

**14<sup>th</sup> JUDICIAL DISTRICT  
DISTRICT COURT DIVISION  
GENERAL CIVIL RULES**

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## **RULE 1: GENERAL RULES**

- 1.1** These rules shall apply to general civil cases as distinguished from domestic civil cases.
- 1.2** The purpose of these rules is to provide for the just, orderly, and timely resolution of civil matters which fall under the jurisdiction of the District Court in the 14<sup>th</sup> Judicial District, Civil Division. They shall at all times be construed and enforced to avoid technical or unnecessary delay, and to promote the ends of justice. These rules are promulgated pursuant to the North Carolina State Constitution, including but not limited to Article 4; North Carolina General Statutes, including but not limited to N.C.G.S §1, N.C.G.S §1A, N.C.G.S. §7A-2, N.C.G.S. §7A-130 – 7A-131, N.C.G.S. §7A-146; as well as N.C.G.S. §7A-34 establishing the General Rules of Practice for the Superior and District Courts. These rules adhere to the performance standards and goals established by the North Carolina Administrative Office of the Courts. All North Carolina General Statutes are available online at <http://www.ncleg.net/gascripts/Statutes/Statutes.asp>.
- 1.3** When the enforcement of a rule would lead to an unjust result or bestow an unfair advantage upon a party, the Chief District Court Judge or their designee may exercise their sound discretion to excuse or relieve any party of the burden of these rules. These rules are promulgated with the following intentions and are to be interpreted in light thereof:
- a.** To provide for fair treatment of all litigants;
  - b.** To ensure that the scheduling of cases for disposition is consistent with the nature of the case;
  - c.** To enhance the quality of the litigation process;
  - d.** To instill public confidence in the Court;
  - e.** To dispose of cases without undue delay;
  - f.** To establish meaningful time frames for disposing of issues and cases.
- 1.4** These rules are not complete in every detail and will not cover all situations. If the rules do not cover a specific situation, the District Court Coordinator is authorized to act in its discretion, subject to consultation with the Chief District Court Judge or the Presiding Judge.
- 1.5** These rules and all amendments hereto shall be filed with the Clerk of Superior Court for Durham County and may be cited as, “Fourteenth District Local Rules for Civil District Court.”and supercede any previous rules titled as such.
- 1.6** District Court Administration will maintain a copy of these local rules and a copy of all local forms to be furnished to attorneys and pro se litigants upon request. These documents are also available online at [www.nccourts.org](http://www.nccourts.org).

- 1.7** The most current contact information for the Durham County District Court Coordinator can be found on the website at <http://www.nccourts.org/County/Durham/Staff/TCA.asp>.
- 1.8** Parties without attorneys are known as “pro se” litigants, and will be referred to as such throughout these rules. Although no party is required to have an attorney, if you are not represented by an attorney, you must know, understand, and follow all court rules. The District Court Coordinator cannot provide legal advice.
- 1.9** Corporations must be represented by an attorney in all Civil District Court proceedings, including Court-Ordered Arbitration.
- 1.10** In accordance with Rule 5 of the General Rules of Practice, the first document filed by each party in a civil action shall be the General Civil Action Cover Sheet (AOC form AOC-CV-751).
- 1.11** Information included on any pleading must include: Durham County file number, name of all parties, and phone number and address (and email address, if applicable) of party filing the pleading. All parties to a case filed in District 14 must comply with North Carolina Rules of Civil Procedure (N.C.G.S. §1 – 1A), specifically Rule 5: “Service and Filing of Pleadings and other Papers,” (N.C.G.S. §1A-1.5).
- 1.12** All parties and attorneys are responsible for updating the Clerk of Superior Court and the District Court Coordinator of any change in contact information (to include, but not limited to address, phone numbers, fax numbers, email addresses, etc). Changes to contact information can be made by filling out the Notice of Address Change for (local form DUR-CIV-1), and filing it with the Civil Filings division of the Durham County Clerk’s office. PLEASE NOTE: Parties filing a change of contact information must also notify all parties/attorneys for parties of the change.
- 1.13** Ex parte communications with judges and arbitrators is prohibited by law. An ex parte communication is a communication about the merits of a case with the judge/arbitrator, without adequate notice to all parties, and without all parties having an opportunity to be present. No party, including attorneys, may have, or attempt to have, communication about a case with a judge/arbitrator. Ex parte communications include any contact outside of the courtroom about a case (conversations, email, phone calls/messages, letters, and/or social media contact). A District Court Judge or Arbitrator will not return telephone calls, listen to recorded telephone messages, or read mail which are deemed ex parte communications. Before any ex parte communication may occur, the attorney or party must inform the judge of any attorney or pro se litigant involved and all ways in which you attempted to contact him/her before initiating the communication. If you violate the ex parte communications rule, the Court may sanction you.
- 1.14** Any attorney that is retained to represent a litigant must file a Notice of Appearance with the Clerk of Superior Court (local form DUR-CIV-2, or a form of similar structure), unless he/she is filing a pleading with his/her name thereon. Attorneys should immediately inform the District Court Coordinator if a calendar is issued without his/her

name designated as counsel of record. Attorneys who make their initial appearance in a case in court will have to fill out the form listed above.

- 1.15** No attorney who has entered an appearance in any civil action shall withdraw their appearance, or have it stricken from the record, except by order of the court, after proper notice to all parties, in accordance with Rule 16 of the General Rules of Practice for Superior and District Courts. Orders allowing counsel to withdraw from any civil action must contain a mailing address for the litigant whose attorney is requesting to withdraw. A copy of this order allowing withdrawal of counsel must be provided to the District Court Coordinator by the courtroom clerk or the clerk shall enter such address on the minutes.
- 1.16** Attorneys and pro-se litigants may use either the local forms provided or a form of their own, except where specific AOC forms are required. Proper use of all forms (including omissions or incorrect information) is the responsibility of the party submitting the form. Durham County local forms can be found online, along with AOC forms, at [www.nccourts.org](http://www.nccourts.org). Local forms are also available through the District Court Coordinator's office, and on a limited basis in the Civil Filings office of the Clerk of Superior Court. All information provided to the Court and to be filed with the Clerk of Superior Court shall comply with the Identity Theft Protection Act of 2005.
- 1.17** The attorney vacation policy of the 14<sup>th</sup> Judicial District Court shall be governed by Rule 26, Secured Leave Periods for Attorneys, of the General Rules of Practice for the Superior and District Courts N.C.G.S §7A-34.
- 1.18** All applicable provisions of the Service Members Civil Relief Act 50 U.S.C. Ch. 50 §§ 3901-4043 must be complied with when filing ALL cases in Civil District Court. This includes filing the Service members Civil Relief Act Affidavit (AOC form AOC-G-250). Failure to comply with these provisions may lead to unnecessary delay.

