



CHIEF JUSTICE'S RULES ADVISORY COMMISSION MINUTES OF MEETING

November 19, 2021

North Carolina Judicial Center, Hickory Boardroom
901 Corporate Center Drive
Raleigh, NC 27607

Call to Order

A meeting of the Chief Justice's Rules Advisory Commission was called to order at 2:04 p.m. on Friday, November 19, 2021, by North Carolina Court of Appeals Chief Judge Donna Stroud, Commission Chair.

Commission Members in Attendance in Person:

Mark Anderson, *Partner*, McGuireWoods LLP

Michelle Ball, *Clerk of Superior Court*, Johnston County

Mark Holt, *Partner*, Holt Sherlin LLP

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

Kellie Myers, *Trial Court Administrator*, Wake County

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

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

Christine Walczyk, *District Court Judge*, Wake County

Commission Members in Attendance via Webex:

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

Michael Robinson, *Special Superior Court Judge for Complex Business Cases*, North Carolina Business Court

Other Attendees in Attendance in Person:

Seth Ascher, *Assistant 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

Jon Harris, *General Counsel*, North Carolina Court of Appeals

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



Announcement of Resignation

Chief Judge Stroud announced the resignation of commission member Ann Anderson, effective November 5, 2021. Supreme Court of North Carolina Chief Justice Paul Newby will appoint a new member to fill the empty seat on the commission.

Approval of Minutes

The minutes from the August 20, 2021 meeting were approved, as written.

eCourts Update

Brad Fowler reported to the commission that the release of the *eWarrants* system in the pilot counties (Harnett, Johnston, Lee, and Wake) has been delayed until at least March 2022. He further reported that the original twelve county groupings included in the *Odyssey* rollout plan have not changed; however, the timing and scheduling of the tracks for those groupings may change.

Brad Fowler also noted that the configuration of the e-filing system has gone well, and another initial training and a refresher course will likely be offered to attorneys approximately two months prior to the rollout of *Odyssey*.

Subcommittee Reports

General Rule of Practice 15 Subcommittee

- Judge Paul Ridgeway, subcommittee chair, reported that since the last commission meeting, he met with Amanda Martin, general counsel to the N.C. Press Association. Amanda Martin agreed to assist the subcommittee with its work.
- The next meeting of the subcommittee is scheduled for Wednesday, January 12, 2022, at the Judicial Center. The primary objective of this meeting will be for the subcommittee to create a working draft of a proposed amendment to General Rule of Practice 15.
- Upon suggestion from the commission, the subcommittee will also consider whether video proceedings/live streams of court proceedings should be addressed in Rule 15. The subcommittee will continue to consult with Amanda Martin, as needed, as it works to draft the proposed rule.
- Next steps for the subcommittee: (1) meet on January 12, 2022, to create a draft of a proposed amendment to Rule 15; and (2) further consider the implications of Rule 15 on video proceedings/live streams of court proceedings.

Criminal Service Subcommittee

- Judge Christine Walczyk, subcommittee chair, reported that the work of the subcommittee is suspended after learning that the Office of General Counsel at the Administrative Office of the Courts has been looking into the implications of e-filing on North Carolina statutes concerning service in criminal cases.
- When the Office of General Counsel is finished with its review of the criminal service statutes, the Office of General Counsel will share its findings with the subcommittee. The subcommittee will then work with the Office of General Counsel to determine next steps.
- Next steps for the subcommittee: wait for further guidance from the Office of General Counsel.

Privacy Subcommittee

- Commission members received a copy of the subcommittee's working draft of a new Rule 5(f) of the North Carolina Rules of Civil Procedure, which is attached to these minutes.
- Judge Michael Robinson, subcommittee chair, invited feedback concerning the subcommittee's draft of Rule 5(f).
- Mike Mitchell suggested that the subcommittee consider whether General Rule of Practice 5 should be amended to cross-reference Rule 5(f) of the Rules of Civil Procedure in the event that the subcommittee's proposed Rule 5(f) is passed.
- Brad Fowler shared that the Administrative Office of the Courts is working to create forms which would be programmed to automatically redact certain types of PII, and *Odyssey* will have multiple levels of security and will contain an automatic-redaction feature. He suggested that the subcommittee take a look at the Rules of Recordkeeping to determine whether an amendment should be made to those rules to clarify the extent to which clerks are authorized to protect PII.
- Clerk Michelle Ball noted that additional guidance/resources from the Office of General Counsel about how clerks should proceed when a party requests that PII be redacted would be useful to clerks across the state.
- Next steps for the subcommittee: (1) a liaison of the subcommittee will contact the Office of General Counsel for assistance in resolving outstanding questions regarding the subcommittee's draft of Rule 5(f); and (2) the subcommittee will finalize the Rule 5(f) proposal.

New Business and Future Planning

The next commission meeting is to be scheduled for the first quarter of 2022. Grant Buckner will inform the commission members of the 2022 meeting schedule when it is decided early next year.

Adjournment

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

Minutes submitted by: /s/ Jennifer N. Wyatt
Assistant Administrative Counsel, Supreme Court of North Carolina

Date: 1/4/22

PROPOSED NEW RULE 5(f) OF THE NC RULES OF CIVIL PROCEDURE

5. Service and filing of pleadings and other papers.

* * *

(f) Privacy Protection for Filings Made with the Court.

(1) Redacted Filings. A person making an electronic or paper filing with the court shall redact or remove personal identifying information before filing, unless the court orders otherwise.

(2) Definition of Personal Identifying Information. Personal identifying information includes the following types of information: social-security or tax identification number; birth date; financial account number; drivers license number; state identification number; passport number; pin codes or passwords for accounts; the name of an individual known to be a minor at the time of the filing; the name of a confidential informant in a criminal case.

(3) Last Four Digits Allowed. A filing may contain: the last four digits of a social security or tax identification number; the year of a person's birth; the last four digits of a financial-account number; the initials of a person known to be a minor.

(4) Filing Under Seal. If personal identifying information cannot be removed or redacted from a document before filing, the document shall be filed provisionally under seal in accordance with General Rule of Practice 27.

(5) Removal of Personal Identifying Information After Filing. A person may file a written request to redact or remove their personal identifying information with the clerk of court in the county where the information was filed. The clerk shall consider the request on an expedited basis.

(6) Waiver of Protection. A person waives the protection of Rule 5(f) as to the person's own information by filing it without redaction and not under seal.

Commented [SA1]: Federal Rule 5.2 has some exclusions. The AOC should consider whether there are appropriate exclusions to this proposed new rule.

Commented [AS2]: OGC is considering recommending updates to N.C.G.S. § 132-1.10 (f), (f1), to point at other PII already protected by law. There are existing statutes that suggest that certain categories should not be public (Public Records Law, DMV regulations, Violence Against Women Act) which are not accounted for in the clerk's authority under 132.

If that happens, this section should track that authority.

Commented [AS3]: JR: I would want to think more about the policy implications. I continue to be concerned with potential incentives to keep information away from the public view.

Commented [AS4]: Should this more directly tie to N.C.G.S. § 132-1.10 (f), (f1)? The answer likely depends on any of the changes discussed in the comment to (2) of this rule.