# RULE 1: PURPOSE AND SCOPE

1.1 Purpose.

These Business Court Rules should be construed and enforced to foster professionalism and civility; to permit the orderly, just, and prompt consideration and determination of all matters; and to promote the efficient administration of justice.

1.2 Scope.

These rules govern every civil action that is designated as a mandatory complex business case or assigned to a Business Court judge under Rule 2.1 of the General Rules of Practice for the Superior and District Courts Supplemental to the Rules of Civil Procedure.

1.3 Integration.

These rules are intended to supplement, not supplant, the Rules of Civil Procedure and the General Rules of Practice.

1.4 Effective date.

These rules take effect upon an order by the Senior Business Court Judge as described in N.C. Gen. Stat. § 7A-45.3 and apply to all pending actions.

1.5 Definitions.

(a) "The Rules" refers to the Business Court Rules.

(b) "The Chief Business Court Judge" refers to the Senior Business Court Judge.

(c) "The Court" refers to the North Carolina Business Court.

# RULE 2: MANDATORY BUSINESS COURT DESIGNATION

2.1 Designation.

(a) Form of notice.

The party seeking to designate an action as a mandatory complex business case must file a Notice of Designation as provided in N.C. Gen. Stat. § 7A-45.4. Appendix 1 to the Rules contains a Notice of Designation template.

(b) Method of service.

In addition to serving the Notice of Designation as required by section 7A-45.4(c), the designating party should e-mail the notice to all parties as practicable, the Chief Business Court Judge, and the Chief Justice of the Supreme Court.

(c) Civil action number.

Before a party files a Notice of Designation in an action, the Clerk of Superior Court in the county of venue will assign a civil action number to the action. When an action is designated or assigned to the Court, the action retains that civil action number.

(d) Cost.

Within ten days of the assignment of an action to a Business Court judge, the party responsible for paying the cost described in N.C. Gen. Stat. § 7A-305(a)(2) must file a certification in the Court that the cost has been paid to the Clerk of the Superior Court in the county of venue.

2.2 Opposing a Notice of Designation.

If a party files an opposition to a Notice of Designation pursuant to N.C. Gen. Stat. § 7A-45.4(3), then any other party may file a response to the opposition. The response must be filed within fifteen days of service of the opposition or as otherwise ordered by the Court. Unless the Court orders otherwise, the party that filed the opposition may not file a reply.

If the Court upholds an opposition, the action will proceed on the regular civil docket in the county of venue, although any party may seek to have the action designated as exceptional under Rule 2.1 of the General Rules of Practice.

2.3 Designation based on an amended pleading.

(a) Procedure.

If a party amends a pleading, and the amendment raises a new material issue listed in N.C. Gen. Stat. § 7A-45.4(a), any party may seek designation of the action as a mandatory complex business case within the time periods set forth in section 7A-45.4(d).

If the party that files the amended pleading seeks designation, the Notice of Designation must be made contemporaneously with the filing of the amended pleading.

If another party seeks designation based on the amended pleading, the Notice of Designation must be filed within thirty days of service of the amended pleading; for proposed amended pleadings, the thirty-day period begins to run on the later of (a) the timely filing of the Court-allowed pleading or (b) three days after any order that deems the proposed amended pleading to be filed.

If, as a result of the amended pleading, the action falls within section 7A-45.4(b), the action must be designated to the Court under that section, and section 7A-45.4(g) will apply to any action if there is no designation.

(b) New eligibility for designation.

Rule 2.3(a) applies only to an action that had not previously qualified under section 7A-45.4(a) for designation to the Court. Parties added by subsequent pleadings may designate an action to the Court in accordance with section 7A-45.4(d).

The Notice of Designation procedure should not be utilized in connection with an amended pleading for the purpose of interfering with or delaying ongoing or upcoming proceedings, or where assignment of the action as a mandatory complex business case would be inconsistent with the interests of justice given the status of the proceedings in the Court where the action is pending.

2.4 What constitutes designation.

For purposes of the Rules, an action is designated as a mandatory complex business case when the Chief Justice issues an order as described in N.C. Gen. Stat. §§ 7A-45.4(c) and (f). A party's filing of a Notice of Designation does not constitute the designation of the action as a mandatory complex business case or effectuate the assignment of a case to the Court.

2.5 Designation under N.C. Gen. Stat. § 7A-45.4(a)(9).

When seeking designation based on N.C. Gen. Stat. § 7A-45.4(a)(9), if the plaintiff, third-party plaintiff, or petitioner lacks the consent of all parties, then the plaintiff, third-party plaintiff, or petitioner may file a conditional Notice of Designation contemporaneously with the complaint, third-party complaint, or petition for judicial review. The conditional Notice of Designation will be construed to comply with section 7A-45.4(d)(1). The plaintiff, third-party plaintiff, or petitioner will then have thirty days after service on all parties of the complaint, third-party complaint, or petition for judicial review to file a supplement to the conditional Notice of Designation that reflects consent by all parties to the Notice of Designation. A Notice

of Designation filed by a plaintiff, third-party plaintiff, or petitioner under section 7A-45.4(d)(14) is not deemed to be complete until after the supplement is filed.

# RULE 3: FILING AND SERVICE

3.1 Mandatory electronic filing.

Except as otherwise specified in the Rules, all filings in the Court must be made electronically on 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.

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 litigant. 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 forego use of the electronic-filing system will be determined on a good-cause standard.

3.3 Electronic identities.

Any person who desires to file using the electronic-filing system must obtain an electronic identity from the Court. An electronic identity consists of a username and password. Counsel with a case designated as a mandatory complex business case or assigned to a Business Court judge must promptly obtain an electronic identity and must maintain adequate security over that identity.

