



CHIEF JUSTICE'S RULES ADVISORY COMMISSION MINUTES OF MEETING

November 20, 2020

Remote Meeting via WebEx

Call to Order

A remote meeting of the Chief Justice's Rules Advisory Commission was called to order at 2:05 p.m. on Friday, November 20, 2020, via WebEx by North Carolina Court of Appeals Judge Donna Stroud, Commission Chair.

Commission Members Present for the WebEx Meeting:

Mark Anderson, *Partner*, McGuireWoods LLP

Mark Holt, *Partner*, Holt Sherlin LLP

Mike Mitchell, *Attorney*, Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, LLP

Kellie Myers, *Trial Court Administrator*, Wake County

John Rabiej, former *Deputy Director*, Bolch Judicial Institute, Duke University School of Law

Paul Ridgeway, *Senior Resident Superior Court Judge*, Wake County

Andrew Tripp, *Chief of Staff*, Office of Senate President Pro Tempore Phil Berger

Christine Walczyk, *District Court Judge*, Wake County

Other Attendees Present for the WebEx Meeting:

Grant Buckner, *Administrative Counsel*, Supreme Court of North Carolina

Brad Fowler, *Chief Business Officer*, North Carolina Administrative Office of the Courts

Betse Hamilton, *Office Administrator*, Supreme Court of North Carolina

Abby Hammond, *Advocacy Consultant*, North Carolina Advocates for Justice

Atiya Mosley, *Senior Staff Attorney*, Legal Aid of North Carolina, Inc. – The Child's Advocate

Michael Robinson, *Judge*, North Carolina Business Court

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

Welcome and Introductions

Judge Stroud welcomed those in attendance, including several guests.

Approval of Minutes

The minutes from the November 6, 2020 meeting were approved, as written.

General Rules of Practice – Proposed Edit to Rule 5

Mark Anderson gave an overview of the subcommittee's current draft of Rule 5 of the General Rules of Practice.

The Commission discussed the draft and edited it during the meeting.

Mark Anderson moved that the Commission approve the draft of Rule 5 of the General Rules of Practice, as edited during the meeting, and recommend that draft to the Supreme Court of North Carolina. Mike Mitchell seconded the motion. Judge Stroud called the matter to a vote and the Commission members then present approved the motion unanimously. (Commission member John Rabiej did not vote because he had departed the meeting early.)

The draft of Rule 5 of the General Rules of Practice, as edited during the meeting, is attached to these minutes.

Adjournment

The meeting was adjourned at approximately 3:45 p.m. by Judge Stroud.

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

Date: 11/23/20

Rule 5. Electronic Filing of Pleadings and Other Papers

- (a) Electronic Filing.
- (1) Requirement for attorneys. An attorney shall file papers electronically through the electronic filing system in a court where electronic filing has been implemented, as identified by the Administrative Office of the Courts.
 - (i) A court may impose sanctions for failure to file a paper electronically, including striking the paper. The Chief Justice may establish exceptions to the electronic filing requirement for exceptional circumstances.
 - (2) An unrepresented party or person may, but is not required to, file papers electronically through the electronic filing system.
 - (3) Email Address. An attorney or unrepresented party or person shall include his or her email address on every paper filed electronically.
 - (4) Mechanism. Electronic filing shall be done through the electronic filing system established and maintained by the Administrative Office of the Courts.
 - (5) Registration:
 - (i) An attorney filing in a court electronically shall register with the electronic filing system. The attorney shall provide the attorney's State Bar Number.
 - (ii) An unrepresented party or person may register to participate in electronic filing by registering with the electronic filing system. The unrepresented party or person shall provide personal identifying information and certify compliance with all mandated security procedures.
 - (6) A party or person may, for purposes of convenience, use the electronic court filing system to transmit a paper, which may not be filed under another applicable rule or statute.
 - (7) Timely filing. An electronically filed paper is deemed filed when marked with an electronic receipt stamp by the electronic filing system, except:
 - (i) if a paper is transmitted and stamped after 5:00 p.m. EST, the paper shall be deemed filed on the following day, subject to section ii; and
 - (ii) if a paper is transmitted and electronically stamped on a Saturday, Sunday, or a legal holiday when the courthouse

is closed for transactions, it is deemed filed on the next day that is not a Saturday, Sunday, or a legal holiday.