## **RULE 2: CASE MANAGEMENT**

- 2.1** The District Court Coordinator's Office shall establish and maintain a case tracking system pursuant to Rule 2 of the General Rules of Practice for Superior and District Courts, and in accordance with these rules. This system shall be used to monitor the number, age, type, and procedural status of all pending cases.
- 2.2** With the exception of civil actions involving tax and assessment foreclosures listed under N.C.G.S. 47-108.25 and N.C.G.S. 105-374, all cases filed should be tried or disposed of pursuant to North Carolina Supreme Court Guidelines (<http://www.nccourts.org/County/Durham/Documents/Measure3.pdf>).
- 2.3** With the exception of civil actions involving tax and assessment foreclosures listed under N.C.G.S. 47-108.25 and N.C.G.S. 105-374, a case may be placed on an administrative calendar if service has not been perfected within ninety days, and no alias and pluries summons has been issued. A case may be subject to discontinuance or dismissal if at the administrative calendar call no party is present, or the case is no longer an active lawsuit.
- 2.4** With the exception of civil actions involving tax and assessment foreclosures listed under N.C.G.S. 47-108.25 and N.C.G.S. 105-374, a case may be placed on an administrative calendar if no action has been taken within the last four (4) months, and the case is not scheduled on a calendar. A case may be subject to discontinuance or dismissal if at the administrative calendar call no party is present, or the case is no longer an active lawsuit.
- 2.5** All general civil actions will be reviewed at the time of filing to determine eligibility for Court-Ordered Arbitration in accordance with N.C.G.S §7A-37.1. Cases identified as arbitration-eligible will proceed pursuant to the North Carolina Rules for Court-Ordered Arbitration. The full set of Rules for Court-Ordered Arbitration can be found online at <http://www.nccourts.org/Citizens/CPrograms/Arbitration/Default.asp?topic=10>.
- 2.6** Any case listed on a published calendar is subject to dismissal for failure to prosecute/present timely judgment if the attorneys or pro se litigants are not present when the case is called for trial by the Court.

## RULE 3: CALENDARS

- 3.1** The calendar for the disposition of civil cases in Durham County District Court shall be set by the District Court Coordinator in accordance with these rules.
- 3.2** Civil District motions hearings, jury and non-jury trials, and administrative matters will be held during a one week session every month. The Chief District Court Judge shall assign Judges for those sessions.
- 3.3** The scheduling of civil matters will occur as follows:
- a.** Appeals from small claims summary ejectments will be heard on Monday at 9:30 a.m. on General Civil Court weeks;
  - b.** Motions will be heard on Monday at 2:30 p.m. on General Civil Court weeks;
  - c.** Non-jury and jury trials will begin on Tuesday at 9:30 a.m. on General Civil Court Weeks (this may include summary ejectment appeals in some instances);
  - d.** Administrative matters will be heard Friday at 9:30 a.m. on General Civil Court weeks.
- 3.4** Cases on the calendar will be heard in the order set by the Presiding Judge, and may not proceed in calendar order. Any case listed on a published trial calendar is subject to dismissal for failure to prosecute if, at the time it is called for trial, the attorneys or pro-se litigants are not present or ready to proceed. All cases calendared should be ready for trial at **any** time during the week-long session.
- 3.5** Trial and Administrative calendars will be prepared by the District Court Coordinator and the first draft will be posted on the NC Courts website approximately four (4) weeks prior to the hearing date. Pro-se litigants will be notified via U.S. mail by the District Court Coordinator. Attorneys are required to subscribe at [www.nccourts.org](http://www.nccourts.org) to receive civil calendars. **Printed calendars/notices will not be mailed to attorneys or their clients.** It is the obligation of the parties and attorneys to ensure that all mailing and contact information is current and correct, and that subscriptions to the online dockets are current.
- 3.6** Motions calendars will be prepared by the District Court Coordinator and posted on the NC Courts website approximately one (1) week prior to hearing date. It is the responsibility of the moving party to notice all other parties involved.
- 3.7** All calendars are subject to modification, and will be updated weekly (after the initial draft is posted) to include continuances and removals. The final docket for each session will be posted online no later than 2:00pm on the last business day preceding the session, and will be labeled "FINAL DRAFT" in the heading. For the most up-to-date calendar information, please contact the District Court Coordinator at 919-808-3018, or view the docket online at <http://www1.aoc.state.nc.us/www/calendars/Civil.jsp?county=DURHAM>.

- 3.8** Any party desiring to have a contested civil matter heard by a District Court Judge may do so by submitting a Calendar Request Form to the District Court Coordinator (local form DUR-CIV-3). Prior to submitting a Calendar Request Form, the District Court Coordinator must be contacted to determine calendar dates and availability. The District Court Coordinator can be reached by email ([Suzanne.L.Hansen@nccourts.org](mailto:Suzanne.L.Hansen@nccourts.org)), telephone (919-808-3018), or fax (919-808-3038). Calendar Request Forms **should not** be submitted to Civil Records Filing. Calendar Request Forms *must* be received by the District Court Coordinator at least ten (10) business days prior to the start of the requested General Civil court session. If assistance is needed determining this date, please contact the District Court Coordinator. In cases where a Calendar Request Form has been submitted, it is the responsibility of the party submitting the Calendar Request Form to notice all other parties in the case, and file proof of said notice with Civil Records Filing. These local rules regulate District Court Administrative Calendaring only, and are to have no affect on the N.C. Rules of Civil Procedure and Notice Requirements. Calendar requests are subject to calendar availability, and are processed in the order in which they are received by the District Court Coordinator. All parties to a case filed in District 14 must comply with North Carolina Rules of Civil Procedure (N.C.G.S. §1 – 1A), specifically Rule 5: “Service and Filing of Pleadings and other Papers,” (N.C.G.S. §1A-1.5). Any party submitting a Calendar Request Form must provide notice to all other parties of scheduled hearing, and file proof of said notice with Civil Records Filing not later than 4:00 p.m. three business days prior to the calendar date, as provided in Rule 3.4, above.
- 3.9** All parties listed on a calendar as of 4:00 p.m. two business days prior to the calendar hearing date, must be present at calendar call. If all parties are absent at calendar call, the case may be subject to dismissal by the presiding Judge.
- 3.10** When a case listed on a calendar is settled, an attorney of record or pro se litigant must notify District Court Administration in writing within twenty-four hours of the settlement in accordance with Rule 2(g) of the General Rules of Practice for Superior and District Courts. The District Court Coordinator must be notified in writing by 4:00 p.m. three business days prior to the hearing date in order for the settled case to be removed from the calendar. If a settlement is reached after 4:00 p.m. three business days or less prior to the calendar hearing date, the settlement must be presented to the Judge on the hearing date. Attorneys and pro se litigants are to take all steps necessary to close settled case files, and have an affirmative duty to file all necessary documents within the term of court for which the case is calendared, or by a date set by the Court. All cases that are removed due to a reported settlement will be automatically placed on the next session’s Administrative calendar for order entry. All documents needed to close a case must be filed on or before the Administrative calendar date.



