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Civil Local Rules and Procedures

In the 38th Judicial District
Superior and District Courts

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GASTON CO., C.S.C.

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Civil Local Rules and Procedures

In the 38th Judicial District Superior and District Courts

Rule 1. Purpose

In accordance with and subject to the provisions of Rule 40(a) of the North Carolina Rules of Civil Procedure and Rule 2 of the General Rules of Practice for the Superior and District Courts, the following administrative and procedural rules shall constitute the case management plan for the calendaring of civil cases in the Superior and District Courts of the 38th Judicial District of the State of North Carolina. The purpose of these rules is to provide for the orderly, just and prompt disposition of civil matters to be heard in the Superior and District Courts. They shall be at all times construed and enforced in such a manner as to avoid technical delay.

Rule 2. Preparation and Publication of Calendars

The Superior Court Civil calendar shall be prepared under the supervision of the Senior Resident Superior Court Judge. The District Court Civil calendar shall be prepared under the supervision of the Chief District Court Judge. Nine months after a complaint is filed, and if the case is trial ready, the Trial Court Coordinator shall place that case on a ready calendar, unless the time is extended by written Order of the Senior Resident Judge for Superior Court or the Chief District Court Judge for District cases.

Superior Court Civil cases will be scheduled for trial or alternative dispute resolution hearing in accordance with Local Rule 23.

Rule 3. Trial Calendars

A final trial calendar shall be published and distributed by the Trial Court Coordinator to each attorney of record (or Pro Se litigant) no later than four (4) weeks prior to the first day of the trial week. The Wednesday of the week before the first day of the trial week, the Trial Court Coordinator will publish and distribute an updated version of the trial calendar to each attorney of record, the presiding judge, and the corresponding Judicial Assistant. Any changes between the two calendars shall be noted.

3.1 To the extent possible, the Trial Court Coordinator shall set cases by case number, oldest case first and newest case last, except for peremptorily set cases and statutory priority settings, which will be first.

3.2 When cases are likely to be consolidated by the trial Judge, they will be regarded as one case for calendaring purposes and will be listed under the oldest case number pending approval for consolidation from the Trial Judge.

3.3 The Trial Court Coordinator shall communicate with the attorney who is appearing in a case that is on the upcoming trial calendar. The Trial Court Coordinator shall inquire whether the case is ready for trial and shall also ascertain the anticipated length of the trial. The Trial Court Coordinator shall also inquire whether there are any anticipated scheduling problems, whether the parties are likely to settle and whether there are any pre-trial matters for the Court. The Trial Court Coordinator shall ask each attorney to advise them if any matter arises that may affect the ability of the court to conduct a trial of the case at the upcoming term of court. Upon communicating with each attorney for this information, the Trial Court Coordinator will publish the final trial calendar.

3.4 The final calendar shall be published and distributed by the Trial Court Coordinator by posting the calendar to NCCOURTS.GOV or any subsequently succeeding website, such that it is available for public review and display. As a professional courtesy, the Trial Court Coordinator shall email a copy of the final calendars to the attorneys who have registered their email addresses with the Trial Court Coordinator who are Counsel of record for the appearing cases on the final calendar.

Rule 4. Adding cases for Trial

Only the Senior Resident Superior Court Judge or Chief District Court Judge, or their designee, can add cases for trial to final calendar. Attorneys wishing to have a case placed on the trial calendars after publication may request an addition. All such request must be made in writing and addressed to the respective Judge. The Judge will notify the Trial Court Coordinator if the case is permitted to be added to the trial calendar.

4.1 The designee for the Senior Resident Superior Court Judge shall be any other Resident Superior Court Judge of the 38th Judicial District or the Trial Court Coordinator when the Senior Resident Superior Court Judge cannot be reached.

Rule 5. Publication of Calendar for Public Use

The Trial Court Coordinator will publish the final trial calendar on the courts website as follows. Upon completing the final trial calendar 3 to 4 weeks prior to the start of the trial week and upon releasing the update trial calendar the Wednesday prior to the start of the trial week, the Trial Court Coordinator shall place the calendar on NCCOURTS.org website for public viewing that same day. The online calendar is to be updated each time a subsequent calendar is released.

