



CHIEF JUSTICE'S RULES ADVISORY COMMISSION MINUTES OF MEETING

August 20, 2021

Remote Meeting via Webex

Call to Order

A remote meeting of the Chief Justice's Rules Advisory Commission was called to order at 2:03 p.m. on Friday, August 20, 2021, via Webex by North Carolina Court of Appeals Chief Judge Donna Stroud, Commission Chair.

Commission Members Present for the Webex Meeting:

Mark Holt, *Partner*, Holt Sherlin LLP

Mike Mitchell, *Attorney*, Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, LLP

Kellie Myers, *Trial Court Administrator*, Wake County

John Rabiej, former *Deputy Director*, Bolch Judicial Institute, Duke University School of Law

Paul Ridgeway, *Senior Resident Superior Court Judge*, Wake County

Michael Robinson, *Judge*, North Carolina Business Court

Andrew Tripp, *Senior Vice President for Legal Affairs & General Counsel*, University of North Carolina System

Christine Walczyk, *District Court Judge*, Wake County

Other Attendees Present for the Webex Meeting:

Seth Ascher, *Assistant Administrative Counsel*, Supreme Court of North Carolina

Grant Buckner, *Administrative Counsel*, Supreme Court of North Carolina

Brad Fowler, *Chief Business Officer*, North Carolina Administrative Office of the Courts

Betse Hamilton, *Office Administrator*, Supreme Court of North Carolina

Jen Wyatt, *Assistant Administrative Counsel*, Supreme Court of North Carolina

Approval of Minutes

The minutes from the April 23, 2021 meeting were approved, as written.



eCourts Update

Brad Fowler reported to the commission that the *eWarrants* system will not go live until sometime after Labor Day. He further reported that the *Odyssey* e-filing system will go live in the four pilot counties (Harnett, Johnston, Lee, and Wake) forty-five to sixty days following *eWarrants* and that the original county groupings in the twelve tracks for the *Odyssey* rollout have not changed.

Subcommittee Reports

General Rule of Practice 15 Subcommittee

- Judge Paul Ridgeway, subcommittee chair, summarized the contents of the subcommittee's report to the commission, which is attached to these minutes. Specifically, Judge Ridgeway described five issues that a new Rule 15 would have to address, namely:
 1. prohibition of recording certain protected classes;
 2. practical requirements regarding decorum and potential courtroom disruptions;
 3. judges' discretion in making the determination as to whether the extended media coverage would somehow interfere with the administration of justice;
 4. allowing open access to court proceedings for media members while filtering out impermissible coverage of cases under the guise of being legitimate members of the media; and
 5. discretion of court officials in county or judicial districts to develop media policies.
- Judge Ridgeway asked the commission to think about these issues and to provide feedback to the subcommittee about them.
- The commission approved of the subcommittee reaching out to Amanda Martin, Counsel to the N.C. Press Association, to obtain her assistance in consulting with the subcommittee. Ms. Martin helped with local rules for Wake County.
- The commission reached consensus that the subcommittee should seek to get input from multiple stakeholder groups.
- Next steps for the subcommittee: (1) reach out to Ms. Martin and other potential stakeholders to ask for their assistance; and (2) further refine and elaborate upon the five issues identified in the subcommittee's report.

Criminal Service Subcommittee

- Judge Christine Walczyk, subcommittee chair, summarized the subcommittee's work to date. The subcommittee has compiled a list of statutes in Chapter 15A of the General Statutes that affect service in criminal actions, and the subcommittee has divided up the statutes among its members to determine which statutes need an amendment.

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- Judge Walczyk gave a brief overview of Session Law 2021-47, which amended the criminal motions statute. A copy of the session law is attached to these minutes.
- The commission reached consensus that the subcommittee should recruit criminal experts to assist the subcommittee in its work. Grant Buckner agreed to ask Brad Fowler (who had departed the meeting) to help identify criminal experts involved in the judicial branch's eCourts effort.
- Next steps for the subcommittee: (1) identify criminal experts to consult; and (2) further refine the list of statutes from Chapter 15A that need to be amended.

Privacy Subcommittee

- Judge Michael Robinson, subcommittee chair, summarized the subcommittee's report to the commission, which is attached to these minutes.
- Judge Robinson asked the commission for feedback. John Rabiej asked the subcommittee to review Federal Rule of Civil Procedure 5.2. Mike Mitchell asked the subcommittee to consider a checkbox in the e-filing system by which the filer of a document would certify compliance with existing private-information laws. Grant Buckner agreed to ask Brad Fowler (who had departed the meeting) about the ability to add the checkbox to the *Odyssey* e-filing system.
- Mike Mitchell, John Rabiej, and Andrew Tripp joined the subcommittee.
- Next steps for the subcommittee: (1) decide which approach (or approaches) outlined in the subcommittee's report to pursue; and (2) begin work to execute that approach.

New Business and Future Planning

The next commission meeting is scheduled for Friday, November 19, 2021.

Adjournment

The meeting was adjourned at approximately 3:40 p.m. by Chief Judge Stroud.

Minutes submitted by: /s/ Grant E. Buckner
Administrative Counsel, Supreme Court of North Carolina

Date: 8/31/21

CJRAC Rule 15 Subcommittee Report
August 20, 2021

Rule 15 must balance the public rights related to court access, the individual rights of participants in the court system, and the ability to effectively operate the judicial system.

The subcommittee has broadly identified five ‘buckets’ of issues that need to be grappled with by the rule:

1. Prohibition of recording certain protected classes:

Certain proceedings and participants should be categorically off limits from media coverage, i.e. jurors, juvenile matters, victims of sexual assault, etc.

The existing rule 15 identifies many categories. Are categories missing? Is the list overinclusive? Are there particular risks to victims, witnesses, or jurors that need to be accounted for?

2. Practical requirements regarding decorum and potential courtroom disruptions:

Distractions and disruptions caused by media can have adverse consequences to the administration of justice.

What general principles should rule 15 make universal? What local orders are expected to account for physical courtrooms? Blanket prohibition on bringing certain devices into court without approval?

3. Judges’ discretion in making the determination as to whether the extended media coverage would somehow interfere with the administration of justice:

Maintaining control of the courtroom is a core responsibility of a judge.

Are these decisions case specific? Courtroom specific? Can judges issue a standing order? Should judges make written findings? What recourse for participants claiming to be wronged?

4. Allowing open access to court proceedings for media members while filtering out impermissible coverage of cases under the guise of being legitimate members of the media:

This is the cutting edge of media and the courts.

Should transmission/recording by the public be generally prohibited? Require credentialing or registration with the clerk’s office? Who can speak for media outlets?

5. Discretion of court officials in county or judicial districts to develop local media policies:

Different courtrooms have different practical considerations for media involvement.

Who are local points of contact for media? What decisions are left specifically to local control? Who are the local stakeholders who need to participate?

N.C. Courtroom-Media Policy Issues

- I. Presumption allowing electronic media and still photography of all public judicial proceedings
- II. But general presumption is subject to discretion of individual judge to “prohibit or terminate” – wording somewhat odd by first declaring general presumption, but then providing a huge exception. Consider rewording: “Unless the presiding justice or judge restricts, prohibits, or terminates electronic media or still photography coverage, electronic media and still photography shall be allowed in judicial proceedings, subject to the following conditions”
 - Although the power to “terminate” implicitly includes the power to restrict, should it worded explicitly, e.g., “have authority to restrict, prohibit, or terminate...”
 - Should an individual justice or judge be able to issue a “general standing order” governing all his cases, or should the judge be limited to issuing only “case-specific orders”? The latter would be more consistent with the general presumption.
- III. Equipment Issues -- Existing rule provisions focus on traditional “large-scale” equipment, which may require special accommodations.
 - Many small devices, including i-phones, are capable of video transmissions.
 - Should we identify potential risks of victim, witness, and juror tampering caused by transmissions? Federal courts concerned with ensuring safety of courtroom participants.
 - Should safeguards be established preventing risks of victim, witness, and juror tampering caused by transmissions?
 - Should public be prohibited from transmitting video or broadcasting judicial proceedings?
 - If so, should blanket prohibition against bringing in devices in the courtroom be considered?
 - Should individuals who transmit proceedings be registered with the clerk of court for every proceeding? Registered for periods of time, which would apply to all proceedings during the time period?
 - If so, should they be credentialed with a traditional news outlet? What about internet bloggers, podcasters, and tweeters, etc.?
 - Should specific areas of the courtroom be designated for anyone using a small device to transmit proceedings, i.e., last two rows of seats in the courtroom?
 - Three official media representatives are identified in the rules. Are these limited to traditional televising transmissions? Should any be added?

- Any limitations to handle a sensational case, e.g., O.J. Simpson?

IV. Procedures

- Should procedures be established to address objections both to orders “permitting” transmitting proceedings as well as orders “denying” transmission of proceedings?
- Are findings necessary? Alternatively, a purely discretionary matter in the hands of the justice or judge?
- Who has standing to raise objections?
- Any appellate review or mandamus?

COURTROOM MEDIA POLICY MEMO
prepared for
GRP 15 Revision Committee of the
Chief Justice's Rules Advisory Commission
July 29, 2021

(For discussion purposes only - the views expressed herein have not been adopted or sanctioned by the committee or commission)

“Our liberty depends on the freedom of the press, and that cannot be limited without being lost.” *Thomas Jefferson (1786)*

The North Carolina Constitution declares that “All courts shall be open.” *N.C. Const.*, Art. I, Sec. 18. The Sixth Amendment of the United States Constitution declares that “all criminal defendants shall enjoy the right to a speedy and public trial.” *U.S. Const.*, Art. 6. However, as the United States Supreme Court has explained, the guarantee of a public trial confers no special benefit on the press, nor does it require that the trial, or any part of it, be broadcast live or on tape to the public, but such guarantee is satisfied by the opportunity of the public and the press to attend the trial and to report what they have observed. *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 610 (1978). Likewise, the North Carolina Supreme Court has held that “a trial judge in the interest of the fair administration of justice may impose reasonable limitations upon the access of the public and the press to a criminal trial.” *State v. Burney*, 302 N.C. 529, 538, 276 S.E.2d 693, 698 (1981).

