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## MEMORANDUM

TO: Trial Court Officials

FROM: NCAOC Office of General Counsel

DATE: May 6, 2021

SUBJECT: Amendments to the General Rules of Practice and the Supplemental Rules of Practice and Procedure for the North Carolina eFiling Pilot Project<sup>1</sup>

This summer the North Carolina Administrative Office of the Courts (NCAOC) will begin implementing *Odyssey*, a statewide electronic filing and case-management system that will be rolled out across the state in phases over the next few years. On April 21, 2021, in anticipation of the transition to *Odyssey*, the Supreme Court of North Carolina adopted amendments to the General Rules of Practice for the Superior and District Courts (GRP) and to the Supplemental Rules of Practice and Procedure for the North Carolina eFiling Pilot Project.<sup>2</sup> The amendments will take effect on May 10, 2021.

This memorandum summarizes the amendments, which collectively

- establish rules for electronic filing, service, and notice in counties with *Odyssey*;
- clarify the electronic filing requirements for Business Court cases in *Odyssey* counties;
- confirm that electronic filing in non-*Odyssey* counties remains permissible in Business Court cases and in those non-*Odyssey* counties that are part of the NC eFiling Pilot Project;
- explain that local court rules cannot be inconsistent with the GRP; and
- set out rules for filing sealed documents in *Odyssey* and non-*Odyssey* counties.

### **GRP Amendments**

The amendments repeal current Rule 5 (Filing of Pleadings and Other Documents) of the GRP and replace it with an entirely new Rule 5 (Filing of Pleadings and Other Documents in Counties with *Odyssey*) and Rule 5.1. (Filing of Pleadings and Other Documents in Counties Without *Odyssey*).

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<sup>1</sup> This memo will be available on the NCAOC's website for Judicial Branch users at <https://juno.nccourts.org/legal-memos> under "Legal Memos."

<sup>2</sup> The Supreme Court's orders amending the General Rules of Practice and the Supplemental Rules of Practice and Procedure for the North Carolina eFiling Pilot Project may be accessed on the NCAOC's Juno website for Judicial Branch users at <https://juno.nccourts.org/news/supreme-court-adopts-electronic-filing-rules-implementation-ecourts> and on the Judicial Branch website for the public at <https://www.nccourts.gov/news/tag/general-news/supreme-court-adopts-electronic-filing-rules-for-the-implementation-of-ecourts>.

## **Rule 5 (Filing of Pleadings and Other Documents in Counties with Odyssey)**

### **Rule 5(b) (Electronic Filing in Odyssey)**

Paragraph (b) of new Rule 5 contains several provisions governing the use of *Odyssey*.

- **Rule 5(b)(1) (Registration to Use Odyssey)**

To file documents electronically through *Odyssey*, a person must register for a user account. The AOC must ensure that the registration process employs security procedures consistent with G.S. 7A-49.5(b1), including a requirement that *pro se* parties submit a form of identification.

- **Rule 5(b)(2) (Electronic Filing Required for Attorneys)**

In counties in which *Odyssey* has been implemented, any “**attorney must** file pleadings and other documents electronically” (emphasis added). *Pro se* parties are encouraged to file electronically but are not required to do so.

- **Rule 5(b)(3) (Electronic Signatures Permitted)**

Any person filing a pleading or other document in *Odyssey* may electronically sign the document “by typing his or her name in the document preceded by ‘/s/.’”

- **Rule 5(b)(4) (Date and Time When Filed; Filing Deadlines)**

(a) When a document is received by *Odyssey*, the system will produce an electronic file stamp on the face of the document. A document is considered to have been filed on the date and time reflected by its electronic file stamp.

(b) If a document is due to be filed on a particular date, the deadline to file it is 5:00 P.M. Eastern Standard Time on that date.

- **Rule 5(b)(5) (Relief if Emergency Prevents Timely Filing)**

Where emergency circumstances—such as an *Odyssey* service outage or natural disaster—prevent an attorney from electronically filing a document in a timely manner, the attorney may file a motion asking the court for any relief permitted by law.

- **Rule 5(b)(6) (Electronic Orders, Judgments, Decrees, and Court Communications)**

The court may electronically sign and file any order, judgment, or decree and may also send notices and communications through *Odyssey*.

### **Rule 5(c) (Paper Filings in Counties with Odyssey)**

Former Rule 5(b)’s requirements for paper filings, including the cover sheet requirement, now appear in Rule 5(c) for *Odyssey* counties. (New Rule 5.1(c) contains the equivalent provision for non-*Odyssey* counties.) The paper filing requirements in new Rule 5(c) are identical to the paper filing requirements in former Rule 5(b).

