

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

IN RE Local Rules of Practice )  
and Procedure for the North )  
Carolina Business Court )  
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**ORDER**

This Court hereby adopts the attached Amended General Rules of Practice and Procedure for the North Carolina Business Court (“Amended Local Rules”). The Amended Local Rules will apply to all cases currently pending before or later assigned to the North Carolina Business Court, including cases assigned to judges of the North Carolina Business Court under both N.C.G.S. § 7A-45.1 and Rule 2.1 of the General Rules of Practice for the Superior and District Courts.

SO ORDERED, this the 31st day of July, 2006.

/s/ Ben F. Tennille  
Honorable Ben F. Tennille  
Chief Special Superior Court Judge  
for Complex Business Cases

The following Local Rules for the North Carolina Business Court were prepared by a committee of the North Carolina Bar Association. The committee has attempted to anticipate questions and issues that will inevitably arise with the expanded use of technology in complex cases. The Rules have been adopted by the Court and are currently in effect.

**GENERAL RULES OF PRACTICE AND PROCEDURE  
FOR THE NORTH CAROLINA BUSINESS COURT**

**Adopted March 9, 2000**

**Revised \_\_\_\_\_, 2006**

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## *RULE 1 – PHILOSOPHY AND GOALS*

**1.1 – Citation to Rules.** These rules shall be known and cited as the General Rules of Practice and Procedure for the North Carolina Business Court. They may also be referred to in abbreviated form as “BCR” or “Business Court Rules” (e.g., this section may be cited as “BCR 1.1”).

**1.2 – Purpose.** The Business Court Rules are designed to facilitate the pretrial and trial of cases by the North Carolina Business Court and any other court(s) with comparable and compatible technical capabilities and otherwise subject to the North Carolina Rules of Civil Procedure and the General Rules of Practice for Superior and District Courts. They are intended to take advantage of computer-assisted methods of information processing and the transmission of such information by advanced communications equipment: (1) where feasible, (2) where elected by one or more parties and (3) where approved by the Court. They are not, however, intended to operate to the exclusion of paper-driven methods of handling litigation, absent prior agreement.

**1.3 – Environment.** These rules are designed to accommodate litigation and trial of cases utilizing electronic methods which include but are not limited to electronic filing, scanning, storage and reproduction of written material in machine-readable form suitable for transmission through a variety of communications media, as well as litigation and trial of cases in non-electronic form dependent upon the physical manipulation of paper writings.

**1.4 – Goals.** These rules and the equipment and methods they enable are intended to provide better access to Court information for litigants, counsel, and the public; increase the efficiency and understanding of Court personnel, counsel, and witnesses; decrease costs for litigants and others involved in the court system; and facilitate the efficient and effective

presentation of evidence in the courtroom. Whether applied in an electronic or non-electronic environment, these rules shall be construed and enforced to avoid technical delay, encourage civility, permit just and prompt determination of all proceedings and promote the efficient administration of justice.

**1.5 – Integration with Other Rules.** These rules are intended to supplement, not supplant, the North Carolina Rules of Civil Procedure and the General Rules of Practice for Superior and District Courts. Should any conflict be deemed to exist between the Business Court Rules and the North Carolina Rules of Civil Procedure or the General Rules of Practice for Superior and District Courts, the latter Rules shall control.

#### *RULE 2 – DEFINITIONS*

**2.1 – “Electronic Identity”** means the combination of Username and Password issued to a person by the Court and utilized by that person for the purpose of filing an electronic record.

**2.2 – “Electronic”** means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

**2.3 – “Electronic Agent”** means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part, without review or action by an individual.

**2.4 – “Electronic Record”** means a record created, generated, sent, communicated, received, or stored by electronic means. All electronic records shall be capable of being printed as paper, or transferred to archival media, without loss of content or material alteration of appearance.

**2.5 – “Electronic Security Procedure”** means a procedure employed for the purpose of verifying that an electronic signature, record, or performance is that of a specific person or for

detecting changes or errors in the information in an electronic record.

**2.6 – “Record”** means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

**2.7 – “Document”** means a related and paginated grouping of information items contained on a record.

**2.8 – “Information”** means data, text, images, sounds, or codes, manipulated manually or by computer hardware and software.

**2.9 – “Information Processing System”** means a system for creating, generating, sending, receiving, storing, displaying, or processing information on paper or in an electronic medium.

**2.10 – “Paper”** means any item subject to filing, service, or another use contemplated by these Rules.

### *RULE 3 – MANDATORY BUSINESS COURT JURISDICTION*

#### **3.1 – Compliance with N.C. Gen. Stat. § 7A-45.1.**

(a) A party shall file a Notice of Designation of an action as a mandatory complex business case under N.C. Gen. Stat. § 7A-45.4 by using Form 1 appearing at the end of these Rules. The time period for filing the Notice of Designation is explicitly set forth in N.C. Gen. Stat. § 7A-45.4. If the time period for filing a Notice of Designation expires with respect to a party, such party may not proceed under N.C. Gen. Stat. § 7A-45.4, but may seek assignment of the action to the Business Court under General Rule of Practice 2.1.

(b) In the event that a party amends a pleading under N.C. R. Civ. P. 15 (either by right or with leave of Court), if the amendment raises a new material issue listed in subsections (a)(1) through (a)(6) of N.C. Gen. Stat. § 7A-45.4, then a Notice of Designation (with respect to

the entire action) may be filed with respect to such new material issue within the time periods set forth in subsection (d) of N.C. Gen. Stat. § 7A-45.4. Such time periods will be calculated and determined by reference to the amended pleading and all permitted responses thereto. A party shall refrain from filing a Notice of Designation based on an amended pleading unless the new material issue presented by the amended pleading substantially alters the nature of the action and other considerations support assignment of the case to the Business Court. The Notice of Designation procedure shall not be utilized in connection with an amended pleading for the purpose of interfering with or delaying ongoing or upcoming proceedings, or where assignment of the action to Business Court would be inconsistent with the interests of justice given the status of the proceedings in the Superior Court where the action is pending.

(c) Service of a party's Notice of Designation upon the Special Superior Court Judge for Complex Business Cases who is then the Chief Business Court Judge as required by N.C. Gen. Stat. 7A-45.4(b) shall be effected in the same manner (i.e., by e-mail or facsimile transmission) in which the party sends the Notice of Designation to the Chief Justice of the Supreme Court.

**3.2 – Contents of Notice of Designation.** N.C. Gen. Stat. 7A-45.4 provides an expedited method for certain types of actions to be assigned to the Business Court. In setting forth the categories of cases within the “mandatory” jurisdiction of the Business Court, the General Assembly afforded the Court flexibility to determine (on its own motion or the motion of a party) that the action should not be retained as a Business Court case. In order to allow the Court to make such a determination on its own motion, Form 1 requires that the party filing the Notice of Designation explain why and how the action falls within one of the specific categories set forth in N.C. Gen. Stat. § 7A-45.4(a) and invites that party to supply any additional information that

may be helpful in determining whether the Court should retain the action. When completing Form 1, the party should briefly and succinctly explain the nature of the dispute and the material issues likely to be presented in the action (including any material issues not listed in N.C. Gen. Stat. § 7A-45.4(a)). In addition, the party should identify for the Court any other factors that may assist the Court in deciding whether to retain the case, including but not limited to (i) the amount in issue, (ii) the novelty of the issues, (iii) the degree to which the interests of justice will be advanced by adjudication of the action under the Business Court's rules and procedures, and (iv) any other potential impacts on the parties or the Court that would be associated with retention of the action.

**3.3 – Opposition to Notice of Designation.** N.C. Gen. Stat. 7A-45.4(e) provides that a party may file an opposition to the Notice of Designation. In the event that a party files such an opposition, all other parties to the action shall be entitled to file responses supporting or opposing retention of the action in the Business Court. Such responses shall be filed within fifteen days of service of the opposition or in such shorter time as the Court may direct.

**3.4 – Payment of Fee for Cases Assigned to the Business Court.** The fee for cases assigned to the Business Court shall be paid to the Clerk of Superior Court in the judicial district in which the matter is pending and is due immediately upon receipt of an Order assigning the case to the Business Court. This fee is non-refundable in the event an Order is subsequently entered remanding the case to the Superior Court in the County in which the case was originally filed.

*RULE 4 – CASE IDENTIFICATION AND ELECTRONIC IDENTITIES*

**4.1 – Case Identification Numbers.** On designation or assignment of any case to the Business Court, the matter shall retain the civil action number assigned to it by the clerk in the county in which the action originated.

