

**LOCAL RULES FOR CIVIL SUPERIOR COURT
TENTH JUDICIAL DISTRICT
NORTH CAROLINA**

Effective January 7, 2013

Amended November 13, 2015

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Local Forms are available in fillable PDF format on the Trial Court Administrator's Website:
www.nccourts.org/WakeTCA

1.0 PURPOSE OF THE RULES

- 1.1 The purpose of these rules is to provide for the just, orderly, and prompt consideration, determination and disposition of civil matters to be heard in Wake County Superior Court. They shall at all times be construed and enforced to avoid technical delay.
- 1.2 These rules are promulgated pursuant to Rule 2 of the General Rules of Practice for Superior and District Court and N.C. Gen. Stat. §1A-1, Rule 40.
- 1.3 The rules and all amendments here after shall be filed with the Clerk of Superior Court for Wake County and published on the North Carolina Administrative Office of the Courts website, www.nccourts.org. The Trial Court Administrator shall maintain a supply of printed rules to be furnished upon request.
- 1.4 The North Carolina Supreme Court standards for resolution of cases filed in civil Superior Court are as follows: 90% resolved within one year, 98% within 18 months and 100% within two years. These rules are to be read consistently with the standards as set forth by the Supreme Court. (See Court Performance Management System at www.nccourts.org/Citizens/SRPlanning/Performance/Default.asp.)
- 1.5 These rules are not complete in every detail and will not cover every situation. In the event the rules do not cover a specific situation, the Trial Court Administrator is authorized to act, subject to consultation with the Senior Resident Superior Court Judge or the Judge Presiding.

2.0 CALENDARING AND NOTICE TO ATTORNEYS

- 2.1 The Trial Court Administrator shall prepare the necessary calendars for the disposition of civil cases in the Superior Court of Wake County in accordance with these rules.
- 2.2 The Senior Resident Superior Court Judge may designate a specific resident judge or a specific judge assigned to hold court in the District to preside over all proceedings in a particular case.
- 2.3 There shall be a calendar call of the cases on the calendar by the presiding judge at 10:00 a.m. on the first day of the session of court. Cases will normally be called for trial or hearing in the order they appear on the calendar; however, any case may be called for trial by the presiding judge at any time during the week. Attorneys and unrepresented parties should be prepared for their case to be called at any time.
- 2.4 **Calendar Publication** All calendars will be prepared by the Trial Court Administrator and published on the Administrative Office of the Courts website no later than three weeks prior to the first day of the court session. Publication of the calendar shall serve as sufficient notice to counsel that a case has been set. Civil court calendars are available at: www1.aoc.state.nc.us/www/calendars/Civil.jsp?county=WAKE.

- 2.5 **Calendar Updates** Updates to court calendars will be posted online not later than 2:00 p.m. on the last business day before the first day of the court session. Parties must provide notice to the Trial Court Administrator's Office of any updates, including settlements and continuances, in cases appearing on the calendar. Any updates arising after the calendar is posted must be made directly to the Court at the call of the calendar.
- 2.6 **Attorney Query Tool** Attorneys may search cases on published calendars using the Civil Calendar Attorney Query by Bar Number tool at www.nccourts.org. To ensure accuracy of this tool, attorneys must provide the Clerk of Superior Court with information regarding withdrawals, notice of appearance, and substitution of counsel in specific cases. Filings must include the North Carolina State Bar number for each attorney of record. Only attorneys active with the North Carolina State Bar and who have a valid North Carolina State Bar identification number may use this search tool.
- 2.7 **Subscription** The North Carolina Court Calendar subscription service is available for civil Superior court cases set for hearing on published calendars in Wake County at the following web address:
www1.aoc.state.nc.us/www/calendars/Civil.jsp?county=WAKE.
- 2.8 **Notice to Unrepresented Parties** Unrepresented parties will be provided notice of the calendar by the Trial Court Administrator. Notice will served by any method authorized for service by North Carolina Rule of Civil Procedure 5(b)(2). Unrepresented parties are required to comply with these local rules and the NC Rules of Civil Procedure and the NC General Rules of Practice in all respects.
- 2.9 **Court Appearance** When an attorney is notified to appear for a pre-trial conference, motion hearing, trial or any other court appearance, the attorney must, consistent with ethical requirements, appear or have a partner, associate, or another attorney familiar with the case appear. Unless an attorney has been excused in advance by the judge before whom the case is scheduled and has given prior notice to his opponent, an attorney's absence should not be grounds for a continuance.
- 3.0 **MOTIONS AND OTHER NON-JURY MATTERS**
- 3.1 **Generally** Motions, administrative appeals and other non-jury matters will normally be set during specially designated non-jury sessions. Parties should refer to the sessions schedule to determine the next available non-jury session. The sessions schedule is available online at <http://www.nccourts.org/County/Wake/Calendars.asp>. Non-jury sessions are denominated as "NJ" on the sessions schedule. Matters that are expected to require an hour or more of court time may be placed on trial calendars in the discretion of the Trial Court Administrator, depending on the need to balance courtroom utilization while ensuring that all cases are heard during the requested session. Parties are encouraged to check all published calendars for the setting of their case. In exigent circumstances, the Trial Court Administrator may set a motion for hearing at any time, if all notice requirements are satisfied or all parties consent.

- 3.2 **Calendar Requests** Any party requesting that a matter be heard during a non-jury session must submit a completed calendar request form to the Trial Court Administrator. Calendar requests shall be filed within the deadlines established on the sessions schedule. Calendar requests should not be filed with the Clerk. Calendar requests may be hand-delivered, mailed, emailed or faxed to the Trial Court Administrator's Office. The email address to send calendar requests is: calendarrequestswake@nccourts.org. Submission of only one copy of the request is sufficient. Any special requests regarding the setting of the motion must be included in the calendar request. No calendar request may be made before filing the motion that is the subject of the hearing. Requests submitted before the filing of a motion will be without effect and ignored. If the opposing party has a conflict with the request made, the Trial Court Administrator's Office must be notified within 3 days of service of the calendar request.
- 3.3 **Removal of cases from non-jury calendars** Cases set for non-jury hearing will be removed from the calendar only under the following conditions: (1) settlement of the case and/or final resolution of the motion; (2) written withdrawal of the motion by the moving party; or (3) continuance by the court for good cause shown pursuant to Local Rule 8.
- 3.4 **Consent Motions** Motions consented to by the parties may be presented to the Trial Court Administrator for assignment to a judge for review and decision, without the necessity of formal calendaring. The party filing the motion shall include with the submission a proposed order which shall recite that the motion is consented to or otherwise unopposed. A party filing any of the following motions must make a good faith effort to determine whether there is opposition to the motion:
- (1) Motion for Extension of Time to Respond or Otherwise Plead
 - (2) Motion to Amend a Pleading or Add a Party
 - (3) Motion to Transfer to Superior Court Division
 - (4) Motion to Withdraw as Counsel
 - (5) Motion to Stay Agency Decision Pending Judicial Review
 - (6) Motion for Extension of Time for Discovery Responses
 - (7) Motion to Extend the Period of Time for Discovery
- 3.5 **Motions to Withdraw** Motions to withdraw must include a certificate of service showing service on the client from whom representation is being withdrawn. The motion also must indicate whether all parties consent or if any party opposes the motion. The motion and proposed order must set forth the name and address of substitute counsel, or if not known, the current address of the party from whom representation is being withdrawn. No action will be taken on a motion and proposed order that does not include this information. If the motion to withdraw is granted, the withdrawing attorney must serve a copy of the signed order on the Trial Court Administrator.

