



CHIEF JUSTICE'S RULES ADVISORY COMMISSION MINUTES OF MEETING

May 22, 2020

Remote Meeting via WebEx

Call to Order

A remote meeting of the Chief Justice's Rules Advisory Commission was called to order at 2:00 p.m. on Friday, May 22, 2020, via WebEx by North Carolina Court of Appeals Judge Donna Stroud, Commission Chair.

Commission Members Present for the WebEx Meeting:

Trey Allen, *Associate Professor*, UNC School of Government
Ann Anderson, *Associate Professor*, UNC School of Government
Mark Anderson, *Partner*, McGuireWoods LLP
Mark Holt, *Partner*, Holt Sherlin LLP
Mike Mitchell, *Attorney*, Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, LLP
John Rabiej, former *Deputy Director*, Bolch Judicial Institute, Duke University School of Law
Paul Ridgeway, *Senior Resident Superior Court Judge*, Wake County
Christine Walczyk, *District Court Judge*, Wake County

Other Attendees Present for the WebEx Meeting:

Seth Ascher, *Assistant Administrative Counsel*, Supreme Court of North Carolina
Grant Buckner, *Administrative Counsel*, Supreme Court of North Carolina
Elizabeth Croom, *Legal Counsel*, North Carolina Administrative Office of the Courts
Brad Fowler, *Chief Business Officer*, North Carolina Administrative Office of the Courts
Betse Hamilton, *Office Administrator*, Supreme Court of North Carolina
Andrew Simpson, *Chief Counsel for Policy and Intergovernmental Affairs*, North Carolina Administrative Office of the Courts
Rebecca Stevens, *Research Assistant to Representative Sarah Stevens*, North Carolina House of Representatives

Approval of Minutes

The minutes from the May 8, 2020 meeting were approved.

Communications with the General Assembly about the Rules of Civil Procedure Proposal

The Commission discussed Judge Stroud's letter to the General Assembly explaining the proposed amendments to Rule 3 and Rule 5 of the Rules of Civil Procedure, a copy of which is attached to these minutes.

Andrew Simpson advised the Commission that time was of the essence and that the sooner the Commission could get a final recommendation to the General Assembly, the better.

General Rules of Practice Subcommittee Report

The Commission discussed the merits of a 5:00 p.m. electronic-filing deadline and a 12:00 a.m. (midnight) electronic-filing deadline. Because eCourts will be rolled out over a five-year period, many counties will still have a 5:00 p.m. paper-filing deadline for a few more years. Consensus was reached that a 5:00 p.m. electronic-filing deadline in General Rule of Practice 5 was the best way to preserve uniformity among all counties during the eCourts rollout.

Mark Anderson, Subcommittee Chair, reported that a proposed amendment to General Rule of Practice 5 would be ready for discussion at the Commission's next regular meeting.

Rules of Civil Procedure Subcommittee Report

Mark Holt, Commission Member, reported feedback that he had received from the membership of the North Carolina Bar Association concerning the subcommittee's proposed amendments to Rule 3 and Rule 5. The reported feedback was informal and does not represent the official position of the Bar Association.

- The feedback showed broad support for an electronic service option in the rules.
- The feedback showed divided support for eliminating the telefacsimile service option in the rules.

Elizabeth Croom shared her concern about e-mail service in the absence of a rule requiring encryption for confidential documents.

Ann Anderson, Subcommittee Member, reported feedback that she had received from Chief Judge Bledsoe of the North Carolina Business Court. Specifically, she reported his request to insert "unless otherwise ordered by the court" language to the 5:00 p.m. electronic-filing deadline.

Discussion ensued about the feedback received and, as a result, several changes were made to the proposal.

Rules of Civil Procedure Proposal

Mike Mitchell, Subcommittee Chair, moved for the Commission to adopt the proposal.

M/S/Withdrawn: To recommend the proposed amendments to Rule 3 and Rule 5 of the Rules of Civil Procedure to the General Assembly, a copy of which is attached to these minutes.

During discussion of the proposal, John Rabiej, Commission Member, proposed several amendments.

Consensus was reached that Mr. Mitchell should withdraw his motion in order to consult with Mr. Rabiej about making further amendments.

Mr. Mitchell withdrew his motion and agreed to meet with Mr. Rabiej and Prof. Anderson to iron out a final proposal.

The vote to recommend the proposed amendments to the General Assembly was delayed until Wednesday, May 27, 2020, at 1:00 p.m.

Upcoming Commission Meetings

The next Commission meeting is scheduled for Wednesday, May 27, 2020, at 1:00 p.m. for the purpose of voting to recommend proposed amendments to Rule 3 and Rule 5 of the Rules of Civil Procedure to the General Assembly. Due to COVID-19, this meeting will be conducted remotely via WebEx.

