



CHIEF JUSTICE'S RULES ADVISORY COMMISSION MINUTES OF MEETING

November 6, 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 6, 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, *Town Attorney*, Town of Chapel Hill
Mark Anderson, *Partner*, McGuireWoods LLP
Mark Holt, *Partner*, Holt Sherlin 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

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
Michael Robinson, *Judge*, North Carolina Business Court
Jennifer Simmons, *Senior Project Manager*, North Carolina Equal Access to Justice Commission
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 Jennifer Simmons of the North Carolina Equal Access to Justice Commission, who was present to discuss the impact that electronic-filing rules have on unrepresented parties.

Approval of Minutes

The minutes from the October 16, 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.

Mark Holt reiterated his concern about the provision related to unrepresented parties, specifically that it allowed a judge to order an unrepresented party to file documents electronically under certain circumstances. Jennifer Simmons of the Equal Access to Justice Commission shared Mr. Holt's concern and represented that the Equal Access to Justice Commission would prefer a rule that does not limit an unrepresented party's paper-filing options. Discussion ensued about this topic that resulted in an additional edit being made to that provision, which eliminated Mr. Holt's concern.

The Commission then discussed the provision that excepts discovery materials, briefs, and memorandums from being electronically filed. Consensus was reached that documents to be reviewed by the Court should be "submitted" to the Court through the system, even if they are not "filed." Ann Anderson proposed a new subsection that requires the documents to be submitted through the system, which was accepted and added to the draft.

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

Judge Stroud asked the General Rules of Practice subcommittee to make additional edits to Rule 5 and circulate the draft by e-mail to the Commission before the next meeting.

Upcoming Commission Meetings

The commission scheduled a meeting for Friday, November 20, 2020, at 2:00 p.m. The meeting will be conducted remotely via WebEx.

Minutes of Meeting
Chief Justice's Rules Advisory Commission
November 6, 2020

Adjournment

The meeting was adjourned at approximately 4:05 p.m. by Judge Stroud.

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

Date: 11/10/20

Rule 5. Form of Pleadings

(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 sanction a party for failing 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 may, but is not required to, file papers electronically through the electronic filing system, ~~but is only required to do so if capable and so ordered by the court in its discretion.~~
- (3) Email Address. An attorney or unrepresented party 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 may register to participate in electronic filing by registering with the electronic filing system. The unrepresented party shall provide personal identifying information and certify compliance with all mandated security procedures.
- (6) Exceptions. The following documents are not to be filed electronically unless the court so orders:
 - (i) Discovery materials, including but not limited to, deposition notices; expert designations; interrogatories; requests for production; requests for admission;

requests for documents; and answers and responses thereto, ~~are not to be filed unless ordered by the Court.~~ All such papers must be served on all other counsel and on all parties not represented by counsel. A party may serve discovery requests and responses on other parties, using the court's electronic filing system, without the papers becoming a part of the official court record.

(ii) Briefs or memoranda provided to the court.

~~(7)~~ (7) Documents to be reviewed by the court that are excluded from filing under Rule of Civil Procedure 5 may nevertheless be submitted to the court through the electronic filing system.

~~(7)(8)~~ (7)(8) 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 document is transmitted and stamped after 5:00 p.m. EST, the document shall be deemed filed on the following day, subject to section ii; and

(ii) if a document 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)(9)~~ (8)(9) 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)(10)~~ (9)(10) Electronic Signatures. A paper that is electronically served, filed, or issued is considered signed if the document includes:

(i) the symbol “/s/” and name typed in the space where the signature would otherwise appear, unless the document is notarized or sworn; or

(ii) an electronic image or scanned image of the signature.

~~(10)(11)~~ (10)(11) Format. An electronically filed document must comport with the electronic filing system's mandated format and document restrictions.

~~(11)~~(12) 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)~~(13) 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) GRP Rule 5 applies to both parties and non-parties. References to “parties” in this rule therefore include non-parties.
 - (2) Parties should limit the materials that they seek to file under seal. The party seeking to maintain materials under seal bears the burden of establishing the need for filing under seal.
 - (3) This rule should not be construed to change any requirement or standard that otherwise would govern the issuance of a protective order.
 - (4) Parties 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. This rule should not be construed to change any requirement or standard that otherwise would govern the issuance of a protective order.
- (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 TOC Rule 5 12 that contains standards and processes for the handling, filing, and service of sealed documents. Proposed protective orders submitted to the Court should include procedures similar to those described in subsections (b) through (d) of this rule.

- (2) **In the absence of a protective order.** In the absence of an order described in BCR 5.2(a), any party that seeks to file a document or part of a document under seal must provisionally file the document under seal together with a motion for leave to file the document under seal. The motion must be filed no later than 5:00 p.m. Eastern Time on the day that the document 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 document 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. (c) Until the Court rules on the sealing motion, any document 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.
- (3) Until the Court rules on the sealing motion, any document 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 document under seal, the party that filed the document

should file a public version of the document. 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 document is filed under seal, in lieu of filing a public version of the document, the filing party must file a notice that the entire document has been filed under seal. The notice must contain a non-confidential description of the document 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 document within seven business days of service of the motion for leave. The supplemental brief must comply with the requirements in BCR 7. In the absence of a brief, the Court may summarily deny the motion for leave and may direct that the document be unsealed.