IN THE SUPREME COURT OF NORTH CAROLINA

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ORDER AMENDING THE
NORTH CAROLINA BUSINESS COURT RULES

Pursuant to Section 7A-34 of the General Statutes of North Carolina, the Court hereby amends the North Carolina Business Court Rules. This order affects Rules 3, 5, 6, 7, 12, and 15, and Appendix 3.

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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.~~Except for exhibits and other supporting materials, documents filed with the Court must be letter size (8½ x 11"), double-spaced, formatted with a margin of at least one inch on each side, and prepared using a proportionally spaced font with serifs that is no smaller than 12-point and no larger than 14-point in size. The Court prefers Century Schoolbook font. Except for proposed orders and proposed jury instructions, each document filed with the Court must be submitted as a PDF file. ~~Pleadings, motions, and briefs filed electronically~~Documents 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. 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) **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 is service under Rule 5(b) of the Rules of Civil Procedure. Service by other means is required if the party served is a pro se party who has not established a user account.

(b) **Certificate of Service**. A Notice of Filing is an "automated certificate of service" under Rule 5(b1) of the Rules of Civil Procedure.

(c) **E-mail addresses**. Each counsel of record and pro se party who 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.

(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.

(e) **Service on a pro se 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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~~**Rule 5. Protective Orders and Filing under Seal**~~

~~**5.1. General principles.**~~

~~(a) BCR 5 applies to both parties and non-parties. References to "parties" in this rule therefore include non-parties.~~

~~(b) 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.~~

~~(c) This rule should not be construed to change any requirement or standard that otherwise would govern the issuance of a protective order.~~

~~(d) 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.~~

5.2. Procedures for sealed filing.

(a) **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 documents. Proposed protective orders submitted to the Court should include procedures similar to those described in subsections (b) through (d) of this rule.

(b) **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:

(1) a non-confidential description of the material sought to be sealed;

(2) the circumstances that warrant sealed filing;

(3) the reason(s) why no reasonable alternative to a sealed filing exists;

(4) 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;

(5) 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;

(6) 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

(7) 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.~~

~~(d) 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.~~

~~**5.3. 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.~~

Rule 5. Sealed Documents and Protective Orders

5.1. General principles.

(a) **"Persons" defined**. References to "persons" in this rule include parties and nonparties who are interested in the confidentiality of a document.

(b) **"Provisionally under seal" defined**. A document is "provisionally under seal" 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."

(c) **Open courts**. A person who appears before the Court should strive to file documents that are open to public inspection and should file a motion to seal a document only if necessary. A person who seeks to have a document sealed bears the burden of establishing the need for sealing the document. Reference to a stipulation or protective order that allows a party to designate a document as confidential is not sufficient to establish that the document should be sealed.

(d) **Scope**. This rule does not apply to documents that are closed to public inspection by operation of statute or other legal authority. This rule does not affect a person's responsibility to omit or redact private information from court documents pursuant to statute or other legal authority.

5.2. Procedure for sealing a document.

(a) **Filing**. A person who seeks to have a document (or part of a document) sealed by the Court must file the document provisionally under seal and file a motion that asks the Court to seal the document. The motion must comply with the requirements of BCR 7.

(b) **Motion**. The motion to seal must contain:

(1) a nonconfidential description of the document the movant is asking to be sealed;

(2) the circumstances that warrant sealing the document;

(3) an explanation of why no reasonable alternative to sealing the document exists;

(4) a statement that specifies whether the document should be accessible only to counsel of record (as opposed to the parties);

(5) a statement that specifies how long the document should be sealed and how the document should be handled upon unsealing;

(6) 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

(7) 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 under BCR 5.2(c) to file a brief in support of the motion.

(c) **Briefing**. A person may file a brief in support of or in opposition to the motion no later than twenty days after having been served with the motion. The Court may extend this deadline for good cause. The brief must comply with the requirements of BCR 7.

(d) **Disclosure pending decision**. Until the Court rules on the motion, a document that is provisionally under seal may be disclosed only to counsel of record and unrepresented parties unless otherwise ordered by the Court or agreed to by the parties.

(e) **Decision by Court**. The Court may rule on the motion with or without a hearing. In the absence of a motion or brief that justifies sealing the document, the Court may order that the document (or part of the document) be made public.

