



CHIEF JUSTICE'S RULES ADVISORY COMMISSION MINUTES OF MEETING

September 23, 2022

North Carolina Judicial Center, Hickory Boardroom
901 Corporate Center Drive
Raleigh, NC 27607

Call to Order

A meeting of the Chief Justice's Rules Advisory Commission was called to order at 2:02 p.m. on Friday, September 23, 2022, by Chief Judge Donna Stroud.

Commission Members in Attendance in Person:

Mike Mitchell, *Attorney*, Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, LLP
Paul Ridgeway, *Senior Resident Superior Court Judge*, Wake County
Christine Walczyk, *District Court Judge*, Wake County

Commission Members in Attendance via Webex:

Mark Holt, *Partner*, Holt Sherlin LLP
Kellie Myers, *Trial Court Administrator*, Wake County
John Rabiej, *Founder*, Rabiej Litigation Law Center
Michael Robinson, *Special Superior Court Judge for Complex Business Cases*, North Carolina Business Court
Andrew Tripp, *Senior Vice President for Legal Affairs & General Counsel*, University of North Carolina System

Other Attendees in Attendance in Person:

Ben Arden, *Intern for the Office of Administrative Counsel*, Supreme Court of North Carolina
Seth Ascher, *Assistant Administrative Counsel*, Supreme Court of North Carolina
Grant Buckner, *Clerk of the Supreme Court*, Supreme Court of North Carolina
Betse Hamilton, *Office Administrator*, Supreme Court of North Carolina
Jon Harris, *General Counsel*, North Carolina Court of Appeals
Jen Wyatt, *Assistant Administrative Counsel*, Supreme Court of North Carolina

Other Attendees in Attendance via Webex:

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



Approval of Minutes

The minutes from the June 17, 2022 meeting were approved as written.

***eCourts* Update**

- Brad Fowler reported to the commission that there will be a delay in the implementation of *eCourts* in the pilot counties, which was originally scheduled to occur on October 10, and a new projected launch date will be released.
- Over the past few months, hundreds of practicing attorneys have been trained on how to e-file using the *eCourts* system, and those training sessions will continue to occur as the system is finalized. Members of court staff in the pilot counties have participated in in-person trainings in order to become familiar with the software before the system goes live. The development team is working to resolve defects and application difficulties that were discovered during the *eCourts* training sessions.

Subcommittee Reports

Criminal Service Subcommittee

- Judge Christine Walczyk, subcommittee chair, reported that when the subcommittee was first established, it was charged with reviewing North Carolina's criminal service statutes to determine whether amendments were necessary to account for the implementation of the *eCourts* system. The subcommittee then learned that the Office of General Counsel at the Administrative Office of the Courts was tasked with an overlapping project and had already compiled a list of needed statutory changes to propose to the General Assembly.
- Since the last commission meeting, the subcommittee has been in communication with the Office of General Counsel concerning the subcommittee's questions about the proposal and to provide feedback and any additional needed assistance. The Office of General Counsel has not communicated that it would benefit from the subcommittee's further work on the project, and therefore, the subcommittee has completed its task.
- Next steps for the subcommittee: none.

General Rule of Practice 3.1 Subcommittee

- Judge Walczyk, subcommittee chair, reported that the two drafts of an amendment to General Rule of Practice 3.1 that the subcommittee shared with the commission at the last meeting were sent to the North Carolina Bar Association for comment, and feedback was received from the Family Law Section.
- Since the last commission meeting, minor edits were made to the drafts to reflect suggestions proposed during the last commission meeting and the feedback from the North Carolina Bar Association. Judge Walczyk asked for final feedback regarding which version of the proposed

rule is preferred (either Version 1, which includes subsection (f), or Version 2, which does not include subsection (f)). Commission members expressed that they would benefit from additional time to consider the drafts.

- Next steps for the subcommittee: (1) redistribute the two versions of General Rule of Practice 3.1 and invite final feedback from commission members; and (2) finalize the preferred draft of the rule for a final vote at the next commission meeting.

Motion Consultation Rule Subcommittee

- Seth Ascher, on behalf of subcommittee chair Judge Michael Robinson, reported that the subcommittee submitted the draft of proposed General Rule of Practice 6 to the North Carolina Bar Association for comment, and that it had not received feedback by the deadline.
- The subcommittee did receive feedback from the Chief Justice's Commission on Professionalism, which recommended a slight change to the language of the proposed rule (so that the rule states that there must be a "good faith effort" to consult). The subcommittee made changes to its draft of General Rule of Practice 6 based on that feedback.
- Commission members shared concerns about whether the rule is meant to exclude pro se parties from the consultation requirement and about the potential for needless continuances as a result of not complying with the rule. There was a recommendation to change the language of the rule to require that a motion reflect whether opposing counsel "consents" to the motion, instead of requiring that a motion reflect "the position" of opposing counsel.
- Next steps for the subcommittee: (1) make minor changes to the language of subsection (a) based on the concerns raised at the meeting; and (2) work to finalize the draft of General Rule of Practice 6.

Privacy Subcommittee

- Seth Ascher, on behalf of subcommittee chair Judge Robinson, reported that the subcommittee has been in contact with Courtney Bailey, Records Officer for the Administrative Office of the Courts, who shared that a proposal is in the works to update the Rules of Recordkeeping based on the implementation of eCourts and for the privacy of personal identifiable information (PII).
- Next steps for the subcommittee: hold for further communications from outside sources regarding the proposal.

General Rule of Practice 15 Subcommittee

- Judge Ridgeway, subcommittee chair, shared an updated draft of General Rule of Practice 15 and invited feedback from the commission.

- After the last commission meeting, Judge Ridgeway shared a previous draft of the rule with fellow judges at the Superior Court Judges' Conference and requested feedback. The subcommittee received no negative comments about the proposed rule, and Judge Ridgeway reported that the judges with whom he spoke appreciated that the rule afforded judges discretion in how to approach courtroom interactions with the media in their respective jurisdictions.
- Judge Walczyk inquired about whether the subcommittee had considered including a definition of "journalist" within the text of the rule, and Judge Ridgeway responded that the subcommittee did consider the idea but instead decided to point to the statutory definition of that term.
- The rule was put to a vote, and it was unanimously approved by the commission as amended. (In subsection (c), the language "shall be allowed unless the judge prohibits it" will be changed to "should be allowed upon request, unless the judge prohibits it.")
- Next steps for the subcommittee: (1) incorporate minor amendment to the language of subsection (c) and finalize rule proposal; and (2) submit the proposed rule and a memo explaining the proposed rule to the Supreme Court of North Carolina for consideration.

Ongoing Business

- Jon Harris provided an update on the remote proceedings project, reporting that Governor Roy Cooper signed House Bill 776 in July 2022, which revived the emergency remote notarization statute through June 2023. The statute, first passed at the onset of the pandemic, allows emergency remote notarizations and oaths by live video. Because the new law requires the Secretary of State to adopt rules establishing standards and procedures for remote electronic notarizations, no further action by the commission is needed at this time.

Upcoming Commission Meetings

The next commission meeting is scheduled for Friday, November 18, 2022, at 2:00 p.m.

Adjournment

The meeting was adjourned at 4:10 p.m. by Chief Judge Stroud.

Minutes submitted by: /s/ Jennifer N. Wyatt
Assistant Administrative Counsel, Supreme Court of North Carolina

Date: 10/4/2022