**4.2 – Electronic Identities.** Upon application of any person having a matter before the Business Court, the Court shall issue an Electronic Identity to such person which shall be used in connection with, and shall authorize, the electronic filing of information by such person in the Business Court. Electronic Identities are not case specific. The issuance of an Electronic Identity without utilization shall not constitute an appearance in any matter. The utilization of an Electronic Identity in connection with any electronic filing in the Business Court shall constitute (a) the agreement of the person to whom the Electronic Identity has been issued that such person shall use the Electronic Identity in compliance with the rules and procedures of the Business Court for electronic filing and all other rules applicable to the Business Court and (b) an appearance in the matter in which the filing is made of the person to whom the Electronic Identity is issued.

**4.3 – Recipients of Electronic Identification.** Each person to whom an Electronic Identity is issued (the “Recipient”) shall be responsible for the security and use of such Electronic Identity. Any electronic filing made utilizing an Electronic Identity shall be deemed to be made with the authorization of the Recipient, unless and until the contrary is demonstrated by the Recipient to the satisfaction of the Court by clear and convincing evidence.

*RULE 5 – SIGNATURES AND AUTHENTICITY*

**5.1 – Signatures.** Information filed with the Court electronically shall be deemed to be signed by a person (the “Signatory”), regardless of the existence of a handwritten signature on the paper, provided that such paper is filed by the Signatory using an Electronic Identity, and that the paper contains the name, postal address, e-mail address and State Bar number (if applicable) of the Signatory and the typed signature of the person preceded by the symbol “/s/” in the location at which a handwritten signature would normally appear if filed in paper form. Unless required by the circumstances, information filed electronically need not and should not be filed in an optically scanned format displaying an actual signature.

**5.2 – Stipulations or Other Information Involving Multiple Signatures.** In the case of a stipulation or other information to be signed by two or more persons representing different parties, the person who files such information shall confirm that all persons due to sign the information are agreeable to the content of the document, shall represent to the Court in the body of the information or in an accompanying filing that such agreement has been obtained, and shall insert the typed signature of persons other than the person filing preceded by the symbol “/s/” and followed by the words “by permission” in the location where such handwritten signature would otherwise appear. Thus, the correct format for the typed signature of a person other than the person filing is: “/s/ Jane Doe by permission.”

**5.3 – Original Document.** Information filed electronically in accordance with these Rules as it resides in the Court’s computer system, and true and accurate printouts of such information, shall be considered authentic. To the extent that the original of a document is not required by these Rules to be filed in the office of the Clerk of Superior Court in the judicial district in which the matter is pending, the Court may require the party to produce that original

document, document attachment, or exhibit, even though a copy of it has already been filed electronically. A screen display or paper printout of an electronic filing is equivalent to the electronic original for purposes of the Best Evidence Rule, if the display or printout is at a degree of optical resolution equal to the resolution at which the document is stored in the records of the Court.

*RULE 6 – ELECTRONIC FILING AND SERVICE*

**6.1 – Business Court Preference for Electronic Filing.** For all papers filed with the Business Court, the parties are strongly encouraged to use the Business Court’s Electronic filing and service system to effect transmittal and filing of those papers and to serve them on all parties. However, except as provided in a Case Management Order, nothing in these Rules shall require the filing of any information in the Business Court by electronic means.

**6.2 – Attributes of Acceptable Electronic Filing.** Electronic filing may be conducted only through authorized use of a valid Electronic Identity in accordance with these Rules. All electronic filings shall be made using only those file formats approved by the Court, and the format for each electronic filing shall be designated by using a generally recognized file extension that identifies a particular format. The manipulation of any file or the use of any technique or format for the purpose of impairing access or display of any file is strictly prohibited.

**6.3 – Certification of Electronically Filed Document.** For the purposes of Rule 11 of the North Carolina Rules of Civil Procedure and these Business Court Rules, any electronically filed information shall be deemed signed by one or more counsel of record or unrepresented parties (each, a “Signatory”) pursuant to Rule 5 of these Rules.

**6.4 – Notice of Electronic Filing.** Electronic transmission of a paper to the Business Court file server in accordance with these Rules, together with the receipt of a Notice of Electronic Filing automatically generated by the Electronic filing and service system as authorized by the Court, shall constitute filing of the paper with the Business Court for purposes of timing under the North Carolina General Statutes, the North Carolina Rules of Civil Procedure, and the Business Court Rules, and shall constitute entry of that paper on the Business Court Docket. An electronic filing with the Business Court is deemed complete only upon receipt of such Notice of Electronic Filing by the person filing the paper.

**6.5 – Substituted Electronic Service.** Service of pleadings and other communications with the Court shall be governed by Rules 6, 7, and the Case Management Order. Until an order regarding service of written papers is entered by the Court, and in the absence of a written stipulation, the parties shall serve documents upon each other in compliance with N.C. R. Civ. P. 5. Where a Business Court order calls for use of Electronic Filing in a matter, receipt by e-mail of a Notice of Electronic Filing at the e-mail address specified in the Case Management Order shall constitute an adequate and timely substitute for service pursuant to the North Carolina Rules of Civil Procedure. Each person who may be served by e-mail shall be responsible for the timely monitoring of receipt of e-mail messages, the proper operation of the person's e-mail service and the prompt notification of the Court and all other persons involved in a matter of any change in e-mail address.

**6.6 – Date and Time of Filing.** When information has been filed electronically, the official information of record is the electronic recording of the information as stored on the Court's file server, and the filing date and time is deemed to be the date and time recorded on the Court's file server for transmission of the Notice of Electronic Filing, which date and time is

stated in the body of such Notice. In the event that information is timely filed, the date and time of the electronic filing shall govern the creation or performance of any further right, duty, act, or event required or permitted under North Carolina law or applicable rule, unless the Court rules that the enforcement of such priority on a particular occasion would result in manifest injustice.

**6.7 – Submission of Filing.** An electronic filing may be submitted to the Court at any time of the day or night. For purposes of determining the timeliness of a filing, if the submission of the filing began during normal business hours of the Business Court (8:00 a.m. – 5:00 p.m., Monday through Friday, excluding holidays), the filing is deemed to have occurred on that date. If the submission of the filing began after normal business hours of the Business Court, the filing is deemed to have occurred on the next day the Business Court is open for business.

**6.8 Information not Filed with the Court.** The parties may choose to electronically serve information that is not filed with the court (e.g., discovery).

(a) Service. All information that is served electronically, but not filed electronically in the Business Court, shall be served on all persons or entities required to be served in the manner designated in the Case Management Order. Service by e-mail shall be deemed satisfied by transmitting the information by e-mail in a format approved by the Court or agreed upon by the parties.

(b) Time service occurs. Service of an electronically transmitted document shall be deemed to occur one hour after it is sent, provided that (i) documents sent after 5 p.m. shall be deemed sent at 8 a.m. the following day; and (ii) documents sent by electronic means that are not in a format in which the content is readily accessible to the recipient shall not be deemed served until actually received in a form in which the content is readily accessible to the receiving party.

**6.9 – Informal Communications.** All communications with the Court that are not filed in the Business Court Electronic filing and service system (e.g., letters to the Court) shall be simultaneously sent to all other parties in the case via e-mail (and if a party cannot receive e-mail, by the most reasonably expedient method available to the sending party (facsimile transmission, hand delivery, or mail)). The transmitting party shall promptly notify the Court if the party is unable to comply with this rule.

**6.10 – Additional Time Upon Electronic Service.** Electronic service shall be treated the same as service by mail for the purpose of adding three (3) days to the prescribed period to respond under N.C. R. Civ. P. 6(e).

**6.11 – Notice and Entry of Orders, Judgments, and Other Matters.** The Court shall file electronically all orders, decrees, judgments, and proceedings of the Court, and all other docket matters, which shall constitute entry of the order, decree, judgment, or proceeding on the Court’s Docket, pursuant to applicable law and procedure. Each order shall bear a date and a typed signature of the Business Court Judge issuing the order. Immediately upon the entry of such matter on the Docket, the Court shall transmit to each e-mail address of record a notice of the entry. Transmission of such Notice of Entry shall constitute service pursuant to N.C. R. Civ. P. 58. The Business Court shall be responsible for filing copies of its orders with the Clerk of Superior Court in the judicial district in which the matter is pending.