Rule 6. Superior Court Civil, District Court Civil, and Mediated Settlement Continuances

6.1 Appropriate Judicial Official

Superior Court Civil Cases. Only a Resident Superior Court Judge may grant a continuance which is requested before 5:00 p.m. on the Friday prior to the Trial week. After 5:00 p.m. on that Friday, all continuance requests are to be directed to the Trial Judge. After that point, only the Judge before whom the case is scheduled may continue the case. Should either the Senior Resident Superior Court Judge or the Trial Judge be unavailable, a Resident Judge may continue cases.

District Court Civil Cases. All applications for continuance of a civil case shall be made only to the District Court Judge presiding over the session of court which the case is calendared. If the trial judge is known at the time of the request, the application should be addressed to the Chief District Court Judge.

Mediated Settlement Conference Cases. All applications for extension of the deadline for completion of the Mediated settlement conference shall be made only to a Resident Superior Court Judge or the Trial Court Coordinator.

6.2 Form of Motion. All application for continuance shall be by written motion made on state form AOC-CV-221, Civil local form 38-1, or other form that contains all the information set forth with Civil local Form 38-A-1. However, oral motions may be allowed in emergency situations at the discretion of the Presiding Judge when the reason for the continuance did not become known until immediately preceding the start of court.

6.3 Notification of Opposing Counsel/Unrepresented Parties. A copy of the completed form AOC-CV-221 or Civil Local form 38A-1, or any other form that complies with all the information set forth with Civil Local form 38A-1, must be distributed to all counsel of record and/or unrepresented parties prior to the presentation of motion to the appropriate judicial official. Distribution of the motion may be made by US Mail, facsimile, email, hand delivery, telephone, or distribution means of attorney distribution boxes maintained in the Courthouse. If the motion is granted, all counsel of record, unrepresented parties, subpoenaed witnesses, and the Trial Court Coordinator's Office shall be notified as soon as possible by the movant during the same business day.

6.4 Objections to Motion for Continuance. Opposing counsel and/or unrepresented parties shall have a period of three (3) working days following completion of distribution to communicate, by approved means, objections to the motion for continuance to the moving party and the appropriate Judicial Official. Objections not raised within this time are deemed waived.

If the motion is made within the three days of the scheduled trial date, the moving party shall contact the opposing counsel and, in the motion to the appropriate Judicial official, document the date of contact and the response of opposing counsel.

6.5 Evaluation of Motions for Continuance. Continuance requests are presumptively disfavored. However, when compelling reason for continuance is presented which would affect the fundamental fairness of the trial process or when a continuance clearly is in the interest of justice, a continuance

may be granted in the exercise of judicial discretion to further the best interest of the fair administration of justice.

In addition to other factors, the appropriate judicial official shall consider the following when deciding whether to grant or deny a motion for continuance:

- a) The age of the case.
- b) The status of the trial calendar for the week.
- c) The order in which the case appears on the trial calendar, including whether the case is peremptorily set.
- d) The number of previous continuances.
- e) The extent to which counsel had input into the scheduling of the trial date.
- f) The due diligence of counsel in promptly filing a motion for continuance as so as practicable.
- g) Whether the reason for continuance is a short-lived event which could resolve prior to the scheduled trial date.
- h) The length of the continuance requested, if applicable.
- i) The impact of a continuance on the safety of the parties or any other persons.
- j) Compliance with any law relating to the scheduling and trial of civil cases (such as, summary ejectment appeals).
- k) The position of opposing counsel and/or unrepresented parties.
- l) Whether the parties themselves consent to the continuance.
- m) Present or future inconvenience or unavailability of witnesses/parties; and
- n) Any other matter that promotes the ends of justice.

6.6 Case Rescheduling. Cases continued for trial will be scheduled to the carryover date listed on the trial calendar. Exceptions may be granted by the appropriate judicial official for good cause shown. The continuance date should be determined after receiving scheduling input from all counsel and/or unrepresented parties at the same time the continuance is granted.