In 1990, after the North Carolina Supreme Court had allowed electronic media and still photography coverage of public judicial proceedings in the appellate and trial courts on an experimental basis for an eight-year period, the Court adopted the current version of General Rule of Practice 15, entitled “Electronic Media and Still Photography Coverage of Public Judicial Proceedings.” See 327 N.C. 664-69. The Rule states, in its introductory language, that “Electronic media and still photography coverage of public judicial proceedings *shall be allowed in the appellate and trial courts of this state*, subject to the conditions below . . .” GRP Rule 15(b)(1) (emphasis added).

Also in 1990, the Supreme Court amended Canon 3(A)(7) of the N.C. Code of Judicial Conduct to read: “A judge should exercise discretion with regard to permitting broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto during civil or criminal sessions of court or recesses between sessions, pursuant to the provisions of Rule 15 of the General Rules of Practice for the Superior and District Courts.”

Since 1990, GRP 15 has not been amended. The Rule’s language, the technology it embraces, and the accommodations the Rule permits all reflect the then-current practices of broadcast and print media. In the thirty years since GRP 15 was adopted, much has

changed in the world of broadcasting and media, not the least of which is the advent of much more sophisticated and portable broadcast and recording devices, internet-based live streaming, social media news feeds and blogging. Indeed, one might argue that the very definition of what “media” is today, compared to 1990, has fundamentally changed.

This Committee is undertaking the task of reviewing GRP 15 with a view towards recommending amendments to ensure the Rule embraces the current realities of media access and coverage of judicial proceedings in North Carolina judicial proceedings in trial and appellate courts.

As a first step, we have carefully considered the language of GRP 15 and surveyed comparable rules or policies of all 50 states, and have identified four general policy objectives that appear to be uniformly found. These policy objectives are usually stated, as is the case in GRP 15, as limitations or restrictions upon unfettered photography, video recording, or broadcasting in courtrooms. The four policy categories are summarized here:

1. Prohibitions of protected classes:

To ensure a fair trial and the safety of all involved, certain classes of people are off limits to members of the media. Examples of these protected classes include jurors, victims of sexual assaults, and juveniles.

2. Practical requirements regarding decorum and potential courtroom disruptions:

Distractions and disruptions caused by media presence can carry adverse consequences in the administration of justice and should be avoided.

3. Judges’ discretion in making the determination as to whether the extended media coverage would somehow interfere with the administration of justice:

It is important that judges always have control of all aspects of the courtroom.

Different counties and jurisdictions have varying requirements to protect all parties involved, their rights, and the fair administration of justice.

4. Allowing open access to court proceedings for media members while filtering out impermissible coverage of cases under the guise of being legitimate members of the media:

It is important for “legitimate” members of the media to have access to the courts in order to disseminate information to the general public consistent with the goals of public access, free speech, open courts, and governmental transparency. However, it is worth considering that not everyone who walks into a courtroom with a camera or recording device has the same intention in mind, but rather may have intentions that could be a threat to public safety, courthouse security, the safety of participants in court proceedings, or the invasion of privacy. It is important, in formulating rules of media access, to consider how to filter media, broadcast and recording privileges to protect against these potential threats.

These four policies are discussed in further detail below. Black text denotes provisions of the current GRP 15. Red text denotes comments obtained from various sources, Blue text denotes provisions of other states’ statutes or rules not found in North Carolina’s Rule.

A fifth general policy consideration is not necessarily explicitly stated in GRP 15 or comparable rules of other states, but is implied in practice -- **namely the importance of discretion of court officials in county or judicial districts to develop local media policies**, for individual cases and in general, that compliment GRP 15.

1. Prohibitions of protected classes

- a. The United States Supreme Court has noted that cameras in the courtroom can have a prejudicial effect on the performance of the jurors, the trial court judge, witnesses, and the defendant. *See Estes v. Texas*, 381 U.S. 532, 545–50 (1965).
- b. North Carolina's current policy regarding extended media coverage in the courtroom expressly prohibits coverage of: adoption proceedings, juvenile proceedings, proceedings held before clerks of court, proceedings held before magistrates, probable cause hearings, child custody proceedings, divorce proceedings, temporary and permanent alimony proceedings, proceedings for the hearing of motions to suppress evidence, promotions involving trade secrets, and in camera proceedings
- c. North Carolina's current policy regarding extended media coverage of witnesses that are expressly prohibited: police informants, minors, undercover agents, victims of sex crimes, families of victims of sex crimes
- d. North Carolina's current policy regarding extended media coverage expressly prohibits coverage of jurors at any portion of the proceedings
 - i. **These protections for certain witnesses or victims are on par with the general requirements of the other states**

2. Practical requirements regarding decorum and potential courtroom disruptions

- a. Pursuant to the current North Carolina Courtroom Media Policy, Rule 15(b)(1), the presiding judge shall at all times have authority to prohibit or terminate electronic media and still photography coverage of public judicial proceedings, in the courtroom or corridors immediately adjacent thereto
- b. North Carolina's current policy has the following requirements of courtroom equipment and personnel:
 - i. The equipment and personnel should be located in a place that both the equipment and personnel are completely obscured from view from within the courtroom and not heard by anyone inside the courtroom
 1. ***"completely obscured" is not the standard in some courts. Most courts require something resembling "positioned in an unobtrusive position that does not disturb the proceedings."**
 - ii. The area where the equipment is located must be set apart by a booth or partitioning device constructed by the media in a place that does not obstruct passage to and from the courtroom at the discretion of the presiding judge
 1. **This seems to be an outdated provision, seeing as how most cameras today are significantly smaller and would not require such a partition**

- iii. Appropriate openings in the partitioning device to allow photographic coverage of the proceedings is admissible provided no one will see or hear any equipment operating
 - 1. See above comment
- iv. The presiding judge has discretion to allow equipment to be used outside of such booth or partition
 - 1. See above comment
- v. Video tape recording equipment which is not a component part of a television camera shall be located in an area remote from the courtroom
 - 1. See above comment
- vi. Media personnel shall not exit or enter the booth area or courtroom once the proceedings are in session except during a courtroom recess or adjournment
 - 1. See above comment
- vii. Media equipment and still photography equipment shall not be taken into the courtroom or removed from a designated media area except at the following times: (1) prior to the convening of proceedings; (2) during the luncheon recess; (3) during any court recess with the permission of the presiding judge; and (4) after adjournment for the day of the proceedings
- viii. Not more than two television cameras shall be permitted in any trial or appellate court proceedings
 - 1. This could be left up to judicial discretion depending on the size of the courtroom, the available space for equipment/operators, distraction that could be caused, etc.
- ix. Not more than one still photographer utilizing not more than two still cameras with not more than two lenses for each camera shall be permitted
 - 1. See above comment
- x. Not more than one wired audio system for radio broadcasting purposes shall be permitted
 - 1. Wired audio systems would be considered outdated, this could be removed from the policy altogether
- xi. In no event shall the number of personnel in the designated area exceed the number necessary to operate the designated equipment
- xii. Only television photographic and audio equipment which does not produce distracting sound or light shall be employed to cover judicial proceedings. No artificial lighting device of any kind shall be employed in connection with the television camera
 - 1. This could be taken out and replaced with a blanket provision prohibiting all distracting light and sound from the courtroom
- xiii. Only still camera equipment which does not produce distracting sound or light shall be employed to cover judicial proceedings. No artificial lighting device of any kind shall be employed in connection with a still camera
 - 1. See above
- xiv. With concurrence of the Senior Resident Superior Court Judge of the judicial district, modifications or additions may be made to the light

sources existing in the facility, provided that the modifications come at no expense to the public

- c. Other states have the following provisions worth considering adding or altering to fit into our policy:
 - i. South Carolina Rule 605(f)(4)(iii): Court proceedings shall not be interrupted by reporter or technician because of a technical or equipment problem. If any problem occurs, that piece of equipment shall be turned off while the proceeding is in session. No attempt shall be made to correct the technical or equipment problem until the proceeding is in recess or has concluded.
 - ii. Mississippi Rules for Electronic and Photographic Coverage of Judicial Proceedings, Rule 4: All running wires shall be securely taped to the floor
 - iii. Alaska Administrative Bulletin No. 45: Persons using cameras and electronic devices are expected to present a neat appearance in keeping with the dignity of the proceedings and be sufficiently familiar with court proceedings to conduct themselves so as not to interfere with the dignity of the proceedings, or to distract counsel or the court

3. Judges' discretion in making the determination as to whether the extended media coverage would somehow interfere with the administration of justice

- a. To protect the attorney client privilege and the right to counsel, there shall be no audio pickup or broadcast of conferences which occur in a court facility between attorneys and their clients, between co-counsel of a client, between adverse counsel, or between counsel and the presiding judge at the bench
 - i. Possible addition: "In the event any of these confidential communications are picked up by media equipment, footage or sound is not to be published and should be deleted immediately under penalty of being held in contempt and loss of media privileges indefinitely."
- b. None of the film, video tape, still photographs, or audio reproductions developed during or by virtue of coverage of a judicial proceeding shall be admissible as evidence in the proceeding out of which it arose, any proceeding subsequent and collateral thereto, or upon any retrial or appeal of such proceedings
- c. Other states have the following provisions worth considering adding to our policy:
 - i. Some states have specific requirements of their judges when issuing a denial:
 - 1. Arizona Rule 122(d)(1):
 - a. Judges must make specific findings on the record if denying coverage. Must find that there is a likelihood of harm arising from one of more of the following factors and that the harm outweighs the benefit of coverage to the public:
 - i. Impact of coverage on right or any party to fair trial

