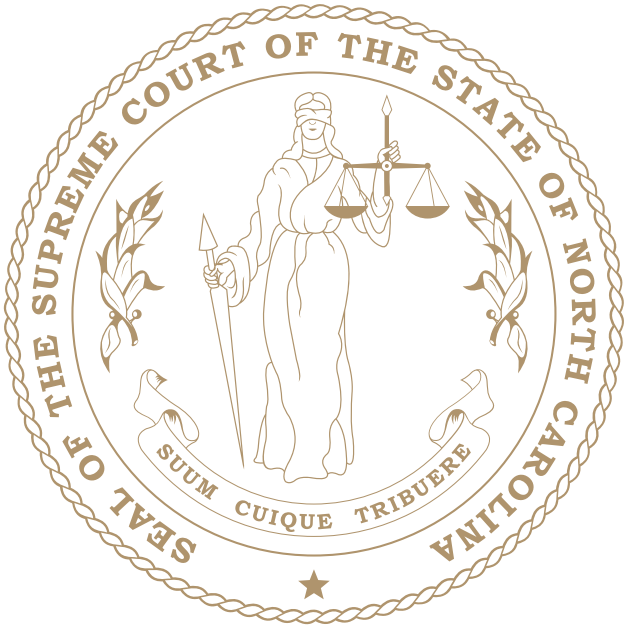
NORTH CAROLINA BUSINESS COURT RULES



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Codified by the Office of Administrative Counsel, Supreme Court of North Carolina

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North Carolina Business Court Rules

Rule 1. Purpose and Scope

1.1. Purpose. These 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.

1.3. Integration. These rules are intended to supplement, not supplant, the Rules of Civil Procedure and the General Rules of Practice. To the extent these rules conflict with local rules or standing orders from the county of venue, these rules will govern.

1.4. Definitions.

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

(b) "The General Rules of Practice" refers to the General Rules of Practice for the Superior and District Courts Supplemental to the Rules of Civil Procedure.

(c) "The Rules of Civil Procedure" refers to the North Carolina Rules of Civil Procedure.

1.5. Citations to these rules. Citations to these rules should follow the citation format BCR [Number], such as BCR 1.5.

History Note.

372 N.C. 911; 372 N.C. 844.

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.G.S. § 7A-45.4. Appendix 1 to these rules contains a Notice of Designation template.

(b) **Method of service**. In addition to serving the Notice of Designation as required by subsection 7A-45.4(c), the designating party should e-mail the Notice of Designation to the Chief Business Court Judge, the Chief Justice of the Supreme Court of North Carolina, and, as practicable, all parties.

(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.G.S. § 7A-305(a)(2) must file a certification in the Court that the cost has been paid to the Clerk of 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.G.S. § 7A-45.4(e), 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 case is no longer designated as a mandatory complex business case, 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.G.S. § 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 subsection 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 (i) the timely filing of the court-allowed pleading or (ii) three days after the entry of any order that deems the proposed amended pleading to be filed.

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

(b) **New eligibility for designation**. BCR 2.3(a) applies only to an action that had not previously qualified under

subsection 7A-45.4(a) for designation to the Court. Parties added by subsequent pleadings, however, may designate an action to the Court in accordance with subsection 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 designation of the action as a mandatory complex business case would be inconsistent with the interests of justice given the status of the proceedings.

2.4. What constitutes designation. For purposes of these rules, an action is designated as a mandatory complex business case when the Chief Justice of the Supreme Court of North Carolina issues an order as described in N.C.G.S. § 7A-45.4(c) and (f). A party's filing of a Notice of Designation does not constitute 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.G.S. § 7A-45.4(a)(9). When seeking designation based on N.C.G.S. § 7A-45.4(a)(9), if the designating party lacks the consent of all parties, then the designating party may file a conditional Notice of Designation contemporaneously with the complaint, third-party complaint, petition for judicial review, answer, or other responsive pleading. The conditional Notice of Designation must be served by e-mail in the same manner set forth in BCR 2.1(b). The conditional Notice of Designation will be construed to comply with subsection 7A-45.4(d)(1). The designating party will then have thirty days after service on all parties of the complaint, third-party complaint, petition for judicial review, answer, or other responsive pleading to file a supplement to the conditional Notice of Designation that reflects consent by all parties to the Notice of Designation. A conditional Notice of Designation filed by a party under subsection 7A-45.4(d) is not deemed to be complete until the supplement is filed. Upon a motion or its own initiative, and for good cause shown, the Court may extend the time period to file a supplement to the conditional Notice of Designation.