4.0 CASE MANAGEMENT ORDERS AND SETTING CASES FOR TRIAL

- 4.1 **Generally** Approximately 120 days after filing of the Complaint, all cases will be reviewed by the Trial Court Administrator for a determination of the status of the case. Cases will either be set for trial or a Status Conference for review. Consistent with the provisions of North Carolina Rule of Civil Procedure Rule 26(f) and Local Rule 5.3, the Trial Court Administrator will use his/her discretion in determining whether a case is appropriate for: (a) entry of a Case Management Order setting a trial or hearing date; (b) requesting written information concerning scheduling and mediation from the parties followed by the entry of a Case Management Order; (c) setting the matter for review at a Status Conference; or (d) setting the matter on a non-jury calendar for hearing and disposition.
- 4.2 **Entry of Case Management Orders** In appropriate cases, the Trial Court Administrator may give the parties written notice that an order will be entered setting a trial date and designating a mediator, and may request written submissions from the parties as to appropriate deadlines. The parties shall confer and use Local Form 2 to respond to the notice. After receipt of such responses, the Trial Court Administrator will enter a Case Management Order which will contain scheduling deadlines and a trial date. If no response is received by the parties, the Trial Court Administrator will set the matter for a Status Conference for a determination of all scheduling matters. The parties may request a scheduling conference with the Trial Court Administrator if the case presents unusual scheduling issues.
- 4.3 **Consent Modification to Case Management Order** The parties may modify the dates in the Case Management Order by consent within 30 days of the issuance of the order. After the 30-day period, the parties may, by consent, modify any deadlines except the trial date. All requests to modify, including consent modifications, must be made in writing and served on the Trial Court Administrator's Office. For all other modifications and continuances, see Local Rule 8.
- 4.4 **Status Conference** The Trial Court Administrator may notice a Status Conference for any case more than four months old. A list of cases set for Status Conference will be published on the Wake County website at www.nccourts.org. Status Conferences will normally occur beginning at 11:00 a.m. on Friday during a specially designated non-jury session of court.
- At the Status Conference, the parties will discuss with the Trial Court Administrator an appropriate trial date, an appropriate mediator, and any other scheduling matters requiring attention. At the conclusion of the Status Conference, the Trial Court Administrator will issue a Case Management Order setting the trial date, selection or appointment of the mediator, and otherwise dealing with any scheduling issues requiring attention. The Trial Court Administrator has full authority to act for the Senior Resident Superior Court Judge in issuing Case Management Orders.
- If the parties agree on scheduling issues and the selection of the mediator, and return Local Form 2 containing this information to the Trial Court Administrator before the Status Conference, the parties will not be required to attend the Status Conference.

Should the parties not agree with dates provided at the Status Conference, the matter will be set for hearing before the Senior Resident Superior Court Judge or his/her designee for a determination of all scheduling matters.

- 4.5 **Failure to Appear at Status Calendar** In the absence of good cause, any attorney or unrepresented party who fails to appear for a noticed status conference, either with the Trial Court Administrator or the Senior Resident Superior Court Judge, when required by these rules will be considered by the Court to have waived any conflicts or problems with dates in the Case Management Order and will be bound by the dates as if all had been present and consented to the schedule.

5.0 DISCOVERY

- 5.1 ~~Generally Parties are expected to make a good faith effort to participate in discovery as set forth in Rule 8 of the General Rules of Practice.~~

AMENDED RULES 5.1 & 5.2: SEE NOVEMBER 13, 2015 ADMINISTRATIVE ORDER ON PAGE 15

- 5.2 ~~Method Discovery is expected to begin promptly upon the close of the pleadings and, except as supplemented by these Rules, shall be governed by the North Carolina Rules of Civil Procedure. All forms of discovery may be used in any sequence during the discovery process, unless otherwise ordered. No agreement to delay discovery or engage in informal discovery may serve as a basis to continue the trial date.~~

- 5.3 **Time Period for Discovery** Subject to an order modifying discovery procedures, the Court expects discovery to be completed within 6 months from the issuance of the Case Management Order. Modifications to the discovery deadline in the Case Management Order shall not serve to delay the trial absent good cause. Requests to extend the deadline for discovery shall be submitted to the Trial Court Administrator prior to the expiration of the deadline in the Case Management Order. A Discovery Plan as set forth in Rule 26(f) of the North Carolina Rules of Civil Procedure may be incorporated into or supplant, if expressly ordered, the Case Management Order. All Discovery Plans shall include a trial date and must be submitted to the Trial Court Administrator for presentation to the Senior Resident Superior Court Judge.

- 5.4 **Discovery Motions and Objections** The Court will not consider motions and objections to discovery unless the moving party files a certificate that, after personal consultation and diligent attempts to resolve differences, the parties are unable to reach an accord. The certificate shall set forth the date of the conference, the names of the participants, and the specific results achieved. The filed certificate must be attached to any request to calendar a discovery dispute and sent to the Trial Court Administrator's Office.

- 5.5 **Medical Malpractice Cases** Discovery plan conferences in medical malpractice actions as defined by N.C. Gen. Stat. § 90-21.11 shall be conducted pursuant to Rule 26(g) of the North Carolina Rules of Civil Procedure. The Discovery Plan shall include a trial date and must be submitted to the Trial Court Administrator for presentation to the Senior Resident Superior Court Judge.

5.6 **Commissions for Discovery to be Conducted Out-of-State** In cases where a party is seeking a commission for obtaining discovery outside of the State, a motion must be filed and calendared for hearing as set forth in Rule 45(f) of the North Carolina Rules of Civil Procedure. Cases requiring a hearing within 20 days must be promptly brought to the Trial Court Administrator for a determination of the next available calendar setting.

NEW 5.7 ELECTRONIC DISCOVERY: SEE NOVEMBER 13, 2015 ADMINISTRATIVE ORDER ON PAGE 15

6.0 **PRE-TRIAL ORDERS, PRE-TRIAL CONFERENCES AND EXHIBITS**

6.1 **Pre-Trial Orders** Proposed pre-trial orders are due to the Trial Court Administrator's Office no later than 5:00 p.m. on the Friday prior to the session of court in which the case is calendared for trial. The pre-trial order shall be in substance as shown on the sample form set out in the General Rules of Practice for the Superior and District courts. The pre-trial order shall include a list of the witnesses expected to be called at trial, a list of exhibits, and a list of the issues the parties request be submitted to the jury.

6.2 **Pre-Trial Conference** Any party, or the Court on its own motion, may request a pre-trial conference to address matters relating to final trial preparation or settlement of a case. Any party requesting a conference with the presiding judge pursuant to Rule 7 of the General Rules of Practice must send a written request to the Trial Court Administrator no later than 15 days before the date the case is scheduled for trial. At the time of or immediately following the pre-trial conference, unless otherwise ordered or agreed, it shall be the duty of the plaintiff to prepare the final proposed pre-trial order to be signed by all counsel.

6.3 **Exhibits** Exhibits shall be pre-marked with appropriate stickers with sequential numbers. A list of all exhibits in sequential order shall be provided to the courtroom clerk at the beginning of the trial. If publication of hard copies to the jury is intended, counsel are encouraged to provide a sufficient number of copies of exhibits for use by the jury.

7.0 **PEREMPTORY AND PRIORITY SETTINGS**

7.1 **Generally** Written requests for the peremptory setting of a case shall be served on the Trial Court Administrator's Office within 30 days of the issuance of the Case Management Order. Local Form 5 may be used. All counsel of record and unrepresented parties must be copied on the request. Parties may request a peremptory setting at the time of the issuance of the Case Management Order. Only the Senior Resident Superior Court Judge may authorize a peremptory setting.

7.2 **Reasons for request** The request must state the reason(s) for the need to have a peremptory setting. Travel of short distances for parties or witnesses typically will not warrant the setting of a case peremptorily. Factors that are considered in determining whether a case will receive a peremptory setting include: the age of the case; the number of times the case has previously been set; travel distance and means required of those involved in the case; the number of expert witnesses expected to testify at trial; and any other reason that may greatly impact the just and proper resolution of the case.

- 7.3 **Setting by the Court** The Court may set a case peremptorily at any time.
- 7.4 **Continuance of a Peremptory Setting** Cases that have peremptory settings may be continued only by the Senior Resident Superior Court Judge or his/her designee.
- 7.5 **Approval of Dates** Attorneys and unrepresented parties must consult with the Trial Court Administrator's Office to determine the availability of a peremptory setting. Generally, no more than two peremptory settings will be approved during a single session of court. Requests for peremptory settings included in consent Discovery Scheduling Orders, especially in the case of medical malpractice actions, must be approved by the Trial Court Administrator before presentation to the Senior Resident Superior Court Judge for approval.
- 7.6 **Other Priority Settings** Counsel shall notify the Trial Court Administrator in cases in which there is statutory authority granting a priority setting.
- 8.0 **CONTINUANCES**
- 8.1 **Generally** Any motion to continue must initially be filed with the Clerk of Superior Court then submitted to the Trial Court Administrator. Opposing counsel and/or unrepresented parties must be notified of the motion to continue before delivery of the motion to the Trial Court Administrator. No continuance shall be granted solely because all parties agree. Motions to continue a case set for trial are generally disfavored and will not be granted absent good cause shown.
- 8.2 **Content** Any motion to continue must be in writing and contain the following information:
- (a) Caption and file number of the case;
 - (b) Session at which the case is set;
 - (c) The basis for the motion;
 - (d) The number of times the case has previously been continued;
 - (e) A certification that the moving party conferred, or attempted in good faith to confer, with all parties before filing the motion, and a statement of whether the motion is opposed; and
 - (f) A proposed session within 90 days for the rescheduling of the case. When the parties do not include a proposed reschedule date, the Trial Court Administrator shall reset the case.
- 8.3 **Timing** A motion to continue must be filed no later than 3 business days before the first day of the session of court in which the case is set. Motions to continue filed thereafter will not be considered until the calling of the calendar, except where the motion reflects extreme hardship or extraordinary circumstances. Parties who are moving to continue a case set for trial should be prepared to move forward with trial in the event the motion to continue is denied. Before the date of trial, only the Senior

Resident Superior Court Judge or his/her designee may rule on a motion to continue a case set for trial.

