

3-A JUDICIAL DISTRICT

LOCAL RULES FOR CIVIL SUPERIOR COURT

Effective January 16, 1995
Amended July 1, 1998

ORDER

The attached rules, procedures and informative descriptions are hereby adopted for the Superior Courts of the 3-A Judicial District as of January 16, 1995, under and pursuant to Rule 40 of the North Carolina Rules of Civil Procedure and Rule 2 of the General Rules of Practice for the Superior and District Courts supplemental to the Rules of Civil Procedure, as amended by the North Carolina Supreme Court through November 15, 1993, are hereby amended effective July 1, 1998 by adding thereto Section VIII, Mediated Settlement Conferences.

These rules supersede all previous civil rules for the Superior Courts of the 3-A Judicial District as to calendaring or other procedural and administrative matters.

This is the 29th day of June, 1998.

W. Russell Duke, Jr.
Senior Resident Superior Court Judge

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I. SUPERIOR CIVIL COURT CALENDARING RULES

1.1 PURPOSE:

The purpose of these rules is to provide for the orderly, just, and prompt disposition of civil matters to be heard in the Superior Courts.

1.2 CALENDARS SET BY TRIAL COURT ADMINISTRATOR:

Caleendars for the disposition of civil cases in the Superior Courts shall be set by the Trial Court Administrator in accordance with these rules. It is recognized that these rules are not complete in every detail and may not cover all situations that may arise. In the event the rules do not cover any specific point the Trial Court Administrator is authorized to act, in consultation with the Senior Resident Superior Court Judge or the judge presiding, if necessary, to address that situation in a manner not inconsistent with the spirit of these rules.

1.3 TRIAL COURT ADMINISTRATOR TO SUPPLY RULES:

A copy of these rules and any subsequent changes or additions shall be mailed to each member of the Bar of District 3A and to other attorneys practicing in the Superior Courts of Judicial District 3A.

1.4 RULES FILED WITH CLERK:

These rules, procedures, and all amendments hereafter shall be filed with the Clerk of superior Court in Judicial District 3A and may be cited accordingly.

1.5 FORMS:

The Trial Court Administrator will maintain a supply of Civil Case Status Reports to be furnished to attorneys upon request.

1.6 RESPONSIBILITY FOR CALENDARING:

The Trial Court Administrator shall have responsibility for the calendaring of motions and trials including all additions and continuances. All objections to the calendaring of motions or trials shall be made to the Trial Court Administrator.

1.7 APPEAL FROM DECISION OF TRIAL COURT ADMINSTRATOR:

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

1.8 CASE TRACKING SYSTEM:

The Trial Court Administrator shall establish and maintain a case-tracking system, as required by Rule 2 (c) of the General Rules of Civil Practice.

1.9 CASE READY FOR TRIAL:

A case shall be deemed ready for trial and shall be placed on the ready docket when the Trial Court Administrator determines:

- (a) One-hundred twenty (120) days have elapsed since the filing of the last required pleading by the start of the scheduled session unless the discovery period has been extended by Stipulation as permitted by these Rules or by Order of the Court. Provided that, within 60 days after the filing of the last required pleading, the parties, by written Stipulation signed by all parties to the action or their counsel, filed with the Clerk and copy sent to the Trial court Administrators Office, may agree to extend the 120 day discovery period for a period not to exceed 90 additional days (total 210 days), after which time the case shall be deemed ready for trial and placed on the ready docket. Additional requests to further extend the discovery period shall be submitted to the Trial Court Administrator's Office for approval with right of appeal of the Trial Court Administrator's decision to the Senior Resident Superior Court Judge.
- (b) A Calendar Request has been filed pursuant to these rules. Provided, however, the Calendar Request may not violate any existing discover Stipulation, schedule or order.
- (c) A case is required by statute to be placed on a ready docket or final trial calendar.
- (d) All counsel of record have signed a certificate of readiness for trial.
- (e) A case has been remanded for trial by the Appellate Division

No case currently assigned to arbitration will be deemed ready for trial.