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 documents that the party is permitted to file by e-mail pursuant to Rule 3.2. An electronic signature consists of a person's 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 one counsel for each party that submits the filing. By filing a document with multiple electronic signatories, the lawyer whose electronic identity is used to file the document certifies that each signatory has agreed to the document's filing.

(c) Form of signature block.

Every signature block must contain the signatory's name, bar number, 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. Documents filed electronically must not be filed in an optically scanned format, unless special circumstances dictate otherwise. Proposed orders must be filed in Microsoft Word format. 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 Standard 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 is sent by e-mail to all counsel of record. Filing is not complete until issuance of a notice of filing. A document filed electronically is deemed filed at the time and date stated on the notice of filing.

3.8 Notice and entry of orders, judgments, and other matters.

The Court will transmit all orders, decrees, judgments, and/or 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 with the Clerk of Superior Court in the county of venue. If a pro se litigant is permitted to forgo use of the electronic-filing system under Rule 3.2, the Court will deliver a copy of every order, decree, judgment, or other matter to that pro se litigant by alternative means.

3.9 Service.

(a) Effect of notice of filing.

After an action has been designated as a mandatory complex business case or otherwise assigned to the Court, the issuance of a notice of filing constitutes adequate service under the Rules of Civil Procedure of the filed documents. Service by other means is not required, unless

the party served is a pro se party. Service of materials on pro se parties is governed by Rule 3.9(e). Documents filed with the Court must bear a certificate of service stating that the documents have been filed electronically and will be served in accordance with this rule.

(b) E-mail addresses.

Each counsel of record must provide the Court with a current e-mail address and maintain a functioning e-mail system. The Court will issue notices of filing to the e-mail address that counsel has provided to the Court.

(c) Service of non-filed documents.

When a document must be served but not filed, the document must be served by e-mail unless (a) the parties have agreed to a different method of service or (b) the Case Management Order calls for another manner of service. Service by e-mail under this Rule constitutes adequate service under Rule 5 of the Rules of Civil Procedure.

(d) Effect on Rule 6(e) of the Rules of Civil Procedure.

Electronic service made under these rules through the electronic-filing system is treated the same as service by mail for purposes of Rule 6(e) of the Rules of Civil Procedure.

(e) Service on pro se parties.

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 a Court order directs otherwise.

3.10 Procedure when the electronic-filing system appears to fail.

If a person tries to file a document, but (a) the person is unable for technical reasons to transmit the filing to the Court; (b) 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 (c) some other

technical reason prevents a person from filing a document, the person attempting to file the document must make a second attempt at filing.

If the second attempt fails, the person (or another person on the filing party's behalf) may continue further attempts to file or may (1) notify the Court of the technical failure by phone call to the judicial assistant for the presiding Business Court judge and (2) e-mail the document to be filed 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. The e-mail should also be copied to counsel of record.

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

3.11 Filings with the Clerk of Superior Court.

Any material, filed with the Court, that is listed in Rule 5(d) of the Rules of Civil Procedure must also be filed with the Clerk of Superior Court in the county of venue within five business days of the date of the filing with the Court.

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 are listed on the docket for the action on the Court's e-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 ask to be added.

# RULE 4: TIME

4.1 Motions to extend time periods.

(a) Procedure.

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, all motions to extend any time period prescribed or allowed by these rules, by the Rules of Civil Procedure, or by court order must be filed with the Court. If the action has been designated as a mandatory complex business case but has not yet been assigned to a particular Business Court judge, then the motion must be submitted to the Chief Business Court Judge.

(b) Basis.

A motion to extend a time period must demonstrate good cause.

(c) Effect.

If a motion to extend a time period is filed, then the filing of that motion automatically extends the time for filing or the performance of the act for which the extension is sought until the earlier of the expiration of the extension requested or a ruling by the Court. If the Court denies the motion, then the filing is due or the act must be completed no later than 5:00 p.m. on the second business day after the Court issues its order, unless the Court's order provides a different deadline.

(d) Modifications by the Court.

The Court may modify any time period on its own initiative, unless a rule or statute prohibits modification of the time period.

(e) Relationship with Rule 6(b) of the Rules of Civil Procedure.

Nothing in these rules precludes parties from entering into binding stipulations in the manner permitted by Rule 6(b) of the Rules of Civil Procedure.

4.2 Extensions of time that do not require a motion.

(a) Papers due within twenty days of designation or assignment.

If any statute, rule of procedure, Business Court Rule, or court order requires the filing or service of any paper fewer than twenty days after the designation of an action as a mandatory complex business case or the assignment of an action to a Business Court judge under Rule 2.1 of the General Rules of Practice, then the time for filing or service of that paper is automatically extended to the twentieth day following the designation or assignment unless a Business Court judge orders otherwise. This rule does not apply to time periods that, by rule or statute, cannot be extended, and is subject to being modified by Court order.

(b) Discovery responses.

The parties may agree, without a Court order, to extend any time period for responses to written discovery. A Court order is required, however, if a party seeks to modify any discovery-related deadline that has been established by a Court order. Rule 10.4(a) contains the standards and process for filing a motion to extend the discovery period or to take discovery beyond the limits set forth in the Case Management Order.

## RULE 5: PROTECTIVE ORDERS AND FILING UNDER SEAL

5.1 Generally.

(a) Rule 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 sections (b) through (e) of this rule.

(b) In the absence of a protective order.

In the absence of an order described in Rule 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 for leave must be filed no later than 5:00 p.m. Eastern Standard 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 under-seal 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 ("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 should be disclosed only to counsel of record and their staff until otherwise ordered by the Court or agreed to by the parties.

(d) Except for documents covered by Rule 5.2(e), 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.

(e) In the rare circumstance that an entire document is filed under seal, 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 after service of the motion for leave. The supplemental brief must comply with the requirements in Rule 7. In the absence of a brief, the Court may summarily deny the motion for leave.