8.4 **Objections** Objections to motions to continue must be in writing and submitted to the Trial Court Administrator within 2 days of receipt of the motion to continue. Objections not made within 2 days are considered waived.

8.5 **Cases Not Reached or Mistried** If a case is not reached for trial or is mistried, counsel and unrepresented parties may submit an agreed-upon date for rescheduling to the Trial Court Administrator's Office no later than close of business on the first Friday following the session of court in which the case was originally set. If counsel and unrepresented parties fail to submit such an agreed-upon date, the case shall be reset by the Trial Court Administrator.

9.0 JUDICIAL REVIEW OF ADMINISTRATIVE ACTION

9.1 **Generally** The judicial review of a final agency decision shall commence by the filing of a Petition for Judicial Review with the Clerk of Superior Court pursuant to N.C. Gen. Stat 150B-43, et seq or by the filing of a Petition for writ of Certiorari. Petitioner shall serve a copy of the Petition or Writ upon the agency. Within 30 days after receipt of the petition or writ, the agency shall cause to be filed with the Clerk of Superior court the original or a certified copy of the official record in the case under review from which the final agency decision was entered. The agency or the Petitioner may move for additional time within which to file the record. Counsel for the agency shall notify Petitioner in writing when the record is filed with the clerk.

9.2 **Briefs** Petitioner shall have 30 days from notice of the record being filed to serve its brief on Counsel for the agency. The agency shall have 30 days from receipt of Petitioner's brief to serve its response brief on Petitioner. The brief of any Intervenor shall be served on all parties concurrently with the motion to intervene. No reply brief shall be allowed except by order of the court. The court for good cause may alter or enlarge the times provided for the filing of briefs.

9.3 **Hearings** Judicial review proceedings shall be set by the Trial Court Administrator upon the submission of a completed calendar request. Hearings projected to last less than one hour may be scheduled during specially designated non-jury sessions of court. Hearings projected to last one hour or longer will be scheduled for hearing on final calendars. Counsel and unrepresented parties are encouraged to check all calendars for the scheduling of their case. Judicial review proceedings are not subject to mandatory mediation unless ordered by the Senior Resident Superior court Judge.

9.4 **Special Provision for the Denial of a Special Use Permit for a Sexually-Oriented Business** An applicant who has been denied a special use permit for a sexually-oriented business by a municipality or county may request, in writing, expedited judicial review after filing a timely petition for certiorari. The applicant's brief required under Local Rule 9.2 shall accompany the request.

10.0 BANKRUPTCY CASES

- 10.1 Any request to continue, stay, or in any other way delay disposition of a case due to bankruptcy of one of the parties must be accompanied by a copy of the stay of proceeding order from the United States Bankruptcy Court having jurisdiction and shall apply only to cases involving the party filing for relief in Bankruptcy.
- 10.2 Any case that has been the subject of an approved request pursuant to Rule 10.1 shall be placed on inactive status and removed from the active docket of cases pending with the Clerk of Superior Court. Upon resolution of the bankruptcy proceedings or dissolution of the stay, the case may be reopened upon motion to the Court and placed on the active docket of cases pending before the Superior Court.

11.0 PRODUCTION OF MEDICAL RECORDS IN LIEU OF APPEARANCE

- 11.1 **Generally** The Trial Court Administrator shall be the designee to accept by registered mail or personal delivery certified copies of medical records pursuant to G.S. §1A-1, Rule 45(c).
- 11.2 **Release of Medical Records** The Trial Court Administrator shall release medical records by presentation of a copy of a written order of the Court or upon request from the presiding judge for use in court proceedings. In the Trial Court Administrator's discretion, records may be released when all parties, including the person who is the subject of the medical records, agree to the release in writing.
- 11.3 **Retention of Medical Records** Once a case has been closed and all direct appeals exhausted, the Trial Court Administrator shall destroy any medical records in the case that remain unclaimed, unless otherwise directed by an order of the Court.

12.0 JUDICIAL REVIEW OF SETTLEMENTS (MINOR SETTLEMENTS)

- 12.1 All requests for review of settlements requiring judicial approval, including minor settlements, shall be submitted to the Trial Court Administrator. Such matters will be given priority and will be set for hearing at the next available session of court. A notice of hearing must be sent to the Trial Court Administrator no later than 5:00 p.m. on the Wednesday before the first day of the court session requested.
- 12.2 The Minor and his/her Guardian *ad Litem* must be present at the hearing, unless excused in advance by the Judge Presiding.

13.0 CONDEMNATION ACTIONS

- 13.1 Parties must submit Local Form 3 no later than 60 days after service of the last answer filed in public condemnation actions. This form must include agreed upon proposed dates for: completion of the project at issue in the condemnation action, the expected start of discovery and a deadline for its completion, a mediation deadline and a trial

date. Based on this information, the Trial Court Administrator will issue a Case Management Order.

- 13.2 If the parties are not able to agree or do not submit Local Form 3 within 60 days of service of the last answer filed, the case will be set for a Status Conference. The parties must then report to the Court for a determination of the posture of the case and the entry of a Case Management Order.

14.0 REQUESTS FOR INJUNCTIVE RELIEF

- 14.1 **Generally** Applications for Temporary Restraining Orders and Motions for Preliminary Injunctions made pursuant to North Carolina Rule of Civil Procedure 65 will be heard only after the commencement of a civil action through the filing of a complaint and/or issuance of the summons.
- 14.2 **Application for Temporary Restraining Orders** Requests for hearings on Applications for Temporary Restraining Orders shall be presented to the Trial Court Administrator for assignment. Hearings normally will be scheduled at 2:00 p.m. before the judge presiding in civil court. Alternate arrangements may be made in the discretion of the Trial Court Administrator. No hearing will be scheduled later in the court week than 2:00 p.m. on Friday without the approval of the Senior Resident Superior Court Judge or his/her designee.
- 14.3 **Notice** Litigants requesting injunctive relief must notify opposing counsel, if any, that such judicial action is being requested and shall so certify to the Trial Court Administrator that notice was given before the request for hearing was made. Upon the scheduling of the motion by the Trial Court Administrator, counsel shall notify opposing counsel in writing of the time and place of hearing.
- 14.4 **Preliminary Injunctions** Motions for preliminary injunctions that are set by the court during a hearing on the application for the temporary restraining order must be presented to the Trial Court Administrator's office to ensure the motion is properly set for hearing. No preliminary injunction shall be issued without notice to the adverse party. Preliminary Injunctions are set for hearing on the next available session of court and are given priority over all other matters, except older matters that are of the same character.

15.0 MEDIATION

- 15.1 **Rules Governing Mediation** The North Carolina Supreme Court's Rules governing mediated settlement conferences are available at www.nccourts.org/Courts/CRS/Councils/DRC/NARules.asp. The Court expects the parties to follow these rules in conducting the mediated settlement conference. Sanctions will be imposed when appropriate.
- 15.2 **Eligible Cases** All civil actions in Superior Court shall be ordered into the mediated settlement conference except for administrative appeals, declaratory judgment

actions and actions in which a party is seeking the issuance of an extraordinary writ. Requests to dispense with mediation are generally disfavored and may only be granted by the Senior Resident Superior Court Judge.

- 15.3 **Mediation Deadlines and Extensions** The deadline for the mediated settlement conference will appear in the Case Management Order and will normally be 60 days prior to the trial date. Short extensions of the deadline may be allowed so long as the trial date is not affected. The parties may submit a proposed stipulated order in lieu of a motion to continue for consideration by the Senior Resident Superior Court Judge to extend the mediation deadline. Parties may use Local Form 4 for this purpose.
- 15.4 **Designation of Mediator** Parties are encouraged to timely select a mediator for their case. The Designation of Mediator form shall be filed with the Clerk of Superior Court and a copy sent to the Trial Court Administrator's office. Parties are encouraged to consider the availability and schedule of the mediator during the selection process. Scheduling conflicts concerning the mediated settlement conference will not serve as a basis to continue trial. If the parties are unable to agree upon the selection of a mediator, the Trial Court Administrator will designate a mediator from the list of court approved mediators. This designation will appear in the Case Management Order. Once a mediator has been appointed, motions to substitute will only be allowed if the designated mediator has a conflict, is otherwise unable to mediate the case or for good cause shown. Substitutions must be authorized by the Senior Resident Superior Court Judge.