## RULE 4: COURT-ORDERED ARBITRATION

- 4.1** All cases subject to Court-Ordered Arbitration pursuant to the rules established by the N.C. Supreme Court shall also be subject to the local rules established herein. All general civil actions will be reviewed at the time of filing to determine eligibility for Court-Ordered Arbitration in accordance with N.C.G.S §7A-37.1. Cases identified as arbitration-eligible will proceed pursuant to the North Carolina Rules for Court-Ordered Arbitration (<http://www.nccourts.org/Citizens/CPrograms/Arbitration/Default.asp>).
- 4.2** All eligible civil actions pending in the 14<sup>th</sup> Judicial District shall be ordered to arbitration, unless there is a written motion and order by a District Court Judge waiving such arbitration requirement.
- 4.3** After determination that a pending action is arbitration-eligible, District Court Administration shall mail the parties or their counsel of record the following two documents:
- a.** Notice of Case Selection for Arbitration. It shall contain all relevant information required by the rules of the North Carolina Supreme Court. Said Notice sets forth the dates between which the case will be scheduled for an arbitration hearing. These dates will be at least thirty-five (35), but not more than sixty (60), days after the last responsive pleading was filed. This Notice will request that the parties provide the Arbitration Coordinator with a list of all dates on which they will have a conflict such that they would be unable to attend an arbitration hearing. Failure to respond in writing within twenty (20) calendar days of the date of the Notice will indicate that the party has no conflicts during the relevant period of time. This Notice also informs the parties that they have twenty (20) calendar days to file a stipulation as to their choice of an arbitrator, instead of having an arbitrator assigned by the Court;
  - b.** After the expiration of twenty (20) calendar days from the date of the Notice of Case Selection for Arbitration, the Arbitration Coordinator shall mail the parties or their counsel of record, a Notice of Arbitration Hearing. This notice assigns a date, time, and place for the arbitration, and assigns an arbitrator to the case. The Arbitration Coordinator can be reached by email ([Suzanne.L.Hansen@NCCourts.org](mailto:Suzanne.L.Hansen@NCCourts.org)), telephone (919-808-3018), or fax (919-808-3038).
- 4.4** Arbitration Hearings may be continued if a written motion is filed at least 24 hours prior to the arbitration hearing, and there is a showing of good cause. **Scheduling conflicts will not be grounds for continuance.** All motions must be accompanied by an order and will be submitted to a District Court Judge for consideration.

**4.5** Any settlement reached prior to the scheduled arbitration date should be reported immediately to the Arbitration Coordinator. A dismissal or consent judgment must be filed no later than 24 hours prior to the scheduled date in order for the case to be removed from the docket. If a dismissal or consent judgment is not entered, all parties should appear at the arbitration and have their settlement entered as a judgment.

**4.6** At least ten (10) days before the date set for the arbitration hearing, the parties shall exchange:

- a.** Lists of witnesses they expect to testify;
- b.** Copies of documents or exhibits they expect to offer into evidence;
- c.** A brief statement of the issues and their contentions.

Parties shall exchange this information by use of the Pre Arbitration Submission Form (local form DUR-CIV-9), or on a form substantially similar in form and content to the local form. Failure to adhere to the information exchange requirements may result in exclusion of the proffered evidence. Pleadings, other filings, and exchanged discovery, which have been received by all parties at least ten (10) days prior to the Arbitration Hearing date, do not also need to be included in the pre-arbitration submission.

**4.8** If a request for a trial de novo is filed, the District Court Coordinator shall calendar the case for trial no sooner than 120 days after the filing of the last responsive pleading, or from the date the trial de novo is filed if no responsive pleading. A party may request a specific session of court, or expedite the hearing date, by submitting a Calendar Request Form (local form DUR-CIV-3) to the District Court Coordinator's Office.

## **RULE 5: TRIAL READY CASES**

**5.1** The District Court Coordinator will periodically review pending actions and place cases on the calendar so as to ensure full utilization of scheduled court time. A case shall be deemed ready for a trial setting when it has been determined that at least one of the following has occurred:

- a.** One hundred and fifty (150) days has elapsed since the filing of a general civil complaint by the start of the scheduled session, and an answer has been filed;
- b.** One hundred and twenty (120) days has elapsed since the filing of the last responsive pleading;
- c.** A case has been transferred to the District Court Division on appeal from the Magistrate's Small Claims Court and does not qualify for Court Ordered Arbitration. Cases that have been appealed from Magistrate's court will be scheduled for trial on the next available (unpublished) calendar.
- d.** A case has been appealed from Court-ordered Arbitration.
- e.** A case has been remanded for trial by the Appellate Division.

- 5.2 Small claims appeals from Magistrate’s court will be scheduled on Monday the week of General Civil Court, at 9:30 a.m. All other non-jury and jury trials will begin on Tuesday the week of General Civil Court, with calendar call at 9:30 a.m.
- 5.3 Pro-se litigants will be notified of trial via U.S. mail by the District Court Coordinator. Attorneys are required to subscribe at [www.nccourts.org](http://www.nccourts.org) to receive civil calendars. **Printed calendars/notices will not be mailed to attorneys or their clients.** It is the obligation of the parties and attorneys to ensure that all mailing and contact information is current and correct.
- 5.4 The District Court Coordinator shall re-calendar cases not reached or continued by the Court to future sessions based upon calendar availability. It is the responsibility of counsel and pro-se litigants to contact the District Court Coordinator to advise of any conflicts no later than Friday afternoon of the close of the trial session.
- 5.5 The prevailing party at the appellate level MUST inform the District Court Coordinator when a case is remanded from the Court of Appeals. All remanded cases will be set for trial in conjunction with these local rules.

## **RULE 6: ADMINISTRATIVE CALENDARS**

- 6.1 An administrative, or clean-up, calendar will be scheduled on Friday the week of General Civil Court at 9:30 a.m.
- 6.2 A case shall be scheduled on the administrative calendar when one of the following has occurred:
- a. In cases where service has not been perfected within ninety (90) days and no alias and pluries summons has been issued;
  - b. In cases where no action has been taken within the last four (4) months, and the case is not scheduled on a calendar;
  - c. In cases where a settlement has been reported and an Order Entry date must be scheduled. Cases scheduled for this reason will be given a date certain that an order, or dismissal, must be entered.
  - d. In some cases where a jury trial is demanded, and the parties need to set a court date.
- 6.3 Parties are required to appear unless the matter has been removed by the District Court Coordinator following receipt of an appropriate disposition, or by requesting a hearing date. All requested hearing dates are firm dates. In cases where parties are asking to be removed from the Administrative docket and placed on a Motion’s calendar, the motion must be filed before the case will be removed. Continuance will not be granted unless for a crucial cause that could not have been foreseen. Cases will not be removed from the Administrative Calendar via telephone. All requests to be removed from an

administrative docket must be done via email, with all parties copied. Cases set for order entry will not be removed unless the order is submitted prior to the setting.