# RULE 6: HEARINGS AND CONDUCT

6.1 Notices 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 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.

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 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 a Business Court judge about a pending matter must copy at least one attorney of record for each 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 consented otherwise, any written communication by counsel to Court personnel regarding a pending matter must include or copy at least one attorney of record for each party.

# 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, all motions and proceedings in the action will be before the Business Court judge to whom it has been assigned unless and until an order has been entered under N.C. Gen. Stat. § 7A-45.4(e) ordering that the case not be designated a mandatory complex business case or the Chief Justice revokes approval of the designation.

7.2 Form.

All motions must be made in electronic form and must be accompanied by a brief (except for those motions listed in Rule 7.10). Motions 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 the Rules.

7.3 Consultation.

All motions, except those made pursuant to Rules 12, 55, 56, 59, 60, or 65 of the North Carolina Rules of Civil Procedure, must reflect consultation with and the position of opposing counsel.

7.4 Motions decided on papers and briefs.

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.

All materials, including affidavits, on which a motion relies must be filed with the motion. Parties should limit these materials to those needed for the Court to decide 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.

Briefs (including opposition briefs) need not attach materials that have been filed previously, and may contain specific references to the docket location of the previously filed exhibit. If a brief refers to materials that have not been filed previously, then the brief should attach the new materials with an index.

When a brief refers to a publicly available document, the brief may contain a hyperlink or URL address to the document in lieu of attaching the document as an exhibit.

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 reports other than the West Federal Reporter System, Lexis System, commonly used electronic databases such as Westlaw or Lexis, or the official North Carolina reporters, then the motion or brief must attach the decision.

7.6 Responsive briefs.

A party that opposes a motion may file a responsive brief within twenty days after 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 respondent 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 movant files a supporting brief in the Business 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 movant files a supporting brief with the Business Court.

7.7 Reply briefs.

Except where otherwise prohibited, a reply brief may be filed within ten days after service of a responsive brief. A reply brief must be limited to discussion of matters newly raised in the responsive 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 must be double-spaced and cannot exceed 7,500 words. Reply briefs must also be double-spaced and cannot exceed 3,750 words. These limits include footnotes and endnotes, but do not include the case caption, any table of contents or table of authorities, the signature blocks, or any required certificates.

A party may ask the Court to expand these limitations, but must make the request no later than five days before the deadline for filing the brief. Word limitations will be expanded only on 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 7.8. Counsel or a pro se party may rely upon the word count of the 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 limitations in this rule.

All briefs must use at least 12-point font, one-inch margins, and a proportional font.

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 one-hundred 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 one-hundred 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 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 the 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 Rule 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; and

(j) for pro hac vice admission.

These motions must state the grounds for the relief sought 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 emergency hearings, 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 (a) issue an order that requests a response, (b) deny the motion, or (c) issue an order with further instructions. The opposing party does not need to

file a response unless otherwise 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) Cases in which a Notice of Designation was filed when the case was initiated.

When a party seeks to have an emergency motion heard in the Court, the party should contact the Chief Justice of the North Carolina Supreme Court 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) Cases subsequently designated as mandatory complex business cases.

If a party has filed an emergency motion for hearing in a case before a Notice of Designation has been filed, and the case 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 case has been assigned as provided by N.C. Gen. Stat. § 7A-45.4(e).

(c) Briefing.

When a party moves for emergency relief under Rule 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 Rule 7.13(a) must file a supporting brief that complies with these Rules; the Court's briefing schedule for a Rule 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 Rule 7.8 apply to all briefs.

# RULE 8: PRESENTATION TECHNOLOGY

8.1 Electronic presentations favored.

The Court encourages electronic presentations, but only if the presentation meaningfully aids the Court's understanding of key issues. Counsel should limit the use of paper handouts at Court proceedings. Any paper handout that a party provides to the Court must also be provided to all parties, the court reporter, and the law clerk.

8.2 Courtroom technology.

Parties may bring their own electronic technology, including hardware, for presentation to the Court or may use the systems available in each Business Court courtroom. Parties are responsible for consulting in advance with courthouse personnel about security, power, and other logistics associated with the use of any external hardware. Counsel who plan to use the available courtroom technology must be familiar with that technology and must follow any rules, established by the Court, associated with that technology's use.

# RULE 9: CASE MANAGEMENT

9.1 Case Management Meeting.

(a) General principles.

The case-management process described in these rules should be applied in a flexible, case-specific fashion. The Rules have been designed to encourage parties to identify and to implement the case-management techniques—including novel and creative ideas—that are most likely to support the efficient resolution of the case.

(b) Timing.

No later than sixty days after the designation of an action as a mandatory complex business case or assignment to a Business Court judge pursuant to Rule 2.1 of the General Rules of Practice, counsel must participate in a Case Management Meeting. The filing of an opposition to a Notice of Designation does not, absent a Court order, stay or alter this Rule's requirements. Counsel for the first named plaintiff is responsible for contacting other counsel and scheduling the meeting.

A party may, by motion, request that the Court alter the process or schedule for the Case Management Meeting and Case Management Report. The motion must be supported by good cause, be filed as promptly as possible, and identify the reasons for the requested change. Any opposition to a motion filed under this rule must be filed within five days after service of the motion. The Court may schedule a status conference in advance of the Case Management Meeting if circumstances warrant.

(c) Topics.

Unless the Court orders otherwise, the Case Management Meeting must cover at least the following subjects:

(1) any initial motions that any party might file and whether certain issues might be presented to the Court for early resolution;

(2) the discovery topics described in Rules 10.3 through 10.8;

(3) a proposed deadline for filing dispositive motions;

(4) a proposed trial date;

(5) whether a protective order is needed;

(6) whether any law other than North Carolina law might govern aspects of the case, and, if so, what law and which aspects of the case;

(7) the parties' views on the timing of mediation, including any plans for early mediation, a mediation deadline, and any agreed-upon mediator(s);

(8) whether periodic Case Management Conferences with the Court would be beneficial and, if so, the proposed frequency of those conferences;

(9) whether the Case Management Conference should be transcribed;

(10) whether any matter(s) might be appropriate for a referee; and

(11) whether client attendance at the Case Management Conference would be beneficial.