1.10 READY CASES PLACED ON TRIAL CALENDARS:

The Trial Court Administrator shall place ready cases on trial calendars pursuant to the following rules for Civil Superior Court.

1.11 NOTIFICATION OF SETTLEMENT:

When a case appearing on a published calendar is settled, all counsel of record or unrepresented parties must notify the Trial Court Administrator within twenty-four (24) hours of the settlement. The notification must include the identification of the counsel or party who will be responsible for preparing and presenting the judgment, dismissal or other necessary documents and the time frame in which such judgment, dismissal or necessary documents will be presented. In any event, and unless otherwise approved by the Trial Court Administrator, the time period to present the judgment, dismissal or other necessary documents shall not exceed thirty (30) days from the date of notification. Attorneys are to take all steps necessary to fully and finally conclude settled cases and have an affirmative duty to file all necessary documents in

a timely manner. All settlement documents must be presented to opposing counsel or unrepresented parties at least forty-eight (48) hours prior to the submission to the documents to any judge. In the event that settlement documents are not submitted to the Court within the time specified by this rule, the Trial Court Administrator shall calendar the case for hearing pursuant to Rule 2.20.

1.12 PRETRIAL CONFERENCES, SCHEDULING CONFERENCES, CLEAN-UP CALENDARS:

The Senior Resident Superior Court Judge and Trial Court Administrator shall schedule cases for pretrial conferences, scheduling conferences and clean-up calendars as is appropriate to the efficient and effective administration of the docket. Cases appearing on trial calendars for Superior Court may be set for a pretrial settlement conference in the discretion of the Trial Court Administrator in consultation with the Senior Resident Superior Court Judge. Counsel and unrepresented parties will be notified of the date, time and location of the pretrial settlement conference. The pretrial settlement conference will generally be held ten (10) days prior to the beginning of the civil session which the case is set for trial. A final Pretrial Order shall be submitted to the Court at the time of the pretrial settlement conference prepared to engage in a full and frank discussion of settlement possibilities of their cases.

1.13 CALENDARS POSTED BY CLERK:

All calendars shall be posted by the Clerk in a prominent place for all counsel and the public to review at will.

II. CIVIL SUPERIOR COURT

2.1 SCHEDULING CALENDAR:

All ready cases as defined in Rule 1.9 above and which have not been set for trial or which are not otherwise eligible for trial based on good cause shown shall be placed on a scheduling calendar for the purpose of setting tentative trial calendars. The Trial Court Administrator shall be responsible for maintaining the scheduling calendar and for providing copies of such scheduling calendars to all attorneys and unrepresented litigants with cases thereon.

2.2 CALENDAR CONFERENCE:

During each calendar quarter, a separate calendar conference for Superior Court shall be held at which the Trial Court Administrator will place cases listed on the scheduling calendar on any of the trial calendars for the succeeding calendar quarter. Counsel and unrepresented parties may have input at the calendar conference by attending in person or by submitting to the Trial Court Administrator a case status report.

2.3 NON-JURY SESSION:

When deemed appropriate, the Trial Court Administrator shall designate sessions of court as non-jury sessions. These shall be noted on the calendar.

2.4 PUBLICATION OF INITIAL CALENDAR:

Initial calendars shall be published by the Trial Court Administrator no later than two weeks following the day of the calendar conference.

2.5 DISTRIBUTION OF INITIAL CALENDARS:

Copies of the initial calendars shall be mailed to each attorney of record or unrepresented party. However, the Trial Court Administrator is authorized in lieu of mailing to deposit the calendars in a suitable mail or courier box for each attorney or law firm designated as such in the office of the Clerk of the Superior Court.

2.6 DISTRIBUTION OF FINAL CALENDAR:

The Trial Court Administrator shall produce and distribute a final trial calendar for the session. Copies of the final trial calendars shall be mailed by the Trial Court Administrator to each attorney of record and unrepresented party. However, in lieu of mailing, the Trial Court Administrator is authorized to deposit the final trial calendar in a suitable mail or courier box for each attorney or law firm designated as such in the office of the Clerk of Superior Court.

