

**LOCAL RULES FOR CIVIL DISTRICT COURT**  
**TENTH JUDICIAL DISTRICT**  
**NORTH CAROLINA**

Effective November 18, 2015

<a href="#">Rule 1.0: Purpose of the Rules</a> .....	1
Rule 1.1 Purpose	
Rule 1.2 Promulgation Authority	
Rule 1.3 Amendments to the Rules	
Rule 1.4 Time Guidelines for Resolution of District Court General Civil Cases	
Rule 1.5 Application of Rules	
Rule 1.6 Citation of Rules	
Rule 1.7 Applicability to General Civil Only	
Rule 1.8 Self-Represented Person	
<a href="#">Rule 2.0: Calendaring and Notice to Attorneys</a> .....	2
Rule 2.1 Preparation of Calendars	
Rule 2.2 Daily Calendars	
Rule 2.3 Calendar Call	
Rule 2.4 Daily Calendaring Guidelines	
Rule 2.5 Calendar Publication	
Rule 2.6 Case Status Updates	
Rule 2.7 Attorney Query Tool	
Rule 2.8 Subscription	
Rule 2.9 Court Appearance	
<a href="#">Rule 3.0: Motions and Other Non-Jury Matters</a> .....	3
Rule 3.1 Generally	
Rule 3.2 Calendar Requests	
Rule 3.3 Motions to Withdraw	
Rule 3.4 Briefs and Memoranda of Law	
Rule 3.5 Adding Motions to Published Trial Calendar	
Rule 3.6 <i>Ex Parte</i> Motions Other Than Requests for Injunctive Relief	
(a) Motion for Order to Show Cause	
(b) Motion for Temporary Civil No-Contact Order Pursuant to N.C.G.S. § 95-265 (“Workplace Violence Prevention Act”)	
(c) Motion for Default Judgment Without a Hearing, Rule 55(b)(2)(b)	
(d) Motion for Orders in Aid of Execution	
(e) Inactive Order	
(f) Other Motions Seeking <i>ex parte</i> Relief	
(g) Calendar Request	
<a href="#">Rule 4.0: Case Management and Setting Cases for Trial</a> .....	7
Rule 4.1 Generally	
Rule 4.2 Cases Set by the Court for Trial	
Rule 4.3 Cases Set by the Court for Status Review	

Rule 4.4	Status Review or Clean-up Calendars	
Rule 4.5	Reporting Settled Cases	
Rule 4.6	Removal of Cases from Jury Calendar	
<a href="#">Rule 5.0: Discovery</a>		9
Rule 5.1	Generally	
Rule 5.2	Method	
Rule 5.3	Time Period for Discovery	
Rule 5.4	Discovery Motions and Objections	
<a href="#">Rule 6.0: Pre-Trial Orders, Pre-Trial Conferences, and Exhibits</a>		10
Rule 6.1	Generally	
Rule 6.2	Pre-Trial Orders and Jury Instructions	
Rule 6.3	Pre-Trial Conference	
Rule 6.4	Exhibits	
<a href="#">Rule 7.0: Peremptory and Priority Settings</a>		11
Rule 7.1	Generally	
Rule 7.2	Reasons for Request	
Rule 7.3	Setting by the Court	
<a href="#">Rule 8.0: Continuances</a>		11
Rule 8.1	Generally	
Rule 8.2	Content	
Rule 8.3	Timing	
Rule 8.4	Objections	
Rule 8.5	Cases not Reached	
Rule 8.6	Continued to a Date Certain	
<a href="#">Rule 9.0: Self-Represented Persons</a>		13
Rule 9.1	Generally	
Rule 9.2	Unpublished Authorities to be Provided to Self-Represented Persons	
Rule 9.3	Default Judgment and Servicemembers Civil Relief Act Affidavit	
Rule 9.4	Answers versus Communication with Opposing Party	
<a href="#">Rule 10.0: Bankruptcy</a>		14
Rule 10.1	Notice of Filing of Bankruptcy	
Rule 10.2	Inactive Status	
<a href="#">Rule 11.0: Production of Medical or Public Records in Lieu of Appearance</a>		14
Rule 11.1	Generally	
Rule 11.2	Release of Medical or Public Records	
Rule 11.3	Retention of Medical or Public Records	
<a href="#">Rule 12.0: Consent Orders/Judgments and Judicial Review of Settlements</a>		15
Rule 12.1	Minor Settlements, Wrongful Death Settlements, and Other Settlements to be Approved by the Court	
Rule 12.2	Consent Orders/Judgments	
Rule 12.3	Presence of Parties in Minor Settlements	
Rule 12.4	Candor to the Tribunal	

