

NORTH CAROLINA
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SUPREME COURT OF NORTH CAROLINA

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GENERAL RULES OF PRACTICE
FOR THE SUPERIOR AND DISTRICT COURTS
SUPPLEMENTAL TO THE RULES OF CIVIL PROCEDURE
ADOPTED PURSUANT TO G.S. 7A-34

1. *Philosophy of General Rules of Practice.*

These rules are applicable in the Superior and District Court Divisions of the General Court of Justice. They 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 them.

2. *Calendaring of Civil Cases.*

Subject to the provisions of Rule 40(a), Rules of Civil Procedure, and G.S. 7A-146:

(a) A ready calendar shall be maintained by the Clerk of the Superior Court. Five months after a complaint is filed the clerk shall place that case on the ready calendar, unless the time is extended by written order by a resident or presiding judge or any district court judge in his respective jurisdiction.

(b) The clerk, who shall act as chairman, plus two or more attorneys selected by members of the local bar, shall be the calendar committee. Acting under the direction of the senior presiding superior court judge (or the Chief District Court Judge in district court matters), the calendar committee shall prepare a tentative trial calendar from the ready calendar. The tentative trial calendar shall be mailed to each attorney of record and to each presiding judge and resident judge four weeks before the first day of court. If, at the tentative calendar meeting of the local bar, the attorneys and the clerk cannot agree on the cases to be calendared for trial, the presiding judge, or his designate as calendar judge, shall settle the conflict.

(c) A final trial calendar, prepared by the above committee, shall be mailed to each attorney of record and to each presiding judge no later than two weeks prior to the first day of court.

(d) When an attorney desires a case placed on the ready calendar earlier than five months after complaint is filed, he shall file a certificate of readiness with the clerk, with copy to opposing counsel. The clerk shall immediately place said case on the ready calendar. (A suggested form for a certificate of readiness is attached.)

(e) Insofar as possible, requests for a peremptory setting

should be made to the presiding judge at the first civil session after January 1 and July 1. No case shall be peremptorily set by request unless a certificate of readiness is on file. A peremptory setting shall be had only for good and compelling reasons and shall be ordered by the presiding judge, or Chief District Court Judge. A resident judge, on his own motion, may set a case peremptorily. When two or more civil sessions are being held simultaneously the senior civil presiding judge shall have control over peremptory settings.

(f) On the final trial calendar, cases shall be set in the order in which they were filed.

(g) At the first civil session in January and July the senior presiding judge of the superior court, or the Chief District Judge of the District Court, shall each review all cases on the ready calendar of his court and shall make appropriate disposition and orders in each; to insure full use of court time, he shall confer regularly with the chairman of the calendar committee.

(h) When a case on the published calendar is settled, the clerk must be notified of the settlement within twenty-four hours thereafter. Attorneys for each party shall have the duty to provide such notice. The notice to the clerk shall state who will present the judgment, and when.

3. *Continuances.*

An application for a continuance shall be made to the presiding judge of the court in which the case is calendared.

When an attorney has conflicting engagements in different courts, priority shall be as follows: Appellate Courts, Federal Court, Superior Court, District Court, Magistrate's Court.

At mixed sessions, criminal cases in which the defendant is in jail shall have absolute priority.

4. *Enlargement of Time.*

The judge or clerk of the court in which the action is pending may by order extend the time for filing answer.

When counsel, by consent under Rule 6 (b), agree upon an enlargement of time, the agreement shall be reduced to writing and filed with the clerk.

5. *Form of Pleadings.*

If feasible, each paper presented to the court for filing shall be flat and unfolded, without manuscript cover, and firmly bound.

6. *Motions in Civil Actions.*

All motions, written or oral, shall state the rule number or numbers under which the movant is proceeding. (See Rule 7 of Rules of Civil Procedure.)

Motions may be heard and determined either at the pre-trial conference or on motion calendar as directed by the presiding judge.

Every motion shall be signed by at least one attorney of record in his individual name. He shall state his office address and telephone number immediately following his signature. The signature of an attorney constitutes a certificate by him that he has read the motion; that to the best of his knowledge, information and belief, there are good grounds to support it; and that the motion is not interposed for delay. (See Rule 7 (b) (2); also Rule 11).

7. *Pre-Trial Procedure.* (See Rule 16)

There shall be a pre-trial conference in every civil case, unless counsel for all parties stipulate in writing to the contrary and the court approves the stipulation. Upon its own motion or upon request of any party, the court may dispense with or limit the scope of the pre-trial conference or order.

In uncontested divorce, default, and magistrate cases and magistrate appeals, a pre-trial conference or order is not required.