(f) **Public version of document**. If the movant seeks to have only part of a document sealed by the Court, then the movant must file a public version of the document no later than ten days after filing the document provisionally under seal. The public version of the document may include redactions and omissions, but the redactions and omissions should be as limited as practicable. If the movant filed the document provisionally under seal because another person designated the document as confidential and the terms of a protective order required the movant to file the document provisionally under seal, then the movant must consult with the person who designated the document as confidential before filing the public version of the document.

If the movant seeks to have the entire document sealed, then the movant must file a notice that the entire document has been filed provisionally under seal instead of filing a public version of the document. The notice must contain a nonconfidential description of the document.

5.3. Protective orders. The procedure for sealing a document in BCR 5.2 should not be construed to change any requirement or standard that governs the issuance of a protective order. The Court may therefore enter a protective order that contains standards and processes for the handling, filing, and service of a confidential document. To the extent that a proposed protective order outlines a procedure for sealing a confidential document, the proposed protective order should include (or incorporate by reference) the procedures described in BCR 5.2. Persons are encouraged to agree on terms for a proposed protective order before submitting it to the Court.

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Rule 6. Hearings and Conduct

6.1. Notice of hearing. The Court will typically issue a notice of hearing prior to a hearing. The Court will usually issue the notice at least five business days prior to the hearing. The Court retains the flexibility to convene counsel informally if doing so would advance the interests of justice. A ruling on a motion heard after notice to the parties will not be subject to attack solely because a notice of hearing was not issued as provided by this rule.

6.2. Hearing procedures. ~~The Court may conduct pretrial hearings in person or by any technological means accessible to all parties in an action.~~ Unless

otherwise specified, all pretrial hearings will be ~~held~~conducted in the Business Court courtroom assigned to the presiding Business Court judge. ~~Unless otherwise ordered, or unless the parties agree otherwise, any court reporter transcribing any pretrial hearing or conference will be present in the Business Court courtroom.~~At the Court's discretion, a hearing may be conducted by audio and video transmission in accordance with N.C.G.S. § 7A-49.6.

6.3. Conduct before the Court.

(a) **Addressing the Court**. Counsel should speak clearly and audibly from a standing position behind counsel table or the podium. Counsel may not approach the bench without the Court's request or permission.

(b) **Examination of witnesses and jurors**. Counsel must examine witnesses and jurors from a sitting position behind counsel table or standing from the podium, except as otherwise permitted by the Court. Counsel may only approach a witness for the purposes of presenting, inquiring about, or examining the witness about an exhibit, document, or diagram.

(c) **Professionalism**. Participants in court proceedings must conduct themselves professionally. Adverse witnesses, counsel, and parties must be treated with fairness and civility both in and out of court. Counsel must yield gracefully to rulings of the Court and avoid disrespectful remarks.

6.4. Contact with the Court.

(a) **E-mail**. Any e-mails to the Court about a pending matter must copy ~~at least one~~all pro se parties and all counsel of record for each represented party.

(b) **Contact with court personnel**. Counsel may contact the judicial assistants or law clerks of the Business Court judges to discuss scheduling and logistical matters. Neither counsel nor counsel's professional staff may seek advice or comment from a judicial assistant or law clerk on any matter of substance. Counsel should communicate with Business Court judges, law clerks, and judicial assistants with appropriate professional courtesy.

In the absence of exigent circumstances, and unless ~~opposing counsel has~~the other parties have consented otherwise, any written communication by counsel to court personnel regarding a pending matter must include or copy ~~at least one~~all pro se parties and all counsel of record for each represented party.

6.5. Participation of junior attorneys. To promote the professional development of junior attorneys, the Court welcomes their participation at oral argument.

6.6. Secure leave. Notwithstanding subsections (c) and (e) of Rule 26 of the General Rules of Practice, an attorney must designate his or her secure-leave periods using the Court's electronic-filing system in each case in which the attorney is counsel of record.

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Rule 7. Motions

7.1. Filing. After an action has been designated as a mandatory complex business case or assigned to a Business Court judge under Rule 2.1 of the General Rules of Practice, the Business Court judge to whom the action is assigned will preside over all motions and proceedings in the action, unless and until an order has been entered under N.C.G.S. § 7A-45.4(e) ordering that the case not be designated a mandatory complex business case or the Chief Justice of the Supreme Court of North Carolina revokes approval of the designation.