- ii. Impact of coverage on right to any victim or witness
 - iii. Impact on safety and wellbeing of any party, victim, or juror
 - iv. Likelihood of distractions
 - v. Adequacy of court facilities
 - vi. Timeliness of request
 - vii. Whether person making request is engaged in dissemination of news to the broad community
 - viii. Any other factor affecting the administration of justice
2. California Rule 1.150(e)(3): In ruling on the request, the judge is to consider the following factors:
- a. (A) The importance of maintaining public trust and confidence in the judicial system;
 - b. The importance of promoting public access to the judicial system;
 - c. The parties' support of or opposition to the request;
 - d. The nature of the case;
 - e. The privacy rights of all participants in the proceeding, including witnesses, jurors, and victims;
 - f. The effect on any minor who is a party, prospective witness, victim, or other participant in the proceeding;
 - g. The effect on the parties' ability to select a fair and unbiased jury;
 - h. The effect on any ongoing law enforcement activity in the case;
 - i. The effect on any unresolved identification issues;
 - j. The effect on any subsequent proceedings in the case;
 - k. The effect of coverage on the willingness of witnesses to cooperate, including the risk that coverage will engender threats to the health or safety of any witness;
 - l. The effect on excluded witnesses who would have access to the televised testimony of prior witnesses;
 - m. The scope of the coverage and whether partial coverage might unfairly influence or distract the jury;
 - n. The difficulty of jury selection if a mistrial is declared;
 - o. The security and dignity of the court;
 - p. Undue administrative or financial burden to the court or participants;
 - q. The interference with neighboring courtrooms;
 - r. The maintenance of the orderly conduct of the proceeding; and
 - s. Any other factor the judge deems relevant.
3. Colorado Rule 3(a)(2): In determining whether expanded media coverage should be permitted, a judge shall consider the following factors:

- a. Whether there is a reasonable likelihood that expanded media coverage would interfere with the rights of the parties to a fair trial;
 - b. Whether there is a reasonable likelihood that expanded media coverage would unduly detract from the solemnity, decorum, and dignity of the court; and
 - c. Whether expanded media coverage would create adverse effects which would be greater than those caused by traditional media coverage
4. Hawaii Supreme Court Rules 5.1-5.3:
 - a. A party may object to extended coverage at the beginning of any new stage of the case. If a party objects or if the court orders on its own motion, a hearing will be held to determine whether extended coverage will be allowed for that stage of the case. The media have standing to be heard at the hearing and may present evidence. Any objection by a party to extended coverage must be made before extended coverage begins for that stage of the case. If no party objects, no hearing will be held.
 - b. When a request for extended coverage has been denied, the media or any party may seek review of the order by filing a motion with the appropriate administrative judge. A motion for review shall be filed no later than 5 days after the filing of the order regarding coverage. A party may seek appellate review of an order regarding extended coverage, including any such order issued by the administrative judge, but immediate appellate review of such an order is not available as a matter of right.
 5. Illinois Circuit Court Policy 1.3(c)
 - a. A party objecting to expanded media coverage shall file a written objection stating the reasons, at least 3 days before commencement of the proceeding. . . . All objections shall be heard and determined by the judge prior to the commencement of the proceedings. The judge may rule on the basis of the written objection alone. IN addition, the objecting party or witness, and all other parties, may be afforded an opportunity to present additional evidence by affidavit or by other means as the judge directs.
 6. New York Rule 131.3(d)
 - a. In determining an application for coverage, the presiding trial judge shall consider all relevant factors, including but not limited to:
 - i. the type of case involved;
 - ii. whether the coverage would cause harm to any participant;

- iii. whether the coverage would interfere with the fair administration of justice, the advancement of a fair trial, or the rights of the parties;
- iv. whether the coverage would interfere with any law enforcement activity;
- v. whether the proceedings would involve lewd or scandalous matters;
- vi. the objections of any of the parties, victims or other participants in the proceeding of which coverage is sought;
- vii. the physical structure of the courtroom and the likelihood that any equipment required to conduct coverage of proceedings can be installed and operated without disturbance to those proceedings or any other proceedings in the courthouse; and
- viii. the extent to which the coverage would be barred by law in the judicial proceeding of which coverage is sought.
- ix. The presiding trial judge also shall consider and give great weight to the fact that any party, victim, or other participant in the proceeding is a child.

7. Utah Code Jud. Admin. 4-401.1(2)(b)

- a. When determining whether the presumption of electronic media coverage has been overcome and whether such coverage should be prohibited or restricted beyond the limitations in this rule, a judge shall consider some or all of the following factors:
 - i. whether there is a reasonable likelihood that electronic media coverage will prejudice the right of the parties to a fair proceeding;
 - ii. whether there is a reasonable likelihood that electronic media coverage will jeopardize the safety or well-being of any individual;
 - iii. whether there is a reasonable likelihood that electronic media coverage will jeopardize the interests or well-being of a minor;
 - iv. whether there is a reasonable likelihood that electronic media coverage will constitute an unwarranted invasion of personal privacy of any person;
 - v. whether electronic media coverage will create adverse effects greater than those caused by media coverage without recording or transmitting images or sound;
 - vi. the adequacy of the court's physical facilities for electronic media coverage;

- vii. the public interest in and newsworthiness of the proceeding;
- viii. potentially beneficial effects of allowing public observation of the proceeding through electronic media coverage; and
- ix. whether the predominant purpose of the electronic media coverage request is something other than journalism or dissemination of news to the public; and
- x. any other factor affecting the fair administration of justice.

4. Allowing open access to court proceedings for media members while filtering out impermissible coverage of cases under the guise of being legitimate members of the media

- a. This court hereby designated the North Carolina Association of Broadcasters, the Radio and Television News Directors Association of the Carolinas, and the North Carolina Press Association as the official representatives of the news media. The governing boards of these associations shall designate one person to represent the television media, one person to represent the radio broadcasters, and one person to represent still photographers in each county in which electronic media and still photographic coverage is desired. The names of the persons so designated shall be forwarded to the Senior Resident Superior Court Judge, the Director of the AOC, and the county manager or other official responsible for administrative matters in the county or municipality in which coverage is desired. Thereafter, these persons shall conduct all negotiations with the appropriate officials concerning the construction of the booths of partitioning devices referred to above. Such persons shall also be the only persons authorized to speak for the media to the presiding judge concerning the coverage of any judicial proceedings
 - i. **Some research needs to be done on the existence/prevalence of these organizations*
 - ii. *Worth considering contacting these organizations and consulting with a representative on how they would approach such a requirement/if they have the ability to elect a media representative in each county/jurisdiction*
 - iii. *Could remove requirement to notify county managers as well as mention of construction of booths or partitioning devices*
- b. The express intent and purpose of this rule to preclude judges and other officials from having to negotiate with various representatives of the news media. Since these rules require pooling of equipment and personnel, cooperation by the media is of the essence and the designation of three media representatives is expressly intended to prevent presiding judges from having to engage in discussion with others from the media
 - i. **There is a general agreement that there should be no negotiation. Most courthouses have an understanding with the local press*
 - ii. **Perhaps this section could be replaced with "Senior Resident's will designate a point person for communication from media at court*

facilities in their district.” The intent would be to allow
TCC/TCA/JA/clerks to field basic arrangements

- c. Any pooling arrangements among the media required by these limitations on equipment and personnel shall be the sole responsibility of the media without calling upon the presiding judge to mediate any dispute as to the appropriate media representative or equipment authorized to cover a particular proceeding. In the absence of advance media agreement on disputed equipment or personnel issues, the presiding judge shall exclude all contesting media personnel from a proceeding
- d. Other states have the following provisions, worth considering adding to our policy:
 - i. Alaska Admin. Bulletin No. 45: requires person or organization who wants to use a camera or electronic device at a trial court proceeding must submit an application to the court through the area court administrator on a form provided by the area administrator’s office
 - ii. Arizona
 1. Except as provided in paragraphs (h) and (i) of this rule, a person who wishes to use a recording device during a proceeding must submit a written or electronic request to cover the proceeding, as follows.
 - a. *Requirements for submission of a request:* The person must submit the request to the judge who will conduct the proceeding, or to an office of the court authorized to receive requests under this rule. A person who submits a request to cover a proceeding has standing on the request, but the submission of a request does not confer upon that person the status of a party to the case.
 - b. *Time limit for submission of a request:* A person must submit a request sufficiently in advance of the proceeding to allow the judge to consider it in a timely manner.
 - i. If the specified proceeding is a trial, a person must submit a request at least seven calendar days before the trial date.
 - ii. If the proceeding is not a trial, a person must submit a request as soon as possible, and no less than forty-eight hours before the start of the proceeding.
 - iii. If the court schedules any proceeding on less than seventy-two hour’s notice, a person must file the request as soon as reasonably possible before the proceeding as not to delay or interfere with it.
 - c. *Court action upon receiving a request:* The court will notify the parties of its receipt of a request for coverage. The judge will promptly hold a hearing if the judge intends to deny the request or a portion of the request, or if a party objects to a request.

