

IN THE SUPREME COURT OF NORTH CAROLINA

ORDER AMENDING THE
NORTH CAROLINA BUSINESS COURT RULES

Pursuant to Section 7A-34 of the General Statutes of North Carolina, the Court hereby amends Rule 3 of the North Carolina Business Court Rules.

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Rule 3. Filing and Service

3.1. Mandatory electronic filing. Except as otherwise specified in these rules, all filings in the Court must be made electronically through the Court's electronic-filing system beginning immediately upon designation of the action as a mandatory complex business case by the Chief Justice of the Supreme Court of North Carolina or assignment to a Business Court judge pursuant to Rule 2.1 of the General Rules of Practice. Counsel who appear in the Court are expected to have the capability to use the electronic-filing system. Instructions for filing documents through the Court's electronic-filing system are available on the Court's website. Counsel should exercise diligence to ensure that the description of the document entered during the filing process accurately and specifically describes the document being filed.

3.2. Who may file. A filing through the electronic-filing system may be made by counsel, a person filing on counsel's behalf, or a pro se party. Parties who desire not to use the electronic-filing system may file a motion for relief from using the system, but the Court will grant that relief for counsel only upon a showing of exceptional circumstances. A request by a pro se party to forgo use of the electronic-filing system will be determined on a good-cause standard.

3.3. User account. Counsel who appear in the Court in a particular matter ("counsel of record") and pro se parties who are not excused from using the electronic-filing system must promptly create a user account through the Court's website. Any person who has established a user account must maintain adequate security over the password to the account.

3.4. Electronic signatures.

- (a) **Form.** A document to be filed that is signed by counsel must be signed using an electronic signature. A pro se party must also use an electronic signature on any document that the party is permitted to file by e-mail pursuant to BCR 3.2. An electronic signature consists of a person's typed name preceded by the

symbol “/s/.” An electronic signature serves as a signature for purposes of the Rules of Civil Procedure.

- (b) **Multiple signatures.** A filing submitted by multiple parties must bear the electronic signature of at least one counsel for each party that submits the filing. By filing a document with multiple electronic signatures, the lawyer whose electronic identity is used to file the document certifies that each signatory has authorized the use of his or her signature.
- (c) **Form of signature block.** Every signature block must contain the signatory’s name, bar number (if applicable), physical address, phone number, and e-mail address.

3.5. Format of filed documents. All filings must be made in a file format approved by the Court. The Court maintains a list of approved formats on its website. Pleadings, motions, and briefs filed electronically must not be filed in an optically scanned format, unless special circumstances dictate otherwise. Proposed orders must be filed in a format permitted by the filing instructions on the Court’s website. The electronic file name for each document filed with the Court must clearly identify its contents.

3.6. Time of filing. If a document is due on a date certain, then the document must be filed by 5:00 p.m. Eastern Time on that date, unless the Court orders otherwise.

3.7. Notice of ~~filing~~Filing. When a document is filed, the Court’s electronic-filing system generates a Notice of Filing. The Notice of Filing appears in the user account for all counsel of record and pro se parties who have created a user account. Filing is not complete until issuance of the Notice of Filing. A document filed electronically is deemed filed on the date stated in the Notice of Filing.

3.8. Notice and entry of orders, judgments, and other matters. The Court will transmit all orders, decrees, judgments, and other matters through the Court’s electronic-filing system, which, in turn, will generate a Notice of Filing to all counsel of record. The issuance by the electronic-filing system of a Notice of Filing for any order, decree, or judgment constitutes entry and service of the order, decree, or judgment for purposes of Rule 58 of the Rules of Civil Procedure. The Court will file a copy of each order, decree, or judgment with the Clerk of Superior Court in the county of venue. If a pro se party is permitted to forgo use of the electronic-filing system under BCR 3.2, the Court will deliver a copy of every order, decree, judgment, or other matter to that pro se party by alternative means.