2.7 ORDER OF CASES:

The cases listed on any tentative or final trial calendar shall generally be listed in ascending numerical order with the oldest case being listed first. Provided however, cases that have been peremptorily set, that receive priority by statute or by order of the Senior Resident Superior Court Judge, or have been designated by the Trial court Administrator shall be listed first.

2.8 CONSOLIDATED CASES:

When cases have been consolidated for trial, they will be counted as one case for calendaring purposes, and, will be listed under the oldest case number.

2.9 CALENDAR REQUESTS:

- (a) Any attorney of record or unrepresented party may request that the Trial Court Administrator add a case to a initial calendar or to calendar a case at a future session for which no initial calendar has been published. Any such request shall be in writing and directed to the Trial Court Administrator with a copy to all of the attorneys of record or unrepresented parties. The Trial Court Administrator shall

act upon the request and provide a written response to the requesting party with copies to all other parties.

- (b) No calendar request may be filed without the initiating attorney of record or initiating unrepresented party making a good faith effort to communicate with opposing counsel or any unrepresented party to determine the availability of the opposing counsel or unrepresented party for the matter to be calendared. The calendar request shall state the position of all parties with regard to the request. Any conflicts between court appearances will be determined by the Trial Court Administrator pursuant to the General Rules of Practice for Superior and District Courts with right of appeal to the Senior Resident Superior Court Judge.

2.10 ADDING CASE TO FINAL CALENDAR:

No case may be added to a final trial calendar for trial except by Court Order or by agreement of all counsel of record or unrepresented parties. Cases added to a final trial calendar shall appear at the end of the calendar unless provided otherwise by Court Order.

2.11 PEREMPTORY SETTING REQUESTS:

Consistent with Rule 2 (f) of the General rules of Practice, peremptory setting requests may be made for good cause and shall be made in writing to the Trial Court Administrator prior to the calendar conference held pursuant to Rule 2.2. In determining whether or not to grant a request for peremptory setting, the Trial Court Administrator should review the particular grounds for the requests which should include, but not be limited to, the number of times which the case has appeared on the final trial calendar, the inconvenience to parties or witnesses, and any other extraordinary or emergency reason. A peremptory setting shall be granted only for good and compelling reasons. The Senior Resident Superior Court Judge may set a case peremptorily on his own motion.

2.12 PRIORITY SETTINGS:

Cases entitled to a priority setting under the General Statutes shall be brought to the attention of the Trial Court Administrator in writing, with copies to all counsel of record, and shall cite the statutory authority for such setting.

2.13 SPECIAL SESSIONS:

In consultation with counsel for all parties or all unrepresented parties, the Trial Court Administrator shall determine which cases should be set for trial at a special session. Factors that will be considered include, but are not limited to, anticipated length of trial, scheduling difficulties of attorneys or essential witnesses, emergencies such as the physical condition of witnesses or parties, or complexity of issues. The Trial Court Administrator shall make all appropriate arrangements for special sessions.

2.14 CONTINUANCE REQUEST DIRECTED TO TRIAL COURT ADMINISTRATOR:

Continuance requests made prior to the beginning of a session of court shall be directed to the Trial Court Administrator. Continuance requests made after the beginning of a session of court shall be directed toward the presiding judge.