- d. *Time for a party to object to a request:* A party waives an objection to a request for coverage of a proceeding if the party does not object to the request in writing or on the record no later than the start of the proceeding.
 - e. *Time for a victim or witness to object to a request:* Victims or witnesses may object to coverage of their appearance or testimony at any time. The prosecutor's office is responsible for notifying victims and the prosecutor's witnesses of coverage, and their right to object to coverage, prior to the victims' appearances or the witnesses' testimony at the proceeding. Other parties who call witnesses to testify are responsible for notifying their witness of coverage, and the witness's right to object to coverage, prior to the witness's testimony.
2. Iowa Courts Expanded News Media Coverage
- a. You must submit a request for expanded news media coverage to the regional expanded news media coordinator at least seven days in advance of the proceeding (or, if the proceeding is not scheduled at least seven days in advance, as soon as practicable after the proceeding is scheduled). This includes texting, blogging, or tweeting real-time electronic coverage
3. Nevada (gives discretion to individual counties) Clark County:
- a. A Court Information Officer will serve as the court representative (Supreme Court Rule 232)
 - b. The local media shall select a Media Representative, who shall be designated as “a representative with whom the court may consult.” This Media Representative will serve for six months. The Media Representative will work with the Court Information Officer to coordinate pooling arrangements (Supreme Court Rule 232)
 - c. Media requests from all radio, print, and television requesting to photograph, record audio or video tape, or to broadcast a case live must be submitted to the Court Information Officer at least 72 hours before a hearing commences. The Court Information Officer will prepare the order, notify the attorneys, and deliver it to the appropriate judge (Supreme Court Rule 230). A media request submitted less than 72 hours of a hearing may be approved at the discretion of the judge if good cause can be shown. Upon approval or disapproval of the media request by the judge, the Court Information Officer will notify the requesting media. In the case of disapproval, the Court Information Officer will supply the media with the official written denial, including the reasons for the denial.

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021**

**SESSION LAW 2021-47
SENATE BILL 255**

AN ACT TO MAKE VARIOUS CHANGES AND TECHNICAL CORRECTIONS TO THE
LAWS GOVERNING THE ADMINISTRATION OF JUSTICE.

The General Assembly of North Carolina enacts:

MEDICAL MALPRACTICE JURY INSTRUCTIONS AND JUDICIAL ASSIGNMENT

SECTION 1.(a) Rule 51 of G.S. 1A-1 is amended by adding a new subsection to read:

"(d) Final instructions to the jury. – In civil cases subject to G.S. 90-21.11(2), the court shall reduce the oral instructions given to the jury to writing. Upon the jury retiring for deliberation, the court is encouraged to and may provide the jury a written copy of the oral instructions for the jury to take into the jury room during deliberation."

SECTION 1.(b) G.S. 7A-47.3 is amended by adding a new subsection to read:

"(e) The senior resident superior court judge, in consultation with the parties to the case, shall designate a specific resident judge or a specific judge assigned to hold court in the district to preside over all proceedings in a case subject to G.S. 90-21.11(2)."

SECTION 1.(c) This section becomes effective October 1, 2021. Subsection (a) of this section applies to actions filed on or after that date.

ADJUST MASTER JURY POOL TO ACCOUNT FOR THE COVID-19 PANDEMIC

SECTION 2. Notwithstanding G.S. 9-2(f), the master jury list for the 2022-2023 biennium shall contain not less than one and one-quarter times and not more than three times as many names as were drawn for jury duty in all courts in the county during the 2018-2019 biennium if the jury commission determines that those numbers would be more representative of the required number of jurors than the number of names drawn during the previous biennium. Notwithstanding G.S. 9-2(f), in a county preparing an annual master jury list for 2022 as authorized by G.S. 9-2(a), the master jury list shall contain not less than one and one-quarter times and not more than three times as many names drawn during 2019 if the jury commission determines that those numbers would be more representative of the required number of jurors than the number of names drawn during the previous year. A master jury list for the 2022-2023 biennium or for the 2022 year shall not include fewer than 500 names. In counties in which a different panel of jurors is selected for each day of the week, there is no limit to the number of names that may be placed on the master jury list for the 2022-2023 biennium or 2022 year.

CLARIFY VARIOUS PROCEDURES RELATED TO THE ENFORCEMENT OF JUDGMENTS

SECTION 3.(a) G.S. 1C-1603 reads as rewritten:

"§ 1C-1603. **Procedure for setting aside exempt property.**

(a) Motion or Petition; Notice. –

...

(4) After judgment, except as provided in subdivision (3) of this subsection or when exemptions have already been designated, the clerk may not issue an



execution or writ of possession unless notice from the court has been served upon the judgment debtor advising the debtor of the debtor's rights. The notice is not required if the exemptions under G.S. 1C-1601 are inapplicable based on an exception in G.S. 1C-1601(e). The judgment creditor must cause the notice, which must be accompanied by the form for the statement by the debtor under subsection (c1) of this section, to be served on the debtor as provided in G.S. 1A-1, Rule 4(j)(1). If the judgment debtor cannot be served as provided under G.S. 1A-1, Rule 4(j)(1), the judgment creditor may serve the judgment debtor by mailing a copy of the notice to the judgment debtor at the debtor's last known address. Proof of service by certified or registered mail or personal service is as provided in G.S. 1A-1, Rule 4. The judgment creditor may prove service by mailing to last known address by filing a certificate that the notice was served indicating the circumstances warranting the use of such service and the date and address of service.

- ...
- (b) Contents of Motion or Petition. – The motion or petition must:
- (1) Name the judgment ~~debtor;~~debtor.
 - (2) Name the judgment creditors of the debtor insofar as they are known to the ~~movant;~~movant.
 - (3) If it is a motion to modify a previously allocated exemption, describe the change of condition (if the movant received notice of the exemption hearing) and the modification desired.

- ...
- (e) Procedure for Setting Aside Exempt Property. –

- ...
- (2) If the judgment debtor does not file a motion to designate exemptions with a schedule of assets within 20 days after notice of the debtor's rights was served in accordance with subdivision (4) of subsection (a) of this section, or if the debtor does not request a hearing before the clerk within 20 days after service of the notice of rights and appear at the requested hearing, the judgment debtor has waived the exemptions provided in this ~~Article and in Sections 1 and 2 of Article X of the North Carolina Constitution.~~ Article. Upon request of the judgment creditor, the clerk must issue a writ of execution or writ of possession.

- ...
- (12) Appeal from a designation of exempt property by the clerk is to the district court judge. A party has 10 days from the date of entry of an order to appeal. Appeal from a designation of exempt property by a district court judge is to the Court of Appeals. Decisions of the Court of Appeals with regard to questions of valuation of property are final as provided in G.S. 7A-28. Other questions may be appealed as provided in G.S. 7A-30 and 7A-31.

...."

SECTION 3.(b) This section is effective when it becomes law and applies to motions and petitions filed on or after that date.

DISPUTE RESOLUTION COMMISSION STATUTORY CHANGES

SECTION 4.(a) G.S. 7A-38.2 reads as rewritten:

"§ 7A-38.2. Regulation of mediators and other neutrals.

- ...
- (c) The Dispute Resolution Commission shall consist of ~~17~~18 members: five judges appointed by the Chief Justice of the Supreme Court, at least two of whom shall be active superior

court judges, and at least two of whom shall be active district court judges; one clerk of superior court appointed by the Chief Justice of the Supreme Court; two mediators certified to conduct superior court mediated settlement conferences and two mediators certified to conduct equitable distribution mediated settlement conferences appointed by the Chief Justice of the Supreme Court; one certified district criminal court mediator who is a representative of a community mediation center appointed by the Chief Justice of the Supreme Court; a district attorney appointed by the Chief Justice of the Supreme Court; a court management staff member appointed by the Chief Justice of the Supreme Court; two practicing attorneys who are not certified as mediators appointed by the President of the North Carolina State Bar, one of whom shall be a family law specialist; and three citizens knowledgeable about mediation, one of whom shall be appointed by the Governor, one by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, and one by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121. Commission members shall serve three-year terms and shall be ineligible to serve more than two consecutive terms. Members appointed to fill unexpired terms shall be eligible to serve two consecutive terms upon the expiration of the unexpired term. The Chief Justice shall designate one of the members to serve as chair for a two-year term. Members of the Commission shall be compensated pursuant to G.S. 138-5.

Vacancies shall be filled for unexpired terms and full terms in the same manner as incumbents were appointed. Appointing authorities may receive and consider suggestions and recommendations of persons for appointment from the Dispute Resolution Commission, the Family Law, Litigation, and Dispute Resolution Sections of the North Carolina Bar Association, the North Carolina Association of Professional Family Mediators, the North Carolina Conference of Clerks of Superior Court, the North Carolina Conference of Court Administrators, the Mediation Network of North Carolina, the Dispute Resolution Committee of the Supreme Court, the Conference of Chief District Court Judges, the Conference of Superior Court Judges, the Director of the Administrative Office of the Courts, and the Child Custody Mediation Advisory Committee of the Administrative Office of the Courts.

...
(m) Members of the Commission and its employees are immune from civil suit for all conduct undertaken in the course of their official duties."

SECTION 4.(b) This section is effective when it becomes law and applies to conduct occurring on or after that date.

JUDICIAL STANDARDS COMMISSION ALTERNATE MEMBERS AND TECHNICAL CORRECTIONS

SECTION 5. G.S. 7A-375 reads as rewritten:

"§ 7A-375. Judicial Standards Commission.

(a) Composition. – The Judicial Standards Commission shall consist of the following residents of North Carolina: one Court of Appeals judge, two superior court judges, and two district court judges, each appointed by the Chief Justice of the Supreme Court; four members of the State Bar who have actively practiced in the courts of the State for at least 10 years, elected by the State Bar Council; and four citizens who are not judges, active or retired, nor members of the State Bar, two appointed by the Governor, and two appointed by the General Assembly in accordance with G.S. 120-121, one upon recommendation of the President Pro Tempore of the Senate and one upon recommendation of the Speaker of the House of Representatives. ~~The Court of Appeals judge shall act as chair of the Commission.~~ The General Assembly shall also appoint alternate Commission members for the Commission members the General Assembly has appointed to serve in the event of scheduling conflicts, conflicts of interest, disability, or other disqualification arising in a particular case. The alternate members shall have the same qualifications for appointment as the original members.

