
A case management plan for the calendaring of civil cases must be developed by the Senior Resident Judge . . .

Rule 2(a), General Rules of Practice



**CIVIL CASE MANAGEMENT PLAN
FOR THE SUPERIOR COURT DIVISION**

JUDICIAL DISTRICT 42

HENDERSON, POLK, TRANSYLVANIA COUNTIES

**NORTH CAROLINA SUPREME COURT TIME GUIDELINES FOR DISPOSITION
OF CIVIL ACTIONS IN SUPERIOR COURT**

90 % WITHIN 365 DAYS

This Case Management Plan (this Plan) shall apply to cases filed in or transferred to the Superior Court. This Plan shall not be interpreted in any way that conflicts with the General Rules of Practice, nor the Rules of Civil Procedure. Neither is this Plan intended to duplicate the General Rules of Practice or the Rules of Civil Procedure; on any question; one should look first to those sources for guidance. An index accompanies this Plan, with links to the referenced authority as existed at the time of the effective date of this Plan.

The primary goal of this Plan is to promote the orderly progression of a civil action filed in this judicial district to complete resolution within 365 days. This Plan shall be read and interpreted with that goal in mind, and all attorneys accepting representation of a party shall endeavor to proceed consistent with that goal. Not all cases will accommodate achieving this goal; especially those involving certain categories of claims. However, all counsel of record should establish their own “tickler” system for dates and deadlines and make a concerted and professional effort to meet those deadlines in every case in which they appear as attorney of record.

Responsibility for administering this Case Management Plan is assigned to the Office of the Trial Court Manager for this district (TCM). All communications concerning civil matters should be addressed to the Trial Court Manager, whose office is located in the Henderson County Courthouse.

The mailing address of the Trial Court Manager is

**Ms. Daphne Carland
Trial Court Manager
200 North Grove Street
Hendersonville, NC 28792**

Telephone: 828.694.4230 Facsimile: 828.694.4229

E-mail address of the Trial Court Manager is: Daphne.P.Carland@nccourts.org.

This Plan is general in nature and will not cover every situation that may arise. In the event that these rules do not cover a specific matter, the TCM is authorized to act in her discretion, in consultation with the Resident Judge or the Presiding Judge.

As with the General Rules of Practice for Superior and District Courts (General Rules), and the Rules of Civil Procedure (RCP), this Case Management Plan shall apply without differentiation to all counsel for any party to a proceeding as well as to the individual parties themselves if not represented by counsel (referred to as self-represented or *pro se*). This Plan is set out in the form of series of

sections denominated as “Rules;” this Plan may sometimes be referred to informally by some counsel as the “local rules.”

This Plan shall also be interpreted in like fashion to Rule 1 of the General Rules:



The Rules “shall at all times be construed and enforced in such manner as to avoid technical delay and to permit just and prompt consideration and determination of all the business” before the Superior Court.

Rule 1, General Rules of Practice

RULE 1: APPEARANCE/WITHDRAWAL OF COUNSEL

A. **Notice of Appearance.** Attorneys shall file a written Notice of Appearance with the Clerk of Superior Court immediately after agreeing to represent a party in a civil matter and shall serve a copy upon each attorney of record or unrepresented party, and the TCM. Attorneys who file any pleading on behalf of a party need not also file a Notice of Appearance.

B. **Motions to Withdraw.** Motions to withdraw as counsel of record must be accompanied by a withdrawing counsel’s statement that their client has been advised of the motion and hearing, and further, withdrawing counsel shall provide that party’s address for purposes of service, and shall note the party’s understanding that: (1) such address shall be the official address of that party for notice purposes until such time as that party files in writing a notice of a change of official address or retains new counsel, and (2) withdrawal of that party’s attorney shall not be the basis for delay of any portion of the proceedings for the action.

Motions to Withdraw may be considered by the presiding or resident judge in chambers if all parties or their counsel consent in writing. Facsimile signatures are acceptable. Consent motions shall be subject to the same requirements for the withdrawing counsel’s client as set out in the preceding paragraph. Such consent Motions to Withdraw shall be sent to the TCM who shall submit them to the presiding or resident judge for consideration in Chambers. Motions not meeting each of the criteria will be scheduled for a hearing.

RULE 2: EMAIL ADDRESS and ENTERPRISE JUSTICE – ODYSSEY

All filings in civil actions shall be made through the electronic filing system in this State which is known as Enterprise Justice, also referred to as Odyssey.

Any initial pleading or Notice of Appearance shall include the email address of the attorney or *pro se* party, and thereafter each attorney or *pro se* party shall include their email address in any filing.

