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## TENTH JUDICIAL DISTRICT (WAKE COUNTY) CIVIL SUPERIOR COURT OPERATIONS

The procedures set out below are promulgated by the Court Administrator (CA) 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. The CA is authorized to make additional changes, subject to consultation with the Senior Resident Superior Court Judge, to comply with the 2022 recommendations of the NCAOC Director to eliminate the COVID-19 backlog of pending cases and to decrease the time to disposition of pending cases, and to facilitate the implementation of Odyssey (eCourts).

This document replaces the December 13, 2022, Tenth Judicial District (Wake County) Civil Superior Court Operations memo.

In the event the procedures herein conflict with the [Tenth Judicial District Local Rules for Civil Superior Court](#) (Local Rule), the CA is authorized to act, subject to consultation with the Senior Resident Superior Court Judge or Judge Presiding. *Attorneys and parties must confirm the most current court operations & information from [www.nccourts.gov/WakeTCA](http://www.nccourts.gov/WakeTCA) and <https://www.nccourts.gov/locations/wake-county/wake-county-ecourts-information>.*

NOTICE: All persons preparing or a document to be recorded or filed with the court, whether in paper or electronically, have an obligation to comply with G.S. 132-1.10(d) and exclude or redact personal identifying information from the document. *This includes submitting documents to the court via e-mail.*

### SUPERIOR COURT JUDGE ASSIGNMENTS

Spring and Fall 2023 superior court judge assignments are available from the [Superior Court Master Calendar](#). Future assignments will be published to the same location. The initial judge assignments are subject to change due to hold-over court sessions, reassignments, leave, etc. Therefore, 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.

For each weekly session of civil superior court during the Spring 2023 rotation, there will be one trial judge and one motion judge. Additionally, there will be a second trial judge for one weekly session each month.

### CIVIL SUPERIOR COURT TRIALS

It is the policy of this Court to provide justice without unnecessary delay and without undue waste of the time and other resources of the Court, the litigants, and other case participants. Cases will be set for

trial by the Court Administrator and the Civil Superior Case Manager to align with this policy and with the Supreme Court Time Guidelines for Trial Court Cases.<sup>1</sup>

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 TCA's Office regarding the status of their cases on the trial calendars in advance of the trial date, 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. Attorneys and parties should also be prepared to be placed on stand-by and ready to begin a trial on any day during the weekly session of court.

#### Pretrial Orders

Proposed pretrial orders shall be submitted to the Civil Superior Case Manager by 1:00 p.m. on the Thursday prior to the trial date, via email to [WakeCivSup2@nccourts.org](mailto:WakeCivSup2@nccourts.org). Counsel and parties who do not submit the pretrial order by this deadline may be required to attend a conference with the Court / TCA's Office on the Friday prior to the trial date and may be subject to sanctions imposed by the Court.

### **CIVIL SUPERIOR COURT MOTIONS**

Civil superior motions will be set by the Civil Superior Case Manager on each weekly session in AM and PM daily settings.

To schedule a motion in Wake County Civil Superior Court, please determine the next available date<sup>2</sup> and email a completed calendar request to [calendarrequestswake@nccourts.org](mailto:calendarrequestswake@nccourts.org) or fax it to (919) 792-4951. 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. 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. When scheduling a hearing on a motion, attorneys must comply with Rule 6 of the [NC General Rules of Practice](#).

#### In-Person Hearings

The following motions will be presumptively in-person. All other motions will be scheduled for remote hearings via WebEx, as set out below.

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

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<sup>1</sup> Civil Superior Cases: 90% disposed within 365 days of filing.

<sup>2</sup> See Wake County Superior Court Six Month Schedules: <https://www.nccourts.gov/locations/wake-county/wake-county-local-administrative-schedules>.

### Remote Hearings

Except for the in-person motions listed above, *all calendared motions will be scheduled for remote hearings* via WebEx, the NCAOC approved platform, and in accordance with G.S. 7A-49.6. All remote motion hearings will be recorded in accordance with G.S. 7A-49.6(h).

To join a WebEx hearing, confirm the WebEx Courtroom number from the Hearings tab of the case on Portal, and select from the appropriate link below:

- Location 910-0558 Wake Co. Civil Superior WebEx Ctrm #1:  
<https://nccourts.webex.com/meet/wakecivsup.sh>
- Location 910-8618 Wake Co. Civil Superior WebEx Ctrm #2:  
<https://nccourts.webex.com/meet/wakecivsup2.sh>

### 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 email to the Civil Superior Case Manager ([Lisa.R.Tucker@nccourts.org](mailto:Lisa.R.Tucker@nccourts.org)) no later than 5:00 p.m. on the Wednesday before the first day of the session of court in which the case is set. 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 until the date of the hearing by oral objection to the presiding judge.

