



**KELLIE Z. MYERS**  
TRIAL COURT ADMINISTRATOR  
JUDICIAL DISTRICT – WAKE COUNTY

PO BOX 1916, RALEIGH, NC 27602  
KELLIE.Z.MYERS@NCCOURTS.ORG

WWW.NCCOURTS.GOV/WAKETCA

July 14, 2021 (amended July 15, 2021)

Re: Tenth Judicial District (Wake County) Civil Superior and General Civil District Court Operations

### **CIVIL SUPERIOR COURT**

The procedures set out below are promulgated by the Trial Court Administrator at the direction of the Senior Resident Superior Court Judge and are intended to assist in the efficient administration of justice in the Tenth Judicial District. In the event the procedures herein conflict with the [Tenth Judicial District Local Rules for Civil Superior Court](#), the Trial Court Administrator is authorized to act, subject to consultation with the Senior Resident Superior Court Judge or Judge Presiding.

#### **Civil Superior Court Trials**

Jury and bench trials in civil superior court will resume on August 16, 2021. For each weekly session of civil superior court, there will be one trial calendar and one motion calendar. Parties and counsel must follow the instructions provided by the Court in the heading of the [published civil court calendars](#).

The use of court space and juror time are limited commodities. Attorneys and parties are expected to avoid undue delay, to be prepared when their case is called for trial, to engage in settlement discussions well before the trial date, to communicate with the Trial Court Administrator's Office regarding the status of their cases on the trial calendars, and to communicate to counsel and parties of the cases set on the same trial calendars when they know their case will not proceed to trial. Motions to continue must comply with local rules and requests to continue a case set for trial will not be granted absent good cause shown, which will be strictly applied.

Pending cases have been divided into the following categories for case management (these categories do not include cases designated as complex under Rule 2.1 of the General Rules of Practice, cases assigned to a superior court judge under Local Rule 2.2, and constitutional challenge cases assigned to a three-judge panel). Cases will be set on each trial calendar in order from oldest to newest and there will be no preemptory settings in 2021, as we work to dispose of the aged caseload. Cases designated as complex under Rule 2.1 of the General Rules of Practice, cases assigned to a superior court judge under Local Rule 2.2, and constitutional challenge cases assigned to a three-judge panel shall be governed by the case management orders entered by the assigned judge(s).

1. Cases with a trial date already set in a case management order or continuance order between 8/16/2021 – 12/13/2021: These cases will remain set for trial as previously ordered. Trial calendars will be published by the Superior Court Trial Court Coordinator (TCC) no later than three (3) weeks prior to the first day of the court session. Publication of the civil court calendar shall serve as sufficient notice to counsel and parties that a case has been set. Attorneys and

parties must ensure that the court's official record reflects the current counsel of record and correct contact information.

2. Cases with a trial date that was set between 3/9/2020 – 8/9/2021: The Superior Court TCC will set these cases for trial between 8/16/2021 – 12/13/2021 and will serve a Notice of Trial Date on counsel and self-represented parties. Attorneys and parties must ensure that the court's official record reflects the current counsel of record and correct contact information.
3. Pending cases that have not been issued a Case Management Order and ordered to mediation: Parties and counsel are encouraged to submit a [consent CMO that includes an order to mediation](#) and a trial date in 2022 to the Superior Court TCC ([Lisa.R.Tucker@nccourts.org](mailto:Lisa.R.Tucker@nccourts.org)). Following [Odyssey ICMS implementation](#), the Superior Court TCC will proceed with normal case management by issuing case management notices in those cases where a CMO has not been submitted and approved. Attorneys and parties must ensure that the court's official record reflects the current counsel of record and correct contact information.
4. Cases that had a trial date prior to 3/9/2020 and were previously ordered to mediation: Parties and counsel are encouraged to submit a consent CMO that includes a trial date in 2022. Following Odyssey ICMS implementation, the Superior Court TCC will set these cases for trial between and will serve a Notice of Trial Date on counsel and self-represented parties. Attorneys and parties must ensure that the court's official record reflects the current counsel of record and correct contact information.

#### Pretrial Orders:

Proposed pretrial orders are due to the Superior Court TCC ([WakeCivSup2@nccourts.org](mailto:WakeCivSup2@nccourts.org)) by 1:00 p.m. on the Thursday prior to the trial date. Counsel and parties who do not submit the pretrial order by this deadline will be required to attend a conference with the Court on the Friday prior to the trial date.

#### Civil Superior Court Motions

Civil superior motions will be set by the Superior Court TCC on each weekly session in AM and PM daily settings. Parties and counsel must follow the instructions provided by the Court in the heading of the [published civil court calendars](#).