**6.12 – Good Faith Efforts with respect to Electronic Communications.** The parties shall make all reasonable endeavors in good faith to resolve technical incompatibilities or other obstacles to electronic communications, provided that no purchase of hardware or software shall be required and no extensive “manual” reformatting of documents shall be expected. Parties shall, for example, attempt to identify and correct problems which render content of

communications inaccessible and shall save or transmit documents in electronic formats that are mutually available to all parties receiving them. It shall not be consistent with the rules for a party to object to use of electronic communications and fail to cooperate in resolving a problem upon which the objection is based. In the event that a party asserts that it did not receive an e-mail communication or could not fully access its contents, the sending party shall promptly forward the communication to the party by other means, notify the Court that the information has been sent by other means and make reasonable efforts to assure that the receiving party obtains and is able to access the communication at issue and subsequent communications. No party shall encrypt the contents of a message or change the electronic format in a manner which prevents a party from having access to all information made available to the Court.

**6.13 – Determination of Failure and Effect on Due Date.** The Court shall deem the Electronic filing and service system to be subject to a technical failure on a given day if the Court server is unable to receive and accept filings in accordance with these Rules, either continuously or intermittently over the course of any period of time that, after 12:00 noon on such day, amounts in the aggregate to more than one hour. In the event of a technical failure, filings due that day which were not filed due solely to such technical failures shall become due the next business day. Such delayed filings shall be rejected unless accompanied by a declaration or affidavit attesting to the filing person's failed attempts to file electronically at least two times after 12:00 noon separated by at least one hour on each day of delay due to such technical failure.

**6.14 – Procedure Where Notice of Electronic Filing Not Received.** If a Notice of Electronic Filing is not received from the Court in response to a transmission of information for filing, the information will not be deemed filed. The person making the filing shall attempt to re-

file the information electronically until such a Notice is received, consistent with the provisions of subparagraph 6.13 permitting delayed filings. Each person using the Electronic filing and service system is solely responsible for the proper operation of all equipment and facilities used to transmit an electronic filing.

**6.15 – Retransmission of Electronic Filing.** If, after filing information electronically, any party discovers that the version of the information available for viewing through the Electronic filing and service system is incomplete, garbled, or otherwise does not conform to the information as transmitted when filed, such party shall notify the Court immediately and retransmit the filing if necessary.

#### **RULE 7 – FILING OTHER THAN BY ELECTRONIC MEANS**

When a party is unable to use the Business Court’s electronic filing and service system, any information required or permitted to be filed with the Business Court may be filed by facsimile transmission, by hand delivery, or by delivery through the United States Mail.

**7.1 – Facsimile Transmission.** The Business Court may maintain one or more facsimile machines for the purpose of receiving filings and communications from parties. Numbers for such facsimile machines shall be posted on the Business Court web site. Except as provided in a Case Management Order, any information required or permitted to be filed by facsimile shall be transmitted to the facsimile machine for the Business Court Judge to whom a case has been assigned located at the Business Court of the assigned Judge. In the absence of an assigned Business Court Judge, facsimile transmissions shall be directed to the facsimile machine of the Chief Business Court Judge. The date and time recorded for completion of such facsimile transmission by the Business Court facsimile system shall establish the time of delivery to the Business Court. Any person or entity submitting a filing by such facsimile method shall assume

all risk of error, malfunction, misdirection, or other error that causes a failure in transmission or otherwise prevents receipt by the Court of a complete and accurate filing. In the event of a filing by facsimile, the filing party shall use its best efforts to serve the document on all parties by the means most reasonably calculated to insure receipt of the document by all parties the same day. If unable to serve by facsimile after diligent efforts, the filing party may serve by hand delivery or overnight courier for receipt the next business day if within the state, and by the day following the next business day if outside the state. The Court may receive a facsimile transmission into a computer file, rather than receiving such a transfer onto paper, and shall image such facsimile transmission for further system use.

**7.2 – Hand Delivery.** Except as provided in a Case Management Order, documents may be filed with the Business Court by hand delivery to the Business Court at the chambers of the Business Court Judge assigned to a case or, in the absence of an assignment, to the chambers of the Chief Business Court Judge. Filing by hand delivery shall be deemed complete only upon actual receipt by authorized Business Court personnel of a document.

**7.3 – Mail.** Except as provided in a Case Management Order, documents may be filed with the Business Court by U.S. Mail but such a filing shall be deemed complete only when actually received by the Business Court. The Court will maintain mailing addresses on its web site. In cases assigned to a particular Business Court Judge, mail shall be directed to the Judge's chambers. In the absence of an assignment, mail shall be directed to the chambers of the Chief Business Court Judge.

*RULE 8 – FILINGS WITH THE CLERK OF SUPERIOR COURT*

**8.1 – Required Filings with the Clerk of Superior Court.** In accordance with the provisions of N.C. R. Civ. P. 5(d), all documents and materials submitted to the Business Court shall also be filed within five (5) business days with the Clerk of Superior Court in the judicial district in which the matter is pending. Where such documents and materials have been electronically filed with the Business Court, the certificate of service for filings with the Clerk of Superior Court shall additionally be signed in handwriting above or in lieu of the electronic signature line.

*RULE 9 – TIME*

**9.1 – Clarification Concerning Time Calculations.** In the event that the time prescribed for taking any action by any statute, rule of procedure, or any order of the Court is less than seven days, then even if the additional day allowed as a result of service by telefacsimile after 5:00 pm (or the equivalent service by electronic filing or email under these Rules) or the additional three days for electronic service or service by mail extends the time prescribed to seven days or more, intermediate Saturdays, Sundays, and holidays shall nevertheless be excluded in calculation of time (in the manner specified in N.C. R. Civ. P. 6(a)). In such event, if time is enlarged further pursuant to Rules 9.2 or 9.3, then intermediate Saturdays, Sundays, and holidays shall be included in calculating time only with respect to the period of the enlargement.

**9.2 – Enlargements of Time – Motions.** Once a case has been assigned or designated to the Business Court, all motions to extend any of the times prescribed or allowed by these Rules, the North Carolina Rules of Civil Procedure, or by court order, shall be directed to the Business Court Judge assigned to the case. If the case has not yet been assigned to a particular judge, the

motion to extend time shall be directed to the Chief Business Court Judge. The motion for extension of time shall not be considered to have been made until it is received by the Business Court. After assignment or designation to the Business Court, a party shall not seek an order to extend time from the Clerk of Superior Court in the judicial district in which the matter is pending, notwithstanding the party's obligation to file a hard copy of such material with said Clerk of Superior Court.

The movant shall have a good faith basis for requesting any such extension of time and, except in extraordinary cases, the movant shall first consult with any opposing party and reflect that party's position in the motion and indicate whether the opposing party wishes to be heard on the motion. Provided that there is such a good faith basis, the filing of the motion for extension of time shall automatically extend the time for filing or the performance of the act for which the extension is sought until the earlier of the expiration of the extension requested, ten calendar days, or a ruling by the court. In the event that the motion for extension of time is denied, the filing shall be made or the act done no later than the second business day following filing of the court's order unless a different time is provided by the court's order.

**9.3 – Enlargements of Time – No Motion Required.** With the exception of papers for which time cannot be enlarged (as explicitly provided in N.C. R. Civ. P. 6(b) or in other court rules or statutes), if a statute, any rule of procedure, or any order of the Court requires that a paper be filed or served less than twenty days after the Chief Justice designates an action as a complex business case under General Rule of Practice 2.1 and/or N.C. Gen. Stat. § 7A-45.4, then the time for filing or service of such paper (and for filing of service of papers responsive thereto or dependent thereon) is hereby automatically enlarged so that filing or service will be due on the

twentieth (20<sup>th</sup>) day following such assignment. No motion or order shall be submitted to the Court in such event.

*RULE 10 – PROTECTIVE ORDERS FOR INFORMATION*

*DEEMED CONFIDENTIAL OR PROPRIETARY*

**10.1 – Protective Order Respecting Proprietary Rights.** In connection with the electronic filing of any information in the Business Court, any person may apply by motion for an order prohibiting the electronic filing in the matter of certain specifically identified information on the grounds that such information is subject to a proprietary right or a right of confidentiality and that electronic filing is likely to result in substantial prejudice to those rights. A motion for such an order shall be filed not less than three business days before the information to which the motion pertains is due to be filed with the Court. Nothing in this paragraph shall be construed to change any requirement or standard that otherwise would be applicable for issuance of a protective order per se or in connection with information contained in a paper record.

*RULE 11 – SECURITY*

**11.1 – Confidentiality of Electronic Identity.** Each person shall maintain as confidential, except as expressly provided in these rules, the Electronic Identity issued to that person by the Court. Upon learning about information constituting reasonable evidence of the likely compromise of the confidentiality of the Electronic Identity, an individual shall immediately notify the Court.

**11.2 – Use of Electronic Identity by Additional Person.** A person to whom an Electronic Identity has been issued may authorize another person to file a paper using his number and signature; however, the authorizing person shall retain full responsibility for any paper so filed or for other use of such number and signature.