2.6. Procedure upon remand from federal court. If an action governed by these rules has been removed to federal court, and the action is remanded to state court, then the parties must file a status report within fourteen days of the remand order. BCR 14.3 contains the procedures for remand following an appeal.

2.7. Procedure following entry of stay. If an action governed by these rules has been stayed pending an arbitration or bankruptcy proceeding, then the parties must file a status report within fourteen days of the resolution of the arbitration or bankruptcy proceeding unless otherwise ordered by the Court.

History Note.

372 N.C. 911; 372 N.C. 844.

Rule 3. Filing and Service

3.1. Mandatory electronic filing. Except as otherwise specified in these rules, all filings in the Court must be made electronically through the Court's electronic-filing system beginning immediately upon designation of the action as a mandatory complex business case by the Chief Justice of the Supreme Court of North Carolina or assignment to a Business Court judge pursuant to Rule 2.1 of the General Rules of Practice. Counsel who appear in the Court are expected to have the capability to use the electronic-filing system. Instructions for filing documents through the Court's electronic-filing system are available on the Court's website. Counsel should exercise diligence to ensure that the description of the document entered during the filing process accurately and specifically describes the document being filed.

3.2. Who may file. A filing through the electronic-filing system may be made by counsel, a person filing on counsel's behalf, or a pro se party. Parties who desire not to use the electronic-filing system may file a motion for relief from using the system, but the Court will grant that relief for counsel only upon a showing of exceptional circumstances. A request by a pro se party to forgo use of the electronic-filing system will be determined on a good-cause standard.

3.3. User account. Counsel who appear in the Court in a particular matter ("counsel of record") and pro se parties who are not excused from using the electronic-filing system must promptly create a user account through the Court's website. Any person who has established a user account must maintain adequate security over the password to the account.

3.4. Electronic signatures.

(a) **Form**. A document to be filed that is signed by counsel must be signed using an electronic signature. A pro se party must also use an electronic signature on any document that the party is permitted to file by e-mail pursuant to BCR 3.2. An electronic signature consists of a person's typed name preceded by the symbol "/s/." An electronic signature serves as a signature for purposes of the Rules of Civil Procedure.

(b) **Multiple signatures**. A filing submitted by multiple parties must bear the electronic signature of at least one counsel for each party that submits the filing. By filing a document with multiple electronic signatures, the lawyer whose electronic identity is used to file the document certifies that each signatory has authorized the use of his or her signature.

(c) **Form of signature block**. Every signature block must contain the signatory's name, bar number (if applicable), physical address, phone number, and e-mail address.

3.5. Format of filed documents. Except for exhibits and other supporting materials, documents filed with the Court must be letter size (8½ x 11"), double-spaced, formatted with a margin of at least one inch on each side, and prepared using a proportionally spaced font with serifs that is no smaller than 12-point and no larger than 14-point in size. The Court prefers Century Schoolbook font. Except for proposed orders and proposed jury instructions, each document filed with the Court must be submitted as a PDF file. Documents must not be filed in an optically scanned format unless special circumstances dictate otherwise. The electronic file name for each document filed with the Court must clearly identify its contents.

3.6. Time of filing. If a document is due on a date certain, then the document must be filed by 5:00 p.m. Eastern Time on that date, unless the Court orders otherwise.

3.7. Notice of Filing. When a document is filed, the Court's electronic-filing system generates a Notice of Filing. The Notice of Filing appears in the user account for all counsel of record and pro se parties who have created a user account. Filing is not complete until issuance of the Notice of Filing. A document filed electronically is deemed filed on the date stated in the Notice of Filing.