- 6.4** Pro-se litigants will be notified of trial via U.S. mail by the District Court Coordinator. Attorneys are required to subscribe at [www.nccourts.org](http://www.nccourts.org) to receive civil calendars. **Printed calendars/notices will not be mailed to attorneys or their clients.** It is the obligation of the parties and attorneys to ensure that all mailing and contact information is current and correct.

## **RULE 7: MOTIONS**

- 7.1** All motions in which a setting is required will be scheduled for hearing through the District Court Coordinator, once a Calendar Request Form (local form DUR-CIV-3) has been submitted. Filing a motion does not automatically place a case on a calendar. Motions hearings are scheduled one Monday a month, and calendar call for motions is at 2:30 p.m. In advance of submitting a Calendar Request Form, counsel or pro se litigants should contact the District Court Coordinator (919-808-3018) for motions hearing dates and availability. The date, time, and courtroom shall then be cited in the notice of hearing filed with the Clerk of Superior Court's Civil Records Filing Office, and served upon opposing counsel or pro se parties. All motions must be filed with the Clerk of Superior Court **before** the District Court Coordinator will consider any calendar request. No calendar request can be made until after a motion has actually been filed.
- 7.2** Moving counsel or litigant shall serve all other counsel or parties with the date, time, and location of the hearing. Proof of service shall be filed with the Clerk of Superior Court's Civil Records Filing Office. The District Court Coordinator does not provide notice of a motion's hearing to ANY party.
- 7.3** All uncontested motions (motions that are consented to) shall be submitted for referral to a District Court Judge for review and decision, without the necessity of formal calendaring. Counsel or pro se litigants filing the motion shall include with the filing a proposed order, which shall recite that the motion is consented to, or otherwise unopposed. Signatures on the proposed order of opposing counsel or pro se litigant to verify consent are not required
- 7.4** Motions that do not require a hearing, and their accompanying orders, shall be submitted to Civil Records Filing. The District Court Coordinator will work in conjunction with the Civil Records Filings Office, and will present all motions with accompanying orders to a District Court Judge for review. Motions filed without accompanying orders will not be reviewed by a District Court Judge. All submissions should include enough copies of the order for the file and all parties. The District Court Coordinator will not make copies of orders.

- 7.5** A party filing any one or more of the following motions must make a good faith effort to determine whether or not the motion will be opposed:
- a.** Motion for Extension of Time to File Answer or Otherwise Plead;
  - b.** Motion to Amend a Pleading or to Add a Party;
  - c.** Motion to Withdraw as Counsel; Motions to Withdraw as Counsel must include a certificate of service upon the client from whom representation is being withdrawn and to opposing counsel or pro se litigant. The motion must set forth the name and address of substitute counsel, if known, and the current address of the party from whom representation is being withdrawn. No judicial action will be taken on a motion to withdraw as counsel which does not contain this information;
  - d.** Motion for Extension of Time to comply with discovery requests.
- 7.6** Attorneys and pro se litigants shall serve briefs or memoranda at least two business days prior to the hearing on any motion seeking a final determination of the rights of any party as to any claim or defense, and shall serve affidavits in opposition to motions for summary judgment at least two business days before the motion hearing in accordance with G.S. §1A-1, Rule 5, Rule 6 and Rule 56. However, this rule does not preclude an attorney or pro se litigant from providing to the court copies of cases or statutes relied upon at the time of hearing.

## **RULE 8: CONTINUANCES**

- 8.1** Any motion for a continuance of a case set for trial or arbitration must be in writing and contain the following information:
- a.** Caption and file number of the case;
  - b.** Session in which the case is set;
  - c.** The reason for the request for continuance; Position of the case on the calendar, failure to calendar motions for hearing or first time scheduling of the case will ordinarily not be considered a valid reason for continuance. When an engagement in another court is the reason for continuance, the request must state the case number, and the court in which the other case is pending (See Rule 3.1 of the General Rules of Practice for Superior and District Courts: Guidelines For Resolving Scheduling Conflicts);
  - d.** The number of times the case has previously been continued;
  - e.** A future calendar date which the case could be continued to, which has been approved by the District Court Coordinator;
  - f.** A certification that all opposing counsel or parties have been sent a copy of the request.

- 8.2** Any motion for a continuance must be accompanied by an order, which will be presented to the District Court Judge assigned to the original trial date session, or if the request is to continue an arbitration, to the District Court Judge assigned to oversee the Court-Ordered Arbitration Program.
- 8.3** District 14 Motion and Order for Continuance Forms (local form DUR-CIV-5) are available online, in the District Court Coordinator's Office, and in the Civil Records Filing Office.
- 8.4** Any motion for a continuance and accompanying order should be filed by at least 4:00 p.m. four business days prior to the trial or arbitration date.
- 8.5** Opposing counsel or pro se litigant must be notified of the request for continuance prior to filing the motion to continue. If counsel or a pro se litigant fails to comply with the provisions of this Rule, the request for a continuance is deemed denied, without a hearing. Any objections to the motion must be submitted to the District Court Coordinator within two days of the motion being filed. Objections to a Motion to Continue (local form DUR-CIV-6) must be made in writing and will not be accepted over the phone. Objections can be made via email and fax. If an objection is not submitted to the District Court Coordinator within the two days specified, it will be assumed that the opposing party does not object to the request.
- 8.6** A District Court Judge will rule upon motions to continue either after the expiration of the two day objection period, once it is known that the other party does not object, or once opposition documents are submitted to the District Court Coordinator.

## **RULE 9: PRE-TRIAL CONFERENCES, TEMPORARY RESTRAINING ORDERS, MINOR SETTLEMENTS & PEREMPTORY SETTINGS**

- 9.1** Pre-trial conferences are available for jury and more complicated non-jury matters upon written request only, or upon Order of the Court. All pre-trial conferences are held on Monday the week of General Civil Court at 2:30 p.m, and should be scheduled the session prior to the jury/non-jury trial date. It shall be the duty of counsel for the plaintiff to prepare the final pre-trial order to be signed by all counsel. All pre-trial conference orders shall be presented to the Court for approval, signature and filing no later than 4:00 p.m. one day prior to the trial date.
- 9.2** Motions for temporary restraining orders (TRO) or preliminary injunction shall be presented to the District Court Coordinator for scheduling and assignment to a Presiding Judge. Parties seeking relief are expected to make an effort to notice the other side prior to appearing before the Judge. Temporary restraining orders and preliminary injunctions must be set for a return hearing within ten calendar days, and will be subject to assignment. All motions for temporary restraining orders **MUST** be accompanied by a proposed order. The District Court Coordinator has a template order if needed, but such form is used at the filing parties' discretion.