**11.3 – Compromise of Security.** Any attempt or effort to avoid, compromise or alter any security element of the Electronic filing and service system is strictly prohibited. Any person receiving information constituting reasonable evidence of a likely occurrence of such an attempt or effort shall immediately notify and cooperate with the Court concerning such information.

*RULE 12 – VIDEOCONFERENCING*

**Rule 12.1 – By Agreement.** By mutual agreement, counsel may arrange for any proceeding or conference to be held by videoconference by coordinating a schedule for such meeting that is convenient with the Business Court. All Counsel and other participants shall be subject to the same rules of procedure and decorum as if the meeting were held in the courtroom of the Business Court.

**Rule 12.2 – Responsibility for Videoconferencing Facilities.** The parties are responsible for obtaining all communications facilities and arranging all details as may be required to connect and interface with the videoconferencing equipment available to the Business Court. The Business Court will endeavor to make reasonable technical assistance available to the parties concerning the specifications and requirements of the Court's equipment, but all responsibility for planning and executing all technical considerations required to hold a videoconference successfully shall remain solely with the parties.

**Rule 12.3 – Allocation of Videoconferencing Costs.** In the absence of a contrary agreement among the parties, each party participating by videoconference shall bear its own costs of participating in the conference.

**Rule 12.4 – Court Reporter.** Where any proceeding or conference is held by videoconference, the court reporter transcribing such proceeding or conference will be present in the Business Court.

*RULE 13 – UNDERTAKINGS OF PARTIES  
AND LIMITATION OF COURT LIABILITY*

**13.1 – Undertakings.** Parties wishing to utilize the computer-assisted facilities of the Business Court agree by accessing such facilities to abide by all aspects of these rules, including conditions of access and use and security procedures set out herein and as they may subsequently be published by the Business Court.

**13.2 – No Business Court Liability.** Attorneys, litigants, and all other persons granted access to the computer-assisted facilities of the Business Court agree that the Business Court shall not be liable to them for damages of any kind resulting from the negligent misuse of Court facilities. Such misuse may result in Court sanctions or, in the instance of an aggrieved party, in a right to pursue compensatory damages from a party who intentionally or negligently misuses Court facilities. Such misuse shall be deemed to include the introduction of computer viruses into information handling systems of the Court or other parties, where virus control software recommended by the Court is not being used.

**13.3 – Viruses.** Any party filing electronically shall check each file to be transmitted for viruses before transmitting. Any electronic filing submitted to the Court containing viruses will be rejected by the Court's computer system.

*RULE 14 – CALENDARING AND COMMENCEMENT OF ACTIONS*

**14.1 – Preparation of Calendar.** The calendar for each of the Business Court Judges shall be prepared by that Business Court Judge and published on the Business Court Web Site.

Where e-mail addresses have been provided to the Business Court, Notices of Hearing shall be distributed by e-mail to each attorney of record (or party where there is no attorney of record) no later than five (5) business days prior to the day of the hearing unless otherwise specified by the Case Management Order. An attorney or party who has not provided an e-mail address to the Court will receive Notices of Hearing via facsimile, or where no facsimile number is available, by first class mail.

**14.2 – Appearances.** An attorney and/or unrepresented party who is notified to appear for the setting of a calendar, pretrial conference, hearing of a motion, or for trial, shall, consistent with ethical requirements, appear or have a partner, associate, or another attorney familiar with the case present. Unless an attorney has been excused in advance by the Business Court Judge and has given prior notice to opponent(s), a case will not be continued for failure of appearance.

**14.3 – Notification of Settlement.** When a case is settled, counsel for the plaintiff and each unrepresented plaintiff of record shall notify the Business Court Judge or the Judge's designee within twenty-four (24) hours of the settlement and shall advise the Court of the identity of the party or parties who will prepare and present the judgment, dismissal, or stipulation of dismissal, which shall be presented within thirty (30) days of the notification of settlement.

## **RULE 15 – MOTION PRACTICE**

**15.1 – All Motions to Be Filed in Business Court.** After a case has been assigned or designated to the Business Court, and for as long as the case is pending in this Court, parties shall seek rulings on all motions in the case from this Court, and not from Superior Court Judges or Clerks in the counties where cases originate.

**15.2 – Form.** All motions, unless made orally during a hearing or a trial, shall be in paper writing or electronic form and shall be accompanied by a brief, except as provided in Rules 15.10 and 15.12. Each motion shall be set out in a separate paper. Where the terms “Motion,” “Brief,” “Affidavit,” “Document,” “Deposition” and like designations are used herein, they shall refer to such items in paper writing or electronic form as determined appropriate under these rules.

**15.3 – Content.** All motions shall state with particularity the grounds therefor, shall cite any statute or rule of procedure relied upon and shall set forth the relief or order sought.

**15.4 – Motions Decided on Papers and Briefs.**

(a) Motions shall be considered and decided by the Court on the pleadings, admissible evidence, the official court file, and briefs, without hearing or oral argument, unless otherwise ordered by the Court. Special considerations thought by counsel sufficient to warrant a hearing or oral argument may be brought to the Court’s attention in the motion or response.

(b) If the Court grants oral argument on any motion, it shall give the parties at least five (5) business days’ notice of the date and place of oral argument. The Court, however, for good cause shown, may shorten the five (5)-day notice period. The Court may in its discretion conduct any oral argument by telephone or videoconference.

**15.5 – Movant’s Supporting Documents and Brief.** If allegations of facts not appearing of record are relied upon to support a motion, affidavits, parts of depositions, and other pertinent documents then available shall accompany the motion. If supporting documents are not then available, the moving party may move for an extension of time in accordance with Rule 9.2.

**15.6 – Response to Motion and Brief.** The respondent, if opposing a motion, shall file a response, including brief, within twenty (20) days after service of the brief supporting the motion

(or thirty (30) days if the motion is for summary judgment). If supporting documents are not then available, the respondent may move for an extension of time in accordance with Rule 9.2. For good cause appearing therefor, a respondent may be required by the Court to file any response and supporting documents, including brief, within such shorter period of time as the Court may specify.

**15.7 – Reply Brief.** A reply brief may be filed within ten (10) days after service of the response. A reply brief is limited to discussion of matters newly raised in the response.

**15.8 – Limitations on Length of Briefs.** The Court favors concise briefs. Unless the following limits are modified by the Court for good cause shown, briefs in support of motions and responsive briefs shall be double-spaced and limited in length to a maximum of seven thousand, five hundred (7,500) words. Reply briefs shall also be double-spaced and may not exceed three thousand, seven hundred and fifty (3,750) words. Headings, footnotes, quotations, and citations count toward these word-count limitations. The case caption on the first page of a brief, any table of contents, any table of authorities, and any required certificates of counsel or of a party do not count toward these word-count limitations.

Requests for expansion of word limitations shall be made five (5) business days prior to filing the brief for which expansion of word limitations is sought. Requests for expansion of word limitations that are filed simultaneously with the brief shall be denied.

Each brief shall include a certificate by the attorney or party that the brief complies with this Rule 15.8. The attorney or party may rely upon the word count of the word-processing system used to prepare the brief.

Unless a Case Management Order or another order of the Court expressly provides otherwise, all parties who are jointly represented by any law firm shall join together in a single

brief. Unless otherwise ordered by the Court, that single brief may not exceed the length limit stated above.

**15.9 – Suggestion of Subsequently Decided Authority.** As an addendum to a brief, response brief, or reply brief, a suggestion of subsequently decided controlling authority, without argument, may be filed at any time prior to the Court’s ruling and shall contain only the citation to the case relied upon, if published, or a copy of the opinion if the case is unpublished.

**15.10 – Motions Not Requiring Briefs.** No brief is required by either movant or respondent, unless otherwise directed by the Court, with respect to the following motions:

(a) discovery motions in which the parties have agreed to the expedited procedures described in Rule 15.12;

(b) for extension of time for the performance of an act required or allowed to be done, provided request therefor is made before the expiration of the period originally prescribed or extended by previous orders;

(c) to continue a pre-trial conference, hearing, or the trial of an action;

(d) to add parties;

(e) to amend the pleadings;

(f) to file supplemental pleadings;

(g) to appoint a next friend or guardian ad litem;

(h) for substitution of parties;

(i) to stay proceedings to enforce judgment; and

(j) for pro hac vice admission of counsel who are not members of the North Carolina

State Bar.

The above motions, which are not required to be accompanied by a brief, shall state good cause therefor and cite any applicable rule, statute, or other authority justifying the relief sought. These motions shall be accompanied by a proposed order.