16.0 DESIGNATION OF SECURE LEAVE

- 16.1 Pursuant to Rule 26 of the General Rules of Practice for the Superior and District Courts, attorneys may designate periods of Secure Leave. Attorneys appearing in cases pending before the civil Superior Court of Wake County must submit their Notice of Secure Leave to the Trial Court Administrator.
- 16.2 Notice of Secure Leave shall be sent to the following address:
- Trial Court Administrator's Office
Post Office Box 1916
Raleigh, North Carolina 27602
ATTN: SECURE LEAVE
- 16.3 Secure leave designations are not filed in the court files and should not contain a case number. The Trial Court Administrator will enter the information into a database used to track periods of Secure Leave.
- 16.4 The policy and procedures described herein are not exclusive. In extraordinary circumstances the time limitations for notification of designated weeks may be waived by the court when attorneys have been faced with particular or unusual situations. Furthermore, attorneys shall be able to make other requests to be excused from appearing before the court for personal and professional reasons.

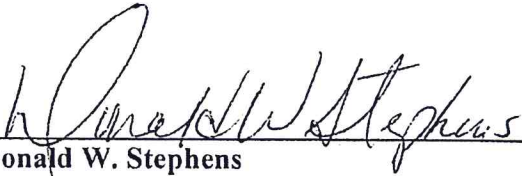
17.0 MISCELLANEOUS

- 17.1 **Cases Under Advisement** Attorneys or unrepresented parties should notify the Trial Court Administrator of cases that have been heard and taken under advisement when a period of more than 90 days has passed since the hearing without a ruling. The Trial Court Administrator will then notify the presiding judge in writing of the need for a prompt and fair resolution in the matter. If no decision is rendered by the presiding judge, the Senior Resident Superior Court Judge may then enter an order finding that the presiding judge has relinquished jurisdiction over the matter and instruct the Trial Court Administrator to re-calendar the case before another judge for a hearing *de novo*.
- 17.2 **Courtroom Utilization** Upon resolution of the civil Superior Court trial calendar, Superior Court Judges may be assigned to preside over cases from the Criminal Division. The Trial Court Administrator shall designate such assignments. Civil clerks will coordinate with criminal clerks to facilitate the addition of cases to the calendar.
- 17.3 **Scheduling Conflicts** When an attorney has more than one case set in different courts at the same time, the scheduling conflict will be resolved pursuant to Rule 3 of the General Rules of Practice.
- 17.4 **Courtroom Presence** Counsel for each party and the presiding judge shall remain in the courtroom throughout the course of a trial, including jury selection, opening statements and closing arguments. The absence of the presiding judge or of counsel during any trial phase conveys to jurors the impression that those procedures are unimportant. Courtroom absences by the presiding judge increase the risk that jurors will be exposed to prejudicial information which cannot be corrected by a jury instruction. If emergencies arise, presiding judges should deal with such by taking a brief recess to avoid any attorney or judge's absences from the courtroom proceedings.
- 17.5 **Removal** When a case is removed to Federal Court, notice of such removal must be provided to the Trial Court Administrator. The State case will be inactivated and removed from the docket of cases pending before the Superior Court of Wake County.
- 17.6 **Sanctions** Should counsel or an unrepresented litigant fail to comply in good faith with any provision of these local Rules, or the General Rules of Practice for the Superior and District Courts, the Court may impose appropriate sanctions in its discretion. An order obtained in substantial violation of these rules is subject to modification or vacation by the Senior Resident Superior Court Judge.
- 17.7 **Transcripts/Electronic Recordings of Court Proceedings** Requests for transcripts of court proceedings shall be made to the resident Court Reporters of the 10th District who will determine the reporter that kept record of each case. If the court proceeding was electronically recorded, a request for the recording shall be made to the supervisor of Courtroom Clerks in the Clerk's Office. An electronic recording of the hearing and a list of persons authorized and approved to prepare a transcript will be provided.

These rules shall become effective January 7, 2013.¹ They have been promulgated and approved by the undersigned.

This, the 4 day of January, 2013.

Kristen L. Fetter
Trial Court Administrator



Donald W. Stephens
Senior Resident Superior Court Judge

¹ To the extent Rule 2(a) of the General Rules of Practice for Superior and District Court applies, these Rules shall be considered preliminary in nature and will become final rules of the Court effective July 1, 2013.

NORTH CAROLINA

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

WAKE COUNTY

2015 NOV 13 PM 2:34

FILED
CIVIL SUPERIOR COURT

In re:

Modification to Civil Superior Court Local Rules
and Forms

**ADMINISTRATIVE ORDER
MODIFYING CIVIL SUPERIOR COURT LOCAL
RULES AND FORMS**

Local Rules for Civil Superior Court (Tenth Judicial District – Promulgated January 7, 2013) are hereby modified and amended in the following manner:

1. Rule 5.1 is rewritten as follows:

5.1 General Provisions

(a) Cooperation. Parties and their counsel are expected to reach agreements cooperatively on how to conduct discovery under Rules 26-37 of the Rules of Civil Procedure. Counsel have a professional responsibility to deal with each other and opposing parties fairly and in full compliance with the letter and spirit of the Rules of Civil Procedure, the Rules of Professional Conduct, and the General Rules of Practice. Parties and their counsel are reminded that Rule 8 of the General Rules of Practice requires the parties to begin discovery promptly so that it does not delay the adjudication of a case.

(b) Proportionality. Parties are expected to use reasonable, good faith and proportional efforts to preserve, identify and produce relevant information. This includes identifying appropriate limits to discovery, including limits on custodians, identification of relevant subject matter, date ranges for discovery and other parameters to limit and guide preservation and discovery issues. Discovery requests that do not comply with Rules 26(b)(1a) and 26(g) of the Rules of Civil Procedure are beyond the scope of proper discovery and are considered an impediment to the proper administration of justice.

(c) Preservation of Discoverable Information. Parties have an obligation to take reasonable and proportional steps to preserve potentially responsive information within their possession, custody, or control. (See Appendix: *Sample Litigation Hold*)

(1) Back up and Archived Data. Absent a showing of good cause by the requesting party, parties shall not be required to modify, on a going-forward basis, the procedures used by them in the ordinary course of business to back up and archive data unless a party has reason to believe that relevant information that cannot be found in active sources is on back up and archived locations and modification of document retention procedures is necessary to preserve this relevant information.

(2) Exempted Categories of Electronically Stored Information. Absent a showing of good cause by the requesting party, the categories of electronically stored information identified below need not be preserved.

(A) Random access memory (RAM), temporary files, or other ephemeral data that are difficult to preserve without disabling the operating system.

(B) On-line access data such as temporary Internet files, history, cache, cookies, and the like.

(C) Data in metadata fields that are frequently updated automatically, such as last-opened dates.

(D) Back-up data that are duplicative of data that are more accessible elsewhere.

(E) Instant messages that are not ordinarily printed or saved on a server dedicated to instant messaging. (NOTE: Text messages are not exempt from a party's preservation obligation unless otherwise agreed between the parties.)

(F) Electronic mail or pin-to-pin messages sent to or from mobile devices (e.g., iPhone and Blackberry devices), provided that a copy of such mail is routinely saved elsewhere.

(G) Other electronic data stored on a mobile device, such as calendar or contact data or notes, provided that a copy of such information is routinely saved elsewhere.

(H) Logs of calls made from mobile devices.

(I) Server, system or network logs.

(J) Electronic data temporarily stored by laboratory equipment or attached electronic equipment, provided that such data is not ordinarily preserved as part of a laboratory report.

(K) Data remaining from systems no longer in use that is unintelligible on the systems in use.

(d) Privilege.

(1) Privilege Logs.

(A) Parties are encouraged to confer on the nature and scope of privilege logs for the case, including whether categories of information (such as work product) may be excluded from any logging requirements and whether alternatives to document-by-document logs (such as identifying documents by category) can be exchanged.

(B) Unless the parties agree or the court orders otherwise, parties are not required to include in privilege logs any attorney-client privileged or work product material that was generated after the filing of the complaint.