7.2. Form of motion and brief. ~~All motions must be double-spaced with a margin of at least one inch at the right, left, top, and bottom of each page, and use at least a 12-point proportional font. All motions must be submitted as a PDF file.~~ All motions must be accompanied by a brief (except for those motions listed in BCR 7.10). Each motion must be set out in a separate document. A motion unaccompanied by a required brief may, in the discretion of the Court, be summarily denied. This rule does not apply to oral motions made at trial or as otherwise provided in these rules.

The function of all briefs required or permitted by this rule is to define clearly the issues presented to the Court and to present the arguments and authorities upon which the parties rely in support of their respective positions. A party should therefore brief each issue and argument that the party desires the Court to rule upon and that the party intends to raise at a hearing.

7.3. Consultation. All motions, except those made pursuant to Rules 12, 55, 56, 59, 60, or 65 of the Rules of Civil Procedure, must reflect consultation with and the position of opposing counsel or any pro se parties. The motion must state whether any party intends to file a response.

7.4. Motions decided without a hearing. The Court may rule on a motion without a hearing. Special considerations thought by counsel sufficient to warrant a hearing or oral argument may be brought to the Court's attention in the motion or response.

7.5. Supporting materials and citations. This rule applies to all motions and briefs filed with the Court.

All materials, including affidavits, on which a motion or brief relies must be filed with the motion or brief. Materials that have been filed previously need not be refiled, but the filing party should, using the form ECF No. ___, cite to the docket location of the previously filed materials. In selecting materials to be filed, parties should attempt to limit the use of voluminous materials. If the adequacy of service of process is at issue in any motion, proof of service must be submitted in support of the motion.

The filing party must include an index at the front of the materials. The index should assign a number or letter to each exhibit and should describe the exhibit with sufficient detail to allow the Court to understand the exhibit's contents.

When a brief refers to a publicly available document, the brief may contain a hyperlink to or URL address for the document in lieu of attaching the document as an exhibit. The filing party is responsible for keeping or archiving a copy of the document referenced by hyperlink or URL address.

When a motion or brief refers to any supporting material, the motion or brief must include a pinpoint citation to the relevant page of the supporting material whenever possible. Unless the circumstances dictate otherwise, only the cited page(s) should be filed with the Court in the manner described above.

If a motion or brief cites a decision that is published only in sources other than the West Federal Reporter System, Lexis System, commonly used electronic databases such as Westlaw or LexisNexis, the official North Carolina reporters, or decisions of the Court listed on its website as opinions, then the motion or brief must attach a copy of the decision.

7.6. Responsive briefs. A party that opposes a motion may file a responsive brief within twenty days of service of the supporting brief. This period is thirty days after service for responses to summary judgment motions and for responses to opening briefs in administrative appeals. If a party fails to file a response within the time required by this rule, the motion will be considered and decided as an uncontested motion.

If a motion has been filed without a brief before a case is designated as a mandatory complex business case, then the time period to file a responsive brief begins running only when the moving party files a supporting brief in the Court. A motion filed without a brief before a case is designated as a mandatory complex business case will not be considered by the Court unless and until the moving party files a supporting brief with the Court.

7.7. Reply briefs. Unless otherwise prohibited, a reply brief may be filed within ten days of service of a responsive brief. A reply brief must be limited to discussion of matters newly raised in the responsive brief, and the Court may decline to consider issues or arguments raised by the moving party for the first time in a reply brief. The Court retains discretion to strike any reply brief that violates this rule.

7.8. Length ~~and format~~. Briefs in support of and in response to motions cannot exceed 7,500 words, except as provided in BCR 10.9(c). Reply briefs ~~must also be double-spaced and~~ cannot exceed 3,750 words. These word limits include footnotes and endnotes but do not include the case caption, any index, table of contents, or table of authorities, signature blocks, or any required certificates.

A party may not incorporate by reference arguments made in another brief or file multiple motions to circumvent these limits.

A party may request the Court to expand these limits but must make the request no later than five days before the deadline for filing the brief. Word limits will be expanded only upon a convincing showing of the need for a longer brief.