3.9. Service.

- (a) ~~Effect of Notice of Filing~~**Service through the Court’s electronic-filing system defined.** After an action has been designated as a mandatory complex business case or otherwise assigned to the Court, the issuance of a Notice of Filing

~~constitutes adequate service under the Rules of Civil Procedure of the filed document~~ is service under Rule 5(b) of the Rules of Civil Procedure. Service by other means is ~~not required unless required if~~ the party served is a pro se party who has not established a user account. ~~Service of materials on pro se parties is governed by BCR 3.9(e). Documents filed with the Court must bear a certificate of service stating that the documents have been filed electronically and will be served in accordance with this rule.~~

- (b) **Certificate of Service.** A Notice of Filing is an “automated certificate of service” under Rule 5(b1) of the Rules of Civil Procedure.
- ~~(b)~~(c) **E-mail addresses.** Each counsel of record and pro se ~~parties~~party who ~~have~~has established a user account must provide the Court with a current e-mail address and maintain a functioning e-mail system. The Court will issue a Notice of Filing to the e-mail address that a person with a user account has provided to the Court.
- ~~(e)~~(d) **Service of non-filed documents.** When a document must be served but not filed, the document must be served by e-mail unless (i) the parties have agreed to a different method of service or (ii) the Case Management Order calls for another manner of service. ~~Service by e-mail under this rule constitutes adequate service under Rule 5 of the Rules of Civil Procedure.~~
- ~~(d)~~ ~~**Effect on Rule 6(e) of the Rules of Civil Procedure.**~~ ~~Electronic service made under these rules through the electronic filing system or by e-mail under BCR 3.9(e) is treated the same as service by mail for purposes of Rule 6(e) of the Rules of Civil Procedure.~~
- (e) **Service on a pro se ~~parties~~party.** All documents filed with the Court must be served upon a pro se party by any method allowed by the Rules of Civil Procedure, unless the Court or these rules direct otherwise.

3.10. Procedure when the electronic-filing system appears to fail. If a person attempts to file a document, but (i) the person is unable for technical reasons to transmit the filing to the Court, (ii) the document appears to have been transmitted to the Court but the person who filed the document does not receive a Notice of Filing, or (iii) some other technical reason prevents a person from filing the document, then the person attempting to file the document must make a second attempt at filing.

If the second attempt fails, the person may (i) continue further attempts to file or (ii) notify the Court of the technical failure by phone call to the judicial assistant for the presiding Business Court judge and e-mail the document for which filing attempts were made to filinghelp@ncbusinesscourt.net. The e-mail must state the

date and time of the attempted filings and a brief explanation of the relevant technical failure(s). The e-mail does not constitute e-filing, but serves as proof of an attempt to e-file in order to protect a party in the event of an imminent deadline and satisfies the deadline, notwithstanding BCR 3.7, unless otherwise ordered. The e-mail should also be copied to counsel of record. The Court may ask the person to make another filing attempt.

The Court will work with the parties on an alternative method of filing, such as a cloud-based file-sharing system, if the parties anticipate or experience difficulties with filing voluminous materials (e.g., exhibits to motions and final administrative records) using the Court's electronic-filing system. In such event, counsel should contact the presiding Business Court judge's judicial assistant for assistance.

For purposes of calculating briefing or response deadlines, a document filed electronically is deemed filed at the time and on the date stated in the Notice of Filing.

3.11. Filings with the Clerk of Superior Court. Unless otherwise directed by the Administrative Office of the Courts, the Clerk of Superior Court in the county of venue maintains the official file for any action designated to the Court, and the Court is not required to maintain copies of written materials provided to it. Accordingly, material listed in Rule 5(d) of the Rules of Civil Procedure must be filed with the Clerk of Superior Court in the county of venue, either before service or within five days after service.


3.12. Appearances. Counsel whose names appear on a signature block in a court filing need not file a separate notice of appearance for the action. After making an initial filing with the Court, counsel should verify that their names and contact information are properly listed on the docket for the action on the Court's electronic-filing system. Counsel whose names do not appear on that docket, but whose names should appear, should contact the judicial assistant for the presiding Business Court judge and request to be added. Out-of-state attorneys may be added to that docket only after admission pro hac vice to appear in the action.

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These amendments to the North Carolina Business Court Rules are effective immediately.

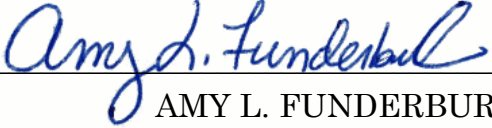
These amendments shall be published in the North Carolina Reports and posted on the rules web page of the Supreme Court of North Carolina.

Ordered by the Court in Conference, this the 13th day of October, 2020.



For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this
the 13th day of October, 2020.



AMY L. FUNDERBURK
Clerk of the Supreme Court