<a href="#"><u>Rule 13.0: Requests for Injunctive Relief</u></a> .....	15
Rule 13.1	Generally
Rule 13.2	Applications or Motions for Temporary Restraining Orders
Rule 13.3	Notice
Rule 13.4	Preliminary Injunction after Entry of Temporary Restraining Order
Rule 13.5	Preliminary Injunction When No Temporary Restraining Order is Entered
<a href="#"><u>Rule 14.0: Mandatory Court-Ordered Arbitration</u></a> .....	16
Rule 14.1	Statutory Authority
Rule 14.2	Arbitration Process
Rule 14.3	Scheduling Arbitration
Rule 14.4	Motions to be Heard by Judge
Rule 14.5	Informal Stay of Case
Rule 14.6	Inactive Orders
<a href="#"><u>Rule 15.0: Designation of Secure Leave</u></a> .....	17
Rule 15.1	Generally
Rule 15.2	Submission of Notice
Rule 15.3	No Filing with the Clerk
Rule 15.4	Extraordinary Circumstances
<a href="#"><u>Rule 16.0: Miscellaneous</u></a> .....	18
Rule 16.1	Scheduling Conflicts
Rule 16.2	Courtroom Presence
Rule 16.3	Obligations of Attorneys and Self-Represented Persons
Rule 16.4	Sanctions
Rule 16.5	Presiding Judge
Rule 16.6	Lead Judge in General Civil District Court
Rule 16.7	Transcripts/Electronic Recordings of Court Proceedings
Rule 16.8	Adoption Proceedings
Rule 16.9	Order/Judgment Submissions
Rule 16.10	Return of Entered Orders/Judgments

**Appendix:**

- WAKE-CVD-01: Calendar Request Form
- WAKE-CVD-02: Motion/Order to Continue Form
- WAKE-CVD-03: Request for Peremptory Setting Form
- WAKE-CVD-04: Arbitration Waiver Form
- WAKE-CVD-05: Civil Submissions Coversheet

NOTE: Local Forms in PDF-Fillable format are available online at: [www.nccourts.org/WakeTCA](http://www.nccourts.org/WakeTCA)

## **1.0 PURPOSE OF THE RULES**

**1.1 Purpose.** The purpose of these rules is to provide for the just, orderly, and prompt consideration, determination and disposition of civil matters to be heard in Wake County District Court. They shall at all times be construed and enforced to avoid technical delay.

**1.2 Promulgation Authority.** These rules are promulgated pursuant to Rule 2 of the North Carolina General Rules of Practice for Superior and District Courts (“General Rules of Practice”) and Rule 40 of the North Carolina Rules of Civil Procedure (“Rules of Civil Procedure”).

**1.3 Amendments to Rules.** The rules and all amendments hereafter shall be filed with the Clerk of Superior Court for Wake County and published on the North Carolina Administrative Office of the Courts website: [www.nccourts.org](http://www.nccourts.org). The Trial Court Administrator shall maintain a supply of printed rules to be furnished upon request.

**1.4 Time Guidelines for Resolution of District Court General Civil Cases.** The North Carolina Supreme Court standards for resolution of cases filed in civil District Court are as follows: 90% resolved within one year, 98% within 18 months and 100% within two years. These rules are to be read consistently with the standards as set forth by the Supreme Court. (See Court Performance Management System at [www.nccourts.org/Citizens/SRPlanning/Performance/Default.asp](http://www.nccourts.org/Citizens/SRPlanning/Performance/Default.asp).)

**1.5 Application of Rules.** These rules are not complete in every detail and will not cover all situations. If the rules do not cover a specific situation, the Trial Court Administrator is authorized to act, subject to consultation with the Chief District Court Judge of the Tenth Judicial District (“Chief District Court Judge”) or the presiding Judge.

**1.6 Citation of Rules.** These rules may be cited as “Tenth Judicial District Local Rules for Civil District Court.”

**1.7 Applicability to General Civil Only.** These rules shall apply to general civil cases and adoptions that have been transferred or appealed to District Court (see Rule 16.8 below) as distinguished between domestic (including divorces) and juvenile cases. Complaints for breach of contract or rescission involving an unincorporated property settlement or separation agreement for which no family court judicial assignment is required (see Tenth Judicial District Family Court Rules for Domestic Court) are general civil cases to which these Rules apply.

**1.8 Self-Represented Person.** When a party (plaintiff or defendant) is a legal entity (including, but not limited to, a corporation, limited liability company, professional limited liability company, and professional limited liability partnership), that party must be represented by an attorney in order to appear in civil District Court. When the party (plaintiff or defendant) is not a legal entity, but is a person doing business under a

trade name, then that party may appear in civil District Court without an attorney. A natural person appearing in civil District Court as a defendant or a plaintiff without an attorney is referred to in these local rules as a “self-represented person.”

## **2.0 CALENDARING AND NOTICE TO ATTORNEYS**

**2.1 Preparation of Calendars.** The Trial Court Administrator shall prepare the necessary calendars for the disposition of civil cases in District Court in accordance with these rules.

**2.2 Daily Calendars.** A one day rule will apply to all cases set on the general civil calendar. This means that if a case does not start on the day for which it has been calendared, then (absent good cause shown as determined by the presiding Judge) the case will not be reached that day, and a continuance order will be entered in accordance with Rule 8.0 (and all sub-parts) below.

**2.3 Calendar Call.** There shall be a calendar call of the cases on the calendar by the presiding Judge each day of the week at 9:00 am. If there is a separate afternoon calendar, then there shall also be a calendar call of the cases on the afternoon calendar by the presiding Judge at 2:00 pm. Cases will normally be called for trial or hearing in the order they appear on the calendar. However, any case may be called for trial or hearing by the presiding Judge at any time during the day for cases on the morning calendar or anytime in the afternoon for cases on the afternoon calendar. Attorneys and self-represented persons should be prepared for their case to be called at any time on the date the matter appears on the calendar.

**2.4 Daily Calendar Guidelines.** As a general scheduling guideline, the Trial Court Administrator will set jury trials on Monday; non-jury trials and small claims appeals will be set on Tuesday and Wednesday; and motions will be set on Thursday. The Trial Court Administrator is authorized to also set motions on Wednesday and Friday afternoons when needed. The Trial Court Administrator is further authorized to schedule matters outside of these guidelines subject to consultation with the Chief District Court Judge or the presiding Judge, including the use of Friday for other civil matters.