3.8. Notice and entry of orders, judgments, and other matters. The Court will transmit all orders, decrees, judgments, and other matters through the Court's electronic-filing system, which, in turn, will generate a Notice of Filing to all counsel of record. The issuance by the electronic-filing system of a Notice of Filing for any order, decree, or judgment constitutes entry and service of the order, decree, or judgment for purposes of Rule 58 of the Rules of Civil Procedure. The Court will file a copy of each order, decree, or judgment with the Clerk of Superior Court in the county of venue. If a pro se party is permitted to forgo use of the electronic-filing system under BCR 3.2, the Court will deliver a copy of every order, decree, judgment, or other matter to that pro se party by alternative means.

3.9. Service.

(a) **Service through the Court's electronic-filing system defined**. After an action has been designated as a mandatory complex business case or otherwise assigned to the Court, the issuance of a Notice of Filing is service under Rule 5(b) of the Rules of Civil Procedure. Service by other means is required if the party served is a pro se party who has not established a user account.

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

(c) **E-mail addresses**. Each counsel of record and pro se party who has established a user account must provide the Court with a current e-mail address and maintain a functioning e-mail system.

The Court will issue a Notice of Filing to the e-mail address that a person with a user account has provided to the Court.

(d) **Service of non-filed documents**. When a document must be served but not filed, the document must be served by e-mail unless (i) the parties have agreed to a different method of service or (ii) the Case Management Order calls for another manner of service.

(e) **Service on a pro se party**. All documents filed with the Court must be served upon a pro se party by any method allowed by the Rules of Civil Procedure, unless the Court or these rules direct otherwise.

3.10. Procedure when the electronic-filing system appears to fail. If a person attempts to file a document, but (i) the person is unable for technical reasons to transmit the filing to the Court, (ii) the document appears to have been transmitted to the Court but the person who filed the document does not receive a Notice of Filing, or (iii) some other technical reason prevents a person from filing the document, then the person attempting to file the document must make a second attempt at filing.

If the second attempt fails, the person may (i) continue further attempts to file or (ii) notify the Court of the technical failure by phone call to the judicial assistant for the presiding Business Court judge and e-mail the document for which filing attempts were made to filinghelp@ncbusinesscourt.net. The e-mail must state the date and time of the attempted filings and a brief explanation of the relevant technical failure(s). The e-mail does not constitute e-filing, but serves as proof of an attempt to e-file in order to protect a party in the event of an imminent deadline and satisfies the deadline, notwithstanding BCR 3.7, unless otherwise ordered. The e-mail should also be copied to counsel of record. The Court may ask the person to make another filing attempt.

The Court will work with the parties on an alternative method of filing, such as a cloud-based file-sharing system, if the parties anticipate or experience difficulties with filing voluminous materials (e.g., exhibits to motions and final administrative records) using the Court's electronic-filing system. In such event, counsel should contact the presiding Business Court judge's judicial assistant for assistance.

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

3.11. Filings with the Clerk of Superior Court. Unless otherwise directed by the Administrative Office of the Courts, the Clerk of Superior Court in the county of venue maintains the official file for any action designated to the Court, and the Court is not required to maintain copies of written materials provided to it. Accordingly, material listed in Rule 5(d) of the Rules of Civil Procedure must be filed with the Clerk of Superior Court in the county of venue, either before service or within five days after service.

3.12. Appearances. Counsel whose names appear on a signature block in a court filing need not file a separate notice of appearance for the action. After making an initial filing with the Court, counsel should verify that their names and contact information are properly listed on the docket for the action on the Court's electronic-filing system. Counsel whose names do not appear on that docket, but whose names should appear, should contact the judicial assistant for the presiding Business Court judge and request to be added. Out-of-state attorneys may be added to that docket only after admission pro hac vice to appear in the action.

History Note.

372 N.C. 911; 372 N.C. 844; 375 N.C. 1029; 381 N.C. 886.

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 and comply with BCR 7.3.

(c) **Effect**. Except as to deadlines set by court order, including deadlines for the completion of fact and expert discovery, the timely filing of a motion to extend time 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. Eastern Time 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) **Documents due within twenty days of designation**. If any statute, rule of procedure, Business Court Rule, or court order requires the filing or service of any document 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 document is automatically extended to the twentieth day following the designation, 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 modification 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. BCR 10.4(a) contains the standards and procedure for filing a motion to extend the discovery period or to take discovery beyond the limits set forth in the Case Management Order.