(a1) Terms. – The Court of Appeals judge shall act as chair of the Commission and shall serve at the pleasure of the Chief Justice. Terms of other Commission members shall be for six years. No member who has served a full six-year term is eligible for reappointment. Members who are not judges are entitled to per diem, and all members are entitled to reimbursement for travel and subsistence expenses at the rate applicable to members of State boards and commissions generally for each day engaged in official business.

~~(b) The Court of Appeals judge shall serve at the pleasure of the Chief Justice. Terms of other Commission members shall be for six years. No member who has served a full six-year term is eligible for reappointment. If Vacancies. – A vacancy on the Commission arises upon the resignation or death of a member or if a member ceases to have the qualifications required for the member's appointment, that person ceases to be a member. appointment. Vacancies of members, other than those appointed by the General Assembly, are filled in the same manner as the original appointment, for the remainder of the term. Vacancies of members appointed by the General Assembly are filled as provided under G.S. 120-122. Members who are not judges are entitled to per diem and all members are entitled to reimbursement for travel and subsistence expenses at the rate applicable to members of State boards and commissions generally, for each day engaged in official business.~~ by the alternate member appointed pursuant to subsection (a) of this section and shall serve for the remainder of the unexpired term. In the absence of an alternate member appointed by the General Assembly pursuant to subsection (a) of this section, or if an alternate member is unable to serve, such vacancy shall be filled as provided under G.S. 120-122.

~~(c) Disability or Disqualification. – If a member of the Commission who is a judge appointed by the Chief Justice becomes disabled, or becomes a respondent before the Commission, the Chief Justice shall appoint an alternate member to serve during the period of disability or disqualification. The alternate member shall be from the same division of the General Court of Justice as the judge whose place the alternate member takes. If a member of the Commission who is not a judge becomes disabled, disabled or is disqualified from participating in a disciplinary proceeding, the Governor, if he appointed the disabled member, shall appoint, or the State Bar Council, if it elected the disabled member, shall elect, an alternate member to serve during the period of disability. disability or disqualification. If a member of the Commission who is not a judge and who was appointed by the General Assembly becomes disabled, an disabled or is disqualified from participating in a disciplinary proceeding, the chair of the Commission shall call upon the alternate member shall be appointed to serve during the period of disability in the same manner as if there were a vacancy to be filled under G.S. 120-122. In a particular case, if a member becomes disqualified, or is successfully challenged for cause, the member's seat for that case shall be filled by an alternate member selected as provided in this subsection.~~ appointed pursuant to subsection (a) of this section.

~~(d) Extended Terms to Complete Proceedings. – A member may serve after expiration of the member's term only to participate until the conclusion of a disciplinary proceeding begun before expiration of the member's term. Such participation shall not prevent the successor from taking office, but the successor may not participate in the proceeding for which the predecessor's term was extended. This subsection shall apply also to any judicial member whose membership on the Commission is automatically terminated by retirement or resignation from judicial office, or expiration of the term of judicial office.~~

~~(e) Civil Immunity. – Members of the Commission and its employees are immune from civil suit for all conduct undertaken in the course of their official duties.~~

~~(f) Commission Staff. – The chair of the Commission may employ, if funds are appropriated for that purpose, an executive director, Commission counsel, investigator, and any support staff as may be necessary to assist the Commission in carrying out its duties. With the approval of the Chief Justice, for specific cases, the chair also may employ special counsel or call upon the Attorney General to furnish counsel. In addition, with the approval of the Chief Justice, for specific cases, the chair or executive director also may call upon the Director of the~~

State Bureau of Investigation to furnish an investigator who shall serve under the supervision of the executive director. While performing duties for the Commission, the executive director, counsel, and investigator have authority throughout the State to serve subpoenas or other process issued by the Commission in the same manner and with the same effect as an officer authorized to serve process of the General Court of Justice.

(g) Rules. – The Commission may adopt, and may amend from time to time, its own rules of procedure for the performance of the duties and responsibilities prescribed by this Article, subject to the approval of the Supreme Court."

CLARIFY ORDER FOR ARREST FOR FAILURE TO APPEAR FOLLOWING RECEIPT OF CRIMINAL SUMMONS

SECTION 6.(a) G.S. 15A-305(b) reads as rewritten:

"(b) When Issued. – An order for arrest may be issued when:

...

- (3) The defendant has failed to appear as required by a duly executed criminal summons issued pursuant to G.S. 15A-303 that charged the defendant with a criminal offense, or a citation issued by a law enforcement officer or other person authorized by statute pursuant to G.S. 15A-302 that charged the defendant with a misdemeanor.

...."

SECTION 6.(b) This section is effective when it becomes law and applies to orders for arrests issued on or after that date.

CLARIFY COURT PLEA EXCEPTIONS

SECTION 7.(a) G.S. 15A-1011(a) reads as rewritten:

"(a) A defendant may plead not guilty, guilty, or no contest "(nolo contendere)." A plea may be received only from the defendant himself in open court except ~~when~~ in any of the following circumstances:

- (1) The defendant is a corporation, in which case the plea may be entered by counsel or a corporate ~~officer;~~ officer.
- (2) There is a waiver of arraignment and a filing of a written plea of not guilty under ~~G.S. 15A-945;~~ G.S. 15A-945.
- (3) In misdemeanor cases when there is a written waiver of appearance submitted with the approval of the presiding ~~judge;~~ judge.
- (4) Written pleas ~~in traffic cases, hunting and fishing offenses under Chapter 113, and boating offenses under Chapter 75A for the types of offenses specified in G.S. 7A-273(2) and G.S. 7A-273(2a) are authorized under G.S. 7A-146(8);~~ G.S. 7A-148(a).

...."

SECTION 7.(b) G.S. 7A-180 reads as rewritten:

"§ 7A-180. Functions of clerk of superior court in district court matters.

The clerk of superior court:

- (1) Has and exercises all of the judicial powers and duties in respect of actions and proceedings pending from time to time in the district court of ~~his~~ the clerk's county which are now or hereafter conferred or imposed upon ~~him~~ the clerk by law in respect of actions and proceedings pending in the superior court of ~~his county;~~ the clerk's county.
- (2) Performs all of the clerical, administrative and fiscal functions required in the operation of the district court of ~~his~~ the clerk's county in the same manner as ~~he~~ the clerk is required to perform ~~such~~ functions in the operation of the superior court of ~~his county;~~ the clerk's county.

- (3) Maintains, under the supervision of the Administrative Office of the Courts, an office of uniform consolidated records of all judicial proceedings in the superior court division and the district court division of the General Court of Justice in ~~his~~the clerk's county. Those records shall include civil actions, special proceedings, estates, criminal actions, juvenile actions, minutes of the court and all other records required by law to be maintained. The form and procedure for filing, docketing, indexing, and recording shall be as prescribed by the Administrative Officer of the Courts notwithstanding any contrary statutory provision as to the title and form of the record or as a method of ~~indexing~~indexing.
- (4) Has the power to accept written appearances, waivers of trial or hearing and pleas of guilty or admissions of responsibility for the types of offenses specified in G.S. 7A-273(2) and G.S. 7A-273(2a) in accordance with the schedules of offenses promulgated by the Conference of Chief District Judges pursuant to G.S. 7A-148, and in ~~such~~those cases, to enter judgment and collect the fine or penalty and ~~costs~~costs.
- (5) Has the power to issue warrants of arrest valid throughout the State, and search warrants valid throughout the county of the issuing ~~clerk~~clerk.
- (6) Has the power to conduct an initial appearance in accordance with Chapter 15A, Article 24, Initial Appearance, and to fix conditions of release in accordance with Chapter 15A, Article 26, ~~Bail~~Bail.
- (7) Continues to exercise all powers, duties and authority ~~theretofore~~ vested in or imposed upon clerks of superior court by general law, with the exception of jurisdiction in juvenile ~~matters~~and matters.
- (8) Has the power to accept written appearances, waivers of trial and pleas of guilty to violations of G.S. 14-107 when restitution, including service charges and processing fees allowed under G.S. 14-107, is made, the amount of the check is two thousand dollars (\$2,000) or less, and the warrant does not charge a fourth or subsequent violation of this statute, and, in ~~such~~those cases, to enter ~~such~~ judgments as the chief district judge shall direct and, forward the amounts collected as restitution to the appropriate prosecuting witnesses and to collect the costs.

...."

SECTION 7.(c) This section is effective when it becomes law and applies to pleas received on or after that date.

CLARIFY TIME ALLOWED FOR DEFENDANT APPELLANT TO MAKE RENTAL PAYMENTS UNDER RESIDENTIAL RENTAL AGREEMENT

SECTION 8. G.S. 42-34.1(a) reads as rewritten:

"(a) If the judgment in district court is against the defendant appellant, it shall be sufficient to stay execution of the judgment during the 30-day time period for taking an appeal provided for in Rule 3 of the North Carolina Rules of Appellate Procedure if the defendant appellant posts a bond as provided in G.S. 42-34(b), and no additional security under G.S. 1-292 is required. If the defendant appellant fails to make rental payments as provided in the undertaking within five business days of the day rent is due under the terms of the residential rental agreement, the clerk of superior court shall, upon application of the plaintiff appellee, immediately issue a writ of possession, and the sheriff shall dispossess the defendant appellant as provided in G.S. 42-36.2."

ALLOW COURT PROCEEDINGS BY AUDIO/VIDEO TRANSMISSION

SECTION 9.(a) Article 7 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"§ 7A-49.6. Proceedings conducted by audio and video transmission.

(a) Except as otherwise provided in this section, judicial officials may conduct proceedings of all types using an audio and video transmission in which the parties, the presiding official, and any other participants can see and hear each other. Judicial officials conducting proceedings by audio and video transmission under this section must safeguard the constitutional rights of those persons involved in the proceeding and preserve the integrity of the judicial process.