**2.5 Calendar Publication.** All court calendars will be prepared by the Trial Court Administrator and published on the Administrative Office of the Courts website no later than four weeks prior to the first day of the court session. Publication of the calendar shall serve as sufficient notice to counsel that a case has been set. Once published, the calendar may be viewed online at: <http://www1.aoc.state.nc.us/www/calendars/Civil.html>. Within two (2) business days of the posting of a calendar, the Clerk of Court shall file and serve notices of hearing on attorneys of record and self-represented persons in cases that have been scheduled for trial or hearing by the Trial Court Administrator. Notices of Hearing shall be sent via first class mail to the attorneys of record and self-represented persons at the addresses that have been provided by the parties to the Clerk of Court. In cases scheduled by a party for trial or hearing, the party scheduling

the matter for trial or hearing is responsible for complying with the notice requirements of Rule 5 of the Rules of Civil Procedure. Printed calendars will not be mailed to parties or attorneys.

**2.6 Case Status Updates.** In cases appearing on a published calendar, parties must provide notice to the Trial Court Administrator of any updates to the status of a case, including settlements and continuances.

**2.7 Attorney Query Tool.** Attorneys may search cases on published calendars using the Civil Calendar Attorney Query by Bar Number tool at: <http://www1.aoc.state.nc.us/www/calendars/CivilQuery.html>. To ensure accuracy of this tool, attorneys must provide the Clerk of Superior Court with information regarding withdrawals, notice of appearance, and substitution of counsel in specific cases. Filings must include the North Carolina State Bar number for each attorney of record. Only attorneys active with the North Carolina State Bar and who have a valid North Carolina State Bar identification number will be able to locate scheduled matters with this search tool.

**2.8 Subscription.** The North Carolina Court Calendar subscription service is available for civil District Court cases set for hearing on published calendars in Wake County at the following web address:

<http://www1.aoc.state.nc.us/www/calendars/Civil.jsp?county=WAKE>.

**2.9 Court Appearance.** When an attorney is notified to appear for a pre-trial conference, motion hearing, trial, or any other court appearance, the attorney must, 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 Judge before whom the case is scheduled and has given prior notice to his/her opponent, an attorney's absence should not be grounds for a continuance.

### **3.0 MOTIONS AND OTHER NON-JURY MATTERS**

**3.1 Generally.** While the Trial Court Administrator will generally schedule motions on Thursday morning, the Trial Court Administrator may schedule non-jury matters (including motions) to be considered on jury and non-jury days.

**3.2 Calendar Requests.** Any party requesting that a motion or non-jury trial be calendared must submit a completed calendar request (WAKE-CVD-01) to the Trial Court Administrator. Calendar requests should not be filed with the Clerk. Calendar requests may be hand-delivered, mailed, emailed or faxed to the Trial Court Administrator. The fax number to send calendar requests is: (919) 792-4951, and the email address to send calendar requests is: [calendarrequestswake@nccourts.org](mailto:calendarrequestswake@nccourts.org). Submission of only one copy of the request is sufficient. A non-moving party may request that an opposing party's motion be set for hearing by submitting a calendar request to the Trial Court Administrator. Calendar requests shall be submitted within

the deadlines established on the sessions schedule. Cases for trial may be added to the final calendar after it is published only by the Chief District Court Judge, the presiding Judge, or the Trial Court Administrator. Under appropriate circumstances, the Trial Court Administrator may set a motion for hearing at any time so long as the notice requirements of Rule (6) (d) of the Rules of Civil Procedure are satisfied or all parties consent. Any special requests regarding the setting of a motion must be included in the calendar request. No calendar request may be made before filing the motion that is the subject of the hearing. Requests submitted before the filing of a motion will be without effect and ignored. Calendar requests must be served on counsel for all opposing parties and any self-represented person contemporaneously with submission of the calendar request to the Trial Court Administrator. If the opposing party has a conflict with the request made, the Trial Court Administrator must be notified within three (3) days of service of the calendar request. Upon being notified, the Trial Court Administrator will work with the parties to resolve the conflict.

### **3.3 Motions to Withdraw.**

- a) Generally.** The motion to withdraw must be filed with the Clerk of Superior Court and served on the client from whom representation is being withdrawn and on all opposing counsel/self-represented persons. A motion to withdraw that has been consented to in writing by all opposing counsel/self-represented persons and by the client from whom representation is being withdrawn shall be submitted to the Court as outlined in Rule 12.2 below.
- b) Motion to Withdraw Without Client's Consent.** A motion to withdraw that has not been consented to by the client from whom representation is being withdrawn must be scheduled for hearing in accordance with these Rules.
- c) Motion to Withdraw With Client's Consent.**
  - 1. Content. A motion to withdraw that has been consented to by the client from whom representation is being withdrawn must include the client's consent in writing on the face of the motion. The motion must specifically state that the court will decide the motion to withdraw without a hearing if opposing counsel/self-represented person fails to serve on the movant a written response, stating the grounds for opposing the motion, within five (5) business days of service of the motion.
  - 2. If no response is timely served on the movant and at least five (5) business days have elapsed following the service on opposing counsel (or self-represented person), the movant shall deliver a file-stamped copy of the motion and at least three copies of the proposed order to the Clerk of Court, accompanied by WAKE-CVD-05. The courtroom clerk will present the motion to the presiding judge for consideration.