When the date for completion of mediated settlement conference has been extended, it shall be extended to a specific date as expeditiously as possible. The deadline extension date should be determined after receiving scheduling input from all counsel and/or unrepresented parties and the mediator at the time the deadline is extended.

6.7 Time Standards. All general civil and magistrate appeal cases should be disposed of within 12 months of filing. All Superior cases should be disposed of within 18 months of filing.

6.8 Court Conflicts. The various levels of court should work together to try and move cases as expeditiously as possible. Age of case, subject matter and priority of settling should be given as much primacy as the level of court when resolving conflicts. Attorneys shall notify the court and opposing counsel of any court conflict(s) as soon as they become known and shall keep the court advised of the resolution of that conflict. All judges shall communicate with other judges to resolve such conflicts, juvenile cases should be given priority over other District and Superior Court matters where practicable.

Rule 7. Peremptory Case Trial Setting

7.1 Requests for a peremptory setting for Superior Court cases involving persons who must travel long distances or numerous expert witnesses or the extraordinary [or statutorily mandated] reasons for such a request must be made to the Senior Resident Superior Court Judge through the Trial Court Coordinator. A peremptory setting shall be granted only for good and compelling reasons. A Senior Resident Judge may set a case peremptorily on the Senior Resident's own motion.

7.2 Requests for a peremptory setting for District Court cases must be made to the Trial Judge assigned to the case. The Trial Judge shall work in conjunction with the District Court Trial Court Coordinator to assure no other cases have been set.

Rule 8. Presence of Attorneys at Calendar Call, Settlement Conferences, Trials, Etc.

When an attorney is notified to appear for the setting of a calendar, pretrial conference, settlement conference, hearing of a motion for trial, the attorney must, consistent with ethical requirements, appear or have a partner, associate or another attorney familiar with the case present. Unless an attorney has been excused in advance by the Judge before whom the matter is scheduled has given prior notice to the opposing party, a case will not be continued.

8.1 Any case noticed for hearing in subject to dismissal for failure to prosecute, when appropriate, if, at that time the case is called for hearing, the attorneys or pro se litigants are not present and ready to proceed and have failed to notify the Court of any emergency or conflict which would preclude the attorney or party from being present and/or ready to proceed.

Rule 9. Notices of Settlement

9.1 When a case on a published calendar is settled, all attorneys of record must notify the Trial Court Coordinator within twenty-four (24) hours of the settlement and advise who will prepare and present the judgment, and by what date the dispositive order will be presented.

9.2 If a case on a published Final Trial calendar is settled, the attorneys, when feasible, should notify all counsel in the next case calendared.

Rule 10. Discovery

Counsel is required to begin promptly such discovery proceedings as should be utilized in each case and are authorized to begin even before the pleadings are completed. Counsel is not permitted to wait until the pre-trial conference is imminent to initiate discovery.

Rule 11. Requests for Withdrawal of Counsel

No attorney who has entered an appearance in any civil action shall withdraw his or her appearance, or have it stricken from the record, except on order of the court. Once a client has employed an attorney who has entered a formal appearance, the attorney may not withdraw or abandon the case without (1) justifiable cause, (2) reasonable notice to the client, and (3) the permission of the court.

Rule 12. Calendaring of Motions

12.1 Motions may be calendared for any session of trial court when space permits upon request to the Trial Court Coordinator, or by Order of the Court.

12.2 The Trial Court Coordinator may at his/her discretion, add motions onto already published Final Trial Calendar with the consent of the Presiding Judge. Motions added to the Final Trial calendar must be with the consent of all counsel and/or parties or upon proper notice to the opposing Counsel.

12.3 Each attorney filing a motion must notify the Trial Court Coordinator as to what motions the attorney desires to be heard and the approximate time that the hearing will require upon the initial filing of the motion. The attorney should also notify the Trial Court Coordinator if the hearing of the motion will require an evidentiary hearing involving testimony of witnesses. Each attorney is to provide the Trial Court Coordinator with a copy of the file stamped motion and notice of hearing.

