

## **DUTIES OF THE SENIOR RESIDENT SUPERIOR COURT JUDGE**

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### *Selection of the senior resident superior court judge*

GS 7A-41.1(b) provides that generally the senior resident superior court judge is the regular resident superior court judge in the district with the most continuous service as a regular resident superior court judge. If two judges in the district have equal seniority, the oldest is the senior resident.

There is one exception to the senior resident being chosen based on seniority. The chief justice chooses the senior resident for a judicial district which consists of a single county, has a set of districts within the district, and is a county “specified in law as the sole proper venue for certain actions.” Superior Court District 10, Wake County, is the only district which meets that definition. For that district, the chief justice chooses the senior resident who serves at the pleasure of the chief.

### *Duties assigned by the North Carolina Constitution*

Appointment to fill vacancy in clerk’s office [Art. IV, § 10] — If the office of clerk of court becomes vacant the senior resident appoints someone to fill the position until the next regular election. Also see GS 7A-100.

Appointment of magistrates [Art. IV, § 10] — The senior resident appoints magistrates from nominations submitted by the clerk of court. Also see GS 7A-171.

Removal of clerk [Art. IV, § 17(4)] — The senior resident may remove a clerk of court for misconduct or mental or physical incapacity. Also see GS 7A-105.

### *Duties assigned by the General Statutes*

Three-judge panel for redistricting cases [GS 1-267.1(b)] — Any lawsuit challenging a legislative or congressional redistricting plan is to be filed in Wake County and served on the senior resident. The senior resident for Wake County is to notify the chief justice of the lawsuit and is to chair the three-judge panel to hear the case unless disqualified or otherwise unable to serve.

Scheduling medical malpractice cases [GS 1A-1, Rules 3(b) and 16(b)] — The senior resident receives an index of medical malpractice actions from the clerk of court and also reviews the

parties' scheduling consent order for a medical malpractice case and approves it or calendars the case for trial.

Motions heard in another county [GS 1A-1, Rule 7] — A motion in a civil case may be heard in another county in the district with the approval of the senior resident or another person designated by the senior resident.

Rules on calendaring civil cases [GS 1A-1, Rule 40] — The senior resident may provide by rule for calendaring of civil actions for trial in the district.

Nonbinding arbitration program [GS 7A-37.1(d)] — The senior resident, with the director of the Administrative Office of the Courts, may approve the establishment of a program of nonbinding arbitration for civil actions involving claims of not more than \$15,000. The senior resident also may recommend termination of the program if it has not met objectives. Also see Rules for Court-Ordered Arbitration in North Carolina.

Mediated settlement conferences [GS 7A-38.1(e), (h) and (i)] — The senior resident may order a mediated settlement conference for any pending civil action in the district, or may order by local rule that all cases not otherwise exempted must go to mediated settlement conference. The senior resident appoints the mediator if the parties fail to agree. With the consent of the parties, the senior resident may order the parties to participate in other authorized settlement procedures. Also see Rules Implementing Statewide Mediated Settlement Conferences in Superior Court Civil Actions.

Mediation of farm nuisance disputes [GS 7A-38.3(d)] — The senior resident appoints the mediator in a farm nuisance dispute when the parties cannot agree. Also see Rules of the North Carolina Supreme Court Implementing the Prelitigation Farm Nuisance Mediation Program.

Prelitigation mediation of insurance claims [GS 7A-38.3A] — Although the statute on prelitigation mediation of insurance claims does not mention the senior resident, the statute says that the procedures are the same as provided in GS 7A-38.1 dealing generally with mediated settlement conferences. If the same procedure applies, the senior resident appoints the mediator when the parties cannot agree.

Mediation of public records disputes [GS 7A-38.3E(c)] — The senior resident appoints the mediator in a public records dispute under GS Chapter 132 when the parties cannot agree.

All resident judge duties not related to a case [GS 7A-41.1c)] — The senior resident has all authority and power in the district, including appointment to and removal from office, which is given by the constitution or statute to the resident judge and which does not relate to a case, controversy or judicial proceeding and does not involve the exercise of judicial power.