**d) Orders Allowing Motion to Withdraw.**

1. All proposed orders allowing a motion to withdraw must set forth the name, address, and email address (if known) of substitute counsel, or if there is no known substitute counsel, the order must set forth the last known address, telephone number, and email address (if known) of the party from whom representation is being withdrawn.
2. Unless consented to in writing by opposing counsel/self-represented person and the client from whom representation is being withdrawn, proposed orders allowing the motion to withdraw without a hearing must include findings as to when the motion to withdraw was served, that the motion contained the notice required by this Rule, that opposing counsel/self-represented person did not timely serve any objections to the motion and that at least five (5) business days have elapsed since the motion was served on opposing counsel/self-represented person.

**3.4 Briefs and Memoranda of Law.** Attorneys and self-represented persons shall serve on all other attorneys of record and self-represented persons any briefs or memoranda of law at least two (2) business days prior to the hearing on any motion seeking a final determination of the rights of any party as to any claim or defense, and shall serve affidavits in support of or in opposition to motions for summary judgment in accordance with Rule 5, Rule 6 and Rule 56 of the Rules of Civil Procedure. However, this Local Rule does not preclude an attorney or self-represented person from providing to the Court copies of cases or statutes relied upon at a hearing.

**3.5 Adding Motions to Published Trial Calendar.** A dispositive motion filed after the final calendar is published may be heard at the call of the case for trial provided that proper notice of hearing was timely provided to all opposing parties. Motions filed after the final calendar is set will not be grounds for a continuance.

**3.6 Ex Parte Motions Other Than Requests for Injunctive Relief.**

- a) **Motion for Order to Show Cause.** A motion for an order to show cause must include, as an attachment to the motion, a copy of the Order that is the subject of the show cause motion.
  1. Procedure: The motion for order to show cause shall be filed with the Clerk of Superior Court. The motion, along with three copies of the proposed show cause order that includes a space for the judge to deny the motion shall be delivered to the Clerk of Court, accompanied by WAKE-CVD-05. The courtroom clerk will present the file-stamped motion to the presiding Judge for consideration. The proposed show cause order shall include space for a date for the show cause hearing. The Trial Court Administrator shall select and/or approve the date for the subsequent hearing.

- b) **Motion for Temporary Civil No-Contact Order Pursuant to North Carolina General Statutes (“N.C.G.S.”) § 95-265 (“Workplace Violence Prevention Act”).** The employer-plaintiff seeking a No-Contact Order pursuant to the Workplace Violence Prevention Act shall initiate such an action using form AOC-CV-540, “Complaint for Civil No-Contact Order Pursuant to the Workplace Violence Prevention Act”.
1. If the Complaint requests a temporary no-contact order, then a copy of the file-stamped Complaint, along with three copies of the proposed order on form AOC-CV-533, shall be delivered to the Trial Court Administrator for immediate scheduling and presentation to a judge. The Trial Court Administrator shall select and/or approve the date for the subsequent hearing.
  2. **Attorney or Self-Represented Person.** When the employer-plaintiff is a legal entity (including, but not limited to, a corporation, limited liability company, professional limited liability company, professional limited liability partnership), the employer-plaintiff must be represented by an attorney in order to appear in civil District Court. When the employer/plaintiff is a person doing business under a trade name, then the employer-plaintiff may appear in court without an attorney as any other self-represented person.
- c) **Motion for Default Judgment Without a Hearing, Rule 55(b)(2)b.** The only motion for default judgment that can be considered *ex parte* by a judge is a motion filed in accordance with Rule 55(b)(2)b of the Rules of Civil Procedure.
1. **Procedure.** Upon obtaining an entry of default from the Clerk and filing a motion for default judgment in conformity with Rule 55(b)(2)b, the moving party may, after the applicable time period has expired, deliver to the Clerk of Court, accompanied by WAKE-CVD-05, a file-stamped copy of the motion, any file-stamped affidavits in support of the motion (including any military affidavits, see Rule 9.3 below), three copies of the proposed judgment. The courtroom clerk will present the motion and accompanying documents to the presiding Judge for consideration. Once the presiding Judge has ruled on the motion, the Clerk will file the original judgment and return the file-stamped copies to the movant.
- d) **Motion for Orders in Aid of Execution.** An *ex parte* order issued in response to a motion filed in a supplemental proceeding seeking issuance of an order to seize property of a judgment debtor shall be limited in scope to prohibiting the holder of the property from disposing of the asset(s) pending a hearing on the motion to seize the property. Consistent with the requirements of N.C.G.S. Chapter 1, Article 31, such motion shall not be filed until a Writ of Execution has been returned unsatisfied in whole or in part.