12.4 The quantity of motions for a given setting may not exceed 15 motions without permission from the Presiding Judge and analysis of the estimated motion lengths to ensure that more motions are not scheduled that the time available would reasonably permit.

12.5 It is the duty of an attorney to notify the Trial Court Coordinator if a motion is no longer for hearing no later than 3 days prior to the scheduled date.

12.6 If an attorney fails to adhere to the procedure for calendaring a motion with the Trial Court Coordinator as outlined by these Local Rules, the Trial Court Coordinator may withhold calendaring the motion until all the necessary information is provided.

Rule 13. Case Action Cover Sheet

All pleadings filed in civil actions shall include as the first page a Court Action Cover sheet. This summarizes critical elements of the pleading. This is an AOC form that is available in Clerk of Court's office.

Rule 14. Calendar Call when on Holidays or Preceding Weeks when Court is not in session

14.1 District Court Cases. Calendar call will be held on the morning of the first day of the session at 9:30 a.m. Cases appearing on the final trial calendar will be electronically sent to the attorneys before the case's trial week. While all cases appearing on the final trial calendar are assumed to be ready for trial, attorneys or parties must comply with Local Rule 8 on calendar call appearances.

14.2 Superior Court Cases, calendar call will be held on the morning of the first day of the session at 10:00 a.m. Cases appearing on the Final Trial Calendar will be electronically sent to all attorneys and parties before the case's trial week. While all cases appearing on that calendar are assumed to be ready for trial, attorney or parties must comply with Local Rule 8 on Calendar Call appearances.

Rule 15. Facsimile/Electronic Copies of Judgments/Orders

The Clerk of Superior Court Gaston County is hereby authorized to accept and file judgments or orders which have been emailed or faxed provided that the copy contains an original signature of the Judge Presiding.

15.1 The presiding Judge maintains the deference as to whether to execute a judgment or order submitted to the Judge through email or facsimile.

15.2 The Clerk of Superior Court is further authorized to accept and file a facsimile or electronic copy of the judgment or order with a Judge's original signature, even if the judgment/order contains signatures of attorneys or parties which have been sent electronically.

Rule 16. Delinquent Orders or Judgments

16.1 Cases tried or reported settled shall be considered delinquent if the Order/Judgment of Disposition is not filed within 21 days after judgment was reported in court or the settlement was reported, unless otherwise directed by the Trial Judge.

16.2 Motions heard shall be considered delinquent if the Order/Judgment of Disposition is not filed within 21 days of after the motion is ruled upon, unless otherwise directed by the Presiding Judge.

16.3 Cases or motions so delinquent may be dismissed by the Senior Resident Superior Court Judge, or the Chief District Court Judge, or their designee, either upon motion by the party against whom the Judgment/Order was to be taken or by the Trial Court Coordinator bringing the case to the Judges attention.

Rule 17. Calendaring Cases not reached or Continued

Cases not reached or continued during any session of court will be scheduled on the carryover date provided by the Trial Court Coordinator.

Rule 18. Duty in Presentation to Court of Ex Parte matters and Defaults

In the event an ex parte matter or default proceeding has been presented by any person to any Judge and requested relief is denied for any reason, such matter shall not be presented to any other Judge without making FULL disclosure of the prior presentation. For a failure to comply with the provisions of this rule, the Order/Judgment made on such subsequent application may be vacated at any time as a fraud upon the court.

Rule 19. Conflicts

19.1 Attorneys will assist Trial Judges in resolving calendar conflicts so that cases may be tried without delay.

19.2 For purposes of resolving appearance conflicts, the Court defers to the schedule of court attendance priority set forth in the General Rules of Practice for the Superior and District Courts Rule 3.1. If a case is started in a Court with lower priority, and counsel is unexpectedly required to appear in a higher priority Court, the already begun trial takes precedence until its termination.

Rule 20. Default

20.1 Any party seeking default is requested to give five (5) days written notice to any party making an appearance in the case before entry of default. A copy of the letter should be sent the Clerk of Court for filing.

20.2 Pendency of the requested notice shall not be cause for delaying the hearing of the Entry of Default or Entry of Default Judgment motions.