Oral objections may be made on the date of hearing to the presiding judge. If there is good cause for the objection, 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.

### 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 and self-represented parties 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. If a matter is added to the calendar, there is no guarantee that it will be reached by the presiding judge.

### Dispositive Motions

Unless otherwise ordered by the Court, the Dispositive Motion Deadline is set in the Case Management Order as a *hearing deadline* and is not a filing deadline. Dispositive motions will not be added to the trial date by the TCA's Office. Requests to do so may be made to the trial judge at the time of trial, if properly noticed. Failure to timely calendar dispositive motions for a hearing is not good cause for a continuance of the trial date.

## CALENDAR PUBLICATION & HEARING DATES

Calendar and hearing date publication in Civil Superior Court has changed following the implementation of *Odyssey*. Those changes are reflected below and supplement Local Rules regarding the same.

### Calendar Publication

Hearings are published no later than three weeks prior to the first day of the court session on Portal (<https://portal-nc.tylertech.cloud/Portal/>). Publication of the hearing to Portal no later than three weeks prior to the first day of the court session shall serve as sufficient notice to counsel that a case has been set (i.e., the calendar is considered published/final at this time and no changes will be made absent court order or approval by the Trial Court Administrator). To view all cases set for trial or hearing on the same calendar session, select Search Hearings in Portal and then search by the court date and hearing location.

### Attorney / Case Query

Search for cases set for hearing or trial by using Portal (<https://portal-nc.tylertech.cloud/Portal/>) and selecting the appropriate Search Type (e.g., Case Number, Party Name, Business Name, Attorney Name, Attorney Bar Number, Judicial Officer, or Courtroom). To ensure accuracy of this tool, attorneys must provide the Clerk of Superior Court with information regarding withdrawals, notice of appearance, and substitution of counsel in specific cases. All filings must include the North Carolina State Bar number for each attorney of record.

## MOTIONS TO CONTINUE & PEREMPTORY SETTINGS

This Court looks with strong disfavor on motions or requests to continue court events. In order to protect the credibility of scheduled trial dates, trial-date continuances are especially disfavored. Requests to continue a case set for trial will not be granted absent good cause shown, which will be strictly applied.

A motion to continue a trial or motion setting must be first filed with the Clerk's Office and then emailed to the Civil Superior Case Manager ([Lisa.R.Tucker@nccourts.org](mailto:Lisa.R.Tucker@nccourts.org)) no later than 5:00 p.m. on the Wednesday before the first day of the session of court in which the case is set. The motion must contain the information listed in Local Rule 8.2. Continuances on agreement of counsel or the parties shall not be automatically granted.

While we continue to address the COVID-related pending case backlog, *peremptory settings will not be granted*. Because only the Senior Resident Superior Court Judge may grant a peremptory setting, any such settings that the parties include in proposed orders will be without effect.

However, certain priority settings will be considered only for designated complex cases and those cases that were previously not reached for trial (see Local Rule 8.5). Priority settings require the approval of the Court Administrator and the Senior Resident Superior Court Judge. Motions to continue will be disfavored for priority settings, absent an emergency, and must be approved by the trial judge and the Senior Resident Superior Court Judge.

### **REMOVE A CASE FROM THE CALENDAR**

To remove a case from a published calendar, Local Rules require the settlement of a case (demonstrated by a filed copy of the dismissal), the filed withdrawal of a motion (not a withdrawal of the notice of hearing), or a continuance granted by the Senior Resident (motion must be filed by 5:00 p.m. on the Wednesday prior to the scheduled session of court). We will not make changes to the calendar once the weekly session of court has begun.

If the Civil Superior Case Manager does not receive one of the required, filed, documents listed above AND you do not receive a confirmation email from the Civil Superior Case Manager indicating removal, parties / counsel MUST APPEAR for the scheduled hearing / calendar call pursuant to [GRP Rule 2\(e\)](#), and request that the presiding judge withdraw the matter from the calendar. If you do not receive confirmation from the Civil Superior Case Manager that the matter is removed from the calendar and you do not appear for the hearing, the Court may enter an order dismissing the action or motion(s) for failure to prosecute.

### **SUBMIT BRIEFS, MEMORANDA, & OTHER HEARING MATERIALS BEFORE A HEARING / TRIAL**

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 sent to opposing counsel and self-represented parties. Do not send duplicates or hard copies to other staff and judges, unless specifically requested by the presiding judge.