1. Freezing accounts. When a financial institution is the subject of the order, the *ex parte* order must require the financial institution to timely contact the moving party when any funds are frozen. Upon receipt of information that funds have been frozen, the judgment creditor must schedule a hearing within five (5) business days regarding the frozen funds. The *ex parte* order must comply with applicable law regarding the freezing of any jointly held accounts.
  2. Property Held by Judgment Debtor. When the *ex parte* order prohibits the judgment debtor from disposing of property other than property held by a financial institution (see paragraph 3.6(d)1 above), a hearing must be held on the motion within five (5) business days of the issuance of the *ex parte* order, and the *ex parte* order must include the date, time, and location of the hearing.
  3. Procedure. The request/motion for an order seeking seizure of assets, along with three copies of the proposed order, shall be delivered to the Clerk of Court, accompanied by WAKE-CVD-05, and the courtroom clerk will present the filed motion to the presiding Judge for consideration.
- e) **Inactive Order.** A motion seeking an inactive order due to a defendant filing for bankruptcy (see Rule 10 below) or because the defendant(s) is/are making payments on the debt that is the subject of the action, may be considered by the presiding Judge *ex parte*. A motion seeking an inactive order for any other reason must be calendared for hearing. Upon the filing of a motion seeking an inactive order that can be entered without a hearing, the moving party shall deliver to the Clerk of Court, accompanied by WAKE-CVD-05, a copy of the motion, and three copies of the proposed order. The courtroom clerk will present the filed motion to the presiding Judge for consideration.
- f) **Other Motions Seeking *ex parte* Relief.** Any motion other than those expressly identified in these Rules that seeks the issuance of an *ex parte* order must include a representation to the Court as to the statutory or legal basis for issuance of the order outside of a properly noticed hearing. The procedure for seeking *ex parte* relief for these motions shall be as provided in Rule 3.6(e) above.
- g) **Calendar Request.** Upon the granting of an *ex parte* order that provides for a subsequent hearing, in addition to any orders containing dates for future hearings, the movant must immediately submit a calendar request to the Trial Court Administrator in accordance with Rule 3.2 above.

#### **4.0 CASE MANAGEMENT AND SETTING CASES FOR TRIAL**

**4.1 Generally.** The Trial Court Administrator shall manage the general civil cases in District Court in accordance with the guidelines established herein. However, the

Trial Court Administrator, in consultation with the Chief District Court Judge, has discretion to alter the procedures in rule 4.2 below in which cases are set for hearing by the Court without formal modification to these Rules.

**4.2 Cases Set by the Court for Trial.** As part of the case management responsibilities of the Trial Court Administrator, the Trial Court Administrator shall calendar cases for trial on the trial calendar for the timely resolution of these cases. For cases set by the Court for trial, the Clerk of Court, in conjunction with the Trial Court Administrator, shall file and serve a Notice of Hearing on all parties in accordance with Rule 2.5 above.

- a) **Small Claims Appeal.** Following the timely filing of a Notice of Appeal to District Court, the Trial Court Administrator shall calendar the case for trial on the next available court setting.
- b) **Request for Trial de Novo.** If following mandatory, court-ordered arbitration (see Rule 14.0 below), either party timely files a request for trial de novo, the Trial Court Administrator shall calendar the case for trial on the next available court setting.
- c) **Aged Cases.** The Trial Court Administrator shall regularly review the status of general civil cases pending in District Court. If more than one hundred eighty (180) days have elapsed since the filing of the Complaint and the case is not currently on a calendar for trial of all pending claims, the Trial Court Administrator may schedule all pending claims for trial on the next available court calendar.

**4.3 Cases Set by the Court for Status Review.** In cases in which service has not been perfected on all defendants and one hundred twenty (120) days after the filing of the Complaint has expired without the automated civil case processing system ("VCAP") automatically closing the case, the Trial Court Administrator shall calendar the case on the next available status review date. The Clerk of Court, in conjunction with the Trial Court Administrator, shall file and serve a Notice of Hearing on all parties in accordance with Rule 2.5 above in cases that have been scheduled for status review.

- a) **First Status Review Hearing.** At the first status review hearing, the Court will inquire of the plaintiff as to why service has not been completed. If the plaintiff has not made diligent efforts to locate and serve all defendants, the Court may, on its own motion, dismiss the Complaint without prejudice as to the unserved defendants for failure to prosecute the action. If the plaintiff has made diligent efforts to locate and serve all defendants, the Court will continue the status review hearing to the next available status review date to give Plaintiff sufficient time to complete service by some other means (such as publication).

- b) **Subsequent Status Review Hearing.** At any subsequent status review hearing, if the plaintiff has not made diligent efforts to serve all defendants, the Court may, on its own motion, dismiss the Complaint as to the unserved defendants without prejudice for failure to prosecute the action. In lieu of dismissing the Complaint, if there is no active alias and pluries summons for any unserved defendant, the Court may enter an Order of Discontinuance as to the unserved defendant(s).

**4.4 Status Review or Clean-up Calendars.** Nothing in these Rules prohibits the Trial Court Administrator, in consultation with the Chief District Court Judge, from considering the need for a separate status review or clean-up calendar. Cases shall be placed on a status review or cleanup calendar if the Trial Court Administrator or the Chief District Court Judge determines that such cases are a proper subject for inquiry concerning their status.

**4.5 Reporting Settled Cases.** When a case on a published calendar is settled, all attorneys of record or self-represented persons must notify the Trial Court Administrator within twenty-four (24) hours of the settlement and advise who will prepare and present the Judgment (or other closing documents), and when. Attorneys and self-represented persons are to take all steps necessary to close settled cases and have an affirmative duty to file all necessary documents and do so within the term of court for which the case is calendared for trial, or hearing, or by a date set by the Chief District Court Judge or the Judge before whom the case is scheduled for trial or hearing. If a case is not reported to the Trial Court Administrator as settled before 5:00 pm on the Friday before the case is scheduled for hearing, then the parties must appear for calendar call unless expressly excused by the presiding judge.