(2) Inadvertent Disclosure. Parties should be familiar with, and should consider submitting for the court's approval, an Order providing for the Non-Waiver of Attorney-Client Privilege and Work Product Protection. Parties are cautioned that Rule 26(b)(5) of the Rules of Civil Procedure only provides for the return, sequestration, or destruction of such information. Rule 26(b)(5) does not address whether and to what extent there has been a waiver of privilege or work product protection.

(e) Electronic Service. Parties may agree to electronically serve discovery requests and written responses. Unless the parties agree or the court orders otherwise, service of an electronically transmitted request or written response shall be deemed to occur when sent; provided, however, that a request or written response sent after 5 p.m. shall be deemed sent at 8 a.m. the following day. If the parties agree to electronic service of requests and written responses, then the sender must make reasonable efforts to confirm receipt.

2. Rule 5.2 is rewritten as follows:

5.2 Method

Discovery is expected to begin promptly upon the close of the pleadings and, except as supplemented by these Rules, shall be governed by the North Carolina Rules of Civil Procedure. All forms of discovery may be used in any sequence during the discovery process, unless otherwise ordered or set pursuant to statute. No agreement to delay discovery or engage in informal discovery may serve as a basis to continue the trial date.

3. Rule 5.7 is added as follows:

5.7. Electronic Discovery

(a) Discovery Meeting and Discovery Plan. Pursuant to Rule 26(f)(1) of the Rules of Civil Procedure, any party may request a meeting regarding the discovery of electronically stored information. Following their meeting, the parties shall submit to the court a discovery plan, or a joint report, pursuant to Rule 26(f)(2). In addition to the subjects referenced in Rule 26(f)(3), a discovery plan shall address the following subjects regarding the discovery of electronically stored information: (1) custodians, (2) non-custodial data sources (i.e., sources that are not organized, managed, or maintained by custodians, such as an enterprise system or database), (3) relevant date ranges, and (4) search methodologies (e.g., search terms, identification of specific email folders, or other culling methodology such as predictive coding). The parties are encouraged to discuss the technical specifications regarding formatting and metadata of electronically stored information. (See Appendices: *Preparing for a Rule 26(f)(1) Discovery Meeting* and *Sample Protocol for Discovery of Electronically Stored Information*)

(b) Electronic Discovery in the Absence of a Rule 26(f)(3) Discovery Plan. If no discovery plan has been agreed upon or entered, and a producing party produces documents in an electronic format or uses electronic means to identify potentially responsive documents,

such party shall disclose upon request the following information at the time of production:

(1) Custodians. The producing party shall identify the custodians from whom the party is producing documents.

(2) Non-Custodial Data Sources. The producing party shall identify a list of the non-custodial data sources (i.e., sources that are not organized, managed, or maintained by custodians, such as an enterprise system or database) from which the party is producing documents.

(3) Date Ranges. If the producing party used date ranges to locate documents being produced, the producing party shall provide the date ranges searched for each custodian and for each non-custodial data source.

(4) Search Methodology for Electronically Stored Information. If a producing party used a search methodology (e.g., search terms, identification of specific email folders, or other culling methodology such as predictive coding) to locate potentially responsive documents, the producing party shall provide a description and identification of the search methodology. The description must be in sufficient detail so as to enable the requesting party and the court, if necessary, to determine the adequacy of the methodology.

(c) Format. Rule 34(b) of the Rules of Civil Procedure requires a party to produce documents as they are kept in the usual course of business, or organize and label them to correspond to the requests, and to produce those documents in a reasonably usable form or forms. Unless the parties agree or the court orders otherwise, black and white image files (e.g., "PDF" or "TIFF") with a load file containing extracted text or OCR and the metadata referenced in Rule 26(b)(1) shall be deemed to satisfy the requirements of Rule 34(b). The only documents that must be produced in their native format are those that are not in a reasonably usable form or forms when produced as PDF or TIFF files (such as Excel spreadsheets or documents with color that are not readable in TIFF or PDF format).

4. Local Forms 1 – 5 shall be amended as attached.
5. Local Form 6 shall be added as attached.

These Local Rules as modified shall become effective immediately. A copy of this order shall be attached to the January 7, 2013 Local Rules.

So ordered this, the 12 day of November, 2015.


Donald W. Stephens
SENIOR RESIDENT SUPERIOR COURT JUDGE

TCA USE ONLY			
<input type="checkbox"/> AM	<input type="checkbox"/> JU	<input type="checkbox"/> CW	<input type="checkbox"/> NB

**WAKE COUNTY CIVIL SUPERIOR COURT
CALENDAR REQUEST**

	FILE NO. _____ CVS _____
vs.	SESSION BEGINNING: _____ *
	<i>*Consult the session calendars for available dates and deadlines prior to submitting this request</i>

MOTION(S) / OTHER:

(1) COMPLETE #1-5 BELOW AND SIGN

1. Date Motion filed (*motion will not be calendared until it has been filed*): _____
2. Approximate hearing time: _____ day(s), _____ hour(s), _____ minutes.
3. Have you conferred with all parties involved? YES NO
4. Have all parties agreed to the requested date? YES NO
5. Special request: _____

This the _____ day of _____ 20____.

- | | |
|------------------------------------|---|
| <input type="checkbox"/> Plaintiff | <input type="checkbox"/> Attorney for Plaintiff |
| <input type="checkbox"/> Defendant | <input type="checkbox"/> Attorney for Defendant |

Print Name: _____	
Phone Number: _____	Email: _____
Address: _____	

(2) SUBMIT REQUESTS TO TCA

EMAIL (*preferred method*): calendarrequestswake@nccourts.org
MAIL: PO Box 1916, Raleigh, NC 27602; or FAX: (919) 792-4951

(3) SEND A COPY OF THIS REQUEST TO ALL PARTIES / ATTORNEYS – List their names and addresses below

<input type="checkbox"/> Plaintiff	<input type="checkbox"/> Attorney for Plaintiff	<input type="checkbox"/> Plaintiff	<input type="checkbox"/> Attorney for Plaintiff
<input type="checkbox"/> Defendant	<input type="checkbox"/> Attorney for Defendant	<input type="checkbox"/> Defendant	<input type="checkbox"/> Attorney for Defendant
Name: _____		Name: _____	
Address: _____		Address: _____	
Phone Number: _____		Phone Number: _____	

NOTE: The submission of a calendar request to the TCA's office *does not guarantee* a setting on the requested session. Please check the published calendars <http://www.nccourts.org/County/Wake/Calendars> to verify your court date(s).

**WAKE COUNTY CIVIL SUPERIOR COURT
RESPONSE TO STATUS CONFERENCE NOTICE**

_____ FILE NO. _____ CVS _____

vs.

In response to the Notice that the above referenced case is scheduled on the upcoming Status Conference Calendar in Wake County Superior Court for the entry of a Case Management Order, the parties submit the following, **agreed-upon** information.

NOTE: Parties are encouraged to submit a Consent Case Management Order to the Trial Court Administrator in lieu of submitting this form.

(1) Trial Date

- Date must be within 12 months of filing; or within 18 months of filing for medical malpractice claims and unusual cases. File Date _____
- First Choice _____ Second Choice _____

(2) Length of Trial

Estimated length _____ day(s) Jury Non-Jury

(3) Mediation

- The deadline for the mediated settlement conference will be 60 days prior to the trial date, pursuant to Local Rule 15.3, unless otherwise set pursuant to court order.
- The Designation of Mediator (AOC-CV-812) **must be filed by the parties**, and a file-stamped copy sent to the Trial Court Administrator, within 21 days of issuance of the Case Management Order **or one shall be appointed**, in accordance with MSC Rule 2.

(4) Discovery

- Discovery Deadline shall be 60 days before trial, unless otherwise set by court order.
- Expert Witness Discovery shall comply with amended N.C. Gen. Stat. §1A-1, Rule 26(b)(4), for all actions commenced on or after October 1, 2015.

(5) Special request(s): _____

<input type="checkbox"/> Plaintiff	<input type="checkbox"/> Attorney for Plaintiff	<input type="checkbox"/> Defendant	<input type="checkbox"/> Attorney for Defendant
Signature: _____		Date: _____	
Name: _____			
Address: _____			
Phone Number: _____			

DELIVER COPIES OF THIS FORM TO ALL COUNSEL, UNREPRESENTED PARTIES, AND THE TRIAL COURT ADMINISTRATOR

**WAKE COUNTY CIVIL SUPERIOR COURT
 CONDEMNATION CASE STATUS REPORT**

FILE NO. _____ CVS _____

vs.