2.15 TIME FOR MAKING CONTINUANCE REQUEST:

- (a) All non-emergency requests for continuances must be made in writing to and actually received by the Trial Court Administrator's office no later than the pretrial settlement conference held pursuant to Rule 1.12, but in no event less than ten (10) days prior to the beginning of the session for which the case is scheduled for trial. Except for requests for continuance based upon bona fide emergencies, no request or motion for continuance will be considered if received after the ten (10) day deadline. Requests should be in letter form pursuant to subsection (b) and copies shall be sent to all counsel of record or unrepresented parties at the same time the request is sent to the Trial Court Administrator. Prior to sending the request, the requesting counsel or unrepresented party must make a good faith effort to contact all counsel of record or unrepresented parties to ascertain their position regarding the request.
- (b) All requests for continuances must be in writing and contain the following information:
 - 1. Caption and file number of the case
 - 2. The session at which the case is set for trial.
 - 3. The reasons for the request for continuance. If a conflict in another court is the reason, the request must state the case number, the court in which the other case is pending, and the position of the other case on the trial calendar.
 - 4. The number of times the case has been previously continued.
 - 5. A certification that all counsel of record have been sent a copy of the request, and the position concerning the request of all counsel and unrepresented parties.
- (c) A request for a continuance for emergency reasons may be made at any time to the Trial Court Administrator, the Senior Resident Superior Court Judge, or presiding judge.

2.16 RESCHEDULING OF CONTINUED CASES:

Unless otherwise determined by Court order of the Trial Court Administrator, all cases continued from a trial calendar must be continued to a trial calendar for a succeeding session, which session is appropriate to the needs of the case, the parties, and the Court.

2.17 RESPONSE TO CALENDAR AND CONTINUANCE REQUEST:

The Trial Court Administrator shall allow at least five (5) working days from the date a written request is received for response by opposing counsel or unrepresented parties. Unless otherwise informed in writing, the Trial Court Administrator shall treat written requests for continuance as unopposed. All requests for continuances shall be responded to promptly in writing by the Trial Court Administrator.

2.18 CORRECTION TO ERRONEOUS REQUEST:

The Trial Court Administrator has the responsibility to correct any erroneous calendaring or continuance requests rising from lack of compliance with these rules.

2.19 CASES CALLED IN ORDER LISTED ON CALENDAR:

Cases shall be called for trial in the order they are listed on the final trial calendar unless otherwise determined by the Senior Resident Superior Court Judge, presiding judge or the Trial Court Administrator.

2.20 CASES WITH ORDERS DUE

At the time a case is reported settled, the attorney responsible for submitting the dispositive order shall be identified and the time by which the order is to be filed shall be indicated. The Trial Court Administrator shall record these data: and if the order is not filed, no extension has been obtained and more than thirty (30) days has elapsed from the indicated date, the Trial Court Administrator shall place the case on the motion calendar for the responsible attorney to show cause for failure to comply.

2.21 PREPARATION OF ORDERS AND JUDGMENTS:

- (a) Simultaneously with the rendering of a decision by a presiding judge on any motion, hearing, or trial, the presiding judge shall designate counsel of record to prepare the appropriate order of judgment.
- (b) Unless all counsel and unrepresented parties stipulate to the signing and entry of the order or judgment out of session, out of county and out of district, the proposed order shall be submitted to all counsel and unrepresented parties for review and presented to the Court for signing and entry prior to the expiration of the session at which it was rendered. Otherwise, the proposed order or judgment must be submitted to all other counsel of record and unrepresented parties within fifteen (15) working days from the date of the decision of the presiding judge. Within ten (10) working days thereafter, any other counsel or record and unrepresented parties must submit to all other counsel of record and unrepresented parties any objections or revisions to the proposed order or judgment, or an alternative order or judgment. If no response is received within the 10-day period, then the attorney or party who

prepared the order or judgment must submit the order or judgment to the presiding judge within five (5) working days from the expiration of the 10-day period.

(c) Unless otherwise directed by the court, whenever a matter has been taken under advisement by the Court, any party may thereafter submit a proposed order or judgment to the Court for its consideration in ruling upon the matter, provided that copies of the proposed order or judgment shall also be provided to all counsel or unrepresented parties.

2.22 OPPOSING COUNSEL PROVIDED COPY OF PROPOSED ORDER OR JUDGMENT:

If Counsel of record and any unrepresented party are unable to agree to the content of the order of judgment, then any counsel of record or unrepresented party may submit to the presiding judge a proposed order or judgment. The submission must be accompanied by a letter explaining to the presiding judge that there has been a disagreement as to the content of the order or judgment and specifically explaining the areas of disagreement. Notwithstanding the time limitations set forth in these rules, any proposed order or judgment must be submitted to the presiding judge no later than thirty (30) days from the date on which the presiding judge announced the decision and authorized the preparation of the order or judgment.