Each brief must include a certificate by the attorney or party that the brief complies with this rule. Counsel or pro se parties may rely on the word count of a word-processing system used to prepare the brief.

In the absence of a court order, all parties who are jointly represented by any law firm must join together in a single brief. That single brief may not exceed the length limits in this rule.

~~All briefs must be double-spaced with a margin of at least one inch at the right, left, top, and bottom of each page, and use at least a 12-point proportional font. All briefs must be submitted as a PDF file.~~

7.9. Suggestion of subsequently decided authority. In connection with a pending motion, a party may file a suggestion of subsequently decided authority after briefing has closed. The suggestion must contain the citation to the authority and, if the authority is not available on an electronic database, a copy of the authority. The suggestion may contain a brief explanation, not to exceed 100 words, that describes the relevance of the authority to the pending motion. Any party may file a response to a suggestion of subsequently decided authority. The response may not exceed 100 words and must be filed within five days of service of the suggestion.

7.10. Motions that do not require briefs. Briefs are not required for the following motions:

(a) for an extension of time, provided that the motion is filed prior to the expiration of the time to be extended;

(b) to continue a pretrial conference, hearing, or trial of an action;

(c) to add parties;

(d) consent motions, unless otherwise ordered by the Court;

(e) to approve fees for receivers, special masters, referees, or court-appointed experts or professionals;

(f) for substitution of parties;

(g) to stay proceedings to enforce a judgment;

(h) to modify the case-management process pursuant to BCR 9.1(a), provided that the motion is filed prior to the expiration of the case-management deadline sought to be extended;

(i) for entry of default;

(j) for pro hac vice admission; ~~and~~

(k) motions in limine complying with BCR 12.9~~.~~;

(l) to seal confidential information (except as provided by BCR 5~~.3~~)~~.~~;

(m) to withdraw as counsel; and

(n) for a bill of costs.

These motions must state the grounds for the relief sought, including any necessary supporting materials, and must be accompanied by a proposed order.

7.11. Late filings. Absent a showing of excusable neglect or as otherwise ordered by the Court, the failure to timely file a brief or supporting material waives a party's right to file the brief or supporting material.

7.12. Motions decided without live testimony. Unless the Court orders otherwise, a hearing on a motion, including an emergency motion, will not involve live testimony. A party who desires to present live testimony must file a motion for permission to present that testimony. In the absence of exigent circumstances, the motion must be filed promptly after receiving notice of the hearing and may not exceed 500 words. After the motion is filed, the Court will either (i) issue an order that requests a response, (ii) deny the motion, or (iii) issue an order with further instructions. The opposing party is not required to file a response unless ordered by the Court. If the Court elects to conduct a telephone conference on the motion, then the Court may decide the motion during the conference.

7.13. Emergency motions prior to designation.

(a) **Actions in which a Notice of Designation was filed when the action was initiated**. If a party seeks to have an emergency motion heard in the Court, the party should contact the Chief Justice of the Supreme Court of North Carolina promptly after filing the Notice of Designation and request expedited designation of the case as a mandatory complex business case. The party should also promptly contact the Court's Trial Court Coordinator and advise that the party seeks to have an emergency motion heard in the Court.

(b) **Actions subsequently designated as mandatory complex business cases**. If a party has filed an emergency motion in an action before a Notice of Designation has been filed, and the action is later designated as a mandatory complex business case or assigned to a Business Court judge under Rule 2.1 of the

General Rules of Practice, then the emergency motion will be heard by the Business Court judge to whom the action has been assigned as provided by N.C.G.S. § 7A-45.4(e). If, however, the emergency motion is heard by a non-Business Court judge prior to designation or assignment, then, barring exceptional circumstances, the Business Court judge will defer to the judge who heard the motion.

(c) **Briefing**. When a party moves for emergency relief under BCR 7.13(a) or (b), the Court will, if practicable, establish a briefing schedule for the motion. A party that moves for emergency relief under BCR 7.13(a) must file a supporting brief that complies with these rules. The Court's briefing schedule for a BCR 7.13(a) motion will establish deadlines for a response and, in the Court's discretion, a reply.

Unless the Court orders otherwise, the length restrictions in BCR 7.8 apply to all briefs filed under this rule.