COMPLETE ALL SECTIONS BELOW, DATE AND SIGN

Pursuant to Tenth District Civil Superior Court Local Rule 13 and in accordance with N.C. Gen. Stat. §40A-50 / N.C. Gen. Stat. §136-110, the following parties ("Reporting Parties") report the current status of the condemnation case as set out below:

1. Plaintiff estimates the completion date of the project for which it filed this case as: _____.
2. The Reporting Parties estimate that they will begin discovery by _____ and complete it by _____.
3. The Reporting Parties estimate that they will be ready to select a mediator in this case not earlier than _____ and to complete mediation not earlier than _____.
4. The Reporting Parties estimate that any motion pursuant to N.C. Gen. Stat. §40A-47 / N.C. Gen. Stat. §136-108 or any dispositive motions would be ready for hearing by _____.
5. The Reporting Parties estimate that, if this case is not settled, it would be ready for trial on _____.
6. The Reporting Parties have consulted, or attempted to consult, any other parties whose positions on the matters addressed in this report are as follows:

This the _____ day of _____ 20____.

By:

By:

<input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant	<input type="checkbox"/> Attorney for Plaintiff <input type="checkbox"/> Attorney for Defendant	<input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant	<input type="checkbox"/> Attorney for Plaintiff <input type="checkbox"/> Attorney for Defendant
Name:		Name:	
Address:		Address:	
Phone Number:		Phone Number:	

SUBMIT REPORT TO TCA

EMAIL (preferred method): calendarrequestswake@nccourts.org

MAIL: PO Box 1916, Raleigh, NC 27602; or FAX: (919) 792-4951

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
_____ CVS _____

Plaintiff,

vs.

Defendant.

**STIPULATED ORDER EXTENDING
COMPLETION DATE FOR MEDIATION**

THIS COURT HEREBY extends the completion date for mediated settlement conference in the above captioned matter and finds as follows:

1. Plaintiff filed the complaint in this matter on: _____.
2. The trial date is set for: _____.
3. Basis for extension: _____
_____.
4. The current deadline for completion of the mediated settlement conference is: _____.
5. Counsel for all parties have conferred and agreed to this extension of time for completion of the mediated settlement conference.

IT IS HEREBY ORDERED that the completion date for the mediated settlement conference shall be extended until _____.

This the _____ day of _____ 20____.

Senior Resident Superior Court Judge

**WAKE COUNTY CIVIL SUPERIOR COURT
 PEREMPTORY SETTING REQUEST**

_____ FILE NO. _____ CVS _____
 vs.

(1) COMPLETE THE FOLLOWING SECTION, DATE AND SIGN.

The undersigned requests a peremptory setting of the above captioned case based on the following:

Estimated length of trial: _____ JURY NON-JURY

Requested Trial Date: _____

Have all parties agreed to the requested date? YES NO

Date: _____ Signature: _____
 Plaintiff Attorney for Plaintiff
 Defendant Attorney for Defendant

(2) SEND A COPY OF THIS REQUEST TO ALL PARTIES / ATTORNEYS – List their names and addresses below

<input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant	<input type="checkbox"/> Attorney for Plaintiff <input type="checkbox"/> Attorney for Defendant	<input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant	<input type="checkbox"/> Attorney for Plaintiff <input type="checkbox"/> Attorney for Defendant
Name: _____		Name: _____	
Address: _____		Address: _____	
Phone Number: _____		Phone Number: _____	

(3) SUBMIT THIS REQUEST TO THE TRIAL COURT ADMINISTRATOR

RECOMMENDATION OF TRIAL COURT ADMINISTRATOR	
<input type="checkbox"/> APPROVED <input type="checkbox"/> DENIED	Date: _____ Signature: _____ TCA / Designee
ORDER	
The undersigned hereby authorizes the Trial Court Administrator to set the above referenced case peremptorily on: _____.	
Date: _____ Signature: _____ Senior Resident Superior Court Judge	

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
_____ CVS _____

_____,
Plaintiff,
vs.
_____,
Defendant.

**MOTION AND ORDER FOR CONTINUANCE
CIVIL SUPERIOR CASES**

INSTRUCTIONS: MOVING PARTY must complete all information requested below. A copy of the completed form must be faxed, mailed, or hand delivered to opposing counsel or unrepresented party prior to filing with the Clerk of Superior Court. Upon receipt, OPPOSING PARTY must immediately communicate any objections to the Trial Court Administrator's office pursuant to Civil Superior Court Local Rule 8.

Calendared Hearing / Trial Date	Requested Reschedule Date (within 90 days)
Opposing Counsel / Party Name	Date Case Filed

MOTION

Pursuant to the local rules for motions for continuance in effect in the Tenth Judicial District, the party named below moves that the above civil case be continued from the calendared date shown above to the requested reschedule date shown above, for the following compelling reasons (*may attach additional sheets, if necessary*):

Moving party must select at least one of the options below:

- I have distributed a copy of this Motion to all counsel of record and unrepresented parties by U.S. mail, facsimile transmission, hand delivery, or placement in a distribution box maintained in the courthouse facility.
- I have conferred, or attempted in good faith to confer, with all parties before filing this motion.
- I certify that the opposing party consents to the above requested continuance (*attach correspondence*).

Name and Address of Movant	Date
	Signature
Telephone No.	

ORDER

It is ORDERED that:

- The motion is ALLOWED and the case is continued and shall be held on the rescheduled date shown below.
- The motion is DENIED and the case shall be heard on the calendared hearing / trial date.

Rescheduled Date	Date of Order
Name of Superior Court Judge	Signature of Superior Court Judge

Sample Litigation Hold

PRIVILEGED AND CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION AND ATTORNEY WORK PRODUCT
--

Memorandum

TO: Distribution List

FROM: [Inside Counsel/Responsible Person/Law Firm]

DATE []

RE: Legal Hold Notice related to [brief description of matter]

I. ATTENTION PLEASE: This Legal Hold Notice (“Notice”) contains important legal information regarding the need to save and preserve certain documents and information related to [potential lawsuit(s) or other legal action(s) that may result] from [brief description]. All employees have a duty to ensure that [Company] is preserving all appropriate records and information as described below. As discussed in more detail below, document preservation encompasses a number of different obligations. First and foremost, do not delete, alter or destroy any Potentially Relevant Documents (as defined below). Any routine or *ad hoc* deletion of electronically-stored information should be suspended and should not occur, even as to electronically-stored information on back-up tapes.

Please understand that document preservation is both a company and an individual responsibility, and we require your full attention and cooperation in this matter. **Any failure** to follow these procedures **may result in severe penalties** against [Company] and could form the basis of legal claims for destroying evidence. Therefore, please review this memorandum carefully and adhere to the mandatory document retention policy outlined below.

II. REASON FOR THE NOTICE: Following [description of cause for sending Litigation Hold Notice with enough detail to permit recipients to discern which documents are potentially relevant].

III. OBLIGATION TO PRESERVE: It is imperative that you immediately take every reasonable step necessary to preserve, and to not lose, alter, or destroy, any Potentially Relevant Documents (as defined below). This means that you must save and preserve every paper and electronic document and any and all data now in existence or that may be created in the future that is related in any way to the subject of this dispute. The obligation to preserve and retain documents extends to all recipients of this Notice.

IV. CONFIDENTIALITY; NOTIFICATION REGARDING DISTRIBUTION LIST: The fact that a lawsuit has been filed, and any communication regarding it, including this litigation hold Notice, should be kept strictly confidential and should not be discussed with anyone except [Inside Counsel/Responsible Person] or with counsel at [Law Firm]. If you are aware of anyone else (whether or not he or she is currently an employee)

NOTE: This document is provided for information purposes only.

who may possess documents concerning this matter and who does not appear on the attached distribution list, please immediately inform [Inside Counsel/Responsible Person] or counsel at [Law Firm].

V. POTENTIALLY RELEVANT DOCUMENTS: Potentially Relevant Documents are defined to mean Documents or physical things in your possession or under your control – whether located on your work or home computer, personal electronic device, cell phone, or any other device over which you have control; whether in your office or elsewhere – concerning [list/categories]. Potentially Relevant Documents must be saved and preserved because they may be relevant to the litigation.

V. DEFINITION OF DOCUMENTS: “Documents” are more than just paper records. The term “Documents” is used in this Notice in its broadest possible context and covers all computer files and written, recorded, or graphic materials of every kind. It means all documents and **all forms of information** of any type, and all other preserved data, regardless of whether it is hard copy or electronic and regardless of the storage medium. All Potentially Relevant Documents must be preserved, including any “personal” copies you have saved separately from any “official” or “firm” file.

