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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.

This document replaces the civil superior court operations set out in the July 14, 2021, 10th Judicial District (Wake County) Civil Superior and General Civil District 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. These procedures are subject to change following Odyssey ICMS (eCourts) implementation. Attorneys and parties must confirm the most current court operations & information from www.nccourts.gov/WakeTCA.

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.¹

¹ Civil Superior Cases: 90% disposed within 365 days of filing.

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. 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. Parties and counsel must follow the instructions provided by the Court in the heading of the most current [published civil court calendars](#) on which their cases appear.

To schedule a motion in Wake County Civil Superior Court, please determine the next available date² and email a completed calendar request to calendarrequestswake@nccourts.org or fax it to (919) 792-4951. The calendar request form is available online: 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](#).

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>.

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.

In-Person Hearings:

1. Preliminary Injunctions
2. Dispositive motions under Rule 12 and Rule 56 of the NC Rules of Civil Procedure
3. Evidentiary matters, including witness testimony

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

4. Sanctions
5. Contempt

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. The WebEx information will be provided in the heading of the published civil court calendar on which the motion is scheduled. All remote motion hearings will be recorded in accordance with G.S. 7A-49.6(h).

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) 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.

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 filed with the Clerk's Office and emailed to the Civil Superior Case Manager (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 situation, 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 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. If the hearing date is continued, the materials must be submitted again the week prior to the new court date.

SUBMIT A PROPOSED ORDER FOLLOWING A HEARING / TRIAL

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 and copy opposing counsel and self-represented parties. Include the file number and name of presiding judge in the subject line and, in the body of the email, indicate if opposing counsel and self-represented parties agree with the form of the order or if they will be submitting an alternate proposed order, unless otherwise instructed by the presiding judge. Do not send duplicates or hard copies to other staff and judges.

Parties and attorneys shall not use this email address to submit additional argument to the Court.

CONSENT MOTIONS / ORDERS SUBMITTED FOR REVIEW WITHOUT A HEARING

After filing the motion with the Clerk's Office, 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. 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). 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. If the materials submitted are not accepted, please note that court personnel are prohibited from giving legal advice and, thus, cannot advise you legally as to what you must do to amend your materials. If you are unsure as to what is required, you may set the matter for a hearing.

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 copy of the filed complaint and the filed motion (if it is not contained within the complaint), and a completed calendar request form, directly to Lisa Tucker (Lisa.R.Tucker@nccourts.org). 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 and completed calendar request 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 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) 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.³ 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.

When transferring the facial challenge, the original trial court should ensure that all necessary parties are joined in the action. *See* NCRCP 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) 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.

³ Visit www.NCcourts.gov/WakeTCA for more information.