History Note.

372 N.C. 911; 372 N.C. 844.

Rule 5. Sealed Documents and Protective Orders

5.1. General principles.

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

(b) **"Provisionally under seal" defined**. A document is "provisionally under seal" if it is filed electronically with a confidential designation in the electronic-filing system or if it is filed in paper inside of a sealed envelope or container marked "Contains Confidential Information – Provisionally Under Seal."

(c) **Open courts**. A person who appears before the Court should strive to file documents that are open to public inspection and should file a motion to seal a document only if necessary. A person who seeks to have a document sealed bears the burden

of establishing the need for sealing the document. Reference to a stipulation or protective order that allows a party to designate a document as confidential is not sufficient to establish that the document should be sealed.

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

5.2. Procedure for sealing a document.

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

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

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

(2) the circumstances that warrant sealing the document;

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

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

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

(6) a statement, if applicable, that (i) the movant is filing the document provisionally under seal because another person has designated the document as confidential and the terms of a protective order require the movant to file the document provisionally under seal and (ii) the movant has unsuccessfully sought the consent of the other person to file the document unsealed; and

(7) a statement, if applicable, that a nonparty who designated the document as confidential under the terms of a protective order has been served with a copy of the motion and notified of the right under BCR 5.2(c) to file a brief in support of the motion.

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

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

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

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

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

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

History Note.

372 N.C. 911; 372 N.C. 844; 381 N.C. 886.

Rule 6. Hearings and Conduct

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

6.2. Hearing procedures. Unless otherwise specified, all pretrial hearings will be conducted in the Business Court courtroom assigned to the presiding Business Court judge. At the Court's discretion, a hearing may be conducted by audio and video transmission in accordance with N.C.G.S. § 7A-49.6.

6.3. Conduct before the Court.

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

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

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

6.4. Contact with the Court.

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

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

In the absence of exigent circumstances, and unless the other parties have consented otherwise, any written

communication by counsel to court personnel regarding a pending matter must include or copy all pro se parties and all counsel of record for each represented party.

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

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

History Note.

372 N.C. 911; 372 N.C. 844; 381 N.C. 886.

Rule 7. Motions

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

7.2. Form of motion and brief. All motions must be accompanied by a brief (except for those motions listed in BCR 7.10). Each motion must be set out in a separate document. A motion unaccompanied by a required brief may, in the discretion of the Court, be summarily denied. This rule does not apply to oral motions made at trial or as otherwise provided in these rules.

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

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

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

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

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

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

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

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

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

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

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

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

reply brief. The Court retains discretion to strike any reply brief that violates this rule.

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

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

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

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

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

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

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

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

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

(c) to add parties;

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

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

(f) for substitution of parties;

(g) to stay proceedings to enforce a judgment;

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

(i) for entry of default;

(j) for pro hac vice admission;

(k) motions in limine complying with BCR 12.9;

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

(m) to withdraw as counsel; and

(n) for a bill of costs.

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

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

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

7.13. Emergency motions prior to designation.

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

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

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

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

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

7.14. Amicus briefs.

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

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

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

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

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

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

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

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

History Note.

372 N.C. 911; 372 N.C. 844; 381 N.C. 886.

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.

History Note.

372 N.C. 911; 372 N.C. 844.

Rule 9. Case Management

9.1. Case Management Meeting.

(a) **General principles**. The case-management process described in this rule should be applied in a flexible, case-specific fashion. These 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 of 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 BCR 10.3 through 10.8;

(3) a proposed deadline for amending pleadings and/or adding parties;

(4) a proposed deadline for filing dispositive motions;

(5) a proposed trial date;

(6) whether a protective order is needed;

(7) 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;

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

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

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

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

(12) 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 these 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**. These rules envision a full discussion at the Case Management Meeting of the discovery issues described in BCR 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 these 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 BCR 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. If the parties participate in a second discovery meeting, then the parties must file a supplement to the Case Management Report within ten days of the second discovery meeting.

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 of when a party makes 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 BCR 6.1. The notice will indicate whether a representative of each party will be required to attend. The Court will conduct the conference in accordance with BCR 6.2.

Unless it orders otherwise, the Court will not hear substantive motions at a Case Management Conference. The conference will not be transcribed 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.