To schedule a motion in Wake County Civil Superior Court, please determine the next available date<sup>1</sup> and email a completed calendar request to [calendarrequestswake@nccourts.org](mailto:calendarrequestswake@nccourts.org) or fax it to (919) 792-4951. No calendar request may be made before filing the motion that is the subject of the hearing. A copy of the Notice of Hearing, which shall be filed with the Clerk's office, will not suffice as a calendar request.

Except for the motions listed below, all calendared motions will be scheduled for remote hearings via WebEx, the NCAOC approved platform. The WebEx information will be provided in the heading of the

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<sup>1</sup> See Wake County Superior Court Six Month Schedules: <https://www.nccourts.gov/locations/wake-county/wake-county-local-administrative-schedules>.

published civil court calendar. All remote motion hearings will be recorded in accordance with G.S. 7A-49.6 (h).

The following motions will be presumptively in-person. Parties, when submitting a calendar request for such motions, may request that the matter be heard remotely. In making such a request, the party(s) shall state the reason for the request and whether opposing parties consent to the request. Consent to hold such motions via WebEx shall be in the discretion of the Trial Court Administrator and the Senior Resident Superior Court Judge. Remote evidentiary hearings and hearings requiring witness testimony will only be allowed in exceptional circumstances.

In-Person Hearings:

- Preliminary Injunctions
- Dispositive motions under Rule 12 and Rule 56 of the NC Rules of Civil Procedure
- Evidentiary matters, including witness testimony
- Sanctions
- Contempt

Objection to Remote Hearing:

Pursuant to G.S. 7A-49.6 (d), a party may object to conducting a civil proceeding by audio and video transmission by demonstrating good cause for the objection. Objections to a remote motion hearing may be made in advance of the hearing by emailing the Superior Court TCC ([WakeCivSup2@nccourts.org](mailto:WakeCivSup2@nccourts.org)) at least two business days in advance of the hearing. Opposing parties and counsel must be copied on the email correspondence. If the written objection is submitted any way other than email, it will not be considered by the presiding judge until the date of the hearing. Oral objections may be made on the date of hearing. If there is an objection for good cause, the presiding judge may require parties and counsel to appear for an in-person hearing during the same weekly session or continue the case for an in-person hearing on a future motion session.

Per Local Rules, publication of the calendar by the TCA's Office shall serve as sufficient notice to counsel that a case has been set. To view published civil court calendars and to subscribe to the calendar email service, visit: <http://www1.aoc.state.nc.us/www/calendars/Civil.jsp?county=WAKE.2>

Calendar Requests:

The calendar request form is available online: [www.nccourts.gov/WakeTCA](http://www.nccourts.gov/WakeTCA) [Under Resources, select Local Rules and Forms; under Local Forms, select WAKE-CVS-01 Superior Court Calendar Request]. Time estimates provided by counsel and parties on the calendar request form will be strictly enforced.

Add-on Motions:

If the calendar request deadline has passed, the motion will be considered an "add-on" and you must first confirm the availability of opposing counsel/party prior to submitting the calendar request to the TCA's office, indicating the same on lines #3 and #4 on the calendar request form. Trials and motions already set on the calendar are given priority over add-on matters, with limited exceptions.

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<sup>2</sup> This will change after Odyssey ICMS implementation.

### Dispositive Motions:

Dispositive motions will NOT be added to the trial date. Requests to do so may be made to the trial judge at the time of trial, if properly noticed.

### **Submit Briefs, Memoranda, & Other Hearing Materials Before a Hearing**

All briefs, memoranda, and other materials for the judge's review prior to a hearing in Wake County Civil Superior Court must be submitted by email to [WakeCivSup2@nccourts.org](mailto:WakeCivSup2@nccourts.org) no later than two business days prior to the hearing, with a copy to opposing parties / counsel. Do not send duplicates or hard copies to other staff and judges, unless specifically requested by the presiding judge.

If the hearing date is continued, the materials must be submitted again prior to the new court date.<sup>3</sup>

### **Submit a Proposed Order Following a Hearing**

Following a hearing in Wake County Civil Superior Court, after the judge has ruled, email the MS Word version of the proposed order to [Wake.Civil.Superior.Orders@nccourts.org](mailto:Wake.Civil.Superior.Orders@nccourts.org) and copy opposing parties / counsel. Include the file number and name of presiding judge in the subject line and, in the body of the email, indicate if opposing parties / counsel are in agreement with the form of the order or if they will be submitting an alternate proposed order. Do not send duplicates or hard copies to other staff and judges.