Ultimately, the parties should discuss any matter that is significant to case management. The parties should review the template Case Management Report in Appendix 2 to the Rules for further guidance about the Case Management Meeting. The template does not limit further topics that might be considered as appropriate to achieve an efficient and orderly disposition in light of the particular circumstances of an individual case.

(d) Discovery management.

The Rules envision a full discussion at the Case Management Meeting of the discovery issues described in Rules 10.3 through 10.8. If, because of the circumstances of the case, the parties need additional time after the Case Management Meeting to complete their discussion of discovery, then the parties should arrange to have a second meeting on any discovery issues that remain to be discussed. The second meeting should be held as soon as is practicable, but in no event later than thirty days after the Case Management Meeting.

9.2 Case Management Report.

The parties must jointly file a Case Management Report no later than the fifteenth day after the Case Management Meeting begins. The template Case Management Report in Appendix 2 to the Rules provides guidance for how to structure the report. Counsel for the first named plaintiff is responsible for circulating an initial draft of the report, for incorporating into the report the views of all other counsel, and for finalizing and filing the report. The report should state whether the parties have completed their discussion of the discovery topics described in Rules 10.3 through 10.8 and, if they have not, the issues that remain to be discussed and the likely date on which a second discovery meeting will occur.

A party that is not served with process until after the Case Management Meeting may file a supplement to the Case Management Report if the Court has not already issued a Case Management Order. A supplement must be filed within ten days after a party has made its first appearance in the case.

9.3 Case Management Conference.

The Court retains discretion about when and whether to convene a Case Management Conference and whether more than one conference is needed. The Court may require

representatives of each party, in addition to counsel, to attend any Case Management Conference. The Court will issue a notice of the conference in accordance with Rule 6.1; the notice will indicate whether or not a representative of each party will be required to attend. The Court will conduct the conference in accordance with Rule 6.2.

Unless it orders otherwise, the Court will not hear substantive motions at a Case Management Conference. The conference will not have a court reporter unless a party arranges for a reporter to transcribe the proceedings or unless the Court orders otherwise.

9.4 Case Management Order.

The Court will issue a Case Management Order. The order will address the issues developed in the Case Management Report and/or Case Management Conference, as well as any other issues that the Court deems appropriate. Any party may move to modify the terms of the Case Management Order on a showing of good cause, but may do so only after consultation with all other parties.

# RULE 10: DISCOVERY

10.1 General principles.

Counsel should cooperate to ensure that discovery is conducted efficiently. Courtesy and cooperation among counsel advances, rather than hinders, zealous representation.

10.2 Document preservation.

As soon as practicable, but no later than seven days before the Case Management Meeting described in Rule 9.1, counsel must discuss with their clients:

(a) which custodians might have discoverable electronically stored information (ESI);

(b) the sources and location of potentially discoverable ESI;

(c) the duty to preserve potentially discoverable materials; and

(d) the logistics, burden, and expense of preserving and collecting those materials.

These requirements do not supplant any substantive preservation obligations that might be established by other sources of law.

10.3 Discovery management.

The parties are required, if possible, to fully discuss discovery management at the Case Management Meeting. As stated in Rule 9.1(c), the parties may conduct a second meeting, no later than thirty days after the Case Management Meeting, to complete their discussion of discovery management. The topics to be discussed include those found in Rules 10.3 through 10.8.

Overall, Rules 10.3 through 10.8 are designed for the parties to set expectations, with reasonable specificity, about what information each party seeks and about how that information will be retrieved and produced. The parties should discuss at least the following topics:

(a) Proportionality.

Counsel should discuss the scope of discovery, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, the burden and expense of the expected discovery compared with its likely benefit, the importance of the issues at stake in the litigation, and the importance of the discovery for the adjudication of the merits of the case.

(b) Phased discovery.

Counsel should consider whether phased discovery is appropriate and, if so, discuss proposals for specific phases.

(c) ESI.

The parties should prepare an ESI protocol—an agreement between the parties for the identification, preservation, collection, and production of ESI. The ESI protocol will vary on a case-by-case basis, but the discussion about ESI should include at least the following subjects:

(1) the specific sources, location, and estimated volume of ESI;

(2) whether ESI should be searched on a custodian-by-custodian basis and, if so, (a) the identity and number of the custodians whose ESI will be searched, and (b) search parameters;

(3) a method for designating documents as confidential;

(4) plans and schedules for any rolling production;

(5) deduplication of data;

(6) whether any device(s) need to be forensically examined and, if so, a protocol for the examination(s);

(7) the production format of documents;

(8) the fields of metadata to be produced; and

(9) how data produced will be transmitted to other parties (e.g., in read-only media; segregated by source; encrypted or password protected).

The parties should jointly prepare a written discovery protocol promptly after they complete their discovery-management discussions. The discovery protocol should not be filed with the Court unless otherwise ordered.

10.4 Presumptive limits.

(a) Discovery period.

The Rules do not discourage the parties from beginning discovery before entry of the Case Management Order, but the presumptive discovery period, including both fact and expert discovery, is seven months from the date of the Case Management Order. That period may be lengthened or shortened in consideration of the claims and defenses of any particular case, but any significantly longer discovery period will require demonstration of good cause.

Each party is responsible for ensuring that it can complete discovery within the time period set by the Case Management Order. In particular, interrogatories, requests for production, and requests for admission should be served early enough that answers and responses will be due before the discovery deadline ends.