**15.11 – Failure to File and Serve Motion Materials.** The failure to file a brief or response within the time specified in this rule shall constitute a waiver of the right thereafter to file such brief or response, except upon a showing of excusable neglect. A motion unaccompanied by a required brief may, in the discretion of the Court, be summarily denied. If a respondent fails to file a response within the time required by this rule, the motion will be considered and decided as an uncontested motion, and ordinarily will be granted without further notice.

**15.12 – Determination of Discovery Motions Through Oral Argument Without Briefs.** With the consent of both parties and as allowed by the Court, the parties may present motions and the Court may resolve disputes regarding discovery matters through the use of an expedited oral argument procedure. Such motions will routinely be limited to matters which can be argued and determined in one hour or less.

#### *RULE 16 – PRESENTATION TECHNOLOGY*

**16.1 – Generally.** Electronic presentations and technologically generated demonstrative evidence should be used to enhance the trier-of-fact's understanding of facts in the action or to further the convenience or efficiency of the litigation process. Presentations which contain technological aspects that primarily add dramatization or "special effects" may be excluded pursuant to North Carolina Rule of Evidence 403. In making such determination, the Court will consider, in addition to any other matters it deems pertinent, the extent to which the presentation serves proper purposes, the extent to which the manner of the presentation may enhance a party's

factual contentions without adequate foundation, and the opposing party's technological resources, means, and ability to prepare to rebut the presentation.

**16.2 – Foundation.** No graphic reconstructions, dramatizations, or other technologically manufactured representations shall be permitted unless:

(a) all representations made or conveyed in the presentation that may be probative to issues in the case or prejudicial to another party are supported by other competent evidence presented in the trial; and

(b) the opposing party has been given an adequate notice and opportunity, determined under the circumstances of the case, to review the presentation and obtain any relevant information concerning its preparation prior to it being presented to the trier-of-fact.

**16.3 – Virus Prevention.** Any media brought into the Business Court for presentation purposes shall be checked for viruses using appropriate virus scanning software before such media are used in the courtroom.

**16.4 – Presentation Formats.** All presentation software not in conformance with the file formats accepted by the Court may not be utilized in the courtroom without the prior express approval of the Court.

*RULE 17 – CASE MANAGEMENT MEETINGS,*

*REPORTS, CONFERENCES, AND ORDERS*

**17.1 – Case Management Meeting.** Within thirty (30) days of filing of assignment or designation of a case to the Business Court, or such shorter or longer time as the Court shall order, the parties shall meet to discuss case management issues, as well as the potential content of a Case Management Order. Unless the parties agree otherwise, counsel for the first plaintiff listed in the complaint is responsible for initiating the scheduling of the Case Management

Meeting. In initiating the scheduling of the Case Management Meeting, plaintiff's counsel should contact each law firm that he or she knows will appear in the case, even if that law firm has not yet entered a formal appearance.

The parties' Case Management Meeting should cover at least the following subjects:

(a) The length of the discovery period, the number of fact and expert depositions to be permitted, and, as appropriate, the length and sequence of such depositions.

(b) A preliminary schedule for depositions of such persons and entities as the parties are able to identify.

(c) The date by which parties shall complete disclosure of expert information pursuant to N.C. R. Civ. P. 26(b)(4)(a).

(d) The identity and number of any Motions to Dismiss or other preliminary or pre-discovery motions which shall be filed and the time period in which they shall be filed, briefed, and argued.

(e) Which parties should be required to file joint briefs for purposes of the length limitations on briefs under Rule 15.8.

(f) The time period after the close of discovery within which post-discovery dispositive motions shall be filed, briefed, and argued and a tentative schedule for such activities.

(g) A tentative date by which the parties will be prepared for trial.

(h) The timing of any mediated settlement conference (see Rule 19) and the selection of a mediator or group of mediators.

(i) An estimate of the volume of documents and/or electronic information likely to be the subject of discovery in the case from parties and nonparties and whether there are technological means, including but not limited to production of electronic images rather than

paper documents and any associated protocol, that may render document discovery more manageable at an acceptable cost.

(j) The number of interrogatories which shall be allowed each party.

(k) The advisability of using special master(s) for fact finding, mediation of discovery disputes or such other matters as the parties may agree upon.

(l) The situs of pretrial and trial proceedings.

(m) An identification of any disputes concerning personal jurisdiction, subject matter jurisdiction, or venue, or a stipulation that no such controversies exist at the time of the Case Management Meeting.

(n) Whether or not a party or parties desire to use the electronic filing, case tracking, scanning, videographic, and real-time court reporting capabilities of the Court, and, to the extent this is the case, a determination of:

(1) Fairness issues, including but not necessarily limited to use of such capabilities by some but not all parties and/or by parties whose resources permit or require variations in the use of such capabilities;

(2) Issues related to compatibility of Court and party facilities and equipment;

(3) Issues related to the use of demonstrative exhibits and any balancing of relevance and potential prejudice which may need to occur in connection with such exhibits;

(4) Such other issues related to the use of the Court's and Parties' special technological facilities as may be raised by any party or the Court or its technological advisor, given the nature of the case and the resources of the parties.

(o) A good faith estimate by counsel for each party based upon consultation with each such party of the costs each party is likely to incur in pursuing the litigation through trial court adjudication, provided, however, that any party may, instead of disclosing this information in a Case Management Meeting or Case Management Report, file this information with the Court under seal and without service of the information on any other party, or discuss this information privately with the Court at the Case Management Conference.

(p) A preliminary listing of the principal legal and factual issues which counsel believe will need to be decided in the case.

(q) A preliminary listing of any issues in the case that any party believes are governed by law other than North Carolina law or federal law.

(r) The need for retention of potentially relevant documents, including but not limited to documents stored electronically and the need to suspend all automatic deletions of electronic documents or overwriting of backup tapes which may contain potentially relevant information. The parties shall also discuss the need for a document preservation order.

(s) The need for cost-shifting of expenses related to discovery of information stored electronically, including the restoration of back-up tapes and forensic examination of computers, and the possibility of obtaining the desired information from alternate sources at reduced expense.

(t) The format in which the electronic records are to be produced, and procedures to avoid unnecessary burden and expense associated with such production. If metadata is to be produced, the parties shall discuss a protocol for producing such information, including the format for production (e.g., native, copy, original), and the ability to search such information.

(u) The need for security measures to be adopted to protect any information that is produced in electronic format or that will be converted into electronic format and stored on counsel's computer systems. Such discussion should encompass whether and under what circumstances clients will be afforded access to the information produced by another party and what security measures should be used for such access.

(v) Such other matters as the Court may assign to the parties for their consideration.

**17.2 – Case Management Report.** The views of each party on the matters set forth in Section 17.1 above, as expressed through counsel or any pro se litigant(s), shall be reduced to writing, circulated for amendment or modification by each party, and filed with the Court in the form of a Case Management Report. Unless the parties agree otherwise, counsel for the first plaintiff listed in the complaint is responsible to prepare and circulate the initial draft of the Case Management Report to all counsel, who shall have five days within which to propose revisions to the report or raise issues about which the parties disagree. If the parties disagree on any issues in the Case Management Report, they shall nonetheless file a single Case Management Report that, in any areas of disagreement, states the views of each party. The final Case Management Report shall be signed by counsel for each party and shall be filed with the Court within fifteen (15) days of the Case Management Meeting.

**17.3 – Case Management Conference.** Within twenty (20) days of the case management meeting of the parties or such longer period as the Court may prescribe, the Court will convene a Case Management Conference with attendance by counsel for all parties and their clients (or in the case of a business entity, such representative as has authority to make all binding litigation-related decisions) unless the Court shall, in its discretion, excuse the attendance of clients. Such conference will be conducted with as much informality as possible

and with the active participation of clients encouraged. The Court will hear the views of counsel and/or clients on such issues listed in Rule 17.1 above as are pertinent to the case and/or on which there are material differences of opinion.

**17.4 – Case Management Order.** Following the Case Management Conference, the Court shall issue a Case Management Order in the form appended to these Rules as Form 2. The Case Management Order will deal with such issues developed in the Case Management Meeting and/or the Case Management Conference as may be determined at the time, given the nature and status of the case. The provisions of the Case Management Order may not be deviated from without notice, grant of a hearing which is discretionary with the Court, good cause shown and entry of an order by the Court. The Case Management Order shall also specify a schedule of status conferences to assess the functioning of the Case Management Order, assess the progress of the case, and enter such further orders or revisions in the Case Management Order, including a trial date, as the Court may deem necessary or appropriate.

**17.5 – Effect on Other Rules.** This Rule 17 is intended to supplement, not substitute for, the provisions of Rule 7 of the General Rules of Practice for Superior and District Courts and its related sample form dealing with pre-trial conferences and orders.