Additional seats of court in certain counties [GS 7A-42(a1)] — The senior resident judge for Davidson and Iredell counties may authorize sessions of superior court in Thomasville and Mooresville, respectively, after consultation with the chief district judge.

Trials outside county seat [GS 7A-42(i)] — Under exigent circumstances the senior resident, with approval of the AOC and after consultation with the clerk of court and county officials, may order sessions of court conducted at a location outside the county seat.

Appointment of judicial secretary; application for additional assistance [GS 7A-44.1] — The senior resident may appoint a judicial secretary to serve at the senior resident's pleasure. The senior resident also may apply to the AOC to enter contracts with local governments to provide additional judicial secretaries for assistance in the speedy disposition of cases involving drug offenses, domestic violence or other offenses involving a threat to public safety.

Setting criminal trial date [GS 7A-49.4(c)] — When a criminal case has not been scheduled for trial within 120 days of indictment, the senior resident or a judge designated by the senior resident, upon motion of the defendant, may hold a hearing to set a trial date.

Removal of district attorney [GS 7A-66] — The senior resident reviews charges made for removal of a district attorney, or assigns the matter to another judge, and decides whether to suspend the DA pending a hearing or to dismiss the proceeding. The same judge presides over the removal hearing and decides whether to remove the DA.

Request for recording equipment and appointment of court reporters [GS 7A-95(a), (e)] — Electronic recording devices are to be provided by the AOC upon request of the senior resident when court reporters are not available. The senior resident appoints court reporters and sets compensation within the limits set by the AOC.

Appointment of clerk to fill vacancy [GS 7A-100(a)] — If the clerk's office becomes vacant the senior resident appoints a replacement to fill the office until an election can be held.

Application for additional clerical assistance [GS 7A-102(f)] — If the clerk has requested additional assistants and deputies to be paid from local funds, the AOC will provide the assistance only upon a showing by the senior resident that it is needed for the speedy disposition of cases involving drug offenses, domestic violence or other offenses involving a threat to public safety.

Removal of clerk [GS 7A-105] — The senior resident reviews charges made for removal of the clerk of court, decides whether to suspend the clerk pending a hearing, and conducts the hearing to decide whether to remove the clerk. If the clerk is suspended, the senior resident appoints a temporary replacement.

Determine custody of records [GS 7A-106(a)] — The senior resident may designate the person to whom an outgoing clerk is to turn over records.

Appointment of magistrates [GS 7A-171(b), (c) and (d)] — The senior resident appoints magistrates from names submitted by the clerk of court, and fills vacancies in the same manner.

Removal of magistrate [GS 7A-173(a), (c)] — The senior resident or any other superior court judge holding court in the district may remove a magistrate from office after conducting a hearing.

Allow district court hearing to revoke probation of drug treatment court or therapeutic court probationer [GS 7A-271(f)] — If the chief district judge and senior resident agree, the district court may conduct the hearing to revoke the probation of a probationer who has been ordered to participate in a drug treatment court or therapeutic court program by the superior court and has been placed under district court supervision pursuant to GS 7A-272(e).

District court supervision of drug treatment court probationer [GS 7A-272(e)] — With the consent of the chief district judge and senior resident the district court may supervise the probation of a defendant ordered by superior court to participate in a drug treatment court or therapeutic court program.

Assignment of duties to trial court administrator [GS 7A-356] — The senior resident, or another judge designated by the senior resident, may assign additional duties to the trial court administrator.

Consult with Commission on Indigent Defense Services [GS 7A-498.5(e)] — The Commission on Indigent Defense Services is to solicit comments from the senior resident, among others, in determining the best method to provide indigent defense services in a judicial district.

Appointment and removal of public defender [GS 7A-498.7(b) and (h)] — In districts in which a public defender's office is established, the senior resident appoints the public defender from nominations voted upon by the district bar. The statute also says the public defender may be suspended and removed for the same reasons and in the same manner as the district attorney, thus the senior resident may suspend the public defender and conduct the hearing on whether to remove the defender from office.