**4.6 Removal of Cases from Calendar.** Cases set for trial or hearing will be removed from the calendar prior to the call of the calendar only under the following conditions: (1) settlement of the case (see Rule 4.5 above) and/or final resolution of all calendared issues (including voluntary dismissal); (2) filed written withdrawal of the motion by the moving party; or (3) continuance by the court for good cause shown pursuant to Rule 8 below.

## **5.0 DISCOVERY**

**5.1 Generally.** Parties are expected to make a good faith effort to participate in discovery as set forth in Rule 8 of the General Rules of Practice.

**5.2 Method.** Discovery is expected to begin promptly upon the close of the pleadings and, except as supplemented by these Rules, shall be governed by the Rules of Civil Procedure. All forms of discovery may be used in any sequence during the discovery process, unless otherwise ordered. No agreement to delay discovery or engage in informal discovery may serve as a basis to continue the trial date.

**5.3 Time Period for Discovery.** Discovery must be completed within one hundred and twenty (120) days after the last required pleading is filed and not inconsistent with Rule 26(d) of the Rules of Civil Procedure.

**5.4 Discovery Motions and Objections.** The Court will not consider motions and objections to discovery unless the motion includes a certification consistent with Rule 37(a)(2) of the Rules of Civil Procedure.

## **6.0 PRE-TRIAL ORDERS, PRE-TRIAL CONFERENCES, AND EXHIBITS**

**6.1 Generally.** In cases where a jury demand has been made, any party requesting that a jury trial be calendared must submit a completed calendar request (WAKE-CVD-01) to the Trial Court Administrator as set forth in Rule 3.2 above.

**6.2 Pre-Trial Orders and Jury Instructions.** Pre-trial orders and proposed jury instructions are required in every jury trial. Proposed pre-trial orders and jury instructions are due to the Trial Court Administrator no later than 5:00 p.m. on the Thursday prior to the session of court in which the case is calendared for trial. The pre-trial order shall be in substance as shown on the sample form set out in the General Rules of Practice. The pre-trial order shall include any stipulations, a list of the witnesses expected to be called at trial, a list of exhibits, and a list of the issues the parties request be submitted to the jury.

**6.3 Pre-Trial Conference.** Any party, or the Court on its own motion, may request a pre-trial conference as required under Rule 7 of the General Rules of Practice to address matters relating to final trial preparation or settlement of a case. At the time of or immediately following the pre-trial conference, unless otherwise ordered or agreed, it shall be the duty of the plaintiff to prepare the final proposed pre-trial order to be signed by all counsel and self-represented persons.

### **6.4 Exhibits.**

- a) Exhibits shall be pre-marked with appropriate stickers or other labeling with the sequential numbers.
- b) For jury trials (and non-jury trials in which there has been a pre-trial conference and pre-trial order), each party shall provide to the courtroom clerk at the beginning of the trial a list of all exhibits in sequential order.
- c) For jury trials, if publication of an exhibit to the jury is intended, counsel and self-represented persons are encouraged to provide a sufficient number of copies of the exhibit for use by the jury.
- d) Unless at the conclusion of the hearing/trial the judge orders that the exhibits be maintained by an attorney, then the party who moved the exhibit into evidence must redact (or have already redacted) all but the last four (4)

digits of any identifying information. If the identifying information is less than eight (8) digits, than all but the last two (2) digits must be redacted. Identifying information includes, but is not limited to the following:

- Social security number
- Taxpayer identification number
- Driver's license number
- State identification number
- Passport number
- Financial (checking, savings, investment) account number
- Credit or debit card number
- Personal identification number (PIN) and passwords

- e) If the exhibits are ordered to be maintained by someone other than the Clerk, then the order/judgment shall include language in the decree documenting the disposition of the exhibits.

## **7.0 PEREMPTORY AND PRIORITY SETTINGS**

**7.1 Generally.** Written requests for the peremptory setting of a case shall be served on the Trial Court Administrator at least six (6) weeks prior to the requested trial setting of the case. WAKE-CVD-03 may be used. All counsels of record and self-represented persons must be copied on the request. The party seeking a peremptory setting must also serve a copy of the order granting a request for peremptory setting on all counsels of record and self-represented persons, along with a copy of the calendar request.

**7.2 Reasons for Request.** The request must state the reason(s) for the need to have a peremptory setting. Travel of short distances for parties or witnesses typically will not warrant the setting of a case peremptorily. Factors that are considered in determining whether a case will receive a peremptory setting include: the age of the case; the number of times the case has previously been set; travel distance and means required of those involved in the case; the number of expert witnesses expected to testify at trial; and any other reason that may greatly impact the just and proper resolution of the case.

**7.3 Setting by the Court.** The Court may set a case peremptorily at any time.

## **8.0 CONTINUANCES**

**8.1 Generally.** Any motion to continue shall be filed with the Clerk of Superior Court. The motion, along with three copies of the proposed order, shall be delivered to the Clerk of Court, accompanied by WAKE-CVD-05. Opposing counsel and/or self-represented persons must be notified of the motion to continue before filing it with the Clerk of Superior Court. No continuance shall be granted solely because all parties agree. Motions to continue a case set for trial are generally disfavored and will be granted only upon good cause shown.

The movant shall NOT deliver a copy of the motion to continue to either the presiding Judge or to the Trial Court Administrator. After delivering the motion to continue to the Clerk of Court, the courtroom clerk will deliver a file-stamped copy of the motion to continue to the appropriate judge for consideration. Only the judge before whom a case is scheduled to be heard or the Chief District Court Judge may continue a case.