### **Rule 5(d) (Service and Certificates of Service)**

Service of electronically filed pleadings and documents must still be accomplished in accordance with applicable law, such as Rule 5 of the NC Rules of Civil Procedure (NCRCP). As amended by the General Assembly last September, Rule 5 of the NCRCP addresses both service through electronic filing and service when electronic filing is not available.<sup>3</sup> It specifies that an “automated certificate of service” generated through the court’s electronic filing system satisfies the requirement for a certificate of service. G.S. 1A-1, Rule 5(b1) (2020). New Rule 5(d) of the GRP clarifies that a “Notification of Service” generated by *Odyssey* constitutes an “automated certificate of service” for purposes of Rule 5(b1) of the NCRCP.

### **Rule 5(e) (Redaction of Private Information)**

Under Rule 5(e), before electronically filing a pleading or other document, the filer “should omit or redact any nonpublic and unneeded, sensitive information” contained therein, such as personally identifying information covered by G.S. 132-1.10(d).<sup>4</sup>

### **Rule 5(f) (Use of Rule 5 in Business Court Cases)**

Notwithstanding new Rule 5 of the GRP, the filing of pleadings and documents with the Business Court remains subject to the [NC Business Court Rules \(NCBCR\)](#). In general, Rule 3.1 of the NCBCR mandates that all filings in the Business Court be made through the [Business Court’s eFiling website](#). Under Rule 3.11 of the NCBCR, however, material listed in Rule 5(d) of the NCRCP must be filed with the Business Court **and** “filed with the Clerk of Superior Court in the county of venue, either before service or within five days of service.”<sup>5</sup> Thus, where the county of venue has implemented *Odyssey*, an attorney must file Rule 5(d) material electronically with the Business Court and electronically in the county of venue through *Odyssey*.

### **Rule 5.1 (Filing of Pleadings and Other Documents in Counties Without Odyssey)**

In counties that have not yet implemented *Odyssey*, electronic filing remains available for only two classes of cases:

- Cases designated as “complex business” or assigned to a Business Court judge under Rule 2.1 of the GRP. In such cases, electronic filing continues to be available through the Business Court’s eFiling website and must comply with the NCBCR.



<sup>3</sup> Last September, the Office of General Counsel provided a legal memo entitled “Changes to G.S. 1A-1, Rules 3 and 5; S.L. 2020-46 (HB 679),” discussing the amendments to Rule 5 of the NCRCP regarding service through electronic filing. That legal memo can be found on the NCAOC’s website for Judicial Branch users at <https://juno.nccourts.org/legal-memos> under “Legal Memos.”

<sup>4</sup> Court filings may not “include any person’s social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords . . . unless otherwise expressly required by law or court order, adopted by the State Registrar on records of vital events, or redacted.” G.S. 132-1.10(d).

<sup>5</sup> The materials listed in Rule 5(d) of the NCRCP include: (1) all pleadings subsequent to the complaint; (2) written motions and notices of hearing; (3) any other application to the court for an order that may affect the rights of or in any way commands [one] to act or forego action of any kind; (4) notices of appearance; (5) any other paper required by rule or statute to be filed; (6) any other papers so ordered by the court; and (7) all orders issued by the court.

- Cases in counties that are taking part in the legacy NC eFiling Pilot Project. The Supplemental Rules of Practice and Procedure for the North Carolina eFiling Pilot Project govern eFiling in those counties.

In all other cases, only traditional paper filing is available. Rule 5.1(c) includes format and cover sheet requirements for paper filings identical to those set out in Rule 5(c).

### ***Rule 22 (Local Rules of Practice and Procedure)***

The GRP amendments repeal and replace Rule 22. New Rule 22 declares that local rules of practice “must be supplementary to, and not inconsistent with, the General Rules of Practice[.]” Local rules “should be succinct and not unnecessarily duplicative of statutes or Supreme Court rules.” Each trial judge must enforce the local rules of the judicial district in which he or she is assigned to hold court, except when a case has been designated “complex business” or assigned to a Business Court judge pursuant to Rule 2.1 of the GRP.

### ***Rule 27 (Sealed Documents and Protective Orders)***

New Rule 27 outlines the procedure for moving a court to file documents under seal. It applies in all counties, regardless of whether they have implemented *Odyssey*. Significantly, Rule 27 does **not** apply to documents that are closed to public inspection by law or to search warrants or other criminal investigation documents.

#### **Rule 27(a) (General Principles)**

Rule 27’s “General Principles” favor openness and urge anyone appearing before a court to file a motion to seal “only if necessary.” R. 27(a)(3). Nonetheless, Rule 27 does not affect a person’s responsibility to omit or redact private information from court documents pursuant to statute or other legal authority. R. 27(a)(4). Moreover, Rule 27 allows anyone “interested in the confidentiality of a document” to file a motion to seal or a brief supporting or opposing the motion. R. 27(a)(1).

#### **Rule 27(b) (Procedure for Sealing a Document)**

Rule 27(b) lays out a step-by-step procedure for filing a motion to seal a document or any part of the document.