III. MOTIONS

3.1 PRETRIAL MOTIONS CALENDARED BY TRIAL COURT ADMINISTRATOR:

All pretrial motions in civil cases in Superior Court shall be calendared by the Trial Court Administrator.

3.2 RESPONSIBILITY OF TRIAL COURT ADMINISTRATOR:

It shall be the responsibility of the Trial Court Administrator in consultation with the Senior resident Superior Court Judge to determine the appropriate schedule of time periods for the hearing of motions and the number of motions to be calendared at each session.

3.3 CALENDARING OF MOTIONS:

- (a) Motions shall be calendared in one of the following ways:
 1. Moving counsel may telephone the Trial Court Administrator to request a hearing date and time. Such hearing is confirmed to the Trial Court Administrator and opposing counsel or unrepresented parties by copy of the notice of hearing.
 2. The request may be in writing, in the form of a calendar request or letter. The Trial Court Administrator shall then notify moving counsel and opposing counsel or parties of a hearing date by letter or telephone.

3. At the instigation of a presiding judge who, at the time of the hearing, re-calendars the motion.
 4. At the direction of the Trial Court Administrator if the case is calendared for trial.
- (b) Prior to making any request for a motion hearing, the requesting counsel or unrepresented party must make a good faith effort to notify all counsel of record and unrepresented parties to determine their availability for the hearing. Counsel and unrepresented parties are urged to arrange for hearings at mutually convenient times. In any event, any request for a motion hearing shall affirmatively state that all counsel and unrepresented parties have been contacted, or if not the reason why, and the position of all counsel or unrepresented parties concerning their availability for hearing.

3.4 MOTION CALENDARS PREPARED BY TRIAL COURT ADMINISTRATOR:

Motion calendars will be prepared by the Trial Court Administrator and shall be sent to all counsel of record or unrepresented parties pursuant to the procedure for trial calendars. Motion calendars may be combined with final calendars.

3.5 REQUEST FOR CONTINUANCE OF MOTION HEARING:

Continuance requests shall be made pursuant to Rules 2.14 et seq. If continuance of a motion will not delay the trial of a case that is already set for trial, the motion may be continued by agreement of all parties, with or without cause. Counsel for the moving party is responsible for notifying the Trial Court Administrator of the agreement to continue hearing of the motion.

3.6 SUPPORTING AUTHORITY FOR MOTIONS;

- (a) Neither memoranda of law nor briefs are required to be submitted in support of any motion filed in this District, but may be submitted by the moving party at the hearing if deemed necessary to the Court's understanding of the issues involved or if requested by the Court.
- (b) All motions filed in this District, in addition to setting forth a statement of the grounds therefore and the rule under which the motion is brought as required by Rule 7 of the North Carolina Rules of Civil Procedure, shall also contain a short statement therein which lists, without argument or discussion, the citations of case and statutory authority upon which the motion is founded. No discussion of the authorities or argument is required to be contained in the motion but may be included if desired.
- (c) At the time of the hearing, case and statutory authority so designated in the motion may be either presented to the court in the form of a memorandum of law or brief, copies of the authorities presented to the Court, or both, if such will facilitate the Court's understanding of the issues involved or if requested by the Court. Additional case and statutory authority not initially cited in the motion may be relied upon by the moving party at the hearing; however, a list of such additional

authorities shall be provided to the opposing party prior to the date of the hearing in order to insure an expeditious hearing on the merits of the motion and avoid delay.

3.7 RULES APPLICABLE TO MOTION SET FORTH IN PLEADING:

The requirement for supporting memoranda set out in Rule 3.6 shall also apply to motions that are contained in an answer, reply or other pleading filed with the Court.