Advice on sentencing services [GS 7A-772, -774 and -775] — An agency applying for a grant to provide local sentencing services is to submit an annual plan to the senior resident for advice and endorsement.

Appointment of drug treatment court management committee [GS 7A-796] — In each district in which a drug treatment court is established the senior resident, with concurrence of the chief district judge and district attorney, is to appoint a drug treatment court management committee with representatives from the categories listed in the statute.

Appointment of jury commissioner [GS 9-1] — The senior resident appoints one of the three members of the county jury commission.

Requirement of annual jury list [GS 9-2(a)] — The senior resident may require the jury commission to prepare an annual list of prospective jurors rather than a biennial list.

Specification of number of jurors to be called [GS 9-5] — The senior resident specifies the number of jurors to be drawn for each week of court. The senior resident also may authorize the pooling of jurors among concurrent sessions of superior and district court. When pooling is used the senior resident, after consulting with the chief district judge, specifies the number of jurors to be drawn.

Disclosure of names of witnesses to execution [GS 15-190] — The senior resident of Wake County may order the disclosure of otherwise confidential identifying information of individuals who carry out or witness an execution, if necessary to a proper administration of justice.

Petition for relief from collateral consequences [GS 15A-173.2] — A petition for relief from collateral consequences of a conviction is heard by the senior resident if the convictions were in superior court. The senior resident may delegate this authority to another judge, a clerk or magistrate.

Equipment for transmission of search warrant testimony [GS 15A-245(a)(3)] — Before audio or video transmission equipment may be used by a law enforcement officer to provide testimony for the issuance of a search warrant the procedures and type of equipment are to be submitted to the AOC by the senior resident and chief district judge.

Equipment for transmission of arrest warrant testimony [GS 15A-304(d)(3)] — Before audio or video transmission equipment may be used by a law enforcement officer to provide testimony for the issuance of an arrest warrant the procedures and type of equipment are to be submitted to the AOC by the senior resident and chief district judge.

Equipment for transmission of initial appearance [GS 15A-511(a1)] — Before audio or video transmission equipment may be used for an initial appearance in a noncapital case the procedures and type of equipment are to be submitted to the AOC by the senior resident and chief district judge.

Request to use video for pretrial release proceeding [GS 15A-532(c)] — Before pretrial release proceedings may be conducted by audio and video transmission, the senior resident must submit the type of equipment to be used to the AOC for approval.

Issuance of policies on pretrial release [GS15A-535] — The senior resident, in consultation with the chief district judge, is to issue pretrial release policies. The senior resident may include a requirement that the reasons be recorded for requiring a secured bond.

Equipment for transmission of first appearance [GS 15A-601(a2)] — Before audio or video transmission equipment may be used for a first appearance in a noncapital case the procedures and type of equipment are to be submitted to the AOC by the senior resident and chief district judge.

Impaneling second grand jury; reduce term to six months [GS 15A-622(b)] — The senior resident may impanel a second grand jury. The senior resident also may reduce grand jury service from twelve months to six if the service is placing a disproportionate burden on grand jurors.

Equipment for transmission of arraignment [GS 15A-941(c)] — Before audio or video transmission equipment may be used for an arraignment in a noncapital case the procedures and type of equipment are to be submitted to the AOC by the senior resident.

List of defendants incapable of proceeding [GS 15A-1005] — Semiannually the clerk of court is to provide to the senior resident a list of defendants who have been determined incapable of proceeding.

Motion for presentence investigation [GS 15A-1332(b)] — A defendant whose case has not yet been calendared may request the senior resident to order a presentence investigation.

Juvenile sentenced to life without parole [GS 15A-1340.19C] — A motion for appropriate relief filed by a juvenile who was sentenced to life without parole is to be referred to the senior resident to assign to the appropriate judge. If the sentencing judge is not available, the senior resident may assign the motion to another judge.