### **Consent Orders & Motions/Orders Submitted for Review Without a Hearing**

Upon receipt of the filed motion from the clerk of court, email a copy of the filed motion and other required documents (e.g., SCRA Affidavit, receipt showing PHV fees paid, etc.), along with the proposed order in MS Word format, to [Wake.Civil.Superior.Orders@nccourts.org](mailto:Wake.Civil.Superior.Orders@nccourts.org). Include the file number in the subject line and copy all counsel and unrepresented parties. You will receive an automatic reply confirming receipt; if you do not receive an automatic reply, please contact Shanda Smallwood ([Shanda.R.Smallwood@nccourts.org](mailto:Shanda.R.Smallwood@nccourts.org)). Do not send duplicates or hard copies to other staff and judges.

Parties / counsel will be notified by email when an order has been entered; however, no action will be taken on a motion and proposed order that does not comply with Local Rules or that is otherwise incomplete.

### **Application for a TRO**

Pursuant to Local Rules, application for Rule 65 TROs will be heard only after the commencement of a civil action through the filing of a complaint and/or issuance of the summons. After the civil action has been commenced, please send a copy of the filed complaint and the filed motion (if it is not contained within the complaint), confirmation that opposing counsel/party has been notified that the action is

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<sup>3</sup> This will change after Odyssey ICMS implementation.

being requested, and a completed calendar request form, to Lisa Tucker by email ([Lisa.R.Tucker@nccourts.org](mailto:Lisa.R.Tucker@nccourts.org)). Please include reference to the application for TRO in the subject line of your email so we will know that it needs prompt attention. Ms. Tucker will then send a confirmation of the hearing date and time, along with WebEx hearing instructions, via email to the movant, who will be responsible for distributing the information to counsel and unrepresented parties. *We will not schedule the TRO hearing or confirm the presiding judge until the filed documents, completed calendar request and confirmation of notification have been provided to our office.*

### **Request for Rule 2.1 Exceptional Case Designation**

Upon motion of any party, the Senior Resident Superior Court Judge in Wake County may recommend to the Chief Justice that a Wake County civil action be designated as exceptional under Rule 2.1 of the General Rules of Practice. The motion must include the reasons for the request (factors are listed in Rule 2.1(d)) and should include confirmation that the parties have contacted the requested judge(s) and they are willing to serve, if so designated by the Chief Justice of the Supreme Court of North Carolina. A copy of the filed motion should be submitted by email to the Trial Court Administrator for review with the Senior Resident Superior Court Judge.

After review, the TCA will send the Senior Resident's recommendation (that the case be designated as exceptional or that the case is not designated as exceptional) to the Chief Justice of the Supreme Court of North Carolina.

### **Superior Court Judge Assignments**

Fall 2021 superior court judge assignments are available from the [Superior Court Master Calendar](#). Future assignments will be published to the same location. The judge assignments are subject to change due to hold-over court sessions, reassignments, leave, etc., so the judge initially assigned to a particular civil or criminal session on the master calendar may change by the first day of the weekly court session.

## **GENERAL CIVIL DISTRICT COURT**

Courtroom 9C

(excludes Family Court, Child Support, and Domestic Violence cases)

### **Mandatory Civil District Court Arbitration**

District Court Arbitrations resumed on February 1, 2021. Parties should report to Suite 1035 of the Wake County Courthouse (10th floor) on the date provided in the hearing notice. Once they have checked-in with the Arbitration Coordinator, they will be sent to Courtroom 10D for the arbitration hearing.

If you would like to request a remote arbitration hearing, please email the Arbitration Coordinator ([Carol.R.Mcleod@nccourts.org](mailto:Carol.R.Mcleod@nccourts.org)) for more information.

### **Civil District Court Trials**

Jury trials in civil district court will resume in September 2021 with the backlogged/oldest cases set first. Civil district court will resume a regular jury trial schedule after the backlogged is cleared.

If all parties consent to waive a trial by jury, please notify the District Court Trial Court Coordinator (TCC) ([Amy.L.Turner@nccourts.org](mailto:Amy.L.Turner@nccourts.org)) so that she may set your matter for a bench trial to avoid further delays caused by the impact of COVID-19 on the court system. Parties that stipulate to less than 12 jurors will also have priority in scheduling.

Bench Trials will continue to be calendared and will continue to be conducted in Courtroom 9C. All attorneys, parties, and witnesses must appear in person for the trial unless specifically ordered otherwise by the Presiding Judge. Calendars published by the TCC are available online at <http://www1.aoc.state.nc.us/www/calendars/Civil.jsp?county=WAKE>.

If you are unable to come to the courthouse for *reasons only related to COVID-19*, you may email a request for a continuance to [wake.civildistrict@nccourts.org](mailto:wake.civildistrict@nccourts.org). Include your case number and case name in the subject line and send a copy of the email to the opposing party.

### **Civil District Court Motions**

Pursuant to the Remote Protocol for Courtroom 9C, the Thursday Motions Calendar has been conducted remotely via WebEx since January 21, 2021. Motions will continue to be conducted remotely via WebEx on Thursdays, as set out below. Normal case management has been resumed by the District Court TCC with regards to aged cases. Therefore, counsel and parties are expected to schedule outstanding motions on aged cases to help improve court efficiency.