3.7 RESPONSES TO MOTIONS:

No formal response is required to any motion but may be filed if necessary to the Court's understanding of the issues involved or if requested by the Court. Any response filed shall contain a list of citations of case and statutory authority upon which the opposing party relies in opposition to the motion. Regardless of whether or not a response to is filed to a motion, any party opposing a motion shall provide the moving party with a list of citations of case and statutory authority upon which the opposing party relies in opposition to the motion not less than five (5) working days prior to the hearing. The rules applicable to the moving party for submission of memoranda of law or briefs, and disclosing additional authority, are also applicable to the opposing party.

3.8 SANCTIONS FOR FAILURE TO COMPLY WITH RULES:

The Court, in its discretion, may impose any appropriate sanction against counsel of record or any unrepresented party for failure to comply with these rules. Among other things, upon timely objection by any party opposing a motion, the court may continue the hearing of a motion that does not comply with Rule 3.6 or Rule 3.7 after first giving the moving party a reasonable opportunity to comply. In the event of the failure of a party opposing a motion to comply with Rule 3.8, upon timely objection by the moving party, the Court shall establish a date by which the opposing party is to comply. Any objections for non-compliance with Rules 3.6, 3.7 and 3.8 must be made in writing to the Trial Court Administrator at least three (3) working days in advance of the hearing date or else be deemed as having been waived.

3.9 LENGTH OF SUPPORTING AND OPPOSING MEMORANDA:

No brief or memorandum of law submitted in support of, or in opposition to, a motion shall exceed twenty (20) pages in length without leave of Court.

3.10 NO BASIS FOR CONTINUANCE:

Failure to timely file motions and calendar motions shall not of itself be a proper basis for continuance of a scheduled trial date.

3.11 MOTIONS DECIDED ON MEMORANDA:

By written consent of all counsel of record and unrepresented parties, and subject to the approval of the appropriate Judge, motions may be decided by any Judge solely upon written memoranda without personal appearance.

IV. DISCOVERY

4.1 DISCOVERY SCHEDULING ORDER:

Whenever a case must be continued from a trial calendar in Superior Court due to problems with discovery, the Trial Court Administrator is authorized to set said case before the Senior Resident Court Judge or before his designee, for entry of a discovery scheduling order. The attorneys or parties will be given ten (10) days written notice of said setting.

V. ADMINISTRATIVE DISPOSITIONS

5.1 CATEGORIES:

(a) All inactive cases shall be deemed not pending for trial. "Inactive cases" are defined as follows:

1. Cases in bankruptcy.
2. Cases in which service has not been made and the summons is discontinued pursuant to Rule 4(e) of the North Carolina Rules of Civil Procedure.
3. Cases that have been transferred to another state or judicial district.
4. Cases in which no answer has been filed and no default judgment has been entered.

(b) Inactive cases shall be eligible for removal by order from the scheduling calendar or list of pending cases. The removal of any case shall be without prejudice unless the case is designated under Rule 5.1(a) (6) above or if a court order indicates otherwise.

5.2 CASES REMOVED:

It will be the responsibility of the Trial Court Administrator to designate inactive cases for removal. All orders of removal will be signed by the Senior Resident Superior Court Judge. The Trial Court Administrator shall send copies of the order of removal to all counsel of record and unrepresented parties.

5.3 RETURN TO ACTIVE STATUS:

Unless the removal is with prejudice, a motion in the cause may be filed to reinstate the case to active status. Any motion in the cause filed in a domestic action will automatically place the case in active status.

5.4 OBJECTIONS TO ADMINISTRATIVE DISPOSITION:

Counsel with valid objections to such an administrative disposition of one of their cases should address those objections to the Trial Court Administrator for appropriate action.

VI. ARBITRATION

6.1 INQUIRIES DIRECTED TO ARBITRATION COORDINATOR:

All arbitration proceedings must be conducted pursuant to the Rules for Court-Ordered Arbitration of North Carolina as adopted and amended from time to time by the North Carolina Supreme Court. The Arbitration Coordinator shall be responsible for the processing of all cases submitted to arbitration. Any inquires pertaining to arbitration and the status of any cases in arbitration shall be addressed to the Arbitration Coordinator.