History Note.

372 N.C. 911; 372 N.C. 844.

Rule 10. Discovery

10.1. General principles. The parties 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 BCR 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. Counsel are required, if possible, to fully discuss discovery management at the Case Management Meeting. As stated in BCR 9.1(d), 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 BCR 10.3 through 10.8.

Overall, BCR 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**. Counsel 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, (i) the identity and number of the custodians whose ESI will be searched, and (ii) 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).

Counsel 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**. These 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 good cause.

Each party is responsible for ensuring that it can complete discovery within the time period in 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 demonstrate that the parties have pursued discovery 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) of the Rules of Civil Procedure, 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 (i) 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 (ii) 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 or 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 may not 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's 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. When 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) **Depositions under Rule 30(b)(6) of the Rules of Civil Procedure**.

(1) After a party serves a deposition notice under Rule 30(b)(6) of the Rules of Civil Procedure, the organization to which 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.

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

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

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

(5) See BCR 10.4(c) for the manner of counting depositions taken under Rule 30(b)(6) of the Rules of Civil Procedure.

10.8. Expert discovery.

(a) **Procedures**. The parties must attempt to agree on procedures that will govern expert discovery including any limits on the number of experts and/or the number of expert depositions. 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**. Unless the parties agree otherwise, 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 may appear.

10.9. Discovery motions.

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

(b) **Pre-filing requirements**.

(1) **Summary of dispute**. Before filing a motion related to discovery, a party must engage in a thorough, good-faith attempt to resolve or narrow the dispute. If the dispute remains unresolved, then the party seeking relief 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 700 words; the certificate described in BCR 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 700 words (excluding the response to the certificate) and must be e-mailed to the judicial assistant and law clerk for the presiding Business Court judge and to opposing counsel within seven calendar days of when the initial summary was e-mailed. Word limits are to be calculated in accordance with BCR 7.8. No replies are allowed.

(2) **Certification of good-faith effort to resolve the dispute**. A dispute summary under BCR 10.9(b)(1) must include 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 must say, if applicable, whether the parties discussed cost-shifting, proportionality, or alternative discovery methods that might resolve the dispute. This certificate may not exceed 300 words. The response by any other party under BCR 10.9(b)(1) may include a response, not to exceed 200 words, to the substance of the certificate.

(3) **Telephone conference among counsel and the presiding Business Court judge**. After the summary, certificate, and any response(s) are submitted, the Court may 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 that decides the issues raised or that provides the parties with further instructions. If the Court elects to conduct a telephone conference, the Court may decide the parties' dispute during the conference.

(c) **Briefs on discovery motions**. If, after the Court conducts a telephone conference under BCR 10.9(b)(3), 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 BCR 7 apply to any such motion, except that (i) the Court may modify the briefing schedule and limits on briefs in its instructions after the BCR 10.9(b)(3) conference, (ii) the supporting brief and any responsive brief may each not exceed 3,750 words unless the Court orders otherwise, and (iii) reply briefs will only be permitted if the Court requests on its own

initiative or grants a moving party 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 may require that any such basis be demonstrated by affidavit.

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

History Note.

372 N.C. 911; 372 N.C. 844.

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 for Mediated Settlement Conferences and Other Settlement Procedures in Superior Court Civil Actions. Although these statewide mediation rules require participation in a mediation utilizing a certified mediator unless the Court orders otherwise on a showing of good cause, the parties may engage in multiple mediated settlement conferences before the same or different mediators.

11.2. Selection and appointment of mediator. The parties should attempt to select a mediator by agreement. 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 appointment by the Court. 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 of 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.

History Note.

372 N.C. 911; 372 N.C. 844; 374 N.C. 945.

Rule 12. Pretrial and Trial

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

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

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

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

45 days before pretrial hearing	Trial exhibits (or a list of exhibits identified by Bates number if the exhibits were exchanged in discovery) and witness lists served on opposing parties
30 days before pretrial hearing	Deposition designations served on opposing parties
21 days before pretrial hearing	Pretrial attorney conference Deposition counter-designations and objections to deposition designations served on opposing parties Supplemental trial exhibit and witness lists served on opposing parties
17 days before pretrial hearing	Objections to trial exhibits served on opposing parties
14 days before pretrial hearing	Motions in limine and briefs in support, if any, filed and served Proposed pretrial order filed and served

7 days before pretrial hearing	Responses to motions in limine filed and served
No later than 14 days before trial	Pretrial hearing
7 days before trial	Trial brief, if any, filed and served Proposed jury instructions filed and served Proposed findings of fact and conclusions of law, if necessary, filed and served Submit joint statement of any stipulated facts

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) the use of technology;

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

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

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

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

12.10. Jury instructions.

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

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

(c) **Form**.