### **SUBMIT A PROPOSED ORDER FOLLOWING A HEARING / TRIAL**

All proposed order for review by a Superior Court Judge shall be submitted pursuant to the [Civil Superior Proposed Order Process](#). All submissions shall include an [Order Submission Cover Sheet \(WAKE-CVS-08\)](#). You must confirm from [www.nccourts.gov/WakeTCA](http://www.nccourts.gov/WakeTCA) that you are using the most current version prior to submitting proposed orders.

### **CONSENT MOTIONS / ORDERS SUBMITTED FOR REVIEW WITHOUT A HEARING**

All consent orders and consent judgments for review by a Superior Court Judge shall be submitted pursuant to the [Civil Superior Proposed Order Process](#). All submissions shall include an [Order Submission Cover Sheet \(WAKE-CVS-08\)](#). You must confirm from [www.nccourts.gov/WakeTCA](http://www.nccourts.gov/WakeTCA) that you are using the most current version prior to submitting proposed orders.

### **APPLICATION FOR A TRO**

Pursuant to Local Rules, application for NCRCP 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, email a completed calendar request form directly to Lisa Tucker ([Lisa.R.Tucker@nccourts.org](mailto:Lisa.R.Tucker@nccourts.org)) and note in the subject line that the email is a request to schedule a TRO hearing. If notice is required by NCRCP Rule 65, the movant must also provide confirmation to Lisa Tucker that notice has been provided to the adverse party or that party's attorney. 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 determine when a judge is available and send a confirmation of the hearing date and time, along with WebEx hearing instructions, via email to the movant. The movant will be responsible for distributing the information to counsel and self-represented parties. *We will not schedule the TRO hearing or confirm the presiding judge until the required documents have been filed and the completed calendar request has 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 a statement regarding the parties' consent. If a specific judge is requested, the motion should also include confirmation that the parties have contacted the requested judge and that judge is willing to serve, if designated by the Chief Justice of the Supreme Court of North Carolina. A copy of the filed motion must be submitted by email to the Court Administrator ([Kellie.Z.Myers@nccourts.org](mailto:Kellie.Z.Myers@nccourts.org)) for review with the Senior Resident Superior Court Judge.

After review, the Court Administrator 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.

### **FACIAL CONSTITUTIONAL CHALLENGE / REQUEST FOR A THREE-JUDGE PANEL**

#### Determination of Facial vs. As Applied:

The original trial court must determine if the challenge to an act of the North Carolina General Assembly is a facial or an as-applied challenge. For cases originally filed in Wake County Superior Court, this issue must be set for a hearing pursuant to local rules and procedures for civil superior court.<sup>3</sup> Facial challenges shall be transferred by order from the original trial court to a three-judge panel of Wake County Superior Court, after meeting all other statutory and legal requirements.

#### Transfer to a Three-Judge Panel:

The original trial court shall enter the order transferring the facial constitutional challenge to Wake County Superior Court for determination by a three-judge panel, *only after*:

- Determination by the original court that resolution of the facial constitutional challenge is necessary to resolve the case;
- All other matters in the case other than those dependent upon resolution of the facial constitutional challenge have been resolved by the original court; and
- The *original trial court has ruled on all motions* filed under Rule 11 or Rules 12(b)(1), 12(b)(2), 12(b)(3), 12(b)(4), 12(b)(5) or 12(b)(7), *see* NCRCP Rule 42(b)(4). The original court may only decline to rule on a motion that is based solely on Rule 12(b)(6), which then must be decided by the three-judge panel.

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<sup>3</sup> Visit [www.NCcourts.gov/WakeTCA](http://www.NCcourts.gov/WakeTCA) for more information.

When transferring the facial challenge, the original trial court should ensure that all necessary parties are joined in the action. See NCRCF Rule 19(d).

Notification to the Court:

Following the original trial court judge's entry of the order transferring only the facial challenge to a three-judge panel of Wake County Superior Court, parties / attorneys shall notify the Wake County Court Administrator by email ([Kellie.Z.Myers@nccourts.org](mailto:Kellie.Z.Myers@nccourts.org)) and provide an electronic copy of all filed documents.

If the facial challenge is transferred to Wake County from another county, the Clerk of Superior Court of the original trial court must send the court file to the Wake County Clerk of Superior Court. The Court Administrator will not proceed with the matter until all documents in the original case file are received by the Wake County Clerk of Superior Court from the Clerk of Superior Court of the original trial court *and* the matter is assigned a Wake County file number. If the case originates in Wake County, it will retain the original file number.

Facial constitutional challenges pending in the Wake County Superior Court are not automatically afforded priority over other pending civil cases in Wake County Superior Court and follow the same time standards as all other general civil cases.