Absent extraordinary cause, a motion that seeks to extend the discovery period or to take discovery beyond the limits in the case management order must be made before the discovery deadline. The motion must explain the good cause that justifies the relief sought. The motion must also show that discovery has been pursued diligently.

(b) Written discovery.

Unless otherwise permitted by the Court, a party may serve no more than twenty-five interrogatories on each party. Each subpart of an interrogatory counts as a separate interrogatory for purposes of this limit. The same limit applies to requests for admission.

(c) Depositions.

A party may take no more than twelve fact depositions in the absence of an order by the Court. For purposes of counting depositions taken by any party, for depositions conducted pursuant to Rule 30(b)(6), each period of seven hours of testimony will count as a single deposition, regardless of the number of designees presented during that seven-hour period.

(d) Agreement, reduction, and modification of limits.

The Court encourages the parties to agree, where appropriate, on reductions to the presumptive limits stated above. The presumptive limits will be increased only upon a showing of good cause.

If the parties agree to conduct discovery after the discovery deadline, but the parties do not seek an order that allows the discovery, then the Court will not entertain a motion to compel or a motion for sanctions in connection with that discovery.

10.5 Privilege logs.

(a) Purpose.

This rule supplements Rule 26(b)(5) of the Rules of Civil Procedure.

(b) Form.

Parties are encouraged to agree on the form of privilege logs and on the date on which privilege logs will be served. The parties should select a format that limits unnecessary expense and burden of producing a privilege log. Each privilege log should be organized in a manner that

facilitates a discussion among counsel on whether documents contain privileged or work-product material. The parties should discuss specifically (1) whether particular categories of documents—such as any attorney-client privileged communications or attorney work-product material generated after the action began, or communications on a certain subject—should be omitted from privilege logs; and (2) whether entries in the privilege log should be arranged by topic or category.

10.6 Agreements to prevent privilege and work-product waiver.

The Court encourages the parties to agree to an order that provides for the non-waiver of the attorney-client privilege and work-product protection in the event that privileged or work-product material is inadvertently produced.

10.7 Depositions.

(a) Time limits.

Unless the parties agree otherwise, a deposition is limited to seven hours of on-the-record time. The Court may extend any seven-hour period for good cause.

(b) Conduct.

(1) Counsel should cooperate to schedule depositions.

(2) Counsel must not direct a witness to refrain from answering a question unless one or more of the following three situations applies: (i) counsel objects to the question on the ground that the answer is protected by a privilege or another discovery immunity, (ii) counsel proceeds immediately to seek relief under Rules 26(c) or 37(d) of the Rules of Civil Procedure, or (iii) counsel objects to a question that seeks information in contravention of a Court-ordered limitation on discovery.

(3) Objections should be succinct and state only the basis for the objection. The Court does not tolerate speaking objections.

(4) Counsel and any witness cannot engage in private, off-the-record conferences while a question is pending, except to decide whether to assert a privilege, discovery immunity, or Court-ordered limitation on discovery.

(5) The Court may impose an appropriate sanction, including the reasonable attorney fees incurred by any party, based on conduct that impedes, delays, or frustrates the fair examination of a deponent.

(c) Exhibits.

(1) A copy of any document shown to a deponent must be provided to counsel for each party either before the deposition starts or at the same time that the document is given to the deponent.

(2) Deposition exhibits should be numbered consecutively throughout discovery without restarting numbers by the deposition being taken or by the party that introduces the exhibit. Where there is the potential for simultaneous depositions, the parties should allocate a range of potential exhibit numbers among the parties. To the extent practical, once assigned an exhibit number, a document utilized during a deposition should retain that deposition exhibit number in all subsequent discovery.

(d) Rule 30(b)(6) depositions.

(1) This rule is designed to encourage parties to resolve disputes about the scope of Rule 30(b)(6) depositions.

(2) After a party serves a Rule 30(b)(6) deposition notice, the organization to whom the notice is issued should present any objections to the noticing party within a reasonable time of service and sufficiently in advance of the deposition.

(3) Counsel for the noticing party and for the organization to whom the notice was issued must then meet and confer in good faith to resolve any disputes over the topics for the deposition.

(4) If the parties cannot agree, then the dispute will be resolved under the procedures described in Rule 10.9.

(5) The parties should also discuss and attempt to agree on whether a Rule 30(b)(6) deponent may be asked questions about the deponent's personal knowledge. Absent an agreement to the contrary, any deposition of a Rule 30(b)(6) designee in his or her individual capacity should be taken separately from the Rule 30(b)(6) deposition.

10.8 Expert discovery.

(a) Procedures.

The parties must attempt to agree on procedures that will govern expert discovery. In the absence of agreement, the Case Management Report should list the parties' respective positions on expert discovery. The parties may elect to exchange disclosures only, or they may elect to exchange reports in addition to or instead of disclosures. The procedures may include, but are not limited to, the following:

(1) Expert reports.

If the parties elect to exchange expert reports as allowed by Rule 26(b)(4) of the Rules of Civil Procedure, then the parties are encouraged to agree that the name of each

expert, the subject matter on which the expert is expected to testify, and the expert's qualifications be exchanged thirty days prior to service of the report.

(2) Timing and manner of disclosure.

If the parties elect not to exchange expert reports, then they are still encouraged to agree on a schedule for exchange of expert information in the form of expert disclosures. In the absence of an agreement, the Court will establish a sequence in the Case Management Order.

(3) Facts and data considered by the witness.

The parties should attempt to agree on whether and when they will provide copies of previously unproduced materials that an expert witness considers in forming his or her opinion.

(b) Expert depositions.

Each expert witness may be deposed by a party adverse to the party designating the expert. The expert witness is only subject to a single deposition at which all adverse parties must appear.