Rule 21. Administrative Dispositions

21.1 Listed below are three categories of cases deemed to be not pending for trial. Cases in these categories shall be eligible for removal by order from the list of pending cases. This removal shall be without prejudice.

- a. Cases in bankruptcy (accompanied by a copy of Stay Order from Bankruptcy Court)
- b. Defendants making payments
- c. Removal for any other reason

21.2 Cases will be removed by Orders prepared by the Clerk of Court or the Trial Court Coordinator upon review of the files and after consultation with Counsel, if necessary. The Order will be signed by

the Senior Resident Superior Court Judge, or the Chief District Court Judge or their designees, and filed with the Clerk of Court.

21.3 If, at some later date, trial or other action becomes necessary, a motion may be filed requesting the case be returned to active status.

21.4 Counsel with valid objections to such an Administrative Closure should address those to the Trial Court Coordinator and appropriate actions will be taken.

Rule 22. Forms

Where forms are specified to be used by these Rules, Counsel may use either the forms provided or a form of their own which substantially corresponds and contains all the information covered in that specified.

Rule 23. Mandatory Participation Among Alternative Dispute Resolution Programs

23.1 All parties to Superior Court civil actions must mutually select from a mandatory Court Ordered Mediation or Private Mediation, within twenty-one (21) days from the filing of the last responsive pleading.

23.2 Exemptions for Mediation

- a. Cases seeking the issuance of an Extraordinary Writ.
- b. Cases appealing the revocation of motor vehicle operator's license.
- c. Declaratory Judgment actions, (unless agreed upon by the parties).
- d. Cases appealing an Administrative Agency's decision.

The Trial Court Coordinator is to provide written notice to all attorneys and unrepresented parties after filing of the last responsive pleading, informing them of the Mandatory Alternative Dispute Resolution programs to which they are Ordered. The deadlines are also set out in this correspondence.

Rule 24. Calendaring for Trial Actions Exempted from Mediated Settlement Conferences or Private Arbitration/Mediation Programs

Cases exempted or removed from participation in the Alternative Dispute Resolution programs are to be scheduled by the Trial Court Coordinator for trial after the case has reached five (5) months of age from filing. The Trial Court Coordinator is to notify the attorneys or parties in writing of the trial weeks available during the immediate ninety (90) day period from which they may mutually select. Failure of the attorneys or parties to agree upon a listed trial week and notify the Trial Court Coordinators Office with fourteen (14) day will result in the case being ordered to the default trial week.

Rule 25. Mediated Settlement Conferences

25.1 Selection of Mediator

a. Pursuant to NCGS7A-38.2B(d), persons ordered to mediation have the right to designate a mediator in accordance with NCGS7A-38. Upon failure to mutually select a mediator within 21 days of the Court's order, the Trial Court Coordinator will appoint the next mediator on the certified mediator list provided by the Dispute Resolution Commission. The Senior Resident Superior Court Judge or the Trial Court Coordinator retains the discretion to depart from the procedure for such circumstances as the appointment of a mediator to a case, or to withhold a mediator from appointment pursuant to Rule 6(d) of the "Rule Implementing Mediated Settlement Conferences."

b. The Senior Resident Superior Court Judge or Trial Court Coordinator may, in the Senior Resident Superior Court Judges discretion, appoint a retired or emergency Judge or Justice of the District, Superior, or Appellate court as mediator, whether such judge has been certified as a mediator.

c. Disqualification of a Mediator by a Judge. If a Resident or Presiding Superior Court Judge orders mediator to be disqualified, the moving party must provide a copy of the order to the TCC within two (2) days of the date of the order.

d. Self-disqualification of Mediator. A mediator may disqualify themselves upon written notice to the Senior Resident Superior Court Judge, Trial Court Coordinator, and the Parties.

25.2 Reporting Full or Partial Settlement Agreement Before or During the Conference

Upon reaching a full or partial settlement agreement before or during the conference, including any recess of the conference, the parties and others with settlement authority shall provide a copy of the written agreement to mediator within five (5) days of such settlement. Failure to provide a copy of the agreement to the mediator may result in sanctions as for the failure to attend. The mediator shall mail the Report of Mediator to the Trial Court Coordinators office within seventy-two (72) hours.