Plan for reporting disposition of cases [GS 15A-1383] — The senior resident is to send to the director of the State Bureau of Investigation any order modifying the district's plans for reporting the disposition of criminal cases. The senior resident may request SBI assistance in development of the district's plan.

Motions for appropriate relief [GS 15A-1413] — All motions for appropriate relief filed in superior court are to be referred to the senior resident to assign to the appropriate judge.

Motions for appropriate relief in noncapital cases [GS 15A-1420(b2)] — The clerk of court is to bring to the attention of the senior resident a motion for appropriate relief filed in a noncapital case, and the senior resident is to assign the motion to the appropriate judge within 30 days. The senior resident may extend the deadline for the judge to complete the initial review and, upon a motion, may reassign the MAR to another judge if the initially-assigned judge has not met the deadline.

Referral from Innocence Inquiry Commission [GS 15A-1468(c)] — When the Innocence Inquiry Commission concludes that a case merits judicial review the case is referred to the senior resident in the district of original jurisdiction. When the commission determines and files with the clerk of court an opinion that there is not sufficient evidence to merit judicial review a copy is served on the senior resident.

Hearing for innocence inquiry panel; determination of indigency [GS 15A-1469(b), (e)] — When a three-judge panel is appointed to hear evidence upon a recommendation from the Innocence Inquiry Commission, the senior resident sets the hearing and orders the State to respond to the commission opinion. The senior resident also determines whether the convicted person is indigent and, if so, appoints counsel.

Limited driving privileges [GS 20-179.3(d)] — The senior resident hears the application for a limited driving privilege if the conviction was imposed in superior court and the presiding judge from the trial is not available.

Administration of estates [GS28A-2-3] —The senior resident has jurisdiction for the administration of an estate when the clerk of court is disqualified because of an interest in the estate.

Venue for estate proceeding [GS 28A-3-2] — If a question arises about proper venue for an estate proceeding, the clerk of court refers the issue to the senior resident or another superior court judge assigned to the district.

Approval of public administrator [GS 28A-12-1] — The clerk of court appoints a public administrator of estates for each county, subject to the approval of the senior resident.

Orders to protect clients of disbarred, deceased or missing lawyer [GS 84-28(j)] — The senior resident may enter orders to protect the interests of clients of a lawyer who is missing, suspended, disbarred, disabled or deceased.

Facilities for Industrial Commission hearings [GS 97-83.1] — The senior resident is to provide suitable facilities, and security if requested, for workers compensation hearings in the district.

Determination of attorneys' fees in workers compensation cases [GS 97-90(c)] — A lawyer dissatisfied with an Industrial Commission decision on attorney's fees in a workers compensation case may appeal the determination to the senior resident for the county in which the claim arose or the claimant resides.

Appeal of denial of name change [GS 101-5] — The senior resident hears appeals from the clerk's denial of a petition for a name change. [Although the statute refers to the "chief resident superior court judge," it clearly intends the senior resident.]

Appointment of social services board member [GS 108A-3(a)] — When the first two appointed members of a county board of social services cannot agree on the third member the senior resident for the county makes the selection.

Appointment of mediator for school funding dispute [GS 115C-431(a), (b)] — When a school board and board of county commissioners cannot agree on the school funding budget, the senior resident appoints a mediator unless the boards jointly select someone themselves. The mediator informs the public and senior resident if no agreement is reached.

Appointment of community college trustee [GS 115D-12(a)] — When a school board or board of county commissioners cannot agree on an appointment to board of trustees of a community college the senior resident makes the appointment.

Complaint about district attorney referred from Ethics Commission [GS 138A-12(h)(3), (l)] — After investigating sufficiently to determine whether there is probable cause for a violation of the ethics statutes, the Ethics Commission is to refer a complaint about a district attorney to the senior resident. If the commission dismisses the complaint, it is to send a copy of the notice to the senior resident.