Except for emergency ex parte motions, all calendared motions will be scheduled for remote hearings via WebEx on Thursday mornings at 9:00 a.m. Calendar requests for a motion hearing must be emailed to the TCC at [calendarrequestswake@nccourts.org](mailto:calendarrequestswake@nccourts.org).

All notices of hearing for motions must be accompanied by [Local Form WAKE-CVD-06](#) (Information Sheet for Civil District Court Motions). Failure to include this information sheet may result in the case being continued.

Continuance orders, judgments, or other documents signed by the Court during the WebEx hearing will be emailed to the parties following the hearing. Parties will not receive hard copies.

#### Calendar Requests:

The calendar request form is available online: [www.nccourts.gov/WakeTCA](http://www.nccourts.gov/WakeTCA) [Under Resources, select Local Rules and Forms; under Local Forms, select WAKE-CVD-01 Calendar Request]. Completed calendar requests for a motion hearing must be emailed to the TCC at [calendarrequestswake@nccourts.org](mailto:calendarrequestswake@nccourts.org).

#### Objection to Remote Hearing:

Pursuant to G.S. 7A-49.6 (d), a party may object to conducting a civil proceeding by audio and video transmission by demonstrating good cause for the objection. Objections to a remote motion hearing may be made in advance of the hearing by emailing the District Court TCC ([wake.civildistrict@nccourts.org](mailto:wake.civildistrict@nccourts.org)) at least two business days in advance of the hearing. Opposing parties and counsel must be copied on the email correspondence. If the written objection is submitted any way other than email, it will not be considered by the presiding judge until the date of the hearing. Oral objections may be made on the date of hearing. If there is an objection for good cause, the presiding judge may require parties and counsel to appear for an in-person hearing at 2:00 p.m. on the same day or continue the case for an in-person hearing on a future motion date.

#### Attending the Hearing:

On the date of the motion hearing, the presiding judge will call the calendar (list of all cases) at 9:00 a.m. via WebEx at the following location: Wake County Courtroom 9C Personal Room – Meeting ID# 126 492 0712. The virtual courtroom will be open at approximately 8:45 a.m. to permit the testing of audio and video connections. Calendar call will start promptly at 9:00 a.m. Further instructions are provided in the [Local Form WAKE-CVD-06](#) (Information Sheet for Civil District Court Motions).

If a party is unable to connect to the internet, or does not have the ability to access WebEx, they must appear in person in Courtroom 9C at the Wake County Courthouse, 316 Fayetteville Street, Raleigh, NC at 9:00 a.m. on the date of the hearing for the calendar call. The presiding judge, in his or her discretion, may reschedule the hearing for an in-person hearing, or make arrangements for the self-represented litigant to attend the remote hearing using equipment provided by the court system.

Business casual or business attire is appropriate dress for parties and counsel appearing at a remote hearing.

All participants in the remote hearing must be able to be seen and heard by the presiding judge. During the hearing, parties that are not speaking should have their microphones muted until they are addressed by the presiding judge.

All remote motion hearings will be recorded in accordance with G.S. 7A-49.6 (h).

### **Submit Briefs, Memoranda, & Other Hearing Materials Before a Hearing**

All attorneys and parties (with known email addresses) with a motion on the calendar will be sent a Liquid Files request from the TCC, Amy Turner, seven (7) days before the hearing. This request should be used to provide exhibits, proposed judgments, memoranda, or other documents in preparation of the hearing. Do not submit pleadings, affidavits, or motions already filed with the Court. All documents uploaded to Liquid Files should be identified including the case name, case number and the nature of the document. All documents should be emailed or otherwise delivered to the opposing party at the same time. Liquid Files requests should be responded to at least five (5) days in advance of the hearing. Documents provided after the deadline will not be available for the judge and may result in a continuance of the hearing.

*For all remote hearings, there is a maximum limit of twenty-five pages per party for documents submitted. This includes all proposed orders, exhibits, memoranda, or other documents. If you have more than twenty-five pages to submit, you may file an objection to the remote setting of the hearing and request an in-person hearing. All parties must be provided copies of any documents at the same time they are delivered to the Court. The judge, in his or her discretion, will determine if there is good cause for an objection based on an excessive number of documents.*

Self-represented litigants for whom the TCC does not have an email address and attorneys who have not yet made an appearance in the case must email all exhibits, proposed orders, memoranda, and other documents to [wake.civildistrict@nccourts.org](mailto:wake.civildistrict@nccourts.org) at least five (5) days in advance of the hearing. If an email address is known for the opposing party, the opposing party must also be copied on any emails submitted to the TCC. The case name and file number should be included in the subject line.