(b) Each party to a proceeding involving audio and video transmission must be able to communicate fully and confidentially with his or her attorney if the party is represented by an attorney.

(c) In a civil proceeding involving a jury, the court may allow a witness to testify by audio and video transmission only upon finding in the record that good cause exists for doing so under the circumstances.

(d) A party may object to conducting a civil proceeding by audio and video transmission. If the presiding official finds that the party has demonstrated good cause for the objection, the proceeding must not be held by audio and video transmission. If there is no objection, or if there is an objection and good cause is not shown, the presiding official may conduct the proceeding by audio and video transmission.

(e) Except as otherwise permitted by law, when the right to confront witnesses or be present is implicated in criminal or juvenile delinquency proceedings, the court may not proceed by audio and video transmission unless the court has obtained a knowing, intelligent, and voluntary waiver of the defendant's or juvenile respondent's rights.

(f) Proceedings conducted by audio and video transmission shall be held in a manner that complies with any applicable federal and State laws governing the confidentiality and security of confidential information.

(g) If the proceeding is one that is open to the public, then the presiding official must facilitate access to the proceeding by the public and the media as nearly as practicable to the access that would be available were the proceeding conducted in person.

(h) If the proceeding is required by law to be recorded, then the audio and video transmission must be recorded in accordance with G.S. 7A-95, G.S. 7A-198, and other laws, as applicable.

(i) This section is not intended to limit the court's authority to receive remote testimony pursuant to statutes that otherwise permit it, including G.S. 15A-1225.1, 15A-1225.2, 15A-1225.3, 20-139.1, 8C-1, Rule 616, 50A-111, and 52C-3-315(f).

(j) All proceedings under this section shall be conducted using videoconferencing applications approved by the Administrative Office of the Courts.

(k) As used herein, the term "judicial official" has the same meaning as in G.S. 15A-101(5)."

SECTION 9.(b) This section is effective when it becomes law and applies to proceedings occurring on or after that date.

MODIFY VARIOUS PROVISIONS ALLOWING FOR REMOTE OR DIGITAL COURT PROCEEDINGS

SECTION 10.(a) G.S. 7B-1906(h) is repealed.

SECTION 10.(b) G.S. 15A-101.1(2) reads as rewritten:

"(2) "Document" means any pleading, criminal process, subpoena, complaint, motion, application, notice, affidavit, commission, waiver, consent, dismissal, order, judgment, or other writing intended in a criminal or contempt proceeding to authorize or require an action, to record a decision or to communicate or record information. ~~The term does not include search warrants.~~ A document may be created and exist in paper form or in electronic

form or in both forms. Each document shall contain the legible, printed name of the person who signed the document."

SECTION 10.(c) G.S. 15A-245(a) reads as rewritten:

"(a) Before acting on the application, the issuing official may examine on oath the applicant or any other person who may possess pertinent information, but information other than that contained in the affidavit may not be considered by the issuing official in determining whether probable cause exists for the issuance of the warrant unless the information is either recorded or contemporaneously summarized in the record or on the face of the warrant by the issuing official. The information must be shown by one or ~~more~~ both of the following:

- (1) ~~Affidavit; or~~ Affidavit.
- (2) Oral testimony under oath or affirmation before the issuing ~~official; or~~ official.
- (3) ~~Oral testimony under oath or affirmation presented by a sworn law enforcement officer to the issuing official by means of an audio and video transmission in which both parties can see and hear each other. Prior to the use of audio and video transmission pursuant to this subdivision, the procedures and type of equipment for audio and video transmission shall be submitted to the Administrative Office of the Courts by the senior regular resident superior court judge and the chief district court judge for a judicial district or set of districts and approved by the Administrative Office of the Courts."~~

SECTION 10.(d) G.S. 15A-304(d) reads as rewritten:

"(d) Showing of Probable Cause. – A judicial official may issue a warrant for arrest only when he is supplied with sufficient information, supported by oath or affirmation, to make an independent judgment that there is probable cause to believe that a crime has been committed and that the person to be arrested committed it. The information must be shown by one or ~~more~~ both of the following:

- (1) ~~Affidavit;~~ Affidavit.
- (2) Oral testimony under oath or affirmation before the issuing ~~official; or~~ official.
- (3) ~~Oral testimony under oath or affirmation presented by a sworn law enforcement officer to the issuing official by means of an audio and video transmission in which both parties can see and hear each other. Prior to the use of audio and video transmission pursuant to this subdivision, the procedures and type of equipment for audio and video transmission shall be submitted to the Administrative Office of the Courts by the senior regular resident superior court judge and the chief district court judge for a judicial district or set of districts and approved by the Administrative Office of the Courts.~~

If the information is insufficient to show probable cause, the warrant may not be issued. A judicial official shall not refuse to issue a warrant for the arrest of a person solely because a prior warrant has been issued for the arrest of another person involved in the same matter."

SECTION 10.(e) G.S. 15A-511(a1) is repealed.

SECTION 10.(f) G.S. 15A-532 reads as rewritten:

"§ 15A-532. Persons authorized to determine conditions for ~~release; use of two-way audio and video transmission.~~ release.

(a) Judicial officials may determine conditions for release of persons ~~brought before them or as provided in subsection (b) of this section, in proceedings over which they are presiding,~~ in accordance with this Article.

(b) ~~Any proceeding under this Article to determine, modify, or revoke conditions of pretrial release in a noncapital case may be conducted by an audio and video transmission between the judicial official and the defendant in which the parties can see and hear each other. If the defendant has counsel, the defendant shall be allowed to communicate fully and~~

confidentially with his attorney during the proceeding. Upon motion of the defendant, the court may not use an audio and video transmission.

~~(e) Prior to the use of audio and video transmission pursuant to subsection (b) of this section, the procedures and type of equipment for audio and video transmission shall be submitted to the Administrative Office of the Courts by the senior regular resident superior court judge for a judicial district or set of districts and approved by the Administrative Office of the Courts."~~

SECTION 10.(g) G.S. 15A-601 reads as rewritten:

"§ 15A-601. First appearance before a district court judge; right in felony and other cases in original jurisdiction of superior court; consolidation of first appearance before magistrate and before district court judge; first appearance before clerk of superior court; use of two-way audio and video transmission.court.

...

~~(a1) A first appearance in a noncapital case may be conducted by an audio and video transmission between the judge and the defendant in which the parties can see and hear each other. If the defendant has counsel, the defendant shall be allowed to communicate fully and confidentially with his attorney during the proceeding.~~

~~(a2) Prior to the use of audio and video transmission pursuant to subsection (a1) of this section, the procedures and type of equipment for audio and video transmission shall be submitted to the Administrative Office of the Courts by the senior regular resident superior court judge for a judicial district or set of districts and approved by the Administrative Office of the Courts.~~

...."

SECTION 10.(h) G.S. 15A-941 reads as rewritten:

"§ 15A-941. Arraignment before judge only upon written request; use of two-way audio and video transmission; entry of not guilty plea if not arraigned.

(a) Arraignment consists of bringing a defendant in open court or as provided in subsection (b) of this section before a judge having jurisdiction to try the offense, advising him of the charges pending against him, and directing him to plead. The prosecutor must read the charges or fairly summarize them to the defendant. If the defendant fails to plead, the court must record that fact, and the defendant must be tried as if he had pleaded not guilty.

~~(b) An arraignment in a noncapital case may be conducted by an audio and video transmission between the judge and the defendant in which the parties can see and hear each other. If the defendant has counsel, the defendant shall be allowed to communicate fully and confidentially with his attorney during the proceeding.~~

~~(e) Prior to the use of audio and video transmission pursuant to subsection (b) of this section, the procedures and type of equipment for audio and video transmission shall be submitted to the Administrative Office of the Courts by the senior regular resident superior court judge for the judicial district or set of districts and approved by the Administrative Office of the Courts.~~

...."

SECTION 10.(i) G.S. 50B-2(e) reads as rewritten:

"(e) All documents filed, issued, registered, or served in an action under this Chapter relating to an ex parte, emergency, or permanent domestic violence protective order may be filed electronically. Hearings held to consider ex parte relief pursuant to subsection (e) of this section may be held via video conference. Hearings held to consider emergency or permanent relief pursuant to subsections (a) or (b) of this section shall not be held via video conference."

SECTION 10.(j) G.S. 50C-6(e) is repealed.

SECTION 10.(k) G.S. 50C-7 reads as rewritten:

"§ 50C-7. Permanent civil no-contact order.

Upon a finding that the victim has suffered an act of unlawful conduct committed by the respondent, a permanent civil no-contact order may issue if the court additionally finds that process was properly served on the respondent, the respondent has answered the complaint and notice of hearing was given, or the respondent is in default. No permanent civil no-contact order shall be issued without notice to the respondent. ~~Hearings held to consider permanent relief pursuant to this section shall not be held via video conference.~~"

SECTION 10.(l) G.S. 122C-268(g) reads as rewritten:

"(g) To the extent feasible, hearings shall be held in an appropriate room at the facility in which the respondent is being treated in a manner approved by the chief district court judge if the facility is located within the presiding judge's district court district as defined in G.S. 7A-133. Hearings may be held in the judge's chambers. A hearing may not be held in a regular courtroom, over objection of the respondent, if in the discretion of a judge a more suitable place is available. ~~A hearing may be held by audio and video transmission between the treatment facility and a courtroom in a manner that allows (i) the judge and the respondent to see and hear each other and (ii) the respondent to communicate fully and confidentially with the respondent's counsel during the proceeding. Prior to any hearing held by audio and video transmission, the chief district court judge shall submit to the Administrative Office of the Courts the procedures and type of equipment for audio and video transmission for approval by the Administrative Office of the Courts. Notwithstanding the provisions of this subsection, if the respondent, through counsel, objects to a hearing held by audio and video transmission, the hearing shall be held in the physical presence of the presiding district court judge. Regardless of the manner and location for hearings, hearings shall be held in a manner that complies with any applicable federal and State laws governing the confidentiality and security of confidential information, including any information transmitted from the treatment facility by audio and video transmission. information.~~ If the respondent has counsel, the respondent shall be allowed to communicate fully and confidentially with his attorney during the proceeding. ~~Prior to the use of the audio and video transmission, the procedures and type of equipment for audio and video transmission shall be submitted to the Administrative Office of the Courts by the chief district court judge and approved by the Administrative Office of the Courts.~~"

SECTION 10.(m) This section is effective when it becomes law and applies to proceedings occurring on or after that date.