- 9.3** Requests for a peremptory setting for a case must be made in writing to the District Court Coordinator. A peremptory setting shall be granted only for good and compelling cause. Cases may be set peremptory on the Court's own motion.
- 9.4** Approval of Minor Settlements will be set at the discretion and convenience of the District Court Coordinator. Parties requesting a setting for a minor settlement should contact the District Court Coordinator at 919-808-3018, or [Suzanne.L.Hansen@nccourts.org](mailto:Suzanne.L.Hansen@nccourts.org), for a selection of available dates.
- 9.5** Complaints for Domestic Violence Protective Orders (50-B) and No-Contact Orders for Stalking or Nonconsensual Sexual Conduct (50-C) can be filed with the Clerk of Superior Court, Civil Records Filing Division (919) 808-3003. Detailed information regarding the North Carolina General Statutes for these chapters can be found online at:  
(<http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=50b>)  
(<http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=50c>).

## **RULE 10: DISCOVERY**

- 10.1** Attorneys serving Interrogatories, Requests for Production of Documents, or Requests for Admissions must leave sufficient space after each Interrogatory or Request for the answer or response to be written, together with any reasonable explanatory material. One copy of Interrogatories, Requests for Production of Documents, or Requests for Admissions must be served upon opposing parties.
- 10.2** The party responding to a Discovery Request, in lieu of recopying all interrogatories or requests, must answer or object in the space provided and return the original with the answers to the opposing party, retaining the duplicate for his/her files. If insufficient space is provided for the answer or objection, it may be stated upon a separate sheet of paper and inserted immediately following the pages upon which the interrogatory or request appears.
- 10.3** Discovery must be completed within one hundred and twenty (120) days after the last required pleading is filed, not inconsistent with Rule 26(d) of the Rules of Civil Procedure. If additional time is needed, it may be granted only by the Chief District Court Judge or designee. The motion for additional time to complete discovery must be served upon opposing counsel or pro se litigant at least five days before being presented to the Chief District Court Judge or designee, and the moving party must comply with these Local Rules to determine whether motion is opposed.
- 10.4** Pursuant to the Rules of Court-ordered Arbitration, outstanding discovery is not grounds for a continuance or removal of a case that is set for arbitration.

## **RULE 11: ORDER SUBMISSION**

- 11.1** All orders are due to the Court by the close of the session in which the verdict was given (typically Friday at 5pm). If the proposed order is not received by the District Court Coordinator by the due date, the case will be set for Order Entry on the next available Administrative Calendar setting. The presiding judge will determine which party, if any, should prepare the proposed order.
- 11.2** All orders that are submitted outside of the courtroom for a Civil District Court session shall be submitted directly to the District Court Coordinator. This can be done via US mail, hand delivery, or email (where original signatures are not required, such as consent orders).
- 11.3** All contested orders that are submitted should include a proposed order from each opposing party. The assigned District Court Judge will review all orders, and render his/her decision. If clarification on the judge's ruling is needed, the case will be set for order entry on the next available Administrative Calendar setting. All parties and/or their counsel will need to be present at this setting.
- 11.4** If parties fail to appear for a case that is set for order entry, the case may be dismissed by the Court for failure to present a timely judgment.
- 11.5** Order submissions should include enough copies for all parties, and an original for the court file. Once orders are signed and processed by the Clerk of Superior Court, they are returned to the attorney who submitted them for service upon all parties. Proof of service shall be filed with the Clerk of Superior Court's Civil Records Filing Office.



## **RULE 12: INTERPRETERS**

- 12.1** Durham County Civil District Court follow the protocol establish by the Administrative Office of the Courts when scheduling interpreters. Court interpreters are provided for some cases free of charge. For more information or to see what types of cases interpreters are provided for, please see <http://www.nccourts.org/LanguageAccess/Default.asp>.
- 12.2** American Sign Language (ASL) interpreters are provided in all court proceedings where needed.
- 12.3** All requests for interpreters should be made in writing and submitted to the District Court Coordinator at least 14 days prior to the hearing. Requests should include the file number, name of party needing services, date of service, courtroom and time. Additional information may be requested.

## **RULE 13: SANCTIONS**

- 13.1** Should counsel or a pro se litigant fail to comply in good faith with any provision contained in these Local Rules or the General Rules for Practice of the Superior and District Courts, the Court may, in its discretion, impose appropriate sanctions. An order entered in substantial violation of these rules may be modified or vacated by the Chief District Court Judge.

NORTH CAROLINA  
14<sup>TH</sup> JUDICIAL DISTRICT  
DURHAM COUNTY

IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION  
CIVIL DIVISION

## ORDER ADOPTING LOCAL RULES FOR CIVIL DISTRICT COURT

The attached Local Rules for Civil District Court are hereby adopted effective March 1, 2017 and shall apply to all cases filed on or after that date, and insofar as practical, to all pending cases.

These rules supersede all previous rules pertaining to civil cases in the 14<sup>th</sup> Judicial District.

It is so ordered, this the   1   day of   March  , 2017.

\_\_\_\_\_/s/\_\_\_\_\_  
\_\_\_\_\_

*HONORABLE MARCIA H. MOREY*  
CHIEF DISTRICT COURT JUDGE  
14<sup>TH</sup> JUDICIAL DISTRICT





LOCAL RULES AND PROCEDURES  
FOR THE CALENDARING OF CIVIL CASES  
IN THE FOURTEENTH JUDICIAL DISTRICT  
SUPERIOR COURT DIVISION  
(EFFECTIVE JULY 1, 2010)

1. RULE 1: GENERAL RULES

- 1.1. The purpose of these rules is to institute a case management plan in the Superior Court Division of the Fourteenth Judicial District (Durham County) in compliance with Rule 40 (a), Rules of Civil Procedure (<http://www.ncga.state.nc.us/gascripts/Statutes/StatutesTOC.pl?Chapter=0001A>); Rule 2(a), General Rules of Practice for Superior and District Courts (not available on line); the Rules Implementing Mediated Settlement Conferences (<http://www.nccourts.org/Courts/CRS/Councils/DRC/MSC/Rules.asp>); and the Rules for Court-Ordered Arbitration (<http://www.nccourts.org/Citizens/CPrograms/Arbitration/Default.asp?topic=10>) in order to provide for the orderly, prompt, and just disposition of civil matters.
- 1.2. These rules shall at all times be construed in such a manner as to avoid technical delay.
- 1.3. It is recognized that these rules are not complete in every detail and will not cover every scenario which may arise. In the event these rules do not cover a specific situation, Trial Court Administration is authorized to act in its discretion, subject to consultation with the Senior Resident Superior Court Judge or Presiding Judge.
- 1.4. The calendar for the disposition of civil cases in the Fourteenth Judicial District Superior Court Division shall be set by Trial Court Administration in accordance with these rules and under the supervision of the Senior Resident Superior Court Judge.
- 1.5. Where forms are referenced in these rules, parties may use either the form provided or a form of their own which substantially corresponds to the referenced form.
- 1.6. These rules and procedures and all future amendments shall be filed with the Clerk of Superior Court for Durham County and may be cited accordingly.
- 1.7. A copy of these rules and any subsequent amendments shall be posted on the North Carolina Court System's website [[www.nccourts.org](http://www.nccourts.org)]. Trial Court Administration will publicize the adoption of these rules and subsequent amendments through a notice to all electronic subscribers, through electronic postings to the North Carolina Court System's website and the Durham County Bar Association website, and will provide a hard copy or an electronic copy of the rules upon request.