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

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

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

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

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

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

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

12.12. Trial briefs. Unless ordered by the Court, a party may, but is not required to, submit a trial brief. A trial brief may address contested issues of law and anticipated evidentiary issues (other than those raised in a motion in limine). The trial brief need not contain a complete recitation of the facts of the case. A party may not file a brief in response to another party's trial brief unless the Court requests a response. Unless otherwise ordered by the Court, a trial brief is not subject to the word limits for briefs under BCR 7.

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

History Note.

372 N.C. 911; 372 N.C. 844; 381 N.C. 886.

Rule 13. Review of Administrative Actions

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

13.2. Case management. Unless the Court orders otherwise, BCR 9 and 11 do not apply to administrative appeals.

13.3. 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 that conference, the parties must file with the Court a final administrative record. This filing must include a statement that clarifies

whether the final record consists of (i) the official record that the Office of Administrative Hearings submitted to the Wake County Clerk of Court, or (ii) a modified version of the record to which the parties have agreed.

If the parties cannot agree on a final record, then the parties must utilize the procedures described in BCR 10.9(b) to raise their disagreement with the Court.

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 BCR 13.3. The respondent may file its brief no later than thirty days after service of the petitioner's brief. The petitioner may file a reply brief no later than ten days after service of the respondent's brief. All briefs must comply with the formatting and length requirements of BCR 7.

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

History Note.

372 N.C. 911; 372 N.C. 844.

Rule 14. Appeals

14.1. How an appeal is taken. An appeal from an order or judgment of the 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 North Carolina 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 Rule 32 of the North Carolina Rules of Appellate Procedure about the case-management issues that apply to the proceedings upon remand.

The parties must submit a report to the Court within ten days of the meeting that proposes a case-management structure for the proceedings.

History Note.

372 N.C. 911; 372 N.C. 844.

Rule 15. [Reserved]

History Note.

372 N.C. 911; 372 N.C. 844; 381 N.C. 886.

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 of the Rules of Civil Procedure and also contain the following:

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

(b) the grounds for reference under Rule 53(a) of the Rules of Civil Procedure, 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) of the Rules of Civil Procedure;

(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) of the Rules of Civil Procedure; 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) of the Rules of Civil Procedure. In appropriate cases when 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 ESI or when there may be differing views regarding the use of keyword 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 issues relevant to the proposed work of the referee. Appendix 4 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 (i) specifies the case, proceeding, claim, or issue to be submitted to the referee for final decision; (ii) states that the parties to the stipulation waive the right to seek further judicial review of the referee's decision; and (iii) 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.

History Note.

372 N.C. 911; 372 N.C. 844.

TOC

Appendixes

Appendix 1. Notice of Designation Template

STATE OF NORTH CAROLINA COUNTY OF _____	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION CIVIL ACTION NO.:
JOHN DOE, Plaintiff, v. ABC CORPORATION, Defendant.	**NOTICE OF DESIGNATION**

Pursuant to N.C.G.S. § 7A-45.4, [INSERT PARTY] seeks to designate the above-captioned action as a mandatory complex business case. In good faith and based on information reasonably available, [INSERT PARTY], through counsel, hereby certifies that this action meets the criteria for:

_____ Designation as a mandatory complex business case pursuant to N.C.G.S. § 7A-45.4(a), in that it involves a material issue related to:

_____ (1) Disputes involving the law governing corporations, except charitable and religious organizations qualified under N.C.G.S. § 55A-1-40(4) on the grounds of religious purpose, partnerships, and limited liability companies, including disputes arising under Chapters 55, 55A, 55B, 57D, and 59 of the General Statutes.