**8.2 Content.** Local Form WAKE-CVD-02 (or a motion and order that are substantially similar to this form) shall be used for all motions to continue. Any motion to continue must be in writing and contain the following information:

- a) Caption and file number of the case;
- b) Session at which the case is set;
- c) The basis for the motion. Position of the case on the calendar will ordinarily not be considered a valid reason for continuance. When an attorney's scheduling conflict in another court is the reason for continuance, a copy of the court calendar for the other case must be attached along with any communication required by Rule 3.1 of the General Rules of Practice;
- d) The number of times the case has previously been continued;
- e) A certification that the moving party conferred, or attempted in good faith to confer, with all parties before filing the motion, and a statement of whether the opposing party objects or consents to the motion, if known;
- f) A proposed rescheduled trial/hearing date within ninety (90) days for the rescheduling of the case (when the parties do not include a proposed reschedule date, the Trial Court Administrator shall reset the case); and
- g) Space for the Judge to "allow" or "deny" the Motion.

If the motion to continue and order do not include all of the required content, including space in the proposed order for the judge to grant or deny the motion, the motion to continue may be denied without consideration of the merits of the motion.

**8.3 Timing.** A motion to continue must be filed no later than three (3) business days before the day of court on which the case is set. Motions to continue filed thereafter will not be considered until the calling of the calendar, except where the motion reflects extreme hardship or extraordinary circumstances. Parties who are moving to continue a case set for trial should be prepared to move forward with trial in the event the motion to continue is denied.

**8.4 Objections.** Objections to motions to continue must be in writing and submitted to the Trial Court Administrator and opposing counsel or self-represented person

within two (2) business days of receipt of the motion to continue. The Trial Court Administrator will present the objections to the appropriate judge for consideration. Objections not made within two (2) business days of receipt of a timely filed motion to continue may be considered waived.

**8.5 Cases not Reached.** If a case is not reached for trial, counsel and self-represented persons shall immediately submit a calendar request or a continuance order signed by the presiding Judge to the Trial Court Administrator resetting the case for trial. Cases on a trial calendar which are not reached will be continued to a new trial date pursuant to a continuance order that shall be filed immediately upon the presiding Judge declaring that the case will not be reached.

**8.6 Continued to a Date Certain.** Any case continued in civil court shall be continued to a date designated by the Trial Court Administrator, the presiding Judge, or the Chief District Court Judge. The Trial Court Administrator is authorized to designate the next available appropriate trial date for a case continued from the trial calendar. All orders of continuance from a trial calendar submitted to the Court for signature shall order that the case is continued to a specific date and time. Upon receipt of the signed continuance order, the party seeking the continuance shall immediately provide a copy of the continuance order containing the new court date to the Trial Court Administrator.

## **9.0 SELF-REPRESENTED PERSONS**

**9.1 Generally.** All self-represented persons shall become familiar with, follow, and comply with the Rules of Civil Procedure, the North Carolina Rules of Evidence, and these Local Rules. Failure to comply with the Rules of Civil Procedure or these Local Rules may result in the dismissal, with prejudice, of claims or defenses asserted by the self-represented person.

**9.2 Unpublished Authorities to be Provided to Self-Represented Persons.** In cases involving self-represented persons, opposing counsel shall, when serving a memorandum of law (or other submission to the Court), provide the self-represented person (but not other counsel or the Court) with copies of cases and other authorities cited therein that are unpublished.

**9.3 Default Judgment and Servicemembers Civil Relief Act Affidavit.** Before seeking any order or judgment that is adverse to a natural-person defendant who has not made an appearance in the case, the plaintiff must have timely filed with the Court AOC Form AOC-G-250, Servicemembers Civil Relief Act Affidavit (or a form substantially similar in content and format).

- a) **Content of Affidavit.** The affidavit must state whether or not the defendant is a member of the military (as defined by 50 U.S.C.S. App. S 511), and it must include necessary facts to support this representation. A bare allegation as to the defendant's military status is not sufficient; the affidavit

must include a statement as to the basis of this assertion. If the military status of the defendant cannot be determined, then the affidavit must state this as well.

- b) **Timeliness of Affidavit.** The affidavit must reflect the defendant's military status at a time relevant to the entry of the adverse judgment, order, or ruling.

**9.4 Answers Versus Communication with Opposing Party.** If, after service of the summons and complaint, a defendant sends written communication to the plaintiff, this communication will not be deemed an answer to the complaint unless the defendant submits it to the Clerk for filing. Only a defendant (or an appropriate legal representative for the defendant) may file an answer on behalf of the defendant. A plaintiff is prohibited from filing such communication with the Court unless the plaintiff prepares a "notice of filing" fully explaining the communication and attaches the communication to the notice. However, the plaintiff's filing of such communication shall not constitute the filing of an answer. Nothing herein shall be deemed to alter the ethical obligations, if any, of counsel when a written communication is received from the opposing party.

## **10.0 BANKRUPTCY**

**10.1 Notice of Filing of Bankruptcy.** Any request to continue, stay, or in any other way delay disposition of a case due to the filing of a bankruptcy petition by one of the defendants to the case, must be accompanied by a copy of the bankruptcy petition or stay order from the United States Bankruptcy Court.