Email shall be used by the TCM or presiding judge to communicate with such party and for use by the Clerk of Superior Court, including for WebEx proceedings. Electronic filing through the Odyssey – Enterprise Justice system requires the inclusion of email address, and all such Enterprise Justice

requirements will be observed by counsel. The email address noted on filings and the email address employed by that party for Enterprise Justice purposes shall of course be the same.

Any attorney or unrepresented party not having internet access will file with the TCM a written affirmation before a Notary Public confirming that they do not have any source of internet access. The TCM shall forward a copy of such written affirmation to the Clerk for inclusion in the court file.

RULE 3: SECURE LEAVE

3.1 Rule 26 of the General Rules which provides for secure leave shall be available to *pro se* litigants, who shall be subject to the same requirements of Rule 26 as are attorneys.

3.2 Notice to the Resident Judge shall include notice of any apparent conflict with scheduling in a pending action.

RULE 4: ENLARGEMENT OF TIME BY STIPULATION

All stipulations made pursuant to Rule 6(b) of the RCP shall be in writing and be filed with the Clerk.

RULE 5: ADMINISTRATIVE DISCONTINUANCE

Civil actions in which there has been no activity for one year, actions subject to bankruptcy stay, and actions in which no summons has been served and the time for such has expired, are subject to administrative order for discontinuance of the action, without notice to any party. Civil actions which have reported to the TCM as being fully settled are likewise subject to administrative order for discontinuance if voluntary dismissal is not timely filed.

RULE 6: ATTORNEY COMMUNICATION

All opposing counsel shall attempt to communicate in a manner consistent with all rules of court and professional responsibility prior to bringing a matter for hearing by the court. Such proposed conduct should not require a "rule," and in most cases, it does not. It is included here as a reminder of the importance of such conduct to all parties and to the court.

RULE 7: ORDER FOR MEDIATED SETTLEMENT CONFERENCE/TRIAL CALENDAR NOTICE

7.1 The TCM shall issue an Order for Mediated Settlement Conference in Superior Court and Trial Calendar Notice (form AOC-CV-811, which succeeds an AOC form previously referred to as a "Scheduling Order") at an appropriate time as determined by the TCM, typically after service of the Complaint. The order will establish a deadline for the completion of mediation and will establish a date upon which the action will appear on a trial calendar. Counsel will consider these two dates in the course of conducting and completing discovery and filing motions, so as not to effect the schedule established by those dates.

7.2 Medical malpractice actions shall be scheduled for a discovery conference pursuant to the provisions of Rule 26(f) of the North Carolina Rules of Civil Procedure. Counsel for the plaintiff shall cause the discovery order to be tasked through Enterprise Justice to the judge presiding for signature following the presiding judge's approval of the order; counsel shall confirm that the TCM receives a copy.

RULE 8: ALTERNATIVE DISPUTE RESOLUTION

8.1 All parties to civil cases, except matters exempted by G.S. 7A-38, will be required to participate in a Mediated Settlement Conference, which shall be conducted pursuant to Rules of the North Carolina Supreme Court Implementing Statewide Mediated Settlement Conferences.

8.2 The TCM is specifically delegated and assigned the authority and responsibility of managing the mediation process, including establishment of deadlines and ensuring adherence to those deadlines. The TCM is authorized to sign all orders and other documents related to Mediated Settlement Conferences.

8.3 Originals of the Designation of Mediator form, all motions, the Report of Mediator and any other documents are to be uploaded by the sender directly through Enterprise Justice for filing and service. It is not the responsibility of the TCM to upload such documents.

8.4 The following Local Rules shall supplement the Mediation Rules:

A. Timing of the Order for Mediated Settlement Conference. An Order for Mediated Settlement Conference shall be as set out in Rule 7 above.

B. Motion to Authorize the Use of Other Settlement Procedures.

(1.) A party may move to use the arbitration program existing in Judicial District 42, or any other settlement procedure provided for in Rule 10 of North Carolina Supreme Court Rules for Mediated Settlement procedure in lieu of a mediated settlement conference by submitting a motion to the TCM.

(2.) The motion should state that all parties consent to the use of the alternative procedure. In the event arbitration is selected, the case will be subject to the rules governing that process. The use of another settlement procedure shall not delay the trial date.

(3.) If a case is removed from the pending trial docket so the parties may engage in binding arbitration, said arbitration shall be completed within whatever time frame the presiding trial judge sets, or if no time frame is set, within six months from the date of the order of removal.