When a case has reached a full or partial settlement agreement, the attorneys of record or unrepresented parties must notify the Trial Court Coordinator within twenty-four (24) hours of the agreement.

25.3 Reporting Settlement Agreement Requiring Subsequent Board Approval

If a proposed settlement agreement is reached which can be approved only governmental board as contemplated by Rule 4 A(I) (iii) of the Supreme Court's "Rules Implementing Settlement Conferences", the mediator is to report the settlement without the necessity of obtaining the board approval. The attorneys of record must notify the Trial Court Coordinator within twenty-four (24) hours of settlement agreement.

25.4 Failure of a Mediator to Comply with Supreme Court Settlement Conference and Local Rules

The Senior Resident Superior Court Judge and Trial Court Coordinator reserve the right to withhold future appointments of any mediator who does not fully comply with the requirements of the "Rules Implementing Mediated Settlement Conferences" and Rules 25 and 26 of these Local Rules.

25.5 Compensation of Mediator

a. Payment without a Conference or in a Recess. If no conference is held or a conference is recessed without resuming, compensation to an appointed mediator shall be submitted with the written full or partial settlement agreement.

b. Indigent Cases. If any party contends that he or she is indigent and cannot pay his or her portion of the mediators fee, the party must file a motion to be relieved from payment of such fee on approved "Petition and Order for Relief of Obligation to Pay Mediator's Fee" form available in the Trial Court Coordinators office after the settlement conference or trial.

c. Sanctions for Failure to Pay Mediators fee. Failure of a party to make a timely payment of his or her portion of the fee, or if an Indigent party fails to submit exemption form, it shall constitute contempt of Court and may result in the imposition of any or all lawful sanctions by a Resident or Presiding Judge.

25.6 Scheduling Unsettled Cases for Trial. Cases that did not fully settle during the mediation process will be scheduled for trial in due course from the which the impasse was declared. Cases are scheduled by order of age, with older cases being given priority.

Rule 26. Private Mediation or Arbitration

26.1 Selection. At any time prior to trial and if all parties agree, they may select to place the case before a private mediator or arbitrator, not part of the Court's mediation program. The selection of a Private Mediator may be made at any time before the case is set for trial. All arrangement of details for obtaining the private service, such as the payment of arbitrator or mediator, determination of the date, time and location, and other details are left to the sole responsibility of the parties.

26.2 Reporting Selection of Private Mediator or Arbitrator. When all parties to a case have decided to obtain the services of a Private Mediator, the attorneys must notify the Trial Court Coordinator with twenty-four (24) hours of the decision.

Rule 27. Communication with the Court

All communication concerning the procedures outlined in these Local Rules can be directed to the Trial Court Coordinators office:

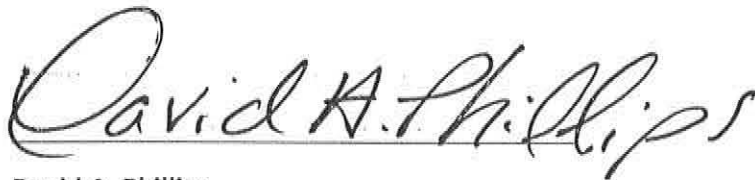
Superior Court Trial Court Coordinator
325 Dr. MLK JR. Way Ste. 4135
Gastonia, NC 28052
704-852-3170

District Court Coordinator
325 Dr. MLK Jr. Way Ste. 3063
Gastonia, NC 28052
704-852-3117

Rule 28. Effective date of these Rules

These Local Rules and Plan for the calendaring of Civil cases shall be effective on the 12th day of June, 2025.

This the 12th day of June, 2025.

A handwritten signature in black ink, reading "David A. Phillips", written over a horizontal line.

David A. Phillips

Senior Resident Superior Court Judge

A handwritten signature in black ink, reading "Angela G. Hoyle", written over a horizontal line.

Angela G. Hoyle

Chief District Court Judge