VI. PRESERVATION IN PLACE AND IN CURRENT FORM: [Company] has a legal obligation to preserve all relevant paper and electronic documents and all relevant physical things in the form in which they were created and maintained in the normal course of business.

- For example, if the document is paper clipped, leave the paper clip on it. If the document has post-it notes on it, leave the post-it notes on it. Documents should be filed as you normally maintain them.
- Do not copy electronic files and delete the originals, and do not change the format of electronic files (e.g., from .doc to .pdf).

All files containing Potentially Responsive Documents must be retained, including any files that have been sent to storage or to other individuals, or any files kept by you or your assistant. Your preservation obligation extends to the preservation of relevant data on external media, including hard drives, DVDs, CDs, flash drives, personal home computers, laptops and mobile devices, including PDAs, cell phones and tablets. If you have any doubt about whether a document falls within a category listed above, please retain it. For any potentially relevant documents, you should preserve the original and all non-identical copies and drafts of the same documents. You should preserve the documents in the files in which they would be normally stored and should not segregate them in response to this memorandum.

You need not — and should not — create any records that do not currently exist to respond to this request. You must simply preserve all documents in the categories described above that have already been created or that are created in the future as part of your normal business activities.

This Notice is intended to preserve Potentially Relevant Documents. **As a follow-up to this Notice, counsel for [Company] will be involved in the company’s process of searching for, collecting and duplicating your Potentially Relevant Documents for possible use in the court litigation.**

VII. CONTINUING OBLIGATION TO PRESERVE DOCUMENTS: Even after your Potentially Responsive Documents have been collected, you must continue to preserve your responsive documents until instructed otherwise. Your preservation obligations are ongoing requirements. Any responsive documents that you receive or create after your documents have been collected also must be preserved.

NOTE: This document is provided for information purposes only.

This Notice and the directions it contains supplements any other litigation hold policies, memoranda or instructions. You must continue to apply the directions contained in this notice until you receive written notice from [Inside Counsel/Responsible Person/Law Firm] that it is no longer in effect.

VIII. IF YOU HAVE ANY QUESTIONS OR NEED HELP: Please call if you have questions concerning this litigation hold or preserving Potentially Relevant Documents. Your discussions about the matter should be directed solely to [Inside Counsel/Responsible Person/Law Firm].

IX. ACKNOWLEDGEMENT. Within five (5) days of receipt of this Notice, please email [Inside Counsel/Responsible Person/Law Firm] acknowledging that you have read and understood the preservation obligations it imposes on you.

X. DISTRIBUTION LIST:

Preparing for a Rule 26(f)(1) Discovery Meeting

Counsel should consider the areas where consensus may be possible.

Be prepared to offer a concrete protocol and schedule.

Be prepared to discuss:

- 1. Relevant facts.**
- 2. Document preservation issues.**
- 3. Relevant media and technology involved in data collection.**
- 4. Search terms and search methodology.**
- 5. Format of data production.**
- 6. Privilege.**
- 7. Disclosure procedures / costs.**
- 8. Scheduling and discovery limitation.**

1. Relevant Facts

- Who are the key players?
- What are the issues?
- What events are relevant?
- What are the relevant time frames?

2. Preservation Issues

- Who are the persons most knowledgeable about ESI systems?
- What events and time frames are relevant?
- What data are at greatest risk of alteration or destruction?
- Are any electronic systems slated for replacement or disposal?
- What steps have been or will be taken to preserve ESI?
- What third parties hold information that must be preserved?
 - How will they be notified?
 - How will compliance be ensured?
- What data, if any, require forensically sound preservation?
- Are there unique chain of custody needs to be met?
- What metadata are relevant, and how will it be preserved, extracted and produced?
- Are there data retention policies and practices in place?
- What are the backup practices? What tape archives exist?
- Are there legacy systems to be addressed?
- How will the parties handle portable devices, social networking content, cloud storage, voicemail, instant messaging and other challenging ESI?
- Is there a preservation duty going forward and, if so, how will it be met?
- Is a protective order needed?

3. Media and Technology

- What e-mail applications are used currently?
- What e-mail applications were used in the relevant past?
- Are personal e-mail accounts and computer systems involved?
- What principal applications are used in the business?
- What principal applications were used in the business in the relevant past?
- What electronic formats are common, and in what anticipated volumes?
- Is there a document or messaging archival system?
- What relevant databases, if any, exist?

4. Search Terms and Methodology

- If keyword searching is contemplated, can the parties agree on keywords?
 - What are the key search terms for both sides, based on the facts as known?
- Can supplementary keyword searches be pursued?
- Should a follow up meeting be scheduled specifically on search terms and search methodology?

5. Production Formats

- Will paper documents need be scanned and OCR'ed, or produced in hard copy?
- How will data de-duplication be handled?
- What forms of production are offered or sought?
- Will single or multipage TIFFs, PDFs or other image formats be produced?
- Will load files accompany document images and, if so, how will they be structured and populated?
- Will bates numbering be used?
- Will there be a need for native file production?
- On what media will ESI be delivered?

6. Privilege

- What procedure should be used in case of inadvertent disclosure of privileged documents?
- Will a non-waiver agreement be used?
- Will the scope of the privilege log be narrowed (e.g., no entries for communications between client and litigation counsel after date of filing of Complaint; work product exclusion)?

7. Disclosure Procedures and Costs

- How much time is required to identify, collect, process, review, redact and produce ESI?
- How will the parties handle inadvertent production of privileged ESI?
- How will the parties protect trade secrets and other confidential information in the ESI?

- Do regulatory prohibitions on disclosure, foreign privacy laws or export restrictions apply?
- How can production be structured to accommodate depositions and deadlines?
- How will the parties handle the authentication of native ESI used in a deposition or at trial?
- What ESI, if any, will be claimed as being unreasonably accessible, and on what basis?
- Will a person be appointed to serve as liaison or coordinator for each side on ESI issues?
- Will technical assistants be permitted to communicate directly with each other?
- Is there a need for an e-discovery special master or neutral?
- Can any costs be shared or shifted by agreement?
- Can cost savings be realized using shared vendors, repositories or neutral experts?
- When is the next conference under Rule 26(f) of the NCRCP (if more than one conference is necessary)?

8. Scheduling and limits on discovery

Be prepared to offer options and negotiate the following:

- Date for completion of discovery.
- Date for completion of fact and expert depositions.
- Date for designation of experts.
- Limit on number of interrogatories, depositions or other discovery device.
- Limit on time for single deposition.
- Date for dispositive motions (consistent with the deadlines set in the Case Management Order).

Sample Protocol for Discovery of Electronically Stored Information

[COURT]

PLAINTIFF, Plaintiff, v. DEFENDANT, Defendant.
--

PROTOCOL FOR DISCOVERY OF ELECTRONICALLY STORED INFORMATION

A. Purpose

 This Order will govern discovery and production of electronically stored information (“ESI”) in this case as a supplement to the North Carolina Rules of Civil Procedure, this Court’s Local Rules, and any other applicable orders and rules.

B. Cooperation

 The parties are aware of the importance the Court places on cooperation and commit to cooperate in good faith throughout this action.

C. Liaison

1. **Appointment of E-Discovery Liaisons:** The parties have identified liaisons to each other who are and will be knowledgeable about and responsible for discussing their respective ESI. Each e-discovery liaison will be, or have access to those who are, knowledgeable about the technical aspects of e-discovery, including the location, nature, accessibility, format, collection, search methodologies, and production of ESI in this matter. The parties will rely on the liaisons, as needed, to confer about ESI and to help resolve disputes without court intervention.
2. **Plaintiff:** Plaintiff appoints _____ as its e-discovery liaison.
3. **Defendant:** Defendant appoints _____ as its e-discovery liaison.

NOTE: This document is provided for information purposes only.

D. Preservation

1. **Preservation in General:** The parties have discussed their preservation obligations and needs and agree that preservation of potentially relevant ESI will be reasonable and proportionate.
2. **Data Sources That Are Not Reasonably Accessible:** These data sources are not reasonably accessible because of undue burden or cost pursuant to N.C. R. Civ. P. 26(b)(2)(B) and ESI from these sources will not be preserved, searched, reviewed, or produced, unless otherwise ordered by the Court upon a motion of a party:
 - a. backup systems and/or tapes used for disaster recovery;
 - b. systems no longer in use that cannot reasonably be accessed;
 - c. voicemail messages;
 - d. information from handsets, mobile devices, personal digital assistants, and tablets that is duplicative of information that resides in a reasonably accessible data source;
 - e. deleted, slack, fragmented, or other data only accessible by forensics;
 - f. random access memory (RAM), temporary files, or other ephemeral data that are difficult to preserve without disabling the operating system;
 - g. dynamic fields of databases or log files that are not retained in the usual course of business; and
 - h. information created or copied during the routine, good-faith performance of processes for the deployment, maintenance, retirement, and disposition of computer equipment.