Arbitration of county salary dispute [GS 153A-92(b)(3)] — If the board of county commissioners and another elected county officer cannot agree on the salary reduction for employees assigned to that officer, either side may refer the matter to arbitration by the senior resident.

Appeal of order concerning jail standards [GS 153A-223(5)(6)] — A county may appeal to the senior resident an order of the Secretary of Health and Human Services that a jail does not meet minimum health and safety standards or that jail personnel do not meet employment standards.

Challenge to drainage district assessment [GS 156-93.1(a)] — The senior resident hears an objection by a property owner to the annual maintenance assessment by a board of drainage district commissioners.

#### *Duties assigned by the General Rules of Practice for the Superior and District Courts*

Calendaring of civil cases [Rule 2] — The senior resident is required to develop a case management plan for calendaring civil cases, and the civil calendar is to be prepared under the supervision of the senior resident. Each case is to be put on the ready calendar five months after the complaint is filed unless the time is extended by the senior resident. The senior resident is assigned to the senior resident's home district for the first week of each six-month term and such other weeks as agreed by the chief justice, for administrative purposes. Requests for peremptory settings are to be made to the senior resident, and the senior resident may set a case peremptorily on the senior resident's own motion.

Designation of exceptional case [Rule 2.1(a)] — On the senior resident's own motion or at the request of a party, the senior resident may recommend to the chief justice that a case be designated exceptional.

Scheduling conflicts [Rule 3.1(b)] — A lawyer who learns of a scheduling conflict before the date on which the matters are to be heard is to notify the senior resident.

Electronic media coverage of court proceedings [Rule 15] — The senior resident approves the location of equipment and personnel for electronic media coverage of court proceedings. The senior resident receives the names of official news media representatives with whom court officials are to negotiate media coverage matters.

Local rules to visiting judges [Rule 22] — The senior resident is to provide each visiting judge with a copy of the local rules.

Summary jury trials [Rule 23] — The senior resident or any presiding judge may order the use of a summary jury upon joint motion or consent of the parties.

Summary procedure for significant commercial disputes [Rule 23.1(a)] — Upon joint motion or consent of the parties the senior resident or any presiding judge may order the use of summary procedures for a significant commercial dispute as defined in the rule.

Motions for appropriate relief, habeas corpus [Rule 25] — In capital cases requests for appointment of experts and all other *ex parte* requests made before the filing of a motion for appropriate relief are to be made to the senior resident. Motions for appropriate relief are to be referred to the senior resident. Writs for habeas corpus based on challenges to the jurisdiction of the sentencing court are to be returned to the senior resident of the district where the



defendant was sentenced. Meritorious applications for habeas corpus based on grounds other than the jurisdiction of the sentencing court are to be referred to the senior resident.

Secure leave periods for lawyers [Rule 26(E)(2)(a)] — A lawyer's designation of a secure leave period is to be filed with the office of the senior resident if there is no trial court administrator in the district.

#### *Duties assigned by the Rules for Court-Ordered Arbitration in North Carolina*

Order to arbitration [Rule 1(a)(2)] — The senior resident may order to arbitration any civil action in which the amount in controversy does not exceed \$15,000.

#### *Duties assigned by the Rules Implementing Statewide Mediated Settlement Conferences in Superior Court Civil Actions*

Initiating settlement [Rule 1] — The senior resident, by local rule, is to require all parties to attend a pre-trial mediated settlement conference. Upon motion of the parties the senior resident may order a different type of settlement procedure. A party may request the senior resident to order mediation in a case not subject to the rule, and a party may request the senior resident to exempt a case from mediation. The senior resident is to set the deadline for completion of mediation.

Selection of mediator [Rule 2] — If the parties cannot agree on a mediator the senior resident selects the mediator. Upon motion of a party the senior resident may disqualify a mediator for cause. The senior resident receives annual requests from mediators who do not live in the district to be placed on the appointment list.

Deadline for completion of mediation [Rule 3] — Upon suggestion of the mediator, agreement of the parties, or the judge's own motion, the senior resident may extend the deadline for completion of mediation. The mediation is not to delay other proceedings in the case except upon order of the senior resident.