7.14. Amicus briefs.

(a) **When permitted**. An amicus curiae may file a brief only with leave of the Court.

(b) **Motion for leave**. A motion for leave to file an amicus brief must state the nature of the movant's interest, the issues that the amicus brief would address, the movant's position on those issues, and the reasons that an amicus brief would aid the Court. The motion must also attach the proposed amicus brief. The Court will generally rule on the motion without a response or argument.

(c) **Deadline for filing**. A motion for leave to file an amicus brief must be filed no later than the deadline for the brief of the party supported.

(d) **Method of filing**. The motion and proposed amicus brief must be filed consistent with BCR 3.

(e) **Contents~~,~~ and length~~, and form~~**. An amicus brief may not exceed 3,750 words and must comply with all other aspects of BCR 7.8. The brief must also state whether (i) a party's counsel authored the brief, (ii) a party or party's counsel paid for the preparation of the brief, and (iii) anyone other than the amicus curiae paid for the brief and, if so, their identities.

(f) **Response**. A party must obtain leave to file a separate response to an amicus brief. If the Court provides leave, the response must be limited to points and authorities presented in the amicus brief.

The response may not exceed 3,750 words. An amicus curiae may not file a reply brief.

(g) **Oral argument**. An amicus curiae may not participate in oral argument without leave of the Court.

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Rule 12. Pretrial and Trial

12.1. Case-specific pretrial and trial management. The Court may modify the deadlines and requirements in this rule as the circumstances of each case dictate.

12.2. Trial date. The Court will establish a trial date for every case. The Court may establish that date in the Case Management Order or otherwise. The Court ordinarily will not set a trial to begin fewer than sixty days after the Court issues a ruling on any post-discovery dispositive motions.

Trial dates should be considered peremptory settings. Any party who foresees a potential conflict with a trial date should advise the Court no later than fourteen days after being notified of the trial date. In addition, after the Court sets a trial date, counsel of record should avoid setting any other matter for trial that would conflict with the trial date. Absent extraordinary and unanticipated events, the Court will not consider any continuance because of conflicts of which it was not advised in conformity with this rule.

12.3. Pretrial process. The following chart sets forth standard pretrial activity with presumptive deadlines.

45 days before pretrial hearing	Trial exhibits (or a list of exhibits identified by Bates number if the exhibits were exchanged in discovery) and witness lists served on opposing parties
30 days before pretrial hearing	Deposition designations served on opposing parties
21 days before pretrial hearing	Pretrial attorney conference Deposition counter-designations and objections to deposition designations served on opposing parties Supplemental trial exhibit and witness lists served on opposing parties
17 days before pretrial hearing	Objections to trial exhibits served on opposing parties
14 days before pretrial hearing	Motions in limine and briefs in support, if any, filed and served Proposed pretrial order filed and served
7 days before pretrial hearing	Responses to motions in limine filed and served
No later than 14 days before trial	Pretrial hearing
7 days before trial	Trial brief, if any, filed and served Proposed jury instructions filed and served Proposed findings of fact and conclusions of law, if necessary, filed and served Submit joint statement of any stipulated facts

12.4. Pretrial attorney conference. Counsel are responsible for conducting a pretrial conference. At the conference, the parties should discuss the items listed in the Court's form pretrial order. Lead trial counsel (and local counsel, if different) for each party must participate in the conference. The conference may be an in-person conference or conducted through remote means.

12.5. Proposed pretrial order. Counsel are responsible for preparing a proposed pretrial order. Appendix 5 to these rules contains a Proposed Pretrial Order template. The parties are encouraged to use the form order to prepare their own order but may also deviate from the form order as the nature of the case dictates. The proposed order should generally include the following items:

(a) stipulations about the Court's jurisdiction over the parties and the designation and proper joinder of parties;

(b) a list of trial exhibits (other than exhibits that might be used for rebuttal or impeachment) and any objections to those exhibits;

(c) the timing and manner of the exchange of demonstrative exhibits or any proposed exhibits not produced in discovery including whether demonstrative exhibits will be used in opening statements;

(d) a list of trial witnesses, including witnesses whose testimony will be presented by deposition;

(e) a list of outstanding motions and motions that might be filed before or during trial;

(f) a list of issues to be tried, noting (if needed) which issues will be decided by the jury and which will be decided by the Court;