A party who has not requested a pre-trial conference may not move for a continuance on the ground that it has not been held.

At least twenty-one days prior to trial date, the plaintiff's attorney shall arrange a pre-trial conference with the defendant's attorney to be held not later than seven days before trial date. At such conference a pre-trial order shall be prepared and signed by the attorneys.

If, after due diligence, plaintiff's attorney cannot arrange a conference with defendant's attorney, he may apply to the presiding judge or other judge holding court in the district (or district court judge with respect to district court cases) who shall make an appropriate order. The defense attorney may initiate pre-trial under the same rules applicable to plaintiff's attorney.

The pre-trial order shall be in substance as shown on the attached sample form.

8. *Discovery.*

All desired discovery shall be completed within 120 days of the date of the last required pleading. For good cause shown, a judge having jurisdiction may enlarge the period of discovery.

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

9. *Opening Statements.*

At any time before the presentation of evidence counsel for

each party may make an opening statement setting forth the grounds for his claim or defense.

The parties may elect to waive opening statements.

Opening statements shall be subject to such time and scope limitations as may be imposed by the court.

10. *Opening and Concluding Arguments.*

In all cases, civil or criminal, if no evidence is introduced by the defendant, the right to open and close the argument to the jury shall belong to him. If a question arises as to whether the plaintiff or the defendant has the final argument to the jury, the court shall decide who is so entitled, and its decision shall be final.

In a criminal case, where there are multiple defendants, if any defendant introduces evidence the closing argument shall belong to the solicitor.

In a civil case, where there are multiple defendants, if any defendant introduces evidence, the closing argument shall belong to the plaintiff, unless the trial judge shall order otherwise.

11. *Examination of Witnesses.*

When several counsel are employed by the same party, the examination or cross-examination of each witness for such party shall be conducted by one counsel, but the counsel may change with each successive witness or, with leave of the court, in a prolonged examination of a single witness.

12. *Courtroom Decorum.*

Except for some unusual reason connected with the business of the court, attorneys will not be sent for when their cases are called in their regular order.

Counsel are at all times to conduct themselves with dignity and propriety. All statements and communications to the court other than objections and exceptions shall be clearly and audibly made from a standing position behind the counsel table. Counsel shall not approach the bench except upon the permission or request of the court.

The examination of witnesses and jurors shall be conducted from a sitting position behind the counsel table except as otherwise permitted by the court [see *S. vs. Bass*, 5 N.C. App. 429, 431 (1969)]. Counsel shall not approach the witness except for the purpose of presenting, inquiring about, or examining the witness with respect to an exhibit, document, or diagram.

Any directions or instructions to the court reporter are to be made in open court by the presiding judge only, and not by an attorney.

Business attire shall be appropriate dress for counsel while in the courtroom.

All personalities between counsel should be avoided. The personal history or peculiarities of counsel on the opposing side should not be alluded to. Colloquies between counsel should be avoided.

Adverse witnesses and suitors should be treated with fairness and due consideration. Abusive language or offensive personal references are prohibited.

The conduct of the lawyers before the court and with other lawyers should be characterized by candor and fairness. Counsel shall not knowingly misinterpret the contents of a paper, the testimony of a witness, the language or argument of opposite counsel or the language of a decision or other authority; nor shall he offer evidence which he knows to be inadmissible. In an argument addressed to the court, remarks or statements should not be interjected to influence the jury or spectators. (See Rule 22, Canons of Ethics and Rules of Professional Conduct, N. C. State Bar, G.S. 4A p. 273.)

Suggestions of counsel looking to the comfort or convenience of jurors should be made to the court out of the jury's hearing. Before, and during trial, a lawyer should attempt to avoid communicating with jurors, even as to matters foreign to the cause.

Counsel should yield gracefully to rulings of the court and avoid detrimental remarks both in court and out. He should at all times promote respect for the court. (See Rule 1, Canons of Ethics and Rules of Professional Conduct, N. C. State Bar, G.S. 4A p. 269.)

13. *Presence of Counsel During Jury Deliberation.*

The right to be present during the trial of civil cases shall be deemed to be waived by a party or his counsel by voluntary absence from the courtroom at a time when it is known that proceedings are being conducted, or are about to be conducted. In such event the proceedings, including the giving of additional instructions to the jury after they have once retired, or receiving the verdict, may go forward without waiting for the arrival or return of counsel or a party.

After the jury has retired to deliberate upon a verdict in a criminal case, at least one attorney representing the defendant shall remain in the immediate area of the courtroom so as to be available at all times during the deliberation of the jury and when the verdict is received.