10.9 Discovery motions.

(a) This rule applies to motions under Rules 26 through 37 and Rule 45 of the Rules of Civil Procedure. References to "parties" in this rule include persons subject to subpoena under Rule 45.

(b) Pre-filing requirements.

(1) Telephonic consultation with presiding Business Court judge.

Before a party files a motion related to discovery, the party must initiate a telephone conference among counsel and the presiding Business Court judge about the dispute. To initiate

this conference, a party must e-mail a summary of the dispute to the judicial assistant and law clerk for the presiding Business Court judge and to opposing counsel. The summary may not exceed seven-hundred words; the certificate described in Rule 10.9(b)(2) does not count against this limit. Any other party may submit a response to the summary; the response may not exceed seven-hundred words and must be e-mailed to the judicial assistant and opposing counsel within seven calendar days after the initial summary was e-mailed. Word limits are to be calculated in accordance with Rule 7.8. No replies are allowed.

After the summary and any response(s) are submitted, the Court will either schedule a telephone conference with counsel to discuss the dispute, order the parties to file a motion and brief regarding the dispute or provide additional materials, or issue an order with further instructions. If the Court elects to conduct a telephone conference, then the Court may decide the parties' dispute during the conference.

(2) Certification of good-faith effort to resolve the dispute.

When a party requests a telephonic conference under Rule 10.9(b)(1), the party must also submit to the Court a certification that, after personal consultation and diligent attempts to resolve differences, the parties could not resolve the dispute. The certificate must state the date(s) of the conference, which attorneys participated, and the specific results achieved. The certificate should say, if applicable, whether the parties discussed cost-shifting, proportionality, or alternative discovery methods that might resolve the dispute. This certificate may not exceed three-hundred words and should state facts without argument.

(c) Briefs on discovery motions.

If, after the Court conducts a telephonic conference described in section (b)(1), the parties still cannot resolve their dispute or if the Court declines to rule on the dispute, then a party may

file a discovery motion. The requirements of Rule 7 apply to any such motion, except that: (1) the Court may modify the briefing schedule and limits on briefs in its instructions after the Rule 10.9(b)(1) consultation; (2) unless the Court orders otherwise, the supporting brief and any responsive brief may each not exceed 3,750 words; and (3) reply briefs will only be permitted if the Court requests on its own initiative or grants a movant leave to file a reply upon a showing of good cause.

(d) Cost-shifting requests.

If a party contends that cost shifting is warranted as to any discovery sought, then the party's brief should address estimated costs of responding to the requests and the proportionality of the discovery sought. Counsel's estimate must have a reasoned factual basis, and the Court reserves the right to request that any such basis be demonstrated by affidavit.

(e) Depositions.

This rule does not preclude parties from seeking an immediate telephone ruling from the Court on any dispute that arises during a deposition that justifies such a conference with the Court.

# RULE 11: MEDIATION

11.1 Mandatory mediation.

All mandatory complex business cases and cases assigned to a Business Court judge pursuant to Rule 2.1 of the General Rules of Practice are subject to the Rules Implementing Statewide Mediated Settlement Conferences in Superior Court Civil Actions. Although the statewide mediation rules require participation in a mediation utilizing a certified mediator unless the Court orders otherwise on a showing of good cause, the Rules of this Court are not to be interpreted as precluding the possibility of multiple mediated settlement conferences before the same or different mediators.

11.2 Selection and appointment of mediators.

The parties should attempt to reach agreement on a mediator. The Case Management Report should contain either the parties' agreement, or in the absence of an agreement, each party's nominee of a certified mediator for Court appointment. If all parties cannot agree on a mediator, then the Court will appoint a mediator from the list of certified mediators maintained by the North Carolina Dispute Resolution Commission.

11.3 Report of mediator.

Within ten days after the conclusion of the mediation, the mediator must mail or e-mail a copy of his or her report to the Court, in addition to filing the report with the Clerk of Superior Court in the county of venue.

11.4 Notification of settlement.

The parties are encouraged to keep the Court apprised of the status of settlement negotiations and should notify the Court promptly when the parties have reached a settlement.

# RULE 12: PRETRIAL AND TRIAL

12.1 Case-specific pretrial and trial management.

The Court may modify the deadlines and requirements in this Rule 12 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 dispositive motions.

The Court's practice is to set each case for trial individually. Such settings should be considered peremptory settings. Any party who foresees a potential conflict with any such court date should advise the Court no later than fourteen days after being notified of the trial date, and after the Court sets a trial date, attorneys 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 time deadlines. As stated in Rule 12.1, the Court may modify any or all of these deadlines and requirements as the circumstances in a case dictate:

| | |
|---|---|
| 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 |
| 17 days before pretrial hearing | Deposition counter-designations and objections to deposition designations served on opposing parties<br>Supplemental trial exhibit and witness lists served on opposing parties |
| 14 days before pretrial hearing | Motions in limine and briefs in support, if any, filed and served<br>Proposed pretrial order filed and served |
| 14 days before pretrial hearing | Objections to trial exhibits served on opposing parties |
| 7 days before pretrial hearing | Responses to motions in limine filed and served |
| 14 days before trial | Pretrial hearing |
| 7 days before trial | Trial brief, if any, filed and served<br>Proposed jury instructions filed and served<br>Proposed findings of fact and conclusions of law, if necessary, filed and served |
| 7 days before trial | 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 form proposed pretrial order; 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;

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

(e) lists 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 (a) the testimony offered to which another party objects, (b) the objecting party, (c) the basis for the objection, and (d) 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.

Briefs regarding motions in limine are not required if the grounds for the motion are evidence from 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 of 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) 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.