C. Designation of Mediator. Counsel for the plaintiff(s) is responsible for completing the appropriate portions of the Designation of Mediator form (AOC-CV-812, available at nccourts.org) and uploading it to the court file in Enterprise Justice within 21 days of the date of the Order for Mediated Settlement Conference referred to in Rule 7.

D. Appointment of Mediator by the Court. If the parties have been unable to agree on a mediator, or if the form is not returned within the time prescribed, the TCM shall appoint a mediator by selecting the next available name on the appropriate list of certified mediators. The TCM may depart from the general procedure in certain instances, in the TCM's discretion.

E. Mediator Directory. The list of mediators who are willing to accept appointment in Judicial District 42 consists of those who live within geographical proximity of at least one of the counties within the district. However, any certified mediator may be included on the list if he or she contacts the TCM in

writing and requests inclusion, and if he or she acknowledges familiarity with the District's Local Rules and agrees to abide by them. A list of all mediators certified in the State of North Carolina is available through the AOC website (nccourts.org). The parties may not agree to utilize a non-certified mediator.

F. Motion to Extend Deadline for Completion of Mediation. A party, or the mediator, may move to extend the deadline for completion of the mediated settlement conference by submitting the motion to the TCM via an upload of form AOC-CV-835. Said motion should propose a new deadline. After determining whether there are any objections to said motion, the TCM will issue an order either granting or denying the motion. A motion to extend the deadline beyond the trial date will not be granted.

G. Report of Mediator. The mediator shall complete form AOC-CV-813, available through the AOC website (nccourts.org) and send the original to the TCM.

RULE 9: TRIAL CALENDAR

9.1 Cases are subject to being placed on the Trial Ready Calendar by the TCM as follows:

- A. The Trial Date named in the Order for Mediated Settlement Conference and Trial Calendar Notice referred to in Rule 7 above has arrived.
- B. It has been transferred by, or appealed from, the Clerk of Superior Court.
- C. It has been remanded for trial by the Court of Appeals or Supreme Court.
- D. It is entitled to a priority hearing by statute.
- E. Counsel has requested placement on the Trial Ready Calendar.

9.2 Upon the filing of a caveat to a will, the Clerk of Superior Court shall contact the TCM to determine the next available date for the parties to appear in Court and align themselves. Following the proceeding to align parties, the TCM shall issue an Order for Mediated Settlement Conference and Trial Calendar Notice as referred to in Rule 7 above.

9.3 Trial calendars appear in Enterprise Justice ("view calendar"). Proceedings are placed on the trial calendar simultaneously with the filing by the TCM of the Order for Mediated Settlement Conference and Trial Calendar Notice referred to in Rule 7.

9.4. It is the responsibility of the counsel or *pro se* party to determine whether, as the result of settlement, sudden illness, or otherwise, cases ahead of their case have moved off of the trial calendar. Typically, counsel accomplishes this by communicating regularly with counsel in cases which precede their own case on the trial calendar, and by communicating with the TCM. It has been observed by the undersigned that counsel will know the status of cases on the trial calendar in advance of the TCM. Trial calendars on the website will not be updated unless the TCM is aware of changes in status at least five business days prior to the first day of the trial term.

9.5 Requests for Peremptory Setting

A. Medical malpractice cases will be presumed to require a peremptory setting unless the TCM is notified otherwise by counsel.

B. Requests for a peremptory setting in all other cases shall be made in writing to the TCM, shall include the specific reasons for the request, and shall include confirmation that advance notice of the request has been given to opposing parties and shall state what response the opposing party has made. Written requests may also take the form of Consent Motions (which shall also recite the specific reasons for the request), with proposed order to be entered by a judge assigned from time to time to sessions of court in this district, in the discretion of such judge.

9.6 Dismissal for Failure to Prosecute

Any case listed on a trial calendar is subject to dismissal for failure to prosecute if at calendar call or at the time it is called for trial the attorneys (or the parties themselves, if *pro se*) are not present or ready to proceed. All cases on the calendar shall be ready for trial at any time during the session.

9.7 When cases are not reached or are continued by the Presiding Judge at calendar call, they shall appear on the next trial ready calendar in the discretion of the TCM, unless earlier resolved.

9.8 “Short Notice” Cases. If all parties consent, a case may be placed on a list of “short notice” cases maintained by the TCM. When the cases appearing on the regular calendar are disposed before the end of the session, including a mixed session of the kind commonly referred to as a “criminal term,” the TCM will notify counsel in any “short notice” case.

9.9 Trial Continuance Motions are not favored by this Plan, and the procedure for considering such motions is set out in Rule 12 herein.