(g) the technology that the parties intend to use, including whether that technology will be provided by the Court or by the parties;

(h) whether the parties desire to use real-time court reporting and, if so, how the parties will apportion the costs of that reporting;

(i) any case-specific issues or accommodations needed for trial, such as use of interpreters, use of jury questionnaires, or measures to be employed to protect information that might merit protection under Rule 26(c)(vii) of the Rules of Civil Procedure;

(j) a statement that all witnesses are available and the case is trial-ready;

(k) an estimate of the trial's length; and

(l) a certification that the parties meaningfully discussed the possibility and potential terms of settlement at the pretrial attorney conference.

12.6. Deposition designations. If a party desires to present deposition testimony at trial, then the party must designate that testimony by page and line number of the deposition transcript. A party served with deposition designations may serve objections and counter-designations; the objecting party must identify a basis for each objection.

All designations, counter-designations, and objections should be exhibits to the proposed pretrial order. In addition, the party that designates deposition testimony to which another party objects must provide the presiding judge with a chart in Microsoft Word format that lists (i) the testimony offered to which another party objects, (ii) the objecting party, (iii) the basis for the objection, and (iv) a blank line on which the presiding judge can write his or her ruling.

12.7. Pretrial hearing. The Court will conduct a pretrial hearing no later than fourteen days before trial. Lead counsel (and local counsel, if different) for each party must attend the hearing ~~in person~~. The Court may order a party with final settlement authority to attend the pretrial hearing, but no party will be required to attend unless ordered by the Court. The pretrial hearing may include any matter that the Court deems relevant to the trial's administration, including but not limited to:

(a) a discussion of the items in the proposed pretrial order;

(b) argument and ruling on any pending motions and objections, including objections to exhibits and deposition designations included in the proposed pretrial order;

(c) the resolution of any disagreement about the issues to be tried;

(d) unique jury issues, such as preliminary substantive jury instructions, juror questionnaires, or jury sequestration;

(e) the use of technology;

(f) the need for measures to protect information under Rule 26(c)(vii) of the Rules of Civil Procedure; and

(g) whether any further consideration of settlement is appropriate.

12.8. Final pretrial order. The Court will enter a final pretrial order.

12.9. Motions in limine. Unless the Court orders otherwise, briefs regarding motions in limine are not required if the grounds for the motion are evidenced by the motion itself. Opening and response briefs may not exceed 3,750 words. Reply briefs will only be permitted in exceptional circumstances with the Court's permission or at the request of the Court. The Court may elect to withhold its ruling on a motion in limine until trial, and any ruling the Court may elect to make on a motion in limine prior to trial is subject to modification during the course of the trial.

12.10. Jury instructions.

(a) **Timing**. When filing proposed jury instructions, a party must also e-mail a copy of the proposed jury instructions in Microsoft Word format to the judicial assistant for the presiding Business Court judge.

(b) **Issues**. In addition to the form as provided below, the jury instructions must state the proposed issues to be submitted to the jury.

(c) **Form**.

(1) Every instruction should cite to relevant authority, including but not limited to the North Carolina Pattern Jury Instructions.

(2) Each party should file two different copies of its proposed instructions: one copy with the citations to authority, and one copy without those citations.

(3) Proposed instructions should contain an index that lists the instruction number and title for each proposed instruction.

(4) Each proposed instruction should be on its own separate page, should be printed at the top of the page, and should receive its own number. The proposed instructions should be consecutively numbered.

(5) If the parties propose a pattern jury instruction without modification to that instruction, then the parties may simply refer to the instruction number. If the parties propose a pattern instruction with any modification, then the parties should clearly identify that modification.

(d) **Preliminary instructions**. The parties may further propose that the Court provide the jury preliminary instructions prior to the presentation of the evidence. In that event, the parties must provide the proposed form of any such preliminary instructions and the parties' proposal as to the time at which such preliminary instructions will be presented.

12.11. Proposed findings of fact and conclusions of law. The Court may require each party in a non-jury matter to file proposed findings of fact and conclusions of law.