_____ (2) Disputes involving securities, including disputes arising under Chapter 78A of the General Statutes.

_____ (3) Disputes involving antitrust law, including disputes arising under Chapter 75 of the General Statutes that do not arise solely under N.C.G.S. § 75-1.1 or Article 2 of Chapter 75 of the General Statutes.

_____ (4) Disputes involving trademark law, including disputes arising under Chapter 80 of the General Statutes.

_____ (5) Disputes involving the ownership, use, licensing, lease, installation, or performance of intellectual property, including computer software, software applications, information technology and systems, data and data security, pharmaceuticals, biotechnology products, and bioscience technologies.

_____ (8) Disputes involving trade secrets, including disputes arising under Article 24 of Chapter 66 of the General Statutes.

_____ (9) Contract disputes in which all of the following conditions are met:

(a) At least one plaintiff and at least one defendant is a corporation, partnership, or limited liability company, including any entity authorized to transact business in North Carolina under Chapter 55, 55A, 55B, 57D, or 59 of the General Statutes.

(b) The complaint asserts a claim for breach of contract or seeks a declaration of rights, status, or other legal relations under a contract.

(c) The amount in controversy computed in accordance with N.C.G.S. § 7A-243 is at least one million dollars ($1,000,000).

(d) All parties consent to the designation. [If all parties have not consented, indicate that the Notice of Designation is conditional pursuant to BCR 2.5.]

_____ Designation as a mandatory complex business case pursuant to N.C.G.S. § 7A-45.4(b), in that it is an action:

_____ (1) Involving a material issue related to tax law that has been the subject of a contested tax case for which judicial review is requested under N.C.G.S. § 105-241.16, or a civil action under N.C.G.S. § 105-241.17 containing a constitutional challenge to a tax statute.

_____ (2) Described in subsection (1), (2), (3), (4), (5), or (8) of N.C.G.S. § 7A-45.4(a) in which the amount in controversy computed in accordance with N.C.G.S. § 7A-243 is at least five million dollars ($5,000,000).

Briefly explain why the action falls within the specific categories checked above and provide information adequate to determine that the case has been timely designated (e.g., dates of filing or service of the complaint or other relevant pleading). If necessary, include additional information that may be helpful to the Court in determining whether this case is properly designated a mandatory complex business case.

Attach a copy of all significant pleadings filed to date in this action (e.g., the complaint and relevant pending motions).

[INSERT DATE AND SIGNATURE BLOCKS]

History Note.

372 N.C. 911; 372 N.C. 844; 374 N.C. 945.

Editor's Note.

The subsections in this Notice of Designation Template correspond to the subsections of N.C.G.S. § 7A-45.4. Accordingly, subsections (a)(6) and (a)(7) are omitted in the template because those subsections have been repealed in the statute.

Appendix 2. Case Management Report Template

STATE OF NORTH CAROLINA COUNTY OF _____	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION CIVIL ACTION NO.:
JOHN DOE, Plaintiff, v. ABC CORPORATION, Defendant.	**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 BCR 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 plans 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. This section should also discuss whether the parties have agreed on any deadlines for amending the pleadings or adding parties and what the impact of those deadlines would be.

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 facilitate 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 multiple related class actions are pending, the parties must report their views on special efforts that should be undertaken and the time for doing so, such as 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 should 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 have 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]

History Note.

372 N.C. 911; 372 N.C. 844.

Appendix 3. [Reserved]

History Note.

372 N.C. 911; 372 N.C. 844; 381 N.C. 886.

Appendix 4. Potential Terms of Order Appointing Referee

This appendix contains potential terms for an order under BCR 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 of the Rules of Civil Procedure.

(b) **Draft report**. The Court may require the referee to provide the parties with a report in draft form. The Court may allow parties to 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) of the Rules of Civil Procedure 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.

History Note.

372 N.C. 911; 372 N.C. 844.

Appendix 5. Proposed Pretrial Order Template

STATE OF NORTH CAROLINA COUNTY OF _____	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION CIVIL ACTION NO.:
JOHN DOE, Plaintiff, v. ABC CORPORATION, Defendant.	**PROPOSED PRETRIAL ORDER**

Pursuant to Rule 16 of the North Carolina Rules of Civil Procedure and BCR 12.4, the parties participated in a pretrial conference on [INSERT DATE] and now submit this pretrial order.