2. RULE 2: SCHEDULING CASES READY FOR TRIAL

- 2.1. Trial Court Administration shall establish and maintain a case-tracking system pursuant to Rule 2(c) of the General Rules of Practice for Superior and District Courts. This system shall be used to monitor the number, age, type and procedural status of all pending cases and to provide for the calendaring of those cases.
- 2.2. A case shall be considered ready to set for trial when Trial Court Administration determines that at least one of the following has occurred:

- A. All parties have been served with pleadings and have answered, or the time period for filing answer has expired;
- B. All parties have informed the Trial Court Administration Office in writing that the case is ready to be set for trial;
- C. A case has been transferred to the Superior Court Division on appeal from the Clerk of the Superior Court;
- D. A case has been remanded for trial by the Appellate Division; or
- E. A case is entitled to priority hearing by statute.

2.3. Trial Court Administration shall place those cases that are determined to be ready for trial on the trial calendar pursuant to Rule 4.

### 3. RULE 3: DISCOVERY AND SCHEDULING ORDERS

3.1 Discovery shall begin promptly, and may begin even before pleadings are completed, as set out in Rule 8 of the General Rules of Practice.

3.2 In medical malpractice cases, a discovery scheduling conference shall be scheduled upon the filing of a responsive pleading or motion as set out in Rule 26 (f1) of the Rules of Civil Procedure. The goal of the discovery scheduling conference is the entry of a discovery scheduling order by the Court. Parties may submit a signed consent order prior to the date of the discovery scheduling conference and, if the proposed order complies with established timelines set forth in Rule 5, the order will be forwarded to the Senior Resident Superior Court Judge for signature, and the conference cancelled. Any changes to a discovery scheduling order must be approved by the Court.

### 4. RULE 4: TRIAL CALENDARS

4.1 Trial Court Administration shall place cases on a trial calendar pursuant to Rule 2.3 by notifying all counsel of record and unrepresented parties in writing of a trial date and mediated settlement conference deadline. All parties shall abide by the N.C. Supreme Court's Mediated Settlement Conference Procedures in Superior Court Civil Actions <http://www.nccourts.org/Courts/CRS/Councils/DRC/MSC/Rules.asp>.

4.2 Upon receipt of the trial date, counsel may request an earlier court date pursuant to Rule 2.2(B) or request a continuance pursuant to Rule 7 for good cause.

4.3 All cases which have a trial date will be posted on the court's website at <http://www.nccourts.org/County/Durham/Calendars.asp>. This information will be updated monthly, and will include a list of cases set for trial in case-number order, and a list in trial-date order.

4.4 A final trial calendar shall be distributed by the Trial Court Administration Office to all counsel of record and unrepresented parties and the Presiding Judge at least four (4) weeks prior to the beginning of the session. Distribution of the calendar will be as follows:

- By first class mail to unrepresented parties

- By posting online at <http://www1.aoc.state.nc.us/www/calendars/Civil.jsp?county=DURHAM>
- By e-mail to all subscribers to <http://www1.aoc.state.nc.us/www/calendars/Civil.jsp?county=DURHAM>

- 4.5 Cases on the final trial calendar will be set with peremptorily-set cases and statutory-priority cases appearing first, and all other cases in case number order, oldest first and newest last, unless otherwise directed by the Senior Resident Superior Court Judge or Presiding Judge assigned to call the calendar.
- 4.6 When cases have been consolidated for trial, they will be regarded as one case for calendaring purposes, and will be listed under the oldest case number.
- 4.7 Pursuant to Rule 2(g) of the General Rules of Practice for Superior and District Courts, when a case on a calendar is settled, all attorneys of record must notify the Trial Court Administration Office in writing within twenty-four (24) hours of the settlement and advise who will prepare and present judgment or dismissal, and when. Without prior written notification, counsel and unrepresented parties shall appear in court as scheduled to inform the court of the settlement.
- 4.8 Cases not reached during a scheduled trial session shall be rescheduled by the Trial Court Administration Office to another trial date. Notification will be in writing. Counsel and unrepresented parties are encouraged to consult and to provide the Trial Court Administration Office with an agreed-upon reschedule date.
- 4.9 Cases that are announced settled and to be closed by the end of the week will be dismissed by the court if the responsible party does not file the closing documents. Cases that are announced settled and to be closed after the trial week will be placed on the next trial or administrative calendar for the court to address.

## 5. RULE 5: TIME STANDARDS

- 5.1 The North Carolina Supreme Court established time standards for the resolution of civil cases in 1996 (see <http://www1.aoc.state.nc.us/cpms/login.do>.) Absent exigent circumstances, cases should be resolved by trial, order, or settlement and dismissal within the following deadlines: 90% within 12 months of filing, 98% within 18 months, and 100% within 24 months.

## 6. RULE 6: PEREMPTORY, PRIORITY, REMANDED AND EXCEPTIONAL CASES

- 6.1. All requests for peremptory settings shall be made in writing and directed to the Trial Court Administration Office, as set out in Rule 2(f) of the General Rules of Practice. If all parties join in the request and a specific trial date is set out in the request, the Court will make a decision based on the written request. If there is disagreement among the parties as to the request or the trial date, the matter may be placed on a calendar for hearing.
- 6.2. If a peremptorily-set case is continued and the parties wish another peremptory setting, a new request must be submitted in accordance with Rule 6.1.
- 6.3. Cases entitled to priority setting by statute shall be brought to the attention of the Trial Court Administration Office in writing with copies to all counsel of record and cite the statutory authority for such setting.