12.12. Trial briefs. Unless ordered by the Court, a party may, but is not required to, submit a trial brief. A trial brief may address contested issues of law and anticipated evidentiary issues (other than those raised in a motion in limine). The trial brief need not contain a complete recitation of the facts of the case. A party

may not file a brief in response to another party's trial brief unless the Court requests a response. Unless otherwise ordered by the Court, a trial brief is not subject to the word limits for briefs under BCR 7.

12.13. Stipulated facts. If the parties intend to file a joint statement of any stipulated facts other than any stipulated facts listed in the proposed pretrial order, then the parties must file the statement before the trial begins. The statement should also explain when and how the parties propose that the stipulations be presented to the jury. If the parties cannot agree on when and how the stipulated facts should be presented to the jury, then the Court will decide this issue before jury selection.

* * *

Rule 15. ~~Receivers~~[Reserved]

~~**15.1. Applicability**.~~

~~(a) This rule governs practice and procedure in receivership matters before the Court.~~

~~(b) The term "receivership estate," as used in this rule, refers to the entity, person, or property subject to the receivership.~~

~~**15.2. Selection of receiver**. On motion or on its own initiative, and for good cause shown, the Court may appoint a receiver as provided by law.~~

~~(a) **Qualifications**. A receiver must have sufficient competence, impartiality, and experience to administer the receivership estate and otherwise perform the duties of the receiver.~~

~~(b) **Motion to appoint receiver**. When a party moves the Court to appoint a receiver, the party should propose candidates to serve as receiver. The motion should explain each candidate's qualifications. The motion should also disclose how the receiver will be paid, including the proposed funding source. A proposed order describing the receiver's duties, powers, compensation, and any other issues relevant to the receivership must be filed with the motion to appoint a receiver. Non-movants may respond to the motion within twenty days of service of the motion. The Court may appoint one of the proposed receivers or, in its discretion, a different receiver. The Court may also propose or require a different fee arrangement for the receiver.~~

~~(c) **Ex parte appointment of receiver**. The Court will not appoint a receiver on an ex parte basis unless the moving party shows that a receiver is needed to avoid irreparable harm. A receiver appointed on an ex parte basis will be a temporary receiver pending further order of the Court.~~

~~(d) **Sua sponte appointment of receiver**. If the Court appoints a receiver on its own initiative, then any party may file an objection to the selected receiver and propose an alternative receiver within ten days of entry of the order appointing the receiver. The objection should contain the information listed in BCR 15.2(b) about the alternative proposed receiver.~~

~~(e) **Duties, powers, compensation, and other issues**. When appointing a receiver, the Court will enter an order that outlines the receiver's duties, powers, compensation, and any other issues relevant to the proposed receivership. Appendix 3 to these rules contains a non-exclusive list of provisions that might be appropriate for a receivership order.~~

~~**15.3. Removal**. The Court may remove any receiver for good cause shown.~~

* * *

Appendix 3. ~~Potential Terms of Receivership Order~~[Reserved]

~~This appendix contains potential terms for an order under BCR 15.2(e).~~

~~**1. Duties**.~~

~~(a) **Acceptance of receivership**. The Court's order may identify a deadline for the proposed receiver to file an acceptance of receivership and give notice of the receiver's bond if required under North Carolina law or by order of the Court. The order may require that the acceptance be served on all counsel and certify that the receiver will:~~

~~(1) act in conformity with North Carolina law and rules and orders of the Court;~~

~~(2) avoid conflicts of interest;~~

~~(3) not directly or indirectly pay or accept anything of value from the receivership estate that has not been disclosed and approved by the Court;~~

~~(4) not directly or indirectly purchase, acquire, or accept any interest in the property of the receivership estate without full disclosure and approval by the Court; and~~

~~(5) otherwise act in the best interests of the receivership estate.~~

~~(b) **Notice of appointment**. The Court's order may direct a deadline for the receiver to provide notice of entry of the order of appointment to any known creditor of the receivership estate and~~

any other person or entity having a known or recorded interest in all or any part of the receivership estate.

(c) **Inventory**. The Court's order may set a deadline for the receiver to file with the Court an itemized and complete inventory of all property of the receivership estate, the property's nature and possible value as nearly can be ascertained, and an account of all known debts due from or to the receivership estate.