#### *RULE 18 – DISCOVERY*

**18.1 – North Carolina Rules of Civil Procedure Applicable.** Except as expressly supplemented by these rules, the North Carolina Rules of Civil Procedure governing the conduct of depositions and discovery in State Courts shall control in the Business Court.

**18.2 – Presumptive Limits on Discovery Procedures.** Subject to an order modifying discovery procedures for good cause shown, the Court expects discovery in cases assigned to the Business Court to be completed within nine (9) months from issuance of the Case Management

Order. Parties are free, however, to begin discovery prior to issuance of the Case Management Order. Presumptively, subject to stipulation of the parties and order of the Court for good cause shown, interrogatories (including sub-parts) and requests for admission are limited to fifty (50) in number by each party. Depositions are presumptively limited to twelve (12) depositions each (not including depositions of testifying experts) by the plaintiffs, by the defendants, and by any third-party defendants, subject to alteration by the Court.

**18.3 – Depositions.** The Court expects counsel to conduct discovery in good faith and to cooperate and be courteous with each other in all phases of the discovery process. Depositions shall be conducted in accordance with the following guidelines:

(a) Counsel shall not direct or request that a witness not answer a question, unless that counsel has objected to the question on the ground that the answer is protected by a privilege or a limitation on evidence directed by the Court.

(b) Counsel shall not make objections or statements which might suggest an answer to a witness. Counsel's statements when making objections should be succinct, stating briefly the basis of the objection and nothing more.

(c) Counsel and any witness/client shall not engage in private, off the record conferences while the deposition is proceeding in session, except for the purpose of deciding whether to assert a privilege.

(d) Deposing counsel shall provide to counsel for the witness and counsel for all parties present a copy of all documents shown to the witness during the deposition. The copy may be provided either before the deposition begins or contemporaneously with the showing of each document to the witness. The witness and counsel for the witness may not discuss documents privately before the witness answers questions about them.

**18.4 – No Filing of Discovery Materials.** Depositions and deposition notices, interrogatories, requests for documents, requests for admission, and answers and responses thereto shall not be filed electronically on the Court’s Electronic filing and service system unless the Court so orders or unless the Court will need such documents in a pretrial proceeding. All discovery materials shall be served on other counsel or parties, and may be served electronically pursuant to Rule 6.8 above. The party taking a deposition or obtaining any material through discovery (including through third party discovery) is responsible for the preservation and delivery of such material to the Court when needed or ordered in the form specified by the Court. Any party seeking to compel discovery or other pre-trial relief based upon discovery material which has not been filed shall identify the specific portion of the material which is directly relevant and ensure that it is filed as an attachment to the application for relief.

**18.5 – Discovery with Respect to Expert Witnesses.** Discovery with respect to experts, including expert depositions and disclosure of expert information, shall be conducted within the discovery period set forth in the Case Management Order.

**18.6 – Conference of Attorneys with Respect to Motions and Objections Relating to Discovery.**

(a) The Court will not consider motions and objections relating to discovery unless moving counsel files a certificate that, after personal consultation and diligent attempts to resolve differences, the parties are unable to reach an accord. The certificate shall set forth the date of the conference, the names of the participating attorneys, and the specific results achieved. It shall be the responsibility of counsel for the movant to arrange for the conference and, in the absence of an agreement to the contrary, the conference shall be held in the office of the attorney

nearest to the Court where the case was originally filed. Alternatively, at any party's request, the conference may be held by telephone.

(b) Prior to filing motions and objections relating to discovery of information stored electronically, the parties shall discuss the possibility of shifting costs for electronic discovery, the use of Rule 30(b)(6) depositions of information technology personnel, and informal means of resolving disputes regarding technology and electronically stored information. The certificate required by Rule 18.6(a) shall address efforts to resolve the dispute through these and any other means related to discovery of information stored electronically.

**18.7 – Expedited Resolution of Some Discovery Disputes.** If, after a conference as required by Rule 18.6, the parties agree that a discovery dispute can be ruled upon in a telephone or videoconference of no more than thirty (30) minutes, the Court will schedule such a conference and rule on the dispute without briefing by the parties. Alternatively, if the parties agree that the dispute can be ruled upon in an in-court hearing of no more than one hour, without briefing, subject to Rule 15.12 the Court will schedule a hearing of such matter at the earliest date reasonably available to the Court and the parties. The fact that these proceedings are expedited and are conducted without briefing does not alter the application of N.C. R. Civ. P. 37(a)(4) relating to the imposition of sanctions and the award of expenses.

**18.8 – Completion of Discovery.** The requirement that discovery be completed within a specified time means that adequate provisions must be made for interrogatories and requests for admission to be answered, for documents to be produced, and for depositions to be held within the discovery period. Normally the Court will not entertain motions relating to discovery conducted after the close of the discovery period as set forth in the Court's Case Management Order.

**18.9 – Extension of the Discovery Period or Request for More Discovery.** Motions seeking an extension of the discovery period or permission to take more discovery than is permitted under the Case Management Order shall be made or presented prior to the expiration of the time within which discovery is required to be completed. Such motions must set forth good cause justifying the additional time or additional discovery and will be granted or approved only upon such a showing of good cause and a showing that the parties have diligently pursued discovery. The Court will permit additional depositions usually only upon a showing of exceptionally good cause.

**18.10 – Trial Preparation After the Close of Discovery.** For good cause appearing therefor, the physical or mental examination of a party may be ordered at any time prior to or during trial. Ordinarily, the deposition of a material witness not subject to subpoena should be taken during discovery. However, the deposition of a material witness who agrees to appear for trial, but later becomes unavailable or refuses to attend, may be ordered at any time prior to or during trial.

#### *RULE 19 – MEDIATION*

**19.1 – Mediation Mandatory in All Cases.** Mediation is a valued tool in the resolution of litigated matters. As such, all cases pending in the Business Court shall be subject to the Rules Implementing Statewide Mediated Settlement Conferences in Superior Court Civil Actions and such other Rules or orders consistent therewith as may be established or entered by the Business Court.

**19.2 – Approved List of Business Court Mediators.** The Business Court maintains on its website a list of mediators who have had experience with cases within the jurisdiction of the Business Court. Parties are not, however, required to select a mediator from this list. In the

event the parties to a Business Court case are unable to agree on a mediator, upon notice from a party, the Business Court will appoint a mediator from the Business Court's approved list to act as mediator in that case.

*RULE 20 – OPENINGS AND CLOSINGS*

**20.1 – Opening Statements.** At any time before the presentation of evidence, counsel for each party may make an opening statement setting forth the grounds of claim or defense. The parties may elect to waive opening statements. Opening statements may be limited in time and scope in the discretion of the Court.

**20.2 – Closing Argument.** If no evidence is produced by the defendant, the right to open and close the argument to the jury shall belong to the defendant. If a question arises as to whether the plaintiff or the defendant has the final argument to the jury, the Court shall decide who is so entitled.

In a case where there are multiple defendants, if any defendant introduces evidence, the closing argument shall belong to the plaintiff, unless the Business Court Judge in his discretion orders otherwise.

*RULE 21 – EXAMINATION OF WITNESSES*

**21.1 –** When several counsel are employed by the same party, the examination or cross-examination of each witness for such party shall be conducted by one counsel, but examining counsel may change with each successive witness or, with leave of the Court, during a prolonged examination of a single witness.

*RULE 22 – COURTROOM DECORUM*

**22.1 – Communications and Position.** Counsel are at all times to conduct themselves with dignity and propriety. All statements and communications to the Court shall be clearly and

audibly made from a standing position behind the counsel table or the computer-assisted podium. Counsel shall not approach the bench except upon the permission or request of the Court.

Colloquies between and disrespectful references to opposing counsel shall be strictly avoided. Adverse witnesses and parties shall be treated with fairness and due consideration. Abusive language or offensive personal references are strictly prohibited.

The examination of witnesses and jurors shall be conducted from a sitting position behind the counsel table or from the computer-assisted podium, except as otherwise permitted by the Court. Counsel may only approach a witness for the purpose of presenting, inquiring about, or examining that witness with respect to an exhibit, document, or diagram.

**22.2 – Professional Demeanor.** The conduct of the lawyers before the Court and with other lawyers should be characterized by candor and fairness. Counsel shall not knowingly misrepresent the contents of documents or other exhibits, the testimony of a witness, the language or argument of opposing counsel or the language of a decision or other authority; nor shall counsel offer evidence known to be inadmissible or cross-examine without a good faith basis for doing so. In an argument addressed to the Court, remarks or statements may not be interjected to improperly influence or mislead the jury.