E. Search

1. **Meet and Confer regarding Search Methods:** The parties agree that they will meet and confer about methods to search ESI to identify ESI that is subject to production in discovery and filter out ESI that is not subject to discovery.

2. **Filtering of Non-User Created Files:** A party may use multiple commercially reasonable means to exclude common system files and application executable files from its production and include files that contain user-created information in its production.
3. **Deduplication:** Neither party is required to produce more than a single copy of a responsive document. Each party may de-duplicate responsive ESI (based on MD5 hash values at the document level) across Custodians. For emails with attachments, the hash value is generated based on the parent/child document grouping. To the extent that de-duplication through MD5 hash values is not possible, the parties may meet and confer to discuss any other proposed method of de-duplication.

F. Privilege: Clawback and Nonwaiver

No party intends to produce document(s) or information that are protected by the attorney-client privilege or the work product doctrine. In the event that such document(s) or information are produced, the producing party may request their return from the receiving party, which will immediately cease to use such documents and will within five (5) days return or destroy all copies of such document(s) and any materials paraphrasing, summarizing, referencing or otherwise using such document(s). Any such inadvertent production of document(s) or information protected by the attorney-client privilege or the work product doctrine shall not constitute a waiver of attorney-client privilege or work product protection.

G. Production Formats

The parties agree to produce documents in a format described in Schedule 1 to this Protocol. If particular documents warrant a different format, the parties will cooperate to arrange for the mutually acceptable production of such documents. The parties agree not to degrade the searchability of documents as part of the document production process.

H. Modification

This Protocol may be modified by written agreement of the parties.

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IT IS SO STIPULATED, through Counsel of Record.

* * * *

Dated: _____

Respectfully submitted,

/s/ DRAFT
Attorneys for Plaintiff

/s/ DRAFT
Attorneys for Defendant

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SCHEDULE 1: PRODUCTION FORMAT AND METADATA

A. Production Format

1. **TIFFs.** Documents that exist only in hard copy format must be scanned and produced as TIFFs. Documents that exist as electronically stored information (“ESI”) must be converted to and produced as TIFFs, except for audio, video, and multi-media files and spreadsheets and databases, which must be produced as described below. Unless excepted below, single page TIFFs should be provided for all documents. Each TIFF image must be named according to a unique corresponding Bates number associated with the document. Each TIFF image must be branded according to the Bates number and the agreed upon confidentiality designation. Original document orientation should be maintained (i.e., portrait to portrait and landscape to landscape). Where the TIFF image is unreadable or has materially degraded the quality of the original, the producing party must provide a higher quality TIFF image or the native or original file.
2. **Native files.** Spreadsheets (e.g. MS Excel) will be produced in native format with redactions, if any, clearly marked. To the extent that they are produced in this action, audio, video, and multi-media files will be produced in native format. For each native file produced, a Bates numbered TIFF placeholder indicating that the document was provided only in native format must accompany the native file. The parties will make reasonable efforts to ensure that any native files that are produced only as TIFF images are formatted so as to be readable and so as to not degrade the image quality of the original.
3. **Text Files.** A text file must be provided as a single text file for each document, and the filename itself should match its respective TIFF filename. A commercially acceptable technology for optical character recognition “OCR” must be used for all scanned, hard copy documents. When possible, the text of native files should be extracted directly from the native file. Text files will not contain the redacted portions of the documents

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and OCR text files will be substituted instead of extracted text files for redacted documents.

4. **General Quality Control of Load Files.** Each TIFF in a production must be referenced in the corresponding image load file. The total number of documents referenced in a production's data load file should match the total number of designated document breaks in the Image Load file(s) in the production. The total number of pages referenced in a production's image load file should match the total number of TIFF files in the production. The total number of documents in a production should match the total number of records in the data load file.
5. **Bates Numbering.** All images must be assigned a unique Bates number that is sequential within a given document and across the production sets. Image file names and Bates numbers must meet the following requirements: (i) have a consistent format within and between productions, including a consistent number of characters; (ii) have the same number of numerals to prevent issues with image display and use leading zeros where necessary to achieve this; (iii) not use a space or special characters to separate the prefix from numbers; and (iv) be sequential within a given document.
6. **Presentations.** The parties must process presentations (e.g. MS PowerPoint) with hidden slides and speaker's notes unhidden, and show both the slide and the speaker's notes on the TIFF image.
7. **Redaction of Information.** If documents are produced containing redacted information, an electronic copy of the original, unredacted data must be securely preserved in such a manner so as to preserve without modification, alteration, or addition the content of such data including any metadata therewith.
8. **Confidentiality Designation.** Responsive documents in TIFF format will be stamped with the appropriate confidentiality designations in accordance with the Protective Order in this matter and include the appropriate confidentiality designation in the CONFIDENTIALITY field of the appropriate load file. Each responsive document

produced in native format will have its confidentiality designation identified in the filename of the native file and include the appropriate confidentiality designation in the CONFIDENTIALITY field of the appropriate load file.

9. **Production Media.** Documents must be produced on external hard drives, readily accessible computer(s), or other electronic media ("Production Media"). Each piece of Production Media must identify a production number corresponding to the production volume (e.g., "VOL001", "VOL002"), as well as the volume of the material in that production (e.g. "-001", "-002"). Each piece of Production Media must also identify: (1) the producing party's name; (2) the production date; and (3) the Bates Number range of the materials contained on the Production Media. Where possible, Production Media will be USB drives (external or flash drives).

B. Metadata Fields and Metadata File

1. Each of the metadata and coding fields set forth below that can be extracted must be produced for that document. The parties are not obligated to populate manually any of the fields below if such fields cannot be extracted from a document, with the exception of the following: (a) BEGDOC, (b) ENDDOC, (c) BEGATTACH, (d) ENDATTACH, (e) CONFIDENTIALITY, (k) CUSTODIAN, (l) DEDUPED_CUSTODIAN, (m) NATIVEFILE, (n) NATIVEFILEPATH, (o) TEXTFILEPATH, and (p) PAGECOUNT, which should be populated by the party or the party's vendor.
2. The parties will make reasonable efforts to ensure that metadata fields automatically extracted from the documents are correct.
3. Each party will provide the following metadata fields, where available:

Field Name	Field Description
BEGDOC	Beginning Bates number as stamped on the production image
ENDDOC	Ending Bates number as stamped on the production image
BEGATTACH	First production Bates number of the first document in a family
ENDATTACH	Last production Bates number of the last document in a family
CONFIDENTIALITY	Confidentiality designation assigned to document
CUSTODIAN	Individual from whom the documents originated
DEDUPED_CUSTODIAN	Individual(s) whose documents de-duplicated out; only relevant for global de-duplication.
FILENAME	Filename of an electronic document (Edoc only)
DOCTYPE	Type of document
NATIVEFILE	"Yes" for Edoc produced in its native file format
LANGUAGE	Primary language of document
DOCEXT	File extension associated with document (if any)
FILESIZE	File size, in bytes
FULLPATH	The directory structure of the original file(s).
TITLE	Any value populated in the Title field of the document properties (Edoc only)
AUTHOR	Any value populated in the Author field of the document properties (Edoc only)
SUBJECT	Any value populated in the Subject field of the document properties (Edoc only)
DOCDATE	Date the document was created (format: MM/DD/YYYY) (Edoc only)
DATEMODIFIED	Date when document was last modified according to file system information (Edoc only)
HASHVALUE	MD5 hash value of document
PARENTID	BEGBATES of parent document (Edoc attachments only)
HASATTACH	"Yes" for parent Edocs
ATTACHCOUNT	Number of attachments to parent document (Edoc parents only)

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Field Name	Field Description
FROM	The name and email address of the sender of the email
TO	All recipients that were included on the "To" line of the email
CC	All recipients that were included on the "CC" line of the email
BCC	All recipients that were included on the "BCC" line of the email
EMAILSUBJECT	Subject of email
DATRECEIVED	Date email was received (format: MM/DD/YYYY)
TIMERECEIVED	Time email was received
DATESENT	Date email was sent (format: MM/DD/YYYY)
TIMESENT	Time email was sent
NATIVEFILEPATH	Native File Link (Native Files only)
TEXTFILEPATH	Path to extracted text/OCR file for document
PAGECOUNT	Number of TIFF pages in document

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