14. *Custody and Disposition of Evidence at Trial.*

Once any item of evidence has been introduced, the clerk (not the court reporter) is the official custodian thereof and is responsible for its safekeeping and availability for use as needed at all adjourned sessions of the court and for appeal.

After being marked for identification, all exhibits offered or ad-

mitted in evidence in any cause shall be placed in the custody of the clerk, unless otherwise ordered by the court.

Whenever any models, diagrams, exhibits, or materials have been offered into evidence and received by the clerk, they shall be removed by the party offering them, except as otherwise directed by the court, within 30 days after final judgment in the trial court if no appeal is taken; if the case is appealed, within 60 days after certification of a final decision from the appellate division. At the time of removal a detailed receipt shall be given to the clerk and filed in the case file.

If the party offering an exhibit which has been placed in the custody of the clerk fails to remove such article as provided herein, the clerk shall write the attorney of record (or the party offering the evidence if he has no counsel) calling attention to the provisions of this rule. If the articles are not removed within 30 days after the mailing of such notice, they may be disposed of by the clerk.

15. *Photographs and Reproduction of Court Proceedings.*

The taking of photographs in the courtroom, or in the corridors immediately adjacent thereto, during the progress of judicial proceedings, or during any recess thereof, is prohibited. The transmission or recording of such proceedings for broadcast by radio or television is likewise prohibited.

Nonjudicial ceremonies such as administering oaths of office, presentation of portraits, and similar ceremonial occasions, may be photographed in or broadcast from the courtroom under the supervision of the court.

16. *Withdrawal of Appearance.*

No attorney who has entered an appearance in any civil action shall withdraw his appearance, or have it stricken from the record, except on order of the court. Once a client has employed an attorney who has entered a formal appearance, the attorney may not withdraw or abandon the case without (1) justifiable cause, (2) reasonable notice to the client, and (3) the permission of the court. (See *Smith vs. Bryant*, 264 N.C. 208. See also Rule 43 of Rules of the N. C. State Bar, Volume 4A of General Statutes of North Carolina, page 278, entitled "Withdrawal from employment as attorney or counsel.")

17. *Entries on Records.*

No entry shall be made on the records of the Superior or District Court by any person except the clerk, his regular deputy, a person specifically directed by the presiding judge, or the judge himself.

18. *Custody of Appellate Reports.*

The clerks of the Superior Court shall be officially responsible for the care and preservation of the volumes of the Appellate Division Reports furnished by the State pursuant to G.S. 147-45, and for the

General Statutes of North Carolina furnished by the Administrative Office of the Courts under G.S. 7A-300(9).

Each clerk of the Superior Court shall report to the presiding judge of the Superior Court at the first session of court held in January and July each year what volumes, if any, of said reports are missing or have been lost since the last report to the end that the judge may enter an appropriate order for replacement of same pursuant to G.S. 147-51.

19. *Recordari; Supersedeas; Certiorari.*

The Superior Court shall grant the writ of recordari only upon petition specifying the grounds of the application. The petition shall be verified and the writ may be granted with or without notice. When notice is given the petition shall be heard upon answer thereto duly verified and upon the affidavits and other evidence offered by the parties. The decision thereupon shall be final, subject to appeal as in other cases. If the petition is granted without notice, the petitioner shall give an undertaking for costs and for the writ of supersedeas, if prayed for. In such case the writ of recordari shall be made returnable to the session of the Superior Court of the county in which the judgment or proceeding complained of was granted, and ten days' written notice shall be given to the adverse party before the session of the court to which the writ is returnable. At that session the respondent may move to dismiss, or may answer the writ, and the answer shall be verified. After hearing the application upon the petition, answer, affidavits, and evidence offered, the court shall dismiss it or order it placed on the trial docket.

In proper cases and in like manner, the court may grant the writ of certiorari. When a diminution of the record is suggested and the record is manifestly imperfect, the court may grant the writ upon motion in the cause.

20. *Sureties.*

No member of the bar, in any case, suit, action or proceeding in which he appears as counsel, and no employee of the General Court of Justice, employee of the Sheriff's Department, or other law enforcement officer, shall act as a surety in any suit, action or proceeding pending in any division of the General Court of Justice.

These rules supersede all rules of practice in the Superior Court as contained in Volume 4A, pp. 201-206 of the General Statutes of North Carolina and rules of the conference of Superior Court Judges.

FILE #:.....

FILM #:.....