- 6.4. Will caveat cases (as appeals from the Clerk of Superior Court under N.C.G.S. 1-273) will be placed on the next available calendar for the purpose of aligning parties, determining a trial setting, and hearing all other motions under Rule 16 of the North Carolina Rules of Civil Procedure. Will caveat cases are entitled by statute to a priority trial calendar setting.
- 6.5. When a case is remanded for trial from the Appellate Division, appellant's counsel shall promptly notify the Trial Court Administration Office which shall set the case for trial.
- 6.6. Requests to designate a case as exceptional or as a complex business case shall be made in accordance with Rules 2.1 and 2.2 of the General Rules of Practice. When all parties are in agreement, a request for 2.1 designation may be presented to the Senior Resident Superior Court Judge as a consent motion. When all parties are not in agreement, the request shall be made in the form of a motion and scheduled for hearing pursuant to Rule 8. In both instances, the motion should include information on the factors set out in Rule 2.1(d) of the General Rules of Practice.

## 7. RULE 7: CONTINUANCE POLICY.

- 7.1 All requests for continuances shall be submitted in writing to the Trial Court Administration Office (See Motion and Order for Continuance <http://www.nccourts.org/Forms/Documents/214.pdf>). Requests for continuance off a published calendar will be addressed by the judge assigned to preside over the session whenever possible, or the Senior Resident Superior Court Judge if the presiding judge is not available. Requests for continuance of a case off a calendar that has not yet been published will be addressed by the Trial Court Administration Office.
- 7.2 The Court would like to consider input from all parties involved. When possible, the parties should confer prior to submission of the continuance request, and the parties' positions on the continuance included. If all parties agree to the continuance request, an agreed-upon reschedule date should also be provided for the Court's consideration. Otherwise, a copy of the continuance request must be sent by facsimile transmission or hand delivery where possible, or by U.S. mail, to all opposing counsel and unrepresented parties prior to submission to Trial Court Administration. Opposing counsel and unrepresented parties shall have a period of three business days to communicate their objections in writing to the Trial Court Administration Office. Objections may be hand-delivered or sent via e-mail or facsimile transmission. Objections not raised within this time period are deemed waived.
- 7.3 Continuance requests are presumptively disfavored. However, when compelling reasons are presented which would affect the fundamental fairness of the trial process or when a continuance clearly is in the best interest of justice, a continuance may be granted.
- 7.4 The Court shall consider the following when deciding whether to grant or deny a motion for continuance:
  - The age of the case
  - The status of the trial calendar for the week
  - The order in which the case appears on the trial calendar, including whether the case is peremptorily scheduled
  - The number of previous continuances
  - The extent to which counsel had input into the scheduling of the trial date
  - The due diligence of counsel in promptly filing a motion for continuance as soon as practicable



- Whether the reason for continuance is a short-lived event which could resolve prior to the scheduled trial date
- The length of the continuance requested, if applicable
- The position of opposing counsel
- Whether the parties themselves consent to the continuance
- Present or future inconvenience or unavailability of witnesses/parties
- Any other matter that promotes the ends of justice

Reasons that shall not be considered valid bases for allowing a continuance include first time scheduling of the case for trial and whether counsel of record has received payment.

- 7.5 Continuance requests based on scheduling conflicts will be addressed in accordance with Rule 3.1 of the General Rules of Practice.
- 7.6 Cases that are continued will be set for a new trial date at the time of the continuance. Input is welcomed from counsel and unrepresented parties.
- 7.7 Ex parte requests for continuance (requests without notice to opposing counsel or unrepresented parties, or without an opportunity for opposing counsel or unrepresented parties to be heard) will not be considered by the Court.

## 8. RULE 8: CALENDARING OF MOTIONS AND NON-JURY MATTERS

- 8.1 Counsel and unrepresented parties wishing to calendar a motion must contact the Trial Court Administration Office via telephone or e-mail to secure a hearing date and set the motion on a calendar for hearing. The requesting party should provide the following:
- The case file number
  - The type of motion to be heard
  - The estimated length of time needed for the motion to be heard
  - The date and time of the motions session requested

Parties are encouraged to consult with all other parties regarding possible hearing dates prior to placing a motion on a calendar.

- 8.2 Motion hearings are scheduled for the second full week of each month, with hearings set for morning and afternoon sessions each day.
- 8.3 Time-sensitive or emergent motions may also be added to a trial calendar at the discretion of the Trial Court Administration Office based on the status of the trial calendar.
- 8.4 The party scheduling the motion must serve all other parties with a copy of the motion and the notice of hearing indicating the date, time and location of the motion hearing. The originals shall be filed with the Clerk of Court and a copy of the notice of hearing only should be forwarded to the Trial Court Administration Office.
- 8.5 Motion calendars will be posted online at <http://www1.aoc.state.nc.us/www/calendars/Civil.jsp?county=DURHAM> approximately one week prior to the start of the calendar. This is for information purposes only, and does not serve as a formal notice of hearing. When a filed motion no longer requires a hearing, the party that filed the motion shall provide notice of withdrawal or removal of the motion to the Court, in writing.

- 8.6 In order to avoid the last-minute expense of trial preparation, parties are encouraged to schedule dispositive motions thirty (30) days prior to the trial date.
- 8.7 Motions to withdraw as counsel shall be set for hearing with notice provided to the client, all parties and/or counsel of record, and shall include the client's current mailing address. Motions shall also include the scheduled trial date or a statement that no date has been set. If a consent order signed by a client is submitted, it should acknowledge an understanding by the client that allowance of the motion to withdraw will not necessarily result in a continuance of trial or other hearings. A Notice or Motion to Substitute Counsel must include the signature(s) and contact information of the attorney(s) who will be withdrawing their representation of a party and the attorney(s) who will be making an appearance. No judicial action will be taken on motions to withdraw or substitutions of counsel that do not contain this information.
- 8.8 A party seeking a temporary restraining order or preliminary injunction shall present the motion to a Judge, or shall contact the Trial Court Administration Office for assistance. The attorney is expected to make an effort to notice the other side prior to appearing before the judge in accordance with Rule 65 of the Rules of Civil Procedure. The moving party shall contact the Trial Court Administration Office for a return hearing date, include that date on the order, and provide a copy to the Office in order to ensure that the case is set on the calendar.
- 8.9 An attorney who associates with an out-of-state attorney to represent a party in a proceeding and that out-of-state attorney shall adhere to N.C.G.S. 84-4.1 and North Carolina State Bar Rules 27 N.C.A.C. 1H.0101 and 27 N.C.A.H. 1D.0903 and .0904. Copies of the North Carolina State Bar Rules and the required registration form are available at [www.ncbar.com](http://www.ncbar.com). The required fee shall accompany the motion and order.
- 8.10 Parties in a case proceeding to arbitration shall notify the Court of their intentions as soon as possible or upon receipt of the Court's Order to Mediated Settlement Conference. The notification or motion to stay should include the anticipated arbitration schedule.
- 8.11 In cases in which a motion has been heard or a bench trial held and the presiding judge takes the matter under advisement, Trial Court Administration will place the matter on an upcoming civil calendar for review by that presiding judge 30-60 days after the original hearing date.
- 8.12 Motions for continuance shall be handled as set out in Rule 7.