Counsel shall yield gracefully to rulings of the Court and avoid disrespectful remarks both in Court and out. Counsel shall at all times conduct themselves in a manner which promotes respect for the Court and the judicial process.

#### *RULE 23 – JURIES*

**23.1 – Jury Instruction Conference.** At the close of the evidence (or at such earlier time as the judge may reasonably direct) in every jury trial, the judge shall conduct a conference on instructions with the attorneys of record (or party, if not represented by counsel). Such

conference shall be out of the presence of the jury, and shall be held for the purpose of discussing the proposed instructions to be given to the jury. If special instructions are desired, they must be submitted in writing to the trial judge at or before the jury instruction conference.

**23.2 – Objections to Instructions.** An opportunity shall be given to the attorneys (or party, if not represented by counsel) to request any additional instructions or to object to any of those instructions proposed by the judge. Any such requests, objections, and the rulings of the Court thereon shall be placed on the record.

At the conclusion of the charge and before the jury begins its deliberations (and out of the hearing, or upon request, out of the presence of the jury), counsel (or party, if not represented by counsel) shall be given an opportunity to object on the record to any portion of the charge as given, or omission therefrom, stating with particularity the objection and grounds therefor.

**23.3 – Treatment of Instructions during Jury Deliberations.** The Court may recall the jury after they have retired and give them additional instructions in order: (i) to correct or withdraw an erroneous instruction; (ii) to inform the jury on a point of law which should have been covered in the original instructions; or (iii) to respond to questions posed by the jury. The provisions of Rule 23.2 above are also applicable to any such additional instructions or other information provided at this stage of the proceeding. The Court, in its discretion, may give a copy of the instructions to the foreperson or to all members of the jury.

**23.4 – Contacts with Jurors Prohibited.** All parties, witnesses, and attorneys shall avoid any extra-judicial contact or communications with a member of a jury venire or panel who has been or may be selected in a case in which that person is involved. No person may have any extra-judicial contact or communication, either directly or indirectly, with a member of a jury venire or panel which may reasonably have the effect of influencing, or which is intended to

influence, the potential juror or sitting juror. Attorneys for parties shall inform their clients and witnesses of this rule.

No person shall approach a juror, either directly or through any member of his immediate family, in an effort to secure information concerning the juror's background. No provision of this rule is intended to prohibit communication with a juror after the juror has been dismissed from further service, so long as the communication does not tend to harass, humiliate, or intimidate the juror in any fashion.

**23.5 – Presence of Counsel during Jury Deliberation.** The right to be present during the trial of civil cases shall be deemed to be waived by a party or counsel by voluntary absence from the courtroom at a time when it is known that proceedings are being conducted or are about to be conducted. In such event the proceedings, including the giving of additional instructions to the jury after they have once retired, or receipt of the verdict, may go forward without waiting for the arrival or return of counsel or a party.

#### *RULE 24 – TRIAL DATES AND FINAL PRETRIAL PREPARATION*

**24.1 – Trial Date.** Trial shall commence on the date established by the Court, normally through revisions to the Case Management Order, or in such other manner as the Court shall deem appropriate. The Court will consider a request to continue a trial date only if the request is signed by both the party and counsel for the party.

**24.2 – Final Pretrial Preparation.** Except in cases deemed by the Court to require different arrangements, no later than twenty (20) days before trial, the parties shall file trial briefs, along with proposed instructions on the issues in jury cases or findings of fact and conclusions of law in non-jury cases. The parties will also file at this time any motions in limine or other motions they wish to have considered prior to trial. The Court may in its discretion

schedule a final pretrial conference to deal with such motions or other pretrial matters as deemed appropriate. Any party, or the Court on its own motion, may request a pretrial hearing or a telephone or videoconference to address matters relating to final pretrial preparation or settlement of a case. This rule is not intended to prevent submission of proposed jury instructions as provided for in Rule 23.1.

*RULE 25 – COURT REPORTING CONSIDERATIONS*

**25.1 - Scheduling of Court Reporters.** Barring extenuating circumstances, official court reporters will be used to report all hearings in the Business Court; however, if both parties agree to hire a freelance reporter, that reporter would then become the official reporter for the particular hearing or trial that he or she was hired to report. Where feasible, the same court reporter will be used to report all hearings in a case. The scheduling of court reporters will be handled through a joint effort of the local scheduling coordinator and the Judicial Scheduling Coordinator for the Administrative Office of the Courts.

**25.2 – Request for Real-Time Transcription.** A request for real-time transcription of the proceedings before the Court shall be made, to the extent possible, during the Case Management Conference. The parties will use the appropriate AOC Form to make such a request and shall submit the same to the Judicial Scheduling Coordinator for the Administrative Office of the Courts. Prior to the proceeding for which transcription is needed, the parties shall confer with the reporter assigned to the case regarding specific needs (e.g., real-time feed, rough ASCII, daily copy) and shall arrange for compensation directly with the reporter. The parties, prior to trial, will provide the reporter with information particular to the case to aid in clarity of transcription, e.g., pleadings, deposition transcripts, glossary of unique terms, etc.

**25.3 – Realtime Feeds or Rough-Draft Transcripts.** A “realtime feed” or “rough-draft transcript” – that which is displayed simultaneously with proceedings occurring before the Court or that which is provided by e-mail or ASCII disk prior to certification – may be referred to or quoted from during a proceeding, provided, however, that any dispute concerning the accuracy of the transcription of a realtime feed or rough draft transcript will be resolved by the Court in its discretion after consultation with the reporter.

**25.4 – Publication of Transcripts.** Transcripts of proceedings before the Business Court shall be published on the Court’s Web Site in the sole discretion of the Business Court Judge. See Rule 27. Access to such transcripts via the Web Site, however, shall only be made available to those counsel, pro se litigants or members of the public with authorization codes issued by the Court after payment of the reporter’s transcription fee or under such other conditions as are set by the Court.

**25.5 – Storage and Retention of Court Reporters’ Notes.** Per N.C. Gen. Stat. § 7A-95, if stenograph, shorthand, or voice writing equipment is used to record proceedings in Superior Court, the original tapes, notes, discs, or other records are the property of the state of North Carolina, and the Clerk of Superior Court is the ultimate custodian of the notes; therefore, when a hearing or trial is completed, the court reporter shall leave his or her notes with the clerk. The court reporter shall not take those notes with him or her for any reason other than to prepare the transcript in the case. If a transcript has been ordered and the reporter signs out the tapes, notes, etc. from the clerk, that court reporter shall return those tapes, notes, etc. to the clerk’s office upon completion of the transcript. This rule applies to both official and freelance court reporters.

*RULE 26 – APPELLATE RECORD CONSIDERATIONS*

**26.1 – Filing of Transcripts.** Certified original transcripts and other record items shall be filed in accordance with Rule 7 of the North Carolina Rules of Appellate Procedure and shall be subject to any further requirement that the appellate court deems appropriate. Parties are encouraged to assist the Court in transmitting original transcripts and other records electronically in addition to the format required by Rule 7 of the North Carolina Rules of Appellate Procedure to the end that the entire appellate record may be transmitted to the appeals court as efficiently and expeditiously as possible.

**26.2 – Signatures on Appellate Materials.** Electronically filed transcripts shall contain such means of signature as may be specified by the appellate courts.

*RULE 27 – WEB SITE AND PUBLICATION*

**27.1 – Web Site.** The Business Court shall maintain a site on the World Wide Web for ready access to members of the bar and to the public generally. The Web Site shall be located at the uniform resource locator [www.ncbusinesscourt.net](http://www.ncbusinesscourt.net). The Web Site will store for ready retrieval basic information about the Business Court, including but not limited to these Rules and the procedure for Complex Business Case designation. In addition, the Web Site will store, in the sole discretion of the Business Court Judges:

- (a) the Court’s address, facsimile machine numbers, and the mailing and physical addresses of the chambers of Business Court Judges;
- (b) the Court’s docket;
- (c) pleadings filed with the Court;
- (d) motions filed with the Court;
- (e) briefs filed with the Court;
- (f) the opinions of the Court; and

(g) rough-draft and/or official transcripts of proceedings before the Court.

**27.2 – Citation to Business Court Opinions.** Citation to the opinions of the Business Court shall be to the year of the opinion, followed by “NCBC,” followed by the opinion number, e.g., “1999 NCBC 1.” Pinpoint notations to Business Court opinions shall be made to the numbered paragraph in which the cited material appears, e.g., “1999 NCBC 1 ¶1.”

**FORM 1**

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE  
COURT DIVISION

COUNTY OF

CIVIL ACTION NO:

John Doe,

Plaintiff,

v.