PLAINTIFF

- v -

CERTIFICATE OF READINESS

DEFENDANT

As counsel of record for.....(name the party you represent), who is a plaintiff, defendant, third party, (underline one) I hereby certify that:

- A. I know of no procedural matters which would delay the trial of the case when called for jury trial;
- B. All motions existing of record this date have been heard or otherwise disposed of;
- C. I know of no parties or witnesses desired that will not be available on the trial date;
- D. I know of no current reason that would cause me to move for a continuance;
- E. I am ready for trial.

This the..... day of.....

.....
Attorney

IN THE GENERAL COURT OF JUSTICE

.....COURT DIVISION

Plaintiff(s))
)
- v -)
)
Defendant(s))

FILE #:

FILM #:.....

ORDER ON FINAL PRE-TRIAL CONFERENCE

Pursuant to the provisions of Rule 16 of the State Rules of Civil Procedure, and Rule 7, General Rules of Practice, a final pre-trial conference was held in the above-entitled cause on the..... day of....., 19....., Esquire, appeared as counsel for the plaintiff(s);, Esquire, appeared as counsel for the defendant(s).

(1) It is stipulated that all parties are properly before the court, and that the court has jurisdiction of the parties and of the subject matter.

Note: If the facts are otherwise they should be accurately stated.

(2) It is stipulated that all parties have been correctly designated, and there is no question as to misjoinder or nonjoinder of parties.

Note: If the facts are otherwise, they should be accurately stated.

(3) If any of the parties is appearing in a representative capacity, it should be set out whether there is any question concerning the validity of the appointment of the representatives. Letters or orders of appointment should be included as exhibits.

(4) Any third-party defendant(s) or cross-claimant(s) should follow the same procedure as set out in paragraphs (4) and (5) for plaintiff(s) and defendant(s).

(5) In addition to the other stipulations contained herein, the

parties hereto stipulate and agree with respect to the following undisputed facts:

(a)

(b)

Note: Here set out all facts not in genuine dispute.*

(6) The following is a list of all known exhibits the plaintiff(s) may offer at the trial:

(a)

(b)

Note: Here list the pre-trial identification numbers and a brief description of each exhibit.

(7) It is stipulated and agreed that opposing counsel has been furnished a copy of each exhibit identified by the plaintiff(s), except:

*IN CONTRACT CASES, the parties may stipulate upon, or state their contentions with respect to, where applicable (a) whether the contract relied on was oral or in writing; (b) the date thereof and the parties thereto; (c) the substance of the contract, if oral; (d) the terms of the contract which are relied upon and the portions in controversy; (e) any collateral oral agreement, if claimed, and the terms thereof; (f) any specific breach of contract claimed; (g) any misrepresentation of fact claimed; (h) if modification of the contract or waiver of covenant is claimed, what modification or waiver, and how accomplished, and (i) an itemized statement of damages claimed to have resulted from any alleged breach, the source of such information, how computed, and any books or records available to sustain such damage claimed.

IN MOTOR VEHICLE NEGLIGENCE CASES, the parties may stipulate upon, or state their contentions with respect to, where applicable (a) the owner, type and make of each vehicle involved; (b) the agency of each driver; (c) the place and time of accident, conditions of weather, and whether daylight or dark; (d) nature of terrain as to level, uphill or downhill; (e) traffic signs, signals and controls, if any, and by what authority placed; (f) any claimed obstruction of view; (g) presence of other vehicles, where significant; (h) a detailed list of acts of negligence or contributory negligence claimed; (i) specific statutes, ordinances, rules, or regulations alleged to have been violated, and upon which each of the parties will rely at the trial to establish negligence or contributory negligence; (j) a detailed list of nonpermanent personal injuries claimed, including the nature and extent thereof; (k) a detailed list of permanent personal injuries claimed, including nature and extent thereof; (l) the age of any party alleged to have been injured; (m) the life and work expectancy of any party seeking to recover for permanent injury; (n) an itemized statement of all special damages, such as medical, hospital, nursing, etc., with the amount and to whom paid; (o) if loss of earnings is claimed; (p) a detailed list of any property damages, and (q) in death cases, the decedent's date of birth, marital status, employment for five years before date of death, work expectancy, reasonable probability of promotion, rate of earnings for five years before date of death, life expectancy under mortuary table, and general physical condition immediately prior to date of death.

IN THE EVENT THIS CASE DOES NOT FALL WITHIN ANY OF THE CATEGORIES ENUMERATED ABOVE, OR ANY OF THE CATEGORIES SUGGESTED BY THIS FORM, COUNSEL SHOULD, NEVERTHELESS, SET FORTH THEIR POSITIONS WITH AS MUCH DETAIL AS POSSIBLE.