EXPAND THE ABILITY OF THE CHIEF JUSTICE OF THE SUPREME COURT TO ASSIGN EMERGENCY JUDGES TO HOLD REGULAR AND SPECIAL SESSIONS OF COURT

SECTION 11.(a) Notwithstanding the limitations set forth in G.S. 7A-52(a), the Chief Justice of the Supreme Court may expand the active list of emergency superior court judges to no more than 25 emergency superior court judges.

SECTION 11.(b) In addition to the reasons found in G.S. 7A-52(a)(1) through (7) that the Chief Justice may assign emergency judges, the Chief Justice may also assign emergency judges to hold regular or special sessions of court to address case management issues created by the COVID-19 pandemic.

SECTION 11.(c) This section is effective when it becomes law and shall expire on July 1, 2022.

MEDIATED SETTLEMENT AGREEMENTS SIGNED BY PARTIES' DESIGNEES

SECTION 12.(a) G.S. 7A-38.1(l) reads as rewritten:

"(l) Inadmissibility of negotiations. – Evidence of statements made and conduct occurring in a mediated settlement conference or other settlement proceeding conducted under this section, whether attributable to a party, the mediator, other neutral, or a neutral observer present at the

settlement proceeding, shall not be subject to discovery and shall be inadmissible in any proceeding in the action or other civil actions on the same claim, except:

- (1) In proceedings for sanctions under this section;
- (2) In proceedings to enforce or rescind a settlement of the action;
- (3) In disciplinary hearings before the State Bar or the Dispute Resolution Commission; or
- (4) In proceedings to enforce laws concerning juvenile or elder abuse.

As used in this section, the term "neutral observer" includes persons seeking mediator certification, persons studying dispute resolution processes, and persons acting as interpreters.

No settlement agreement to resolve any or all issues reached at the proceeding conducted under this subsection or during its recesses shall be enforceable unless it has been reduced to writing and signed by the parties against whom enforcement is ~~sought~~ sought or signed by their designees. No evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed in a mediated settlement conference or other settlement proceeding.

...."

SECTION 12.(b) G.S. 7A-38.3B(i) reads as rewritten:

"(i) Agreements. – In matters before the clerk in which agreements are reached in a mediation conducted pursuant to this section, or during one of its recesses, those agreements shall be treated as follows:

- (1) Where as a matter of law, a matter may be resolved by agreement of the parties, a settlement is enforceable only if it has been reduced to writing and signed by the parties against whom enforcement is ~~sought~~ sought or signed by their designees.
- (2) In all other matters before the clerk, including guardianship and estate matters, all agreements shall be delivered to the clerk for consideration in deciding the matter."

SECTION 12.(c) This section is effective when it becomes law and applies to settlement agreements reached on or after that date.

DIRECT ADMINISTRATIVE OFFICE OF THE COURTS TO DEVELOP RULES OF CONDUCT FOR MAGISTRATES

SECTION 13.(a) Article 16 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"§ 7A-171.3. Magistrate rules of conduct.

The Administrative Office of the Courts shall prescribe rules of conduct for all magistrates not inconsistent with the Constitution of the United States or inconsistent with the Constitution of the State of North Carolina. The rules of conduct shall apply to all magistrates and shall include rules governing the following:

- (1) Standards of professional conduct and timeliness.
- (2) Required duties and responsibilities.
- (3) Methods for ethical decision making.
- (4) Any other topic deemed relevant by the Administrative Office of the Courts."

SECTION 13.(b) The Administrative Office of the Courts shall prescribe the rules required by subsection (a) of this section by October 1, 2021.

SECTION 13.(c) This section becomes effective October 1, 2021, and applies to magistrate conduct on or after that date.

APPLICATION OF FUNDS AND PROCEEDS PAID TO THE CLERK BY SHERIFF

SECTION 14.(a) G.S. 1-239 reads as rewritten:

"§ 1-239. Paid to clerk; docket credited; transcript to other counties; notice to attorney for judgment creditor; judgment creditor to give notice of payment; entry of payment on docket; penalty for failure to give notice of payment.

...

(c) Upon receipt by the judgment creditor of any payment of money upon a judgment, the judgment creditor shall within 60 days after receipt of the payment give satisfactory notice thereof to the clerk of the superior court in which the judgment was rendered, ~~and the which~~ notice shall specify the date and amount of the payment received. If the creditor provides to the clerk a single notice of multiple payments from the debtor, the notice shall specify the date of each individual payment and the amount received on each date. The clerk shall thereafter promptly enter the any such payment on the judgment docket of the court, and the crediting each payment against the judgment as of the date received by the creditor. The clerk shall immediately forward a certificate thereof to the clerk of the superior court of each county to whom a transcript of the judgment has been sent, and the clerk of each superior court shall thereafter promptly enter the same on the judgment docket of the court and file the original with the judgment roll in the action. If the judgment creditor fails to file the notice required by this subsection within 30 days following written demand by the debtor, he may be required to pay a civil penalty of one hundred dollars (\$100.00) in addition to attorneys' fees and any loss caused to the debtor by such failure. The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(d) Payment of money judgment to clerk's office under execution.

- (1) When proceeds are paid to the clerk as a result of levy and an execution sale pursuant to Article 29B of this Chapter, the proceeds shall be credited and applied to the judgment as of the date the proceeds are received by the clerk.
- (2) When funds are paid to the clerk pursuant to the levy under execution without an execution sale, the funds shall be credited and applied to the judgment as of the date the funds are collected."

SECTION 14.(b) G.S. 1-310 reads as rewritten:

"§ 1-310. When dated and returnable.

Executions shall be dated as of the day on which they were issued, and shall be returnable to the court from which they were issued not more than 90 days from said date, and no executions against property shall issue until 10 days after entry of judgment. The sheriff shall separately notate on the return of execution for a judgment requiring the payment of money (i) any amount collected without an execution sale and the date of collection and, if multiple payments to the sheriff are collected on different dates pursuant to a single writ of execution, the individual dates of collection and the amount collected on each date and (ii) the date of levy and description of property levied and sold through an execution sale pursuant to Article 29B of this Chapter."

SECTION 14.(c) G.S. 1-339.70 reads as rewritten:

"§ 1-339.70. Disposition of proceeds of sale.

(a) After deducting all sums due him on account of the sale, including the expenses incurred in caring for the property so long as his responsibility for such care continued, the sheriff shall pay the proceeds of the sale to the clerk of the superior court who issued the execution, and the clerk shall furnish the sheriff a receipt therefor.

(a1) Proceeds paid by the sheriff to the clerk resulting from an execution sale shall be credited and applied to the judgment as of the date the proceeds are received by the clerk.

...."

SECTION 14.(d) G.S. 162-18 reads as rewritten:

"§ 162-18. Payment of money collected on execution.

In all cases where a sheriff has collected money upon an execution placed in his hands, if there be no bona fide contest over the application thereof, he shall immediately pay the same ~~to the plaintiff, or~~ into the office of the clerk of the court from which the execution issued."

SECTION 14.(e) This section is effective when it becomes law.

CLARIFY NOTICE OF EXPUNCTION ORDERS

SECTION 15. G.S. 15A-150 reads as rewritten:

"§ 15A-150. Notification requirements.

...
(b) Notification to Other State and Local Agencies. – Unless otherwise instructed by the Administrative Office of the Courts pursuant to an agreement entered into under subsection (e) of this section for the electronic or facsimile transmission of information, the clerk of superior court in each county in North Carolina shall send a certified copy of an order granting an expunction to a person named in subsection (a) of this section to (i) all of the agencies listed in this subsection and (ii) the person granted the expunction. Expunctions granted pursuant to G.S. 15A-146(a4) are excluded from all clerk of superior court notice provisions of this subsection. An agency receiving an order under this subsection shall purge from its records all entries made as a result of the charge or conviction ordered expunged, except as provided in G.S. 15A-151. The list of agencies is as follows:

- (1) The sheriff, chief of police, or other arresting agency.
- (2) When applicable, the Division of Motor Vehicles.
- (3) Any State or local agency identified by the petition as bearing record of the offense that has been expunged.
- (4) The Department of Public Safety, Combined Records Section.
- (5) The State Bureau of Investigation.

...
(e) The Director of the Administrative Office of the Courts may enter into an agreement with any of the State agencies listed in subsection (b) of this section for electronic or facsimile transmission of any information that must be provided under this section. The Administrative Office of the Courts also may provide notice to State and local agencies, in a manner and format determined by the Administrative Office of the Courts, of expunctions granted pursuant to G.S. 15A-146(a4)."

SERVICE OF MOTIONS/PROOF OF SERVICE

SECTION 16.(a) G.S. 15A-951 reads as rewritten:

"§ 15A-951. Motions in general; definition, service, and filing.