Adjournment

The meeting was adjourned at approximately 4:25 p.m. by Judge Stroud.

Minutes submitted by: /s/ Grant E. Buckner
Administrative Counsel, Supreme Court of North Carolina

Date: 6/30/20

NORTH CAROLINA COURT OF APPEALS



CHAMBERS OF
DONNA STROUD, JUDGE

919-831-3680
PO BOX 888, RALEIGH, NC 27602
DONNA.STROUD@COA.NCCOURTS.ORG

May 20, 2020

Honorable Members of the General Assembly,

As Chair of the Chief Justice's Rules Advisory Commission, I write to relay the Commission's recommended changes to the North Carolina Rules of Civil Procedure, which are as follows:

- 1) amend Rule 3 and Rule 5 to provide for electronic filing ("e-filing");
- 2) amend Rule 5 to allow for service of orders and certain documents to be conducted via email; and
- 3) amend Rule 5 to remove facsimile as a method of service under that Rule.

Draft amendments are attached for reference.

As you are likely aware from previous discussions with leaders of the Administrative Office of the Courts, the Judicial Branch will soon be rolling out the integrated case management system ("ICMS" or "e-Courts"), which will enable the public, attorneys, judicial officials, and court staff to conduct a wide array of court-related business online, including e-filing, financial management, case scheduling, and document management. The Commission has been carefully considering the needed rule changes over the past year, and these changes would greatly assist the efficient initial configuration of the e-Courts system, which is now underway.

To allow the court system to optimize the use of e-Courts technology, the attached recommended revisions would make necessary changes to Rule 3 and Rule 5 so that complaints, subsequent pleadings, orders, and other documents may be electronically filed through the e-Courts system. They would further update Rule 5 to allow certain documents and orders to be served upon parties via email, while also eliminating the antiquated method of service via fax. The Commission respectfully requests that these rule changes be introduced as an amendment or a committee substitute to a bill which is eligible for consideration during the 2020 short session.

The Commission is currently working with the North Carolina Bar Association to seek feedback from their members about these rule changes and we will relay that feedback to the General Assembly for consideration as soon as possible. In the meantime, thank you for your attention to these proposed amendments. Please let us know if we can provide further information or answer any questions.

Sincerely,

Donna Stroud
Judge
North Carolina Court of Appeals

G.S. 1A-1, Rule 3

Rule 3. Commencement of action.

(a) A civil action is commenced by filing a complaint with the court. The clerk shall enter the date of filing on the original complaint, and such entry shall be prima facie evidence of the date of filing. -

A civil action may also be commenced by the issuance of a summons when

- (1) A person makes application to the court stating the nature and purpose of ~~his~~ the action and requesting permission to file the ~~his~~ complaint within 20 days and
- (2) The court makes an order stating the nature and purpose of the action and granting the requested permission.

The summons and the court's order shall be served in accordance with the provisions of Rule 4. When the complaint is filed it shall be served in accordance with the provisions of Rule 4 or by registered mail if the plaintiff so elects. If the complaint is not filed within the period specified in the clerk's order, the action shall abate.

If electronic filing is permitted in the county of filing, filing shall be made in accordance with the General Rules of Practice for the Superior and District Courts.

G.S. 1A-1, Rule 5

Rule 5. Service and filing of pleadings and other papers.

(a) Service of orders, subsequent pleadings, discovery papers, written motions, written notices, and other similar papers – When required. – Every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment and similar paper shall be served upon each of the parties, but no service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

(a1) Service of briefs or memoranda in support or opposition of certain dispositive motions. – In actions in superior court, every brief or memorandum in support of or in opposition to a motion to dismiss, a motion for judgment on the pleadings, a motion for summary judgment, or any other motion seeking a final determination of the rights of the parties as to one or more of the claims or parties in the action shall be served upon each of the parties at least two days before the hearing on the motion. If the brief or memorandum is not served on the other parties at least two days before the hearing on the motion, the court may continue the matter for a reasonable period to allow the responding party to prepare a response, proceed with the matter without considering the untimely served brief or memorandum, or take such other action as the ends of justice require. The parties may, by consent, alter the period of time for service. For the purpose of this two-day requirement only, service shall mean personal delivery, email delivery, ~~facsimile transmission~~, or other means such that the party actually receives the brief within the required time.

(b) Service – How made. – A pleading setting forth a counterclaim or cross claim shall be filed with the court and a copy thereof shall be served on the party against whom it is asserted or on the party's attorney of record as provided by this subsection.