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 limitations for briefs under Rule 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 13: REVIEW OF ADMINISTRATIVE ACTIONS

13.1 Generally.

This rule applies to the Court's review of a final agency decision, including cases brought under N.C. Gen. Stat. § 105-241.16 ("administrative appeals"). This rule does not apply to civil actions brought pursuant to N.C. Gen. Stat. § 105-241.17.

13.2 Case management.

Unless the Court orders otherwise, Rules 9 and 11 do not apply to administrative appeals.

13.3 The record in administrative appeals.

Within fifteen days of the date of the letter from the Office of Administrative Hearings submitting the official record in an administrative appeal to the Wake County Clerk of Superior Court, the parties must meet and confer regarding any further actions that may be required to prepare the appropriate record for use in the Business Court proceeding. Within twenty days of the parties' conference discussed in the prior sentence, the parties must either (a) file a stipulation that they agree to the contents of the record, (b) jointly submit a final record that, as appropriate, modifies the record submitted by the Office of Administrative Hearings. If the parties cannot agree on a final record, the parties must notify the Court of the disagreement and seek the Court's assistance in resolving the disagreement.

13.4 Briefs.

The petitioner in an administrative appeal must file its brief no later than thirty days after the date that the parties file a stipulation that they are in agreement as to the contents of the record or the date the final record is submitted to the Court under Rule 13.3. The respondent may file its brief no later than thirty days after the petitioner files its brief. The petitioner may

file a reply brief no later than ten days after the respondent files its brief. All briefs must comply with the formatting and length requirements of Rule 7.

13.5 Hearings.

The Court, in its discretion, may conduct a hearing on an administrative appeal after briefing is completed.

# RULE 14: APPEALS

14.1 How an appeal is taken.

An appeal from an order or judgment of this Court is taken by filing a written notice of appeal with the Clerk of Superior Court in the county of venue. The notice of appeal must be filed within the time, in the manner, and with the effect provided by the controlling statutes and the Rules of Appellate Procedure. The parties should promptly file a copy of the notice of appeal with the Court.

14.2 Orders and opinions issued by the Appellate Division.

If an appellate court issues an order or opinion in a case that is simultaneously proceeding (in whole or in part) in the Court, then the parties are encouraged to submit a copy of the order or opinion to the Court by e-mailing it to the law clerk for the presiding Business Court judge.

The parties are also encouraged to notify the law clerk for the presiding Business Court judge if the appellate process for an action has reached its conclusion. This notification allows the Court to close cases that are no longer being litigated.

14.3 Procedures on remand.

If an appellate court orders that a case on appeal be remanded to the Court for further proceedings, then—unless the Court instructs otherwise—the parties must confer within fifteen days of the issuance of the mandate pursuant to Appellate Rule 32 about the case-management issues that apply to the remand proceedings. The parties must submit a report to the Court within ten days of the meeting that proposes a case-management structure for the remand proceedings.

# RULE 15: RECEIVERS

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, qualifications, 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. Non-movants may respond to the motion within twenty days of the motion's filing. A proposed order describing the proposed receiver's duties, powers, compensation, and any other issues relevant to the proposed receivership must be filed with the motion to appoint a receiver. If no other party timely responds to the motion to appoint a receiver, 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 movant 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 after entry of the order appointing the receiver. The objection should contain the information about the alternative proposed receiver that is listed in Rule 15.2(b).

(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 2 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.

# RULE 16: REFEREES

16.1 Appointment and removal.

At the Case Management Meeting, the parties must discuss the potential benefit of a referee and summarize their views in the case management report. In addition to that discussion and report, any party may file a motion for the appointment of a referee pursuant to these Rules and to Rule 53 of the Rules of Civil Procedure. The motion should comply with Rule 53 and also contain the following:

(a) the scope of the referee's authority and tasks;

(b) the grounds for reference under Rule 53(a), including, if any party has not joined in or consented to the motion, a statement of the circumstances that warrant compulsory reference pursuant to Rule 53(a)(2);

(c) the names and qualifications of any candidates that the Court should consider as a referee, as well as a statement as to whether the parties consent to each candidate;

(d) the referee's proposed compensation and the source of the compensation;

(e) any requests for special powers to be provided under Rule 53(e); and

(f) if any party has not joined in or consented to the motion, then a certification that counsel for the moving party has consulted with counsel for all non-moving parties and a statement of the position of any non-moving parties.

The Court may appoint a referee on its own motion as provided in Rule 53(a)(2). In appropriate cases where reference is not compulsory, the Court may recommend to the parties the use of a referee if the referee would aid judicial economy.

16.2 Discovery referees.

Counsel are encouraged to give special consideration to the appointment of discovery referees, particularly in cases expected to involve large amounts of electronically stored information, or where there may be differing views regarding the use of key word searches, utilization of predictive coding, or the shifting or sharing of costs associated with large-scale or costly discovery. The parties are encouraged to be creative and flexible in utilizing discovery referees to avoid unnecessary cost and motion practice before the Court.

16.3 Scope of referee's duties.

When appointing a referee, the Court will enter an order that outlines the referee's duties, powers, compensation, and any other relevant issues relevant to the proposed work of the referee. Appendix 3 to these rules contains a non-exclusive list of terms that might be appropriate for an order that appoints a referee.

16.4 Agreement to submit to referee's final decision.

When a referee issues a final report, the parties may agree to forgo judicial review of that report. This type of agreement must be embodied in a stipulation filed with the Court that (1) specifies the case, proceeding, claim, or issue to be submitted to the referee for final decision; (2) states that the parties to the stipulation waive the right to seek further judicial review of the referee's decision; and (3) recites that each party has consulted with counsel and agreed to the submission of the case, proceeding, claim, or issue to the referee for a final decision that will not be reviewable. For the stipulation to take effect, the Court must approve the stipulation.