...
(b) Each written motion must be served upon the attorney of record for the opposing party or upon the defendant if he is not represented by counsel. Service upon the attorney or upon a party ~~may be made by delivering a copy of the motion to him or by mailing it to him at his address of record. Delivery of a copy within the meaning of this Article means handing it to the attorney or to the party or leaving it at the attorney's office with an associate or employee. Service by mail is complete upon deposit of the motion enclosed in a postpaid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the Postal Service of the United States shall be made as provided in G.S. 1A-1, Rule 5.~~

(c) All written motions must be filed with the court. Proof of service must be made by filing with the court a ~~certificate~~ certificate of service as provided in G.S. 1A-1, Rule 5(b1).

- (1) ~~By the prosecutor, attorney, or defendant making the motion that the paper was served in the manner prescribed; or~~
- (2) ~~Of acceptance of service by the prosecutor, attorney, or defendant to be served.~~

~~The certificate must show the date and method of service or the date of acceptance of service."~~

SECTION 16.(b) This section becomes effective July 1, 2021, and applies to motions made on or after that date.

DECLARATIONS UNDER PENALTY OF PERJURY

SECTION 17.(a) Article 11 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"§ 7A-98. Unsworn declarations under penalty of perjury.

(a) Any matter required or permitted to be supported, evidenced, established, or proved in writing under oath or affirmation may, if filed electronically pursuant to rules promulgated by the Supreme Court under G.S. 7A-49.5, with like force and effect be supported, evidenced, established, or proved by an unsworn declaration in writing, subscribed by the declarant and dated, that the statement is true under penalty of perjury.

(b) Declarations given pursuant to this section shall be deemed sufficient if given in substantially the following form:

"I declare (or certify, verify, or state) under penalty of perjury under the laws of North Carolina that the foregoing is true and correct. Executed on (date). (Signature)."

(c) Except as otherwise provided by law, this section does not apply to, and such unsworn declarations shall not be deemed sufficient for, any of the following:

(1) Oral testimony.

(2) Oaths of office.

(3) Any statement under oath or affirmation required to be taken before a specified official other than a notary public.

(4) Any will or codicil executed pursuant to G.S. 31-11.6.

(5) Any real property deed, contract, or lease requiring an acknowledgment pursuant to G.S. 47-17."

SECTION 17.(b) G.S. 14-209 reads as rewritten:

"§ 14-209. Punishment for perjury.

If any person knowingly and intentionally makes a false statement under oath or affirmation in any suit, controversy, matter or cause, or in any unsworn declaration deemed sufficient pursuant to G.S. 7A-98 depending in any of the courts of the State; in any deposition or affidavit taken pursuant to law; in any oath or affirmation duly administered of or concerning any matter or thing where such person is lawfully required to be sworn or affirmed, that person is guilty of perjury, and punished as a Class F felon."

SECTION 17.(c) This section becomes effective December 1, 2021, and applies to offenses committed on or after that date.

SEVERABILITY CLAUSE

SECTION 18. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.

EFFECTIVE DATE

SECTION 19. Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 9th day of June, 2021.

s/ W. Ted Alexander
Presiding Officer of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Roy Cooper
Governor

Approved 12:45 p.m. this 18th day of June, 2021

REPORT OF THE CJRAC PRIVACY SUBCOMMITTEE

August 20, 2021

The Privacy Subcommittee of the Chief Justice's Rules Advisory Commission (CJRAC) held its inaugural meeting on 3 August 2021. Attending were Grant E. Buckner, Seth Ascher, Mark Anderson, and Michael Robinson.

INTRODUCTION

The roll out of Odyssey as a statewide electronic Court filing system will radically change the way civil and criminal proceedings are conducted. Among other issues that will need to be addressed is the protection of "Personal Identifying Information" (PID) from the general public. While the filing of documents containing PID is already a concern for participants in the civil justice system, the increased availability of court filings on-line will make the issue of PID availability much more important.

Currently, the requirement of protecting such information from public disclosure is embedded within a number of statutes and rules.

N.C.G.S. § 132-1.10

N.C.G.S. § 132-1.10 generally prohibits the dissemination of PID, defined as including:

Social security number

Employer taxpayer identification

Driver's license number

State identification number

Passport number

Checking and savings account numbers

Credit card and debit card numbers

Pin codes and passwords

G.S. § 132-1.10(b)(5) prohibits the clerk of superior court from “[i]ntentionally . . . mak[ing PID] available to the general public”.¹ Further, pursuant to subsection (d) of the same statute, “[n]o person preparing or filing a document to be . . . filed in the official records . . . of the courts may include [PID] in that document, unless otherwise expressly required by law or court order. . . . Any person who violates this subsection shall be guilty of an infraction, punishable by a fine not to exceed five hundred dollars (\$500.00) for each violation.”

In addition to the prohibition on a clerk, as contained in G.S. § 132-1.10(b)(5), the clerk is obligated pursuant to 132-1.10(g) to “conspicuously post signs throughout his or her offices for public viewing and conspicuously post a notice on any Internet Web site available to the general public . . . stating [the prohibitions on filing documents containing PID]. . . .”

Pursuant to G.S. § 132-1.10(g)(2) a person has a right to request that the clerk of court remove from the public record a filing containing PID. Any affected person, pursuant to 132-1.20(h), may also petition the court for an order directing compliance with G.S. 132-1.10. No procedure for consideration and determination of these requests and petitions is contained within the statute.

Rules of Civil Procedure

Rule 11 of the North Carolina Rules of Civil Procedure provides that an attorney or party’s signature on a filing with the court “constitutes a certificate by him that he has read the . . . paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry . . . it is warranted by existing law”

Rules of General Practice

Rule 5(e) of the General Rules of Practice provides that “[a] person should omit or redact nonpublic and unneeded sensitive information in a document before filing it with the court.”

¹ Pursuant to G.S. § 132-1.10(h) no liability shall accrue to a clerk of court or his or her agent for a violation of G.S. 132-1.10.

Rule 27 outlines a procedure for sealing documents filed with a court, requiring a person to move for a document to be filed under seal and for the court to limit disclosure until ruling on the motion. This procedure will be most effective at protecting private information when that information belongs to the person filing it. While the rule allows any person interested in the confidentiality of a document to file a motion, there may be some practical delay for a non-movant or stranger who does not know such a document is being filed.

Rules of Professional Conduct for Attorneys

RPC 1.1 provides that “A lawyer shall not handle a legal matter that the lawyer knows or should know he or she is not competent to handle without associating with a lawyer who is competent to handle the matter. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.”

Comment 8 to Rule 1.1 provides “To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with the technology relevant to the lawyer’s practice”

RPC 1.6(c), “Confidentiality of Information” provides that “A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.”

Comment 19 to RPC 1.6 provides “Paragraph (c) requires a lawyer to act competently to safeguard information acquired during the representation of a client against unauthorized access by third parties and against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer’s supervision. See Rules 1.1, 5.1, and 5.3. The unauthorized access to, or the inadvertent or unauthorized disclosure of, information acquired during the professional relationship with a client does not constitute a violation of paragraph (c) if the lawyer has made reasonable efforts to prevent the access or disclosure.”

In combination, the RPCs and Comments thereto support the obligation of an attorney filing papers with the Court to be aware of how filing technology works and to remove PID from documents before they are filed. However, as Comment 19 notes, an inadvertent violation of the provisions regarding PID is not an ethical violation if the lawyer has made reasonable efforts to prevent disclosure. The rule also may not be sufficiently clear as to their obligations regarding the private information of non-clients obtained during the course of representation.

SUBCOMMITTEE RECOMMENDATION

The Privacy Subcommittee believes that the CJRAC should consider recommending changes/additions to the Rules of Civil Procedure, the General Rules of Practice, and N.C.G.S. § 132-1.10. The CJRAC should also consider requesting that the North Carolina State Bar Council add a comment to RPC 1.6 or issue a formal ethics opinion regarding the improper filing of documents containing PID. Finally, the CJRAC should consult with the AOC regarding the roll out of Odyssey to make sure that safeguards are put in place to prompt filers of documents in the Odyssey system to comply with G.S. § 132-1.10. Specifically, the Subcommittee recommends consideration of the following:

Additional General Rule of Practice: The Subcommittee believes a new GRP dealing specifically with the obligation of civil filers to comply with G.S. § 132-1.10 by redacting PID may be helpful. Presently GRP 5(e) deals simply with the redaction of “nonpublic and unneeded sensitive information.” The subcommittee believes given the importance of protecting PID from public disclosure in an electronic environment, emphasizing the need for filers to redact PID through a new GRP focused on this statutory obligation will be beneficial.

Amendment of N.C.R. Civ. P 11: The Subcommittee also believes that the CJRAC should consider the advisability of an amendment of “Rule 11” to make explicit that the signature of an attorney on a paper filed with the court not only acts as a certification that it is well grounded in

fact and law, but that it also complies with the rules regarding protection of PID.

Electronic Filing Safeguards: The Business Court e-filing system currently requires filers to “check the box” confirming that they have read and are complying with the redaction rules regarding PID. The Subcommittee believes a similar safeguard should be embedded in the Odyssey e-filing system. Communication with the Odyssey system design team may be helpful in this regard.

Amendment of G.S. § 132-1.10: While the statute as currently drafted, provides a right of affected parties to seek relief from the clerk of court or a court of law for filings that are believed to be in violation of the PID redaction rules, it appears that the statute provides no procedure for exercise of that right. The Subcommittee believes that an amendment to G.S. § 132-1.10 to expressly create an expedited procedure which authorizes the clerk to place allegedly offending documents under seal promptly upon receipt of a petition and for an expedited determination by the clerk or the court, as relevant, may be beneficial.

State Bar Ethics Rules: The Subcommittee believes that embedding the obligation to properly redact documents in the Rules of Professional Conduct by a request for a Rules amendment, a Formal Ethics Opinion, or an additional Rule Comment, is in order and would serve to highlight for the practicing Bar the need to be vigilant about redaction.

Respectfully submitted,

Michael L. Robinson
Privacy Subcommittee Chair