With respect to all pleadings subsequent to the original complaint and other papers required or permitted to be served, service shall be made upon the party's attorney of record and, if ordered by the court, also upon the party. If the party has no attorney of record, service shall be made upon the party. With respect to such other pleadings and papers, service with due return may be made in a manner provided for service and return of process in Rule 4. Service under this subsection may also be made by one of the following methods:

Service is made under this subsection if performed through the court's electronic filing system. Otherwise, service may be made as follows:

- (1) Upon a party's attorney of record:
 - a. By delivering a copy to the attorney. Delivery of a copy within this sub-subdivision means handing it to the attorney, or leaving it at the attorney's office with a partner or employee, ~~or sending it to the attorney's office by a confirmed telefacsimile transmittal for receipt by 5:00 P.M. Eastern Time on a regular business day, as evidenced by a telefacsimile receipt confirmation. If receipt of delivery by telefacsimile is after 5:00 P.M., service will be deemed to have been completed on the next business day.~~ Service may also be made on the attorney by electronic mail ("email") to an

email address of record with the court in the case. Such email must be sent by 5:00 P.M. Eastern Time on a regular business day. If the email is sent after 5:00 P.M., it will be deemed to have been sent on the next business day.

b. By mailing a copy to the attorney's office.

(2) Upon a party:

a. By delivering a copy to the party. Delivery of a copy within this sub-subdivision means handing it to the party.

b. By mailing a copy to the party at the party's last known address or, if no address is known, by filing it with the clerk of court.

c. Service may also be made on the party by electronic mail ("email") if the party has consented to receive email service in the case at a particular email address, and a copy of the consent is filed with the court by any party. Such email must be sent by 5:00 P.M. Eastern Time on a regular business day. If the email is sent after 5:00 P.M., it will be deemed to have been sent on the next business day.

Service by mail shall be complete upon deposit of the pleading or paper enclosed in a post-paid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service.

(b1) Service – Certificate of Service. – A certificate of service shall accompany every pleading and every paper required to be served on any party or nonparty to the litigation, except with respect to pleadings and papers whose service is governed by Rule 4. The certificate shall show the date and method of service or the date of acceptance of service and shall show the name and service address of each person upon whom the paper has been served. If one or more persons are served by ~~facsimile transmission~~electronic mail ("email"), the certificate shall also show the ~~telefacsimile number~~email address of each person so served. Each certificate of service shall be signed in accordance with and subject to Rule 11 of these rules.

(c) Service – Numerous defendants. – In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any crossclaim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any

such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

(d) Filing. – The following papers shall be filed with the court, either before service or within five days after service:

- (1) All pleadings, as defined by Rule 7(a) of these rules, subsequent to the complaint, whether such pleadings are original or amended.
- (2) Written motions and all notices of hearing.
- (3) Any other application to the court for an order that may affect the rights of or in any way commands any individual, business entity, governmental agency, association, or partnership to act or to forego action of any kind.
- (4) Notices of appearance.
- (5) Any other paper required by rule or statute to be filed.
- (6) Any other paper so ordered by the court.
- (7) All orders issued by the court.

All other papers, regardless of whether these rules require them to be served upon a party, should not be filed with the court unless (i) the filing is agreed to by all parties, or (ii) the papers are submitted to the court in relation to a motion or other request for relief, or (iii) the filing is permitted by another rule or statute. Briefs or memoranda provided to the court may not be filed with the clerk of court unless ordered by the court. The party taking a deposition or obtaining material through discovery is responsible for its preservation and delivery to the court if needed or so ordered.

- (e) (1) Filing with the court defined. – The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with the judge~~him~~, in which event the judge~~he~~ shall note thereon the filing date and forthwith transmit them to the office of the clerk.
- (2) Filing by electronic means. – ~~If, pursuant to G.S. 7A-34 and G.S. 7A-343, electronic filing is permitted in the county in which the paper is to be filed, filing shall be made in accordance with the General Rules of Practice for the Superior and District Courts. the Supreme Court and the Administrative Officer of the Courts establish uniform rules, regulations, costs, procedures and~~

~~specifications for the filing of pleadings or other court papers by electronic means, filing may be made by the electronic means when, in the manner, and to the extent provided therein.~~ (1967, c. 954, s. 1; 1971, c. 538; c. 1156, s. 2.5; 1975, c. 762, s. 1; 1983, c. 201, s. 1; 1985, c. 546; 1991, c. 168, s. 1; 2000-127, s. 1; 2001-379, s. 3; 2001-388, s. 1; 2001-487, s. 107.5(a); 2004-199, s. 5(a); 2005-138, ss. 1, 2; 2006-187, s. 2(a); 2011-332, s. 4.2.)

Rules of Civil Procedure Proposal

M/S/Withdrawn

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- (2) The court makes an order stating the nature and purpose of the action and granting the requested permission.

The summons and the court's order shall be served in accordance with the provisions of Rule 4. When the complaint is filed it shall be served in accordance with the provisions of Rule 4 or by registered mail if the plaintiff so elects. If the complaint is not filed within the period specified in the clerk's order, the action shall abate.