Note: Here set out stipulations with respect to (a) the exhibits that have been furnished opposing counsel, (b) the arrangements made for the inspection of exhibits of the character which prohibits or makes impractical their reproduction, and (c) any waiver of the requirement to furnish opposing counsel with a copy of exhibits.

(8) It is stipulated and agreed that each of the exhibits identified by the plaintiff(s) is genuine and, if relevant and material, may be received in evidence without further identification or proof, except:

Note: Here set out with particularity the basis of objection to specific exhibits.

It is permissible to generally reserve the right to object at the trial on grounds of relevancy and materiality.

(9) The following is a list of all known exhibits the defendant(s) may offer at the trial:

(a)

(b)

Note: Here list the pre-trial identification numbers and a brief description of each exhibit.

(10) It is stipulated and agreed that opposing counsel has been furnished a copy of each exhibit identified by the defendant(s), except:

Note: Here set out stipulations with respect to (a) the exhibits that have been furnished opposing counsel, (b) the arrangements made for the inspection of exhibits of the character which prohibits or makes impractical their reproduction, and (c) any waiver of the requirement to furnish opposing counsel with a copy of exhibits.

(11) It is stipulated and agreed that each of the exhibits identified by the defendant(s) is genuine, and, if relevant and material, may be received in evidence without further identification or proof, except:

Note: Here set out with particularity the basis of objection to specific exhibits. It is permissible to generally reserve the right to object at the trial on grounds of relevancy and materiality.

(12) Any third-party defendant(s) and cross-claimant(s) should follow the same procedure with respect to exhibits as required of plaintiff(s) and defendant(s).

Note: Attention is called to the provisions of the pre-trial rule with respect to the obligation to immediately notify opposing counsel if additional exhibits are discovered after the preparation of this order.

(13) The following is a list of the names and addresses of all known witnesses the plaintiff(s) may offer at the trial:

Note: If either plaintiff's or defendant's attorney discovers additional witnesses after this listing, attention is called to obligation to notify opposing counsel. There shall be no requirement that all witnesses listed by a party be used, and the court may after satisfactory explanation, in his discretion, permit the use of a witness not listed.

The trial judge may, for good cause made known to him, relieve a party of the requirement of disclosing the name of any witness.

(14) The following is a list of the names and addresses of all known witnesses the defendant(s) may offer at the trial:

(15) Any third-party defendant(s) and cross-claimant(s) should follow the same procedure with respect to witnesses as above outlined for plaintiff(s) and defendant(s). Counsel shall immediately notify opposing counsel if the names of additional witnesses are discovered after the preparation of this order.

(16) There are no pending motions, and neither party desires further amendments to the pleadings, except:

Note: Here state facts regarding pending or impending motion. If any motions are contemplated, such as motion for the physical examination of a party, motion to take the deposition of a witness for use as evidence, etc., such motions should be filed in advance of the final pre-trial conference so that they may be ruled upon, and the rulings stated in the final pre-trial order. The same procedure should be followed with respect to any desired amendments to pleadings.

(17) Additional consideration has been given to a separation of the triable issues, and counsel for all parties are of the opinion that a separation of issues in this particular case would (would not) be feasible.

(18) The plaintiff(s) contends (contend) that the contested issues to be tried by the court (jury) are as follows:

(19) The defendant(s) contends (contend) that the contested issues to be tried by the court (jury) are as follows:

(20) Any third-party defendant(s) and cross-claimant(s) contends (contend) that the contested issues to be tried by the court (jury) are as follows:

Note: In all instances possible, the parties should agree upon the triable issues and include them in this order in the form of a stipulation, in lieu of the three preceding paragraphs.

(21) Counsel for the parties announced that all witnesses are available and the case is in all respects ready for trial. The probable length of the trial is estimated to be.....days.

(22) Counsel for the parties represent to the court that, in advance of the preparation of this order, there was a full and frank discussion of settlement possibilities. Counsel for the plaintiff will immediately notify the clerk in the event of material change in settlement prospects.

Note: Counsel shall be required to conduct a frank discussion concerning settlement possibilities at the time of the conference of attorneys, and clients shall either be consulted in advance of the conference concerning settlement figures or be available for consultation at the time of the conference. The court will make inquiry at the time of trial as to whether this requirement was strictly observed.

.....
Counsel for Plaintiff(s)

.....
Counsel for Defendant(s)

Date:..... Approved and Ordered Filed.

.....
Judge Presiding

I certify that the foregoing General Rules for the Superior and District Courts, supplemental to the Rules of Civil Procedure, were adopted by the Supreme Court of North Carolina in conference on 14 May 1970, These General Rules shall be effective on and after 1 July 1970.

HUSKINS, J.
For the Court