- **Rule 27(b)(1) (Filing)** – The interested person must first file the document that he or she wishes to have sealed “provisionally under seal.”<sup>6</sup> On the same day, the interested person must also file a motion asking the court to seal the document.
- **Rule 27(b)(2) (Motion)** – The motion to seal the document must contain the following:

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<sup>6</sup> A document is “provisionally under seal” as defined by subsection (a)(2) if it is filed electronically with a confidential designation in the electronic-filing system or if it is filed in paper inside of a sealed envelope or container marked “Contains Confidential Information – Provisionally Under Seal.”

- a. a nonconfidential description of the document the movant is asking to be sealed;
- b. the circumstances that warrant sealing the document;
- c. an explanation of why no reasonable alternative to sealing the document exists;
- d. a statement that specifies whether the document should be accessible only to counsel of record (as opposed to the parties);
- e. a statement that specifies how long the document should be sealed and how the document should be handled upon unsealing;
- f. a statement, if applicable, that (i) the movant is filing the document provisionally under seal because another person has designated the document as confidential and the terms of a protective order require the movant to file the document provisionally under seal and (ii) the movant has unsuccessfully sought the consent of the other person to file the document unsealed; and
- g. a statement, if applicable, that a nonparty who designated the document as confidential under the terms of a protective order has been served with a copy of the motion and notified of the right to file a brief in support of the motion.”

- **Rule 27(b)(3) (Briefing)** – Within twenty (20) days of being served with the motion to seal, anyone interested in the confidentiality of the document may file a brief supporting or opposing the motion.
- **Rule 27(b)(4) (Hearing)** – The person who filed the motion (movant) “must notice a hearing on the motion as soon as practicable after the briefing period ends.”
- **Rule 27(b)(5) (Disclosure Pending Decision)** – Until the court rules on the motion to seal, a document that has been filed “provisionally under seal” may be disclosed only to counsel of record and to unrepresented parties, unless the court orders or the parties agree otherwise.
- **Rule 27(b)(6) (Decision by Court)** – The court may rule on a motion to seal with or without a hearing. If no one files a motion or brief that justifies sealing the document, the court may order the document’s release to the public.
- **Rule 27(b)(7) (Public Version of Document)** – If a movant seeks to seal only a portion of a document, then, within ten (10) days of filing the document “provisionally under seal,”

the movant must file a public version of the document. The public version may include redactions and omissions hiding the portions of the document that the movant deems confidential, but omissions and redactions should be as limited as practicable. If the movant instead wishes to seal an entire document, he or she need not file a public version of the document. Rather, the movant must file a notice that the entire document has been filed provisionally under seal, which notice must include a nonconfidential description of the document.

### **Rule 27(c) (Protective Orders)**

Rule 27(c) clarifies that the procedures laid out in Rule 27(b) do not affect the standard or procedure for issuance of a protective order. However, to the extent any proposed protective order outlines a procedure for sealing a confidential document, the proposed protective order should either include or incorporate by reference the procedures outlined in Rule 27(b). Finally, Rule 27(c) encourages persons to agree on the terms of proposed protective orders before submitting them to the court.

## **Amendments to the Supplemental Rules of Practice and Procedure for the North Carolina eFiling Pilot Project**

The Supreme Court’s Order Amending the Supplemental Rules of Practice and Procedure for the North Carolina eFiling Pilot Project amends Rules 1 and 5 as summarized below.

### ***Rule 1 (Purpose and Scope)***

The amendments delete Rule 1, which concerned the purpose and scope of the eFiling Pilot Project Rules, and replace it with the following:

#### **“Rule 1. Purpose and Scope**

**1.1. Purpose.** These rules define practice and procedure for the legacy North Carolina eFiling Pilot Project, which will phase out beginning in July 2021.

**1.2 Scope.** These rules apply only in those counties that (i) have not yet implemented *Odyssey*, the Judicial Branch’s new electronic-filing and case-management system, and (ii) still participate in the legacy North Carolina eFiling Pilot Project. The Administrative Office of the Courts maintains a list of those counties and case types to which these rules apply at <https://www.efiling.nccourts.org/>.”

### ***Rule 5 – Electronic Filing and Service***

Rule 5 of the eFiling Pilot Project Rules remains much the same except for changes to subsections 5.3 and 5.5.

- **Rule 5.3 (Pro se Parties)**

Rule 5.3 was amended as follows:

**“5.3. Pro se Parties.** ~~Except as otherwise permitted in these Rules, a party not represented by counsel shall file, serve and receive documents pursuant to the Rules of Civil Procedure and General Rules.~~ A party not represented by counsel may file electronically in civil domestic violence cases through domestic violence center personnel who have been issued an electronic identity. Service upon a party not represented by counsel may not be made by use of the electronic filing and service system.”

- **Rule 5.5 (Cover Sheets Not Required)**

The amendment to Rule 5.5 removes a reference to G.S. 7A-34.1, which was repealed by Session Law 2011-145. The substantive requirements of Rule 5.5. remain the same.