6.2 ARBITRATION BY AGREEMENT OR STIPULATION:

Nothing in these Rules shall prevent counsel of record and unrepresented parties from entering into an agreement or stipulation to arbitrate even if the particular case is not included in those cases designated for arbitration pursuant to the Supreme Court Rules for Court-Ordered Arbitration. Any such agreement must be in writing and signed by all counsel of record and unrepresented parties. The agreement must be submitted to the Court for Entry of an Order referring the case to arbitration. A copy of the approved agreement will be submitted to the Arbitration Coordinator.

6.3 EXEMPTION OR WITHDRAWAL OF CASE FROM ARBITRATION:

Requests for exemption or withdrawal from arbitration must be made in writing to the arbitration coordinator, and a copy of such request must be served on all counsel of record and unrepresented parties. The requests must contain the specific grounds supporting the requests and shall state the position of all counsel of record and unrepresented parties. All other counsel of record and unrepresented parties shall have five (5) working days within which to respond in writing to the requests. Thereafter, the Arbitration Coordinator, in consultation with the Trial Court Administrator, shall render a decision on the requests. The decision of the Arbitration Coordinator may be appealed to the Senior Resident Superior Court Judge.

6.4 SELECTION OF ARBITRATORS:

A committee designated by the Pitt County Bar Association shall nominate all arbitrators. Such nominations shall be in writing and must be approved by the Senior Resident Superior Court Judge.

6.5 OUT OF COUNTY ARBITRATOR TO HEAR CASE:

Out of County Arbitrators may be requested for cause by any party with the request to be in writing with the cause specified and addressed to the Arbitration Coordinator. Appeals of decisions made by the Arbitration Coordinator will be heard by the Senior Resident Superior Court Judge for Superior Court cases.

6.6 ARBITRATION OF MAGISTRATE APPEALS:

Except for amended complaints or specifically identified service problems all magistrate appeals will be considered served at filing and the arbitration process schedule will begin to run from date of appeal filing.

6.7 PRE-HEARING EXCHANGE OF INFORMATION:

Unless specified by stipulation of all parties to a case or requested by the arbitrator, arbitrators shall receive no pre-hearing materials or substantive communications from the parties or attorneys involved in a case. The Arbitration Coordinator or a designated member of the Clerk's Office shall pull the case file and provide it to the Arbitrator at the beginning of the arbitration hearing. By right, Arbitrators may pull and read case files in advance but are encouraged not to do so in the interest of saving their time and avoiding pre-judgment.

VII. MEDICAL MALPRACTICE CASES

7.1 GENERAL:

North Carolina G.S. § 90-21.11 as amended by 1987 Session of General Assembly is hereby incorporated as applicable to the Courts of Judicial District 3A.

7.2 TRIAL COURT ADMINISTRATOR TO IDENTIFY CASES:

The Trial Court Administrator will regularly review all medical malpractice cases pending in each county to determine if a discovery conference or a final pretrial conference should be scheduled. A discovery conference shall be scheduled with the Senior Resident Superior court Judge or his designee 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 pretrial conference shall be scheduled with the Senior Resident Superior Court Judge or his designee at the close of the discovery period established at the discovery conference.

7.1 DISCOVERY CONFERENCE:

At the Discovery Conference, the Judge Shall:

- (a) Rule on all motions.
- (b) Establish an appropriate schedule for designating expert witnesses, consistent with a discovery schedule to be complied with by all parties to the action such that there is a deadline for designating all expert witnesses within an appropriate time for all parties to implement discovery mechanisms with regard to the designated expert witnesses.
- (c) Establish by Order an appropriate discovery schedule designated so that, unless good cause is shown at the conference for a longer time, and subject to further orders of the court, discovery shall be completed within one hundred fifty days after the order is issued, nothing herein shall be construed to prevent any party from utilizing any procedures afforded under Rules 26 through 36 of the N.C. Rules of Civil Procedure, so long as trial or any hearing before the court is not thereby delayed; and
- (d) Approve any consent order that may be presented by counsel for the parties relating to parts (a) and (b) of this subsection, unless the court finds that the terms of the consent order are unreasonable.