RULE 10: MOTIONS

10.1 The scheduling of Motions is accomplished through the efforts and discretion of the TCM and is governed by a separate document, revised from time to time, which appears on the North Carolina courts website (nccourts.org) for each of the three counties of this judicial district (Henderson, Polk, Transylvania). Motions in civil action may be heard in any of the three counties of this district; still, however, there are a limited number of days which may be scheduled in advance for this purpose and the waiting time for hearing a motion is often two or more months. This Plan requires that counsel and *pro se* parties review and comply with the Motions practice document for this district, as modified from time to time, and as it appears on the NC courts website.

Discovery-related motions slow down the movement of the case towards resolution if not timely considered. All counsel are advocates for the parties they represent, but they are also professionals whose conduct is subject to standards when engaging with other professionals. The number of such motions which are withdrawn on the day of hearing leads one to believe that one or both of the parties has failed to communicate in good faith. If this district’s case-resolution goal is to be reached and the parties properly served, counsel must engage in good-faith discussion throughout the term of their representation.

10.2 All motions must be filed and heard in advance of the date of trial except those which must be heard by the Trial Judge. With respect to those motions which must be heard by the Trial Judge, the parties shall communicate with the TCM to schedule the pre-trial motions if at all possible for hearing in advance of the arrival of the jury pool.

RULE 11: ORDERS OR JUDGMENTS

11.1 Counsel for cases which are removed from a trial calendar due to a reported resolution shall file a dismissal of all claims within ten business days. When dismissal has not been timely filed, the action may be ordered to be placed on the inactive docket.

11.2 Counsel in motions withdrawn from hearing shall promptly file written notice of such withdrawal of notice, even if notice is withdrawn on the record.

11.3 Counsel in cases which are reported settled at mediation shall promptly file a dismissal of claims. When dismissal has not been timely filed, the action may be ordered to be placed on the inactive docket.

RULE 12: TRIAL CONTINUANCE POLICY - CIVIL

12.1 The Senior Resident Superior Court Judge shall have exclusive control over the status of trial calendars once established by the TCM pursuant to this Plan, including the authority to consider continuances until the trial session begins. The trial judge is not bound by previous order of the Senior Resident but is requested to take such order into account. It is the philosophy of this Plan that very few reasons will support a motion to continue. The authority to consider trial continuance motions may be delegated to the Trial Court Manager from time to time.

12.2 All motions for continuance shall be in writing on [AOC-CV-221](#), and shall be received by the TCM no later than 10 calendar days prior to the opening of the trial session. A copy must be sent to all counsel of record and *pro se* parties, simultaneous with or prior to presentation to the TCM. The motion shall specify the reasons for the request, and a new trial date shall be proposed. Moving counsel shall communicate with opposing counsel regarding the motion to continue in advance of filing, and shall note opposing counsel's position on the motion, if available.

12.3 Opposing counsel and *pro se* parties shall have a period of two (2) business days following the date upon which the TCM receives the motion shall signal the beginning of the period in which to object. Objections not raised within this time period shall be deemed waived. As noted above, opposing counsel's objection should be noted by the moving party if available

12.4 Motions for continuance will not be granted except for crucial, unforeseeable cause. The advance notice provided in the Order for Mediated Settlement Conference in Superior Court and Trial Calendar Notice referred to in Rule 7 above is deemed a reasonable and sufficient period to accommodate the majority of conflicts. Personal conflicts such as vacations, family commitments and continuing legal education opportunities do not rise to the level of crucial, unforeseeable cause. Typically, neither is failure to complete discovery on a schedule. The Guidelines for Resolving Scheduling Conflicts appearing as Rule 3.1 of the General Rules of Practice for the Superior and District Court will govern rulings regarding professional conflicts. If counsel cites as a basis for continuance the fact that they are

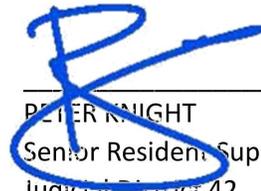
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representing a party in a matter for trial in another jurisdiction, said counsel shall identify the presiding judge in that other matter and shall state the priority that other case has for trial in the other jurisdiction.

RULE 13: RULES FOR GENERAL PRACTICE; RULES OF CIVIL PROCEDURE, APPLY

13.1 The North Carolina Rules of Civil Procedure and the General Rules of Practice for the Superior and District Courts apply throughout this State, including of course within this District. Any apparent conflicts between this Civil Case Management Plan and the RCP or the GRP shall be resolved in favor of the RCP and the GRP. Any specificity lacking in this Plan shall likewise be interpreted in light of the RCP and the GRP.

This Case Management Plan shall be effective as of January 1, 2026.



PETER KNIGHT
Senior Resident Superior Court Judge
Judicial District 42

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