided by law, as well as to all attorneys practicing in the Rowan County District Courts; and

It is further ORDERED that copies of these revised rules shall be distributed by the Clerk of Superior Court to all civil clerks; and that the Clerk of Superior Court shall cause copies hereof to be kept on file in the Clerk of Court's Office, Rowan County, for review.

Entered in chambers in Salisbury, North Carolina, on the _____ day of June, 2001.

ANNA MILLS WAGONER
CHIEF DISTRICT COURT JUDGE