ABC Corporation,

Defendant.

NOTICE OF DESIGNATION OF ACTION  
AS MANDATORY COMPLEX BUSINESS  
CASE UNDER N.C. GEN. STAT. § 7A-45.4

Pursuant to N.C. Gen. Stat. § 7A-45.4, \_\_\_\_\_ (insert name of party) hereby designates the above-captioned action as a mandatory complex business case. In good faith and based on information reasonably available, \_\_\_\_\_ (insert name of party), through counsel, hereby certifies that this action meets the following criteria for designation as a mandatory complex business case pursuant N.C. Gen. Stat. § 7A-45.4(a), and should be adjudicated in the Business Court:

- \_\_\_\_\_ (1) The law governing corporations, partnerships, limited liability companies, and limited liability partnerships.
- \_\_\_\_\_ (2) Securities law.
- \_\_\_\_\_ (3) Antitrust law, except claims based solely on unfair competition under N.C. Gen. Stat. § 75-1.1.
- \_\_\_\_\_ (4) State trademark or unfair competition law, except claims based solely on unfair competition under N.C. Gen. Stat. § 75-1.1.
- \_\_\_\_\_ (5) Intellectual property law.
- \_\_\_\_\_ (6) The Internet, electronic commerce, and biotechnology.

Briefly explain (attach additional sheets if necessary) why the action falls within the specific categories of N.C. Gen. Stat. 7A-45.4(a) checked above, as well as any additional information you believe may be helpful to the Court in determining whether the Business Court should retain jurisdiction of this matter:

A copy of all pleadings listed in N.C. R. Civ. P. 7(a) that have been filed to date in this action are attached hereto as Appendix A for the convenience of the Court.

This \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Attorney for \_\_\_\_\_

**FORM 2**

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE  
COURT DIVISION

COUNTY OF

CIVIL ACTION NO:

John Doe,

Plaintiff,

v.

CASE MANAGEMENT ORDER

ABC Corporation,

Defendant.

THIS MATTER is before the Court pursuant to Rule 17 of the Business Court Rules. This case has been designated as an exceptional case pursuant to Rule 2.1 of the General Rules of Practice. The parties have conferred in advance and have agreed that the Court should enter an order covering scheduling and case management issues in order to facilitate the fair and efficient disposition of this action.

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that:

I. SCOPE OF ORDER

A. General Scope of Order

This order establishes certain procedures to be used and sets deadlines for various matters likely to arise through trial. It shall remain in effect until rescinded by the Court or superseded by subsequent orders. The North Carolina Rules of Civil Procedure, the General Rules of Practice for the Superior and District Courts, and the Local Rules for the North Carolina Business Court shall govern all matters not expressly covered by this Order.

B. Application of Order

This Order, as well as any subsequent case management orders entered by the Court, shall bind all parties to this action and all parties added hereafter unless the Court orders to the contrary.

C. Modification of this Order

The Court may amend or supplement this Order as deemed appropriate by the Court upon the motion of any party or by the Court.

II. COMMUNICATION WITH THE COURT AND AMONG THE PARTIES

A. The parties are represented locally by the following: (hereinafter “Liaison Counsel”):

- 1. \_\_\_\_\_, of \_\_\_\_\_, representing Plaintiff(s);
- 2. \_\_\_\_\_, of \_\_\_\_\_, representing Defendant(s).

B. The Court will communicate with counsel and counsel shall have the responsibility for notifying all parties that it represents of all communications from the Court.

C. All communications with the Court, including a copy of any paper, pleading, order or proposed order, and all exhibits, attachments or enclosures thereto filed in this action shall be sent to the Business Court Judge assigned to the case.

The following parties have agreed to use the Business Court’s electronic filing and service in accordance with Rule 6:

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Any communication filed electronically automatically will be served on all parties

equipped to receive electronic mail.

D. A copy of any paper, pleading, order or proposed order (including all attachments or enclosures, or any other written or electronic communication with the Court, whether filed or not filed) generated by counsel for any party shall be delivered, e-mailed or telecopied to counsel for the other party or parties at least five (5) business days before any scheduled hearing on a matter to which such documents relate.

III. JURISDICTION AND VENUE

A. This Court has subject matter jurisdiction over the disputes raised in this action.

B. The parties  do  do not (*check one*) stipulate that all of the defendants have been properly served with the summons and complaint, and the Court has personal jurisdiction over each of the parties.

C. The parties  do  do not (*check one*) stipulate that venue is proper in this action.

D. All pretrial and trial proceedings in this matter shall occur in the following location:\_\_\_\_\_.

IV. ISSUES, DISCOVERY, MOTIONS, AND TRIAL

A. ISSUES

The principal legal and factual issues which counsel presently believe will need to be decided in this case are as follows:

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The issues in this case which counsel presently believe are governed by the law of any state other than North Carolina law or federal law are as follows:

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**B. DISCOVERY**

At a hearing on \_\_\_\_\_, the Court heard discussion and arguments of counsel regarding discovery in this case. Having considered the record and arguments of counsel, the Court hereby incorporates into this Case Management Order the following provisions regarding discovery on the merits:

The parties are instructed to conduct fact discovery first, then move on to expert witness discovery. The parties shall have until \_\_\_\_\_ to conduct fact discovery on the merits issues. The parties shall be permitted no more than \_\_\_\_\_ fact depositions each. The parties shall be allowed \_\_\_\_\_ interrogatories each. The parties shall submit to the Court any proposed protective orders by \_\_\_\_\_. There will be a subsequent sixty (60) day period for discovery of expert witnesses, if necessary, though and including \_\_\_\_\_. This additional sixty (60) day period is reserved solely for discovery of expert witnesses, and shall not apply if expert discovery is unnecessary. The parties shall be permitted no more than \_\_\_\_\_ expert depositions each.

A preliminary schedule for depositions of such persons and entities as the parties presently are able to identify is as follows: \_\_\_\_\_

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The parties shall produce electronic records shall in the following format:\_\_\_\_\_.

The parties shall adopt the following procedures to avoid unnecessary burden and expense associated with production of electronic records:\_\_\_\_\_

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The parties shall adopt the following procedures for retention of potentially relevant documents, including but not limited to documents stored electronically and the need to suspend all automatic deletions of electronic documents or overwriting of backup tapes which may contain potentially relevant information:

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The parties shall adopt the following security measures to protect any information that is produced in electronic format or that will be converted into electronic format and stored on counsel's computer systems:

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The following further limitations and guidelines are hereby placed on discovery:

1. Depositions shall be conducted in accordance with the following guidelines:

(a) All parties or employees will be made available for deposition on ten days' notice to counsel.

(b) Counsel shall not direct or request that a witness not answer a question, unless counsel has objected to the question on the ground that the answer is protected by privilege or a limitation on evidence directed by the Court.

(c) Counsel shall not make objections or statements which might suggest an answer to a witness. Counsel's statements when making objections should be succinct, stating the basis of the objection and nothing more.

(d) Counsel and their witness-clients shall not engage in private, off-the-record conferences while the deposition is proceeding in session, except for the purpose of deciding whether to assert a privilege.

(e) Deposing counsel shall provide to the witness's counsel a copy of all documents shown to the witness during the deposition. The copies shall be provided either before the deposition begins or contemporaneously with the showing of each document to the witness. The witness and the witness's counsel do not have the right to discuss documents privately before the witness answers questions about them.

2. The parties may conduct only that discovery specifically provided for in this Order.

3. No extensions of time shall be granted without written consent of the opposing party or by Order of the Court.

C. MOTIONS

The parties intend to file the following Motions to Dismiss or other preliminary or pre-discovery motions, and have designated the following time periods in which such motions shall be filed, briefed, and argued: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

It is further ordered that the setting of the \_\_\_\_\_ deadline for completion of discovery shall not limit any party from filing summary judgment motions as to merits issues during such period, but any such motions should be very narrowly drawn so as to address only issues on which fact discovery has been completed. If there are still motions pending after the discovery period, the Court will set a briefing schedule at that time.

After the close of discovery, the parties shall have until \_\_\_\_\_ to file post-discovery dispositive motions.

For the purposes of the length limitations on briefs under Rule 15.8, the following parties shall be required to file joint briefs: \_\_\_\_\_.

The parties have selected \_\_\_\_\_ as a mediator and mediation shall be completed by \_\_\_\_\_.

D. TRIAL

The tentative date by which the parties will be prepared for trial is: \_\_\_\_\_.

The following parties have indicated a desire to use case tracking, scanning, videographic, and real-time court reporting services: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

SO ORDERED, this the \_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
The Honorable \_\_\_\_\_  
Business Court Judge Presiding