If electronic filing is permitted in the county of filing, filing shall be made in accordance with Rule 5 of the General Rules of Practice for the Superior and District Courts.

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G.S. 1A-1, Rule 5
Rule 5. Service and filing of pleadings and other papers.

(a) Service of orders, subsequent pleadings, discovery papers, written motions, written notices, and other similar papers – When required. – Every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment and similar paper shall be served upon each of the parties, but no service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

(a1) Service of briefs or memoranda in support or opposition of certain dispositive motions. – In actions in superior court, every brief or memorandum in support of or in opposition to a motion to dismiss, a motion for judgment on the pleadings, a motion for summary judgment, or any other motion seeking a final determination of the rights of the parties as to one or more of the claims or parties in the action shall be served upon each of the parties at least two days before the hearing on the motion. If the brief or memorandum is not served on the other parties at least two days before the hearing on the motion, the court may continue the matter for a reasonable period to allow the responding party to prepare a response, proceed with the matter without considering the untimely served brief or memorandum, or take such other action as the ends of justice require. The parties may, by consent, alter the period of time for service. For the purpose of this two-day requirement only, service shall mean personal delivery, electronic (“email”) delivery, facsimile transmission, or other means such that the party actually receives the brief within the required time.

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with the court in the case. Such email must be sent by 5:00 P.M. Eastern Time on a regular business day. If the email is sent after 5:00 P.M., it will be deemed to have been sent on the next business day.

b. By mailing a copy to the attorney's office.

(2) Upon a party:

a. By delivering a copy to the party. Delivery of a copy within this sub-subdivision means handing it to the party.

b. By mailing a copy to the party at the party's last known address or, if no address is known, by filing it with the clerk of court.

c. Service may also be made on the party by electronic mail ("email") if the party has consented to receive email service in the case at a particular email address, and a copy of the consent is filed with the court by any party. Such email must be sent by 5:00 P.M. Eastern Time on a regular business day. If the email is sent after 5:00 P.M., it will be deemed to have been sent on the next business day.

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Service by mail shall be complete upon deposit of the pleading or paper enclosed in a post-paid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service.

(b1) Service – Certificate of Service. – A certificate of service shall accompany every pleading and every paper required to be served on any party or nonparty to the litigation, except with respect to pleadings and papers whose service is governed by Rule 4. The certificate shall show the date and method of service or the date of acceptance of service and shall show the name and service address of each person upon whom the paper has been served. If one or more persons are served by facsimile transmission, electronic mail ("email"), the certificate shall also show the telefacsimile number, email address of each person so served. Each certificate of service shall be signed in accordance with and subject to Rule 11 of these rules.

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notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

(d) Filing. – The following papers shall be filed with the court, either before service or within five days after service:

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- (2) Written motions and all notices of hearing.
- (3) Any other application to the court for an order that may affect the rights of or in any way commands any individual, business entity, governmental agency, association, or partnership to act or to forego action of any kind.
- (4) Notices of appearance.
- (5) Any other paper required by rule or statute to be filed.
- (6) Any other paper so ordered by the court.
- (7) All orders issued by the court.

All other papers, regardless of whether these rules require them to be served upon a party, should not be filed with the court unless (i) the filing is agreed to by all parties, or (ii) the papers are submitted to the court in relation to a motion or other request for relief, or (iii) the filing is permitted by another rule or statute. Briefs or memoranda provided to the court may not be filed with the clerk of court unless ordered by the court. The party taking a deposition or obtaining material through discovery is responsible for its preservation and delivery to the court if needed or so ordered.

- (e) (1) Filing with the court defined. – The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with ~~the judge~~him, in which event ~~the judge~~ shall note thereon the filing date and forthwith transmit them to the office of the clerk.
- (2) Filing by electronic means. – ~~If, pursuant to G.S. 7A-34 and G.S. 7A-343, electronic filing is permitted in the county of filing, filing shall be made in accordance with Rule 5 of the General Rules of Practice for the Superior and District Courts, the Supreme Court and the Administrative Officer of the Courts establish uniform rules, regulations, costs, procedures and specifications for the filing of pleadings or other court papers by~~

~~electronic means, filing may be made by the electronic means when, in the manner, and to the extent provided therein.~~ (1967, c. 954, s. 1; 1971, c. 538; c. 1156, s. 2.5; 1975, c. 762, s. 1; 1983, c. 201, s. 1; 1985, c. 546; 1991, c. 168, s. 1; 2000-127, s. 1; 2001-379, s. 3; 2001-388, s. 1; 2001-487, s. 107.5(a); 2004-199, s. 5(a); 2005-138, ss. 1, 2; 2006-187, s. 2(a); 2011-332, s. 4.2.)