1. Stipulations. The parties should list stipulations on subject-matter jurisdiction, personal jurisdiction, joinder of parties, and any other salient legal and/or procedural issues on which they agree.

2. Exhibits. The parties should attach their exhibit lists to the pretrial order. The parties should also cover at least the following topics related to exhibits:

- whether any party objects to the admission of any exhibit(s);
- whether any party objects to the authenticity of any exhibit(s); and
- the timing and manner of the exchange of demonstrative exhibits including whether demonstrative exhibits will be used in opening statements.

3. Witnesses and deposition designations. The order should contain each party's list of potential trial witnesses. The lists should identify witnesses whose testimony will be presented by deposition. The parties should also attach deposition designations, counter-designations, and related objections.

4. Motions. The parties should list any outstanding motions and any motions that might be filed before or during trial. The list should include pending or anticipated motions in limine.

5. Issues. The parties should list the issues to be tried, noting which issues the jury will decide and which issues the Court will decide. The parties should also describe any disagreement related to these matters.

6. Courtroom technology and other accommodations. The parties should describe the technology that they intend to use during trial. For each technology, the parties should clarify who (the parties or the Court) will provide the technology and, if applicable, how the parties will apportion the cost of the technology. The parties should also list any case-specific accommodations needed for trial, as described in BCR 12.5(i).

7. Length and readiness. The parties should estimate how long the trial will last. If the parties disagree on the estimate, then each party should give its own estimate. The parties should also state that all potential trial witnesses are available and that the case is trial-ready.

8. Settlement. The parties should certify that they engaged in a meaningful settlement discussion—including the exchange of potential settlement

terms—during the pretrial conference. The parties should immediately notify the Court in the event of a material change in settlement prospects.

[INSERT SIGNATURES OF ALL PARTICIPATING COUNSEL]

History Note.

372 N.C. 911; 372 N.C. 844.

A Publication Record of the Business Court Rules

TOC

Reporter Volume	Page(s)	Rules Affected	Key Dates*
372 N.C.	911–63	Complete Rule Set	Ordered 20 December 2016 Effective 1 January 2017
372 N.C.	844–95	Complete Rule Set	Ordered 11 June 2019 Effective 1 July 2019
374 N.C.	945–48	Rule 11; Appendix 1	Ordered 26 February 2020 Effective 1 March 2020
375 N.C.	1029–33	Rule 3	Ordered 13 October 2020 Effective 13 October 2020
381 N.C.	886–911	Rules 3, 5, 6, 7, 12, 15; Appendix 3	Ordered 15 June 2022 Effective 1 July 2022

***** The type of date provided for each published entry (e.g., "Adopted," "Effective," "Ordered") reflects the information that was preserved in the North Carolina Reports.

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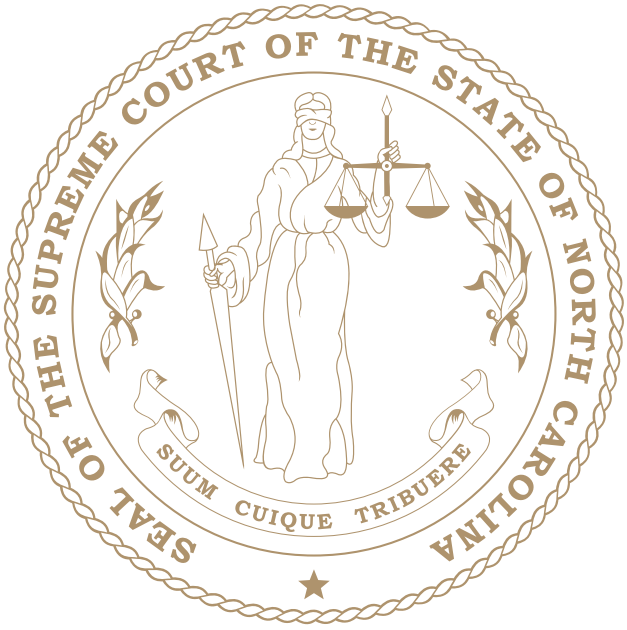

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