(d) **Initial written plan**. The Court's order may set a deadline for the receiver to file an initial written plan for the receivership estate. The order may require the plan to identify:

(1) the circumstances leading to the institution of the receivership estate;

(2) whether the goal of the receivership is to preserve and operate any business within the estate, to liquidate the estate, or to take other action;

(3) the anticipated costs likely to be incurred in the administration of the receivership estate;

(4) the anticipated duration of the receivership estate;

(5) if an active business is to be operated, the number of employees and estimated costs needed to do so;

(6) if property is to be liquidated, the estimated date by which any appraisal and sale by the receiver will occur, and whether a public or private sale is contemplated; and

(7) any pending or anticipated litigation or legal proceedings that may impact the receivership estate.

(e) **Updated plans**. The Court's order may require the receiver to file updated plans on a periodic basis, such as every ninety days. The order may require that each updated plan (i) summarize the actions taken to date measured against the previous plan, (ii) list anticipated actions, and (iii) update prior estimates of costs, expenses, and the timetable needed to complete the receivership.

(f) **Periodic reports**. The Court's order may require the receiver to file periodic reports, such as every thirty days, that itemize all receipts, disbursements, and distributions of money and property of the receivership estate.

(g) **Liquidation and notice**. The Court's order may provide terms relating to the liquidation of the receivership estate including terms that require the receiver to afford reasonable opportunity for creditors to present and prove their claims pursuant to

N.C.G.S. § 1-507.6. The order may also require the receiver, upon notice to all parties, to request that the Court fix a date by which creditors must file a written proof of claim and to propose to the Court a schedule and method for notice to creditors.

(h) **Report of claims**. The Court's order may provide a deadline for the receiver to file a report as to claims made pursuant to N.C.G.S. § 1-507.7, with service on all parties and on all persons or entities who submitted a proof of claim. The Court's order may set out guidelines for the report, such as requiring recommendations on the treatment of claims (i.e., whether they should be allowed or denied (in whole or in part) and the priority of such claims) and setting a deadline for objections to the report.

(i) **Final report**. The Court's order may require the receiver, before the receiver's discharge, to file a final written report and final accounting of the administration of the receivership estate.

2. Powers. The Court may issue an order that sets forth the powers of the receiver, in addition to the powers and authorities available to a receiver under statutory and/or common law. The powers stated in the order may include the power:

- to take immediate possession of the receivership assets, including any books and records related thereto;
- to dispose of all or any part of the assets of the receivership estate wherever located, at a public or private sale, if authorized by the Court;
- to sue for and collect all debts, demands, and rents of the receivership estate;
- to compromise or settle claims against the receivership estate;
- to enter into such contracts as are necessary for the management, security, insuring, and/or liquidation of the receivership estate;
- to employ, discharge, and fix the compensation and conditions for such agents, contractors, and employees as are necessary to assist the receiver in managing, securing, and liquidating the receivership estate; and
- to take actions that are reasonably necessary to administer, protect, and/or liquidate the receivership estate.

3. Compensation and expenses.

(a) **Timing of compensation application**. The Court's order may require a receiver that seeks fees to file an application with the Court and serve a copy upon all parties and all creditors of the receivership estate. The application may be made on an interim

~~or final basis and must advise the parties and creditors of the receivership estate that any objection to the application must be filed within seven days of service of the notice.~~

~~(b) **Substance of application**. The Court's order may require that a receiver's application for fees include a description in reasonable detail of the services rendered, time expended, and expenses incurred; the amount of compensation and expenses requested; the amount of any compensation and expenses previously paid to the receiver; the amount of any compensation and expenses that the receiver has been or will be paid by any source other than the receivership estate; and a disclosure of whether the compensation would be divided or shared with anyone other than the receiver.~~

~~(c) **Notice of hearing on application**. The Court's order may require the receiver to notify all creditors of the receivership estate of the date, time, and location of any hearing that the Court sets on the receiver's fee application.~~

* * *

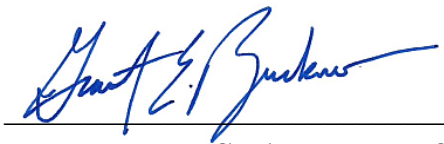
These amendments to the North Carolina Business Court Rules become effective on 1 July 2022.

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 15th day of June 2022.

For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 15th day of June 2022.



GRANT E. BUCKNER
Clerk of the Supreme Court