- (8) **Technical Failure.** In the event of a technical failure or system outage preventing timely filing or service through the electronic filing system, a party may seek appropriate relief from the Court.
- (9) **Electronic Signatures.** A paper that is electronically served, filed, or issued is considered signed if the paper includes:
 - (i) the symbol “/s/” and name typed in the space where the signature would otherwise appear, unless the paper is notarized or sworn; or
 - (ii) an electronic image or scanned image of the signature.
- (10) **Format.** An electronically filed paper must comport with the electronic filing system’s mandated format and paper restrictions.
- (11) **Electronic Notices from the Court.** The Court may send notices, orders, or other communications about the case to a registered party electronically. A court seal and the presiding judge’s signature on any order or other directive may be electronic.
- (12) **Official Record.** A paper filed electronically is the official court record.

[Addition to GRP Rule 5]

Protective Orders and Electronically Filing under Seal

- (a) **General.**
 - (1) Parties or persons should limit the materials that they seek to file under seal. The party or person seeking to maintain materials under seal bears the burden of establishing the need for filing under seal.
 - (2) This rule should not be construed to change any requirement or standard that otherwise would govern the issuance of a protective order.
 - (3) Parties or persons are encouraged to agree on terms for a proposed protective order that governs the confidentiality of discovery materials when exchanged between or among the parties. This rule applies to both parties and non-parties.

- (b) Procedures for sealed filing.
- (1) **Pursuant to a protective order.** The Court may enter a protective order under Rule 26(c) of the Rules of Civil Procedure that contains standards and processes for the handling, filing, and service of sealed papers. Proposed protective orders submitted to the Court should include procedures similar to those described in subsections (b)(2) through (b)(4) of this rule.
 - (2) **In the absence of a protective order.** In the absence of an order described in subsection (b)(1), any party that seeks to file a paper or part of a paper under seal must provisionally file the paper under seal together with a motion for leave to file the paper under seal. The motion must be filed no later than 5:00 p.m. EST on the day that the paper is provisionally filed under seal. The motion must contain information sufficient for the Court to determine whether sealing is warranted, including the following:
 - (i) a non-confidential description of the material sought to be sealed;
 - (ii) the circumstances that warrant sealed filing;
 - (iii) the reason(s) why no reasonable alternative to a sealed filing exists;
 - (iv) if applicable, a statement that the party is filing the material under seal because another party (the “designating party”) has designated the material under the terms of a protective order in a manner that triggered an obligation to file the material under seal and that the filing party has unsuccessfully sought the consent of the designating party to file the materials without being sealed;
 - (v) if applicable, a statement that any designating party that is not a party to the action is being served with a copy of the motion for leave;
 - (vi) a statement that specifies whether the party is requesting that the paper be accessible only to counsel of record rather than to the parties; and
 - (vii) a statement that specifies how long the party seeks to have the material maintained under seal and how the material is to be handled upon unsealing.
 - (3) Until the Court rules on the sealing motion, any paper provisionally filed under seal may be disclosed only to counsel of

record and their staff until otherwise ordered by the Court or agreed to by the parties.

- (4) Within five business days of the filing or provisional filing of a paper under seal, the party that filed the paper should file a public version of the paper. The public version may bear redactions or omit material, but the redactions or omissions should be as limited as practicable. In the rare circumstance that an entire paper is filed under seal, in lieu of filing a public version of the paper, the filing party must file a notice that the entire paper has been filed under seal. The notice must contain a non-confidential description of the paper that has been filed under seal.
- (c) **Role of designating party.** If a motion for leave to file under seal is filed by a party who is not the designating party, then the designating party may file a supplemental brief supporting the sealing of the paper within seven business days of service of the motion for leave. In the absence of a brief, the Court may summarily deny the motion for leave and may direct that the paper be unsealed.