# APPENDIX 1:

[To be drafted]

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| STATE OF NORTH CAROLINA<br><br>COUNTY OF _____ | IN THE GENERAL COURT OF JUSTICE<br>SUPERIOR COURT DIVISION<br>CIVIL ACTION NO.: |
| JOHN DOE,<br><br>Plaintiff,<br><br>v.<br><br>ABC CORPORATION,<br><br>Defendant. | APPENDIX 2: TEMPLATE<br>CASE MANAGEMENT REPORT |

The undersigned counsel of record began the Case Management Meeting on [INSERT DATE] and submit this report on [INSERT DATE] as required by Business Court Rule 9.

1. Summary of the case.

Each party (or group of parties represented by common counsel) should summarize the dispute from its (or their) perspective. No summary by any party or group of parties may exceed 250 words. The parties may also agree on a joint summary not to exceed 500 words.

2. Initial motions.

This section of the report should list whether any party or parties plan to file a motion for emergency relief, a motion to dismiss, or any other early-stage motion. The party that plans to file the motion may provide a short explanation of the basis for the motion. That party should also list the projected date on which the motion will be filed. The report should reference any proposed modification of the time requirements or word limits for briefing.

3. Discovery.

This section should summarize the parties' agreement and/or competing proposals for discovery. The section should cover at least the following topics:

- a proposed discovery schedule;
- an ESI protocol;
- limits on written discovery and depositions;
- any agreements related to privilege logs;
- any agreement about the effects of the inadvertent waiver of attorney-client privilege or attorney work-product; and
- expert discovery.

One or more parties may also ask the Court in the report to postpone creating a discovery schedule until after the Court decides any initial motions, including but not limited to motions to dismiss.

This section should also state whether the parties have completed their full discussion of discovery management or whether they have scheduled a second discovery-management meeting. If the parties have scheduled a second meeting, then the report must indicate which topics remain for discussion at the second meeting and identify the time by which a further report must be filed with the Court.

4. Confidentiality.

The report should indicate which parties, if any, anticipate the need for a protective order. If the parties agree that a protective order should be entered but do not agree on the terms of that order, the report should explain the nature of the disagreement and any specific language in dispute.

5. Mediation.

The report must explain whether the parties agree to early mediation and any agreements reached to facility an early mediation. If the parties do not agree to early mediation, then the report must confirm that counsel have discussed with their client(s) the cost of litigation and the potential cost savings that may be realized by an early mediation.

In any event, the report must include a deadline for mediation (or competing proposals) and the name of the agreed-upon mediator. If the parties do not agree on a mediator, then the report should list each party's choice of mediator.

6. Special circumstances.

(a) Class allegations.

If the complaint includes class action allegations, then the report should summarize the parties' agreement and/or competing proposals for the timing, nature, and extent of class certification discovery, how and/or whether class and merits discovery should be bifurcated or sequenced, and a proposed deadline for the plaintiff(s) to move for class certification. In the event that there are multiple related class actions, the parties must report their views on special efforts that should be undertaken and the time for doing so, such as, for example, the appointment of lead counsel, consolidation, or coordination with proceedings in other jurisdictions.

(b) Derivative claims.

If the complaint includes derivative claims, then the report should summarize the parties' positions on whether proper demand was made. The report should also describe any agreement and/or competing proposals on any special committee investigation, any stay of proceedings, or other issues regarding the derivative claims.

(c) Related Proceedings.

If there are multiple related proceedings, then the parties must state their views on what efforts, including but not limited to consolidation or shared discovery, should be undertaken.

7. Referees.

The report should identify any matter(s) that might be appropriate for reference to a referee. The parties are specifically encouraged to think creatively about how the use of a referee might expedite the resolution of the case.

8. Potential Cost and Time Requirements of Litigation.

Counsel should certify that they has conferred with their respective clients and have given their clients a good faith estimate of the potential cost and time requirements of the litigation.

9. Other matters.

The report should identify and discuss any other matters significant to case management.

[INSERT DATE AND SIGNATURE BLOCKS]

# APPENDIX 3: POTENTIAL TERMS OF RECEIVERSHIP ORDER

This appendix contains potential terms for an order under Business Court Rule 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 this 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 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 of 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 take other action;

(3) the anticipated costs likely to be incurred in the administration of the 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 summarize the actions taken to date measured against the previous plan, list anticipated actions, and 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. Gen. Stat. § 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. Gen. Stat. § 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 for 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 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 after 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; and the amount of any compensation and expenses that the receiver has or will be paid by any source other than the receivership estate; 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.

# APPENDIX 4: POTENTIAL TERMS OF ORDER APPOINTING REFEREE

This appendix contains potential terms for an order under Business Court Rule 16.3.

1. Transcription

The Court may order that, when a referee receives witness testimony:

- the testimony be transcribed by a court reporter and filed in the action pursuant to Rule 53(f)(3) of the Rules of Civil Procedure;
- any request to transcribe a proceeding be made at least fourteen days before the proceeding;
- if the referee or the Court requires transcription, then all parties to the proceedings share equally in the transcription costs; and
- if a request for transcription is not joined in by all of the parties to a case, then only those parties that request transcription will be responsible for transcription costs.

2. Reports and exceptions

(a) Final written report.

The Court may order the referee to issue a final written report as described in Rule 53.

(b) Draft report.

The Court may require the referee to provide the parties with a report in draft form. The Court may allow parties may submit exceptions to the draft report to the referee within a particular deadline and to allow responses to the exceptions within a deadline.

(c) Exceptions to final report.

The Court may require that exceptions to a final report be heard exclusively by the Court.

The Court may set a deadline for exceptions to final reports.

3. Compensation.

The Court may specify the terms of a referee's compensation. The Court may require that applications for advancements made pursuant to Rule 53(d) be made by the referee in writing and served on all parties. The Court may also set a deadline for any objections to the requested advancement.

# APPENDIX 5:

[To be drafted]