9. RULE 9: Minor/Structured Settlements

- 9.1 Minor/Structured Settlements should be filed with the Clerk, then scheduled through the Trial Court Administration Office.
- 9.2 All settlements will be recorded, unless instructed otherwise by the Court.
- 9.3 The Minor and his/her Guardian *ad Litem* shall be present at the minor settlement, absent prior excusal by the Court.
- 9.4 Defense counsel shall state on the record the total and complete amount of insurance coverage afforded to a Defendant in the situation in question.

9.5 To the extent potential damages exceed insurance coverage, Plaintiff's counsel shall make independent inquiry of Defendant's other assets that are reasonably available, other than insurance, and be prepared to report his or her findings to the Court.

9.6 To the extent a Minor or other settlement is to be structured, Plaintiff's counsel shall certify to the Court the present value of the settlement and the tax liability, if any, to the Minor.

#### 10. RULE 10: CALENDAR CALLS, ATTORNEY PRESENCE

10.1 The call of the Superior Court trial calendar shall be at the time and date indicated on the published calendar.

10.2 Cases will be called in the order in which they appear on the trial calendar unless counsel is instructed otherwise by the Presiding Judge or the Trial Court Administration Office.

10.3 Pursuant to Rule 2(e), General Rules of Practice for Superior and District Courts, counsel for all parties in an action, when notified to appear at pre-trial conferences, hearings on motions or at trial, must, consistent with ethical requirements, appear or have a partner, associate, or other attorney familiar with the case present. Unless an attorney has been excused in advance by the Judge before whom the matter has been scheduled, and has given prior notice to his opponent, a case will not be continued.

#### 11. RULE 11: PRE-TRIAL PROCEDURE

11.1 Pre-trial conferences may be held with or without the involvement of a Superior Court Judge. There shall be a pre-trial conference and order in every civil case called for trial unless counsel for all parties stipulate in writing to the contrary and the court approves the stipulation. See Rule 7, General Rules of Practice. The purpose of the conference is to explore settlement possibilities, define and narrow the issues for trial, and to draft a pre-trial order for submission to the court.

11.2 Some cases may benefit from a pre-trial conference conducted by a judge. Upon receipt of the trial calendar, a party may schedule a pre-trial conference by contacting the Trial Court Administration Office. Whenever possible, the conference will be set before the scheduled trial judge during the two-week period prior to the trial date.

11.3 The pre-trial order shall substantially conform with Rule 7 of the General Rules of Practice for the Superior and District Courts.

11.4 The Trial Court Administration Office shall schedule a pre-trial discovery conference in all medical malpractice cases when all responsive pleadings have been filed or the time for pleadings has expired. The Trial Court Administration Office may also schedule other cases for a pre-trial conference when they are deemed complex or it appears they might benefit from a judicial review or pre-trial conference.

#### 12. RULE 12: JUDICIAL REVIEW OF CASE STATUS

12.1 Trial Court Administration may set cases for judicial review or status update at an administrative session. .

12.2 Cases involving, but not limited to, the following matters shall be eligible for judicial review and possible action at an administrative session of court:

- Individuals in bankruptcy or cases removed to the U.S. District Court;
- Lack of service and expired summons;
- Failure to file answers or replies to complaints, crossclaims, or counterclaims, and the time to do so has expired;
- Binding or non-binding arbitration;
- Periodic settlement payments;
- Exceptional or complex business status designation;
- Medical malpractice claims but no current discovery scheduling order;
- Previous announcements of settlement but no closing documents have been filed;
- Appeals and cases remanded to the trial court.

12.3 Failure to appear or provide the Court with a written status report that addresses the outstanding issues may result in a dismissal for failure to prosecute or any other disposition allowed by law at the call of the calendar.

### 13 RULE 13. ALTERNATE DISPUTE RESOLUTION

13.1 In accordance with G.S. 38.1, all civil cases shall be ordered to participate in mediated settlement conferences unless otherwise exempted by the Supreme Court Rules Implementing Statewide Mediated Settlement Conferences in Superior Court Civil Actions. Upon a party's motion and a showing of good cause, the judge may exempt a case from a mediated settlement conference.

13.2 Parties may file a motion requesting that the Senior Resident Superior Court Judge authorize the use of some other settlement procedure as set out in Rule 1.C.(2) of the Mediated Settlement Conference Rules cited above.

### 14. RULE. 14: OUT OF STATE SUBPOENA

14.1 This procedure for the issuance of non-North Carolina action subpoenas is established pursuant to Rule 28(d)(1) and Rule 45 of the Rules of Civil Procedure.

14.2 The party seeking the subpoena shall deliver to the Office of the Clerk of Superior Court the following items:

- A. A petition or request for issuance of a subpoena to be used outside the state of North Carolina, signed by the requesting attorney.
- B. A copy of the signed Commission, Order, Notice, Consent, or other authority under which the deposition is to be taken or documents produced.
- C. Order appointing Commissioner to collect before the deposition a sufficient sum of money to cover all costs and charges incident to the taking of the deposition, including such witness fees as are allowed to witnesses in the State for attendance in court. The Order shall be signed by a Resident Superior Court Judge.
- D. A completed North Carolina subpoena form AOC-G-100 (<http://www.nccourts.org/Forms/Documents/556.pdf>), leaving blank the file number, date and signature lines for the Clerk and Resident Judge to complete.

- E. If documents or testimony covered under HIPPA are being subpoenaed, prepare a separate Order addressing the HIPPA regulations and include it for the Resident Judge's signature.
- F. If the out-of-state attorney intends to make an appearance in North Carolina in connection with this case and is not licensed in North Carolina, a Motion and Order to Admit Counsel *Pro Hac Vice* must be filed; see Rule 8.9.

14.3 The following will be needed to complete the process:

- A. A check made payable to Durham County Clerk of Superior Court in the amount of \$110.00. If requesting Attorney is not licensed in North Carolina, the above check must include an additional \$225.00.
- B. If requesting Durham County Sheriff's Office to serve the subpoena, a check made payable to the Sheriff in the amount of \$50.00 (for each subpoena issued). If other type service is requested, indicate how.
- C. Include a large, self-addressed, postage-paid envelope for return of all filings.

14.4 The original set remains in the Clerk's Office and is placed in the court file. One set will be returned in the self-addressed stamped envelope, and one set will be served on each person for whom a subpoena is issued. If service is to be completed by the Sheriff, an additional copy of the subpoena should be given to the Clerk.

## 15. RULE. 15: SANCTIONS

15.1 Failure to comply with any section of these Rules may subject an action to dismissal or other actions allowed by law and deemed appropriate at the discretion of the Presiding Judge.