7.2 SANCTIONS

If 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.

7.3 CALENDARING CONFERENCE:

At the close of the specified discovery period, the Senior Resident Superior Court Judge or his designee shall schedule a calendaring conference for the purpose of setting the case for trial. The court shall take into consideration the nature and complexity of the case; the proximity and convenience of witnesses, the needs of counsel for both parties concerning their respective calendars, the benefits of an early disposition and such other matters as the court may deem proper.

7.4 STIPULATED DISCOVERY SCHEDULE:

Counsel for parties may submit written orders for the Senior Resident Superior Court Judge to Review and sign in lieu of the discovery conference. In order to be acceptable as a substitute for the conference, these orders must be written, signed by each counsel or party, must specifically address each of the statutory mandates and must be signed by the appropriate judge at a time consistent with G.S. § 90-21.11. Counsel shall advise the Trial Court Administrator of their intention to comply by stipulation.

VIII. MEDIATED SETTLEMENT CONFERENCES

8.1 GENERAL:

Mediated Settlement Conferences are hereby authorized in all cases currently pending or hereafter filed in the Superior Courts of Judicial District 3A pursuant to the provisions of G.S. § 7A-38.1 et seq. and the Rules of Mediated Settlement Conferences that may from time to time be promulgated by the North Carolina Supreme Court. In the event of a conflict between these Local Rules and the provisions of G.S. § 7A-38.1 et seq. or rules adopted by the Supreme Court, the statutory provision or Supreme Court Rule will control.

8.2 CASE SELECTION FOR MEDIATION:

Any case now pending or hereafter filed in the Superior courts of Judicial District 3A that is not exempted from mediation by Supreme Court Rule may be assigned to mediation by Order of the Senior Resident Superior Court Judge. Any case now pending or hereafter filed in the Superior Courts of Judicial District 3A may be voluntarily submitted to mediation upon written agreement signed by all counsel of record or pro se litigants. The written agreement will be submitted to the Trial Court Administrator together with a proposed Order assigning the case for mediation.

8.3 ASSIGNMENT OF MEDIATOR:

Unless otherwise ordered by the Senior Resident Superior Court Judge, the parties shall designate a Mediator and notify the Trial Court Administrator of the name of the mediator within thirty (30) days of the entry of an Order assigning the case to mediation. In the event that the parties fail to designate a mediator and notify the Trial Court Administrator within the time required, the Court may enter an Order designating a mediator for the case. All mediators in Judicial District 3A, 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.

8.4 COSTS OF MEDIATED SETTLEMENT CONFERENCES:

Costs of Mediated Settlement Conferences shall be borne by the parties. Unless otherwise ordered by the Court or agreed to by the parties, the mediator's fees shall be paid in equal shares by the parties. For purposes of this rule, multiple parties shall be considered one party where they are represented by the same counsel. Parties who are unable to pay the costs of a Mediated Settlement Conference shall be permitted to participate without costs pursuant to rules adopted by the Supreme Court.

8.5 GOOD FAITH PARTICIPATION:

Such persons or entities having the authority, by law or by contract, to settle the parties' claims, and their attorneys, shall attend the Mediated Settlement Conference unless excused by Supreme Court Rule or Order of the Senior Resident Superior Court Judge. Nothing in this section shall require any party or other participant in the conference to make a settlement offer or

demand which it deems is contrary to its best interests. Any person required by these rules to attend a Mediated Settlement Conference who, without good cause, fails to attend in compliance with the Order assigning the case for mediation, shall be subject to any appropriate monetary sanction imposed by a resident or presiding Superior Court Judge, following notice and hearing, pursuant to G.S. § 7A-38.1(g) including but not limited to the payment of attorney's fees, mediator fees, and expenses incurred in attending the conference.