**10.2 Inactive Status.** Any case that has been the subject of an approved request pursuant to Rule 10.1 shall be placed on inactive status and removed from the active docket of cases pending with the Clerk of Superior Court. Upon resolution of the bankruptcy proceedings or dissolution of the bankruptcy stay, the case may be reopened upon motion to the Court and placed on the active docket of cases pending before the District Court.

## **11.0 PRODUCTION OF MEDICAL OR PUBLIC RECORDS IN LIEU OF APPEARANCE**

**11.1 Generally.** The Trial Court Administrator shall be the designee to accept by registered mail or personal delivery certified copies of medical or public records pursuant to Rule 45(c) of the Rules of Civil Procedure.

**11.2 Release of Medical or Public Records.** The Trial Court Administrator shall release medical or public records by presentation of a copy of a written order of the Court or upon request from the presiding Judge for use in court proceedings.

**11.3 Retention of Medical or Public Records.** Once a case has been closed and all direct appeals exhausted, the Trial Court Administrator shall destroy any medical

or public records in the case that remain unclaimed, unless otherwise directed by an order of the Court.

## **12.0 CONSENT ORDERS/JUDGMENTS AND JUDICIAL REVIEW OF SETTLEMENTS**

**12.1 Minor Settlements, Wrongful Death Settlements, and Other Settlements to be Approved by the Court.** Minor settlements, wrongful death settlements, and settlement of claims on behalf of persons deemed incompetent by the Court shall be calendared for hearing pursuant to Rule 3.1 and 3.2 herein as those Rules relate to the calendaring of motions, except that the calendar request must be submitted no later than 5:00 pm on the eighth calendar day prior to the requested scheduled hearing date. Such matters will be given priority. The Trial Court Administrator, the Chief District Court Judge, or the presiding Judge shall have the authority and discretion to set such matters for hearing at other times in cases of hardship or exigent circumstances. Neither attorneys nor self-represented persons are authorized under these Rules to submit these matters directly to a judge for ruling or approval.

**12.2 Consent Orders/Judgments.** Consent orders or consent judgments shall be delivered to the Clerk of Court, accompanied by WAKE-CVD-05. The courtroom clerk will present the proposed consent order/judgment to the presiding Judge for consideration. Submission of a proposed consent order or judgment directly to a judge for ruling or approval may result in a delay in the entry of the order/judgment. The presiding Judge will not consider approving any proposed consent order relating to a motion unless the motion has been filed prior to the tendering of the proposed order to the presiding Judge.

**12.3 Presence of Parties in Minor Settlements.** The minor, the minor's Guardian ad Litem, and all attorneys representing any party in the action must be present at the hearing, unless excused in advance by the presiding Judge.

**12.4 Candor to the Tribunal.** If a judge declines to approve a consent judgment/order or a proposed settlement, subsequent presentation of the rejected documents to a different judge must fully disclose the fact that a previous judge declined to approve the consent judgment/order or minor settlement.

## **13.0 REQUESTS FOR INJUNCTIVE RELIEF**

**13.1 Generally.** Applications or motions for Temporary Restraining Orders and Motions for Preliminary Injunctions made pursuant to Rule 65 of the Rules of Civil Procedure will be heard only after the commencement of a civil action through the filing of a complaint and/or issuance of the summons.

**13.2 Applications or Motions for Temporary Restraining Orders.** Requests for hearings on Applications or Motions for Temporary Restraining Orders shall be presented to the Trial Court Administrator for scheduling and presentation to the

presiding Judge. After consultation with the judge, the Trial Court Administrator shall schedule a hearing date and time.

**13.3 Notice.** Upon the scheduling and presentation of the motion by the Trial Court Administrator, the movant shall give written notice (including email or fax) to opposing counsel, if any, at least two hours in advance of the hearing of the time and place of hearing. The presiding Judge may waive the two-hour notice requirement in cases of an emergency or if there are allegations of exigent circumstances.

**13.4 Preliminary Injunction after Entry of Temporary Restraining Order.** All proposed temporary restraining orders must include the date and time for the preliminary injunction hearing, which shall be provided to the movant by the judge after consultation with the Trial Court Administrator.

**13.5 Preliminary Injunction When No Temporary Restraining Order is Entered.** In the event that a motion for a temporary restraining order is denied or no such motion was filed, any party filing a motion for a preliminary injunction must calendar the motion for hearing pursuant to Rule 3.2 herein.

## **14.0 MANDATORY COURT-ORDERED ARBITRATION**

**14.1 Statutory Authority.** As provided for in N.C.G.S. § 7A-37.1, the Tenth Judicial District has been designated as a site for statewide court-ordered non-binding arbitration.

**14.2 Arbitration Process.** In accordance with the Rules for Court Ordered Arbitration in North Carolina, all general civil actions filed in District Court will be reviewed to determine eligibility for the program. All eligible civil actions pending in the Tenth Judicial District shall be ordered to arbitration unless the parties have waived arbitration or there is a written order by the Chief District Court Judge exempting the case from the arbitration requirements. Parties agreeing to waive arbitration shall complete and file a Waiver of Court-Ordered, Non-Binding Arbitration, WAKE-CVD-04 (or an AOC form, if one becomes available). A file-stamped copy of this completed form shall immediately be provided to the Arbitration Coordinator.

**14.3 Scheduling Arbitration.** The Arbitration Coordinator shall not schedule any eligible case for arbitration until all defendants are served and the pleadings are closed.

**14.4 Motions to be Heard by