Exemption from attendance; report of settlement; attendance at mediation in related case [Rule 4A(2)(b), C(4), E] — Upon motion of a party the mediator may excuse someone from attendance at a mediation. When a case is settled the lawyers are to notify the senior resident and state who will file the consent judgment or dismissal. Upon motion of a party the senior resident may order a lawyer or insurance representative to attend a mediation in a related case.

Sanctions for failure to attend [Rule 5] — The senior resident or a presiding judge may impose monetary sanctions for failure to attend a mediation.

Reporting data; deadline for completion of mediation [Rule 6] — The senior resident may discipline a mediator who fails to provide reports required by the Dispute Resolution Commission or AOC, and shall report such discipline to the commission. The mediator is to follow the deadline for completion of the mediation unless it is extended by the senior resident.

Determination of indigency; compensation of mediator [Rule 7D] — Upon motion of a party the senior resident may determine indigency and excuse that party from payment of the mediator's fee.

Other settlement procedures [Rule 10] — Upon request of the parties the senior resident may order the use of neutral evaluation, arbitration or a summary trial rather than mediation. The senior resident's duties with respect to such alternative settlement procedures are the same as for mediation: set a deadline for completion, extend the deadline, excuse parties from participating, impose sanctions for failure to attend, etc.

Arbitration [Rule 12] — The arbitrator shall refer to the senior resident all matters involving contempt in an arbitration. The arbitrator provides the senior resident a copy of the written award and the senior resident enters judgment if no party requests a trial *de novo* and the case is not terminated by dismissal or consent judgment. If the parties agree to be bound by the arbitrator's decision, a copy of the agreement is to be filed with the senior resident.

Summary trials [Rule 13L] — The report of the presiding officer at a summary trial is to be filed with the clerk and a copy provided to the senior resident.

Local rules [Rule 14] — The senior resident may establish local rules for mediated settlement conferences.

*Duties assigned by the Rules of the North Carolina Supreme Court Implementing the Prelitigation Farm Nuisance Mediation Program*

Selection of mediator [Rule 3] — If the parties agree upon and request a non-certified mediator, the senior resident decides whether to approve the selection. If the parties cannot agree on a mediator, the senior resident appoints the mediator.

Extension of deadline for completion of mediation [Rule 4B] — Upon motion of a party the senior resident may extend the deadline for completion of the mediation.

*Note that Rule 4 adopts and incorporates by reference Rules 4 and 5 of the Rules Implementing Mediated Settlement Conferences in Superior Court Civil Actions. See those rules for additional duties assigned to the senior resident.*

Deadline for completion of mediation [Rule 5B(4)] — The mediator shall complete the mediation by the deadline set in the rules unless the time has been extended by the senior resident.

Determination of indigency and compensation [Rule 6C, F] — Upon motion of a party the senior resident is to determine whether the party is indigent and exempt from payment of the mediator's fee. The senior resident or a presiding judge may impose sanctions for failure to pay the mediator's fee.

*Duties assigned by the Rules for the Dispute Resolution Commission*

Receipt of biographical information [Rule VI.F] — The commission disseminates biographical information about mediators to the senior resident and other court officials.

Notification of sanctions imposed on mediator [Rule VIII.B11c] — The commission notifies the senior resident of sanctions imposed upon a mediator.

Notification of denial or revocation of certification [Rule IX.B10b] — The commission notifies the senior resident of any denial or revocation of a mediator's certification.

*Duties assigned by local acts of the General Assembly*

Appointment to fill school board vacancy — At least three local acts of the General Assembly provide that the senior resident is to appoint a person to fill a vacancy on a local board of education if the remaining members of the board cannot agree on the appointment within a specified period of time. The acts apply to all vacancies on the Buncombe County Board of Education (SL 1995, Ch 93) and the Whiteville City Board of Education (SL 1995, Ch 661) and to a vacancy for the chair of the Madison County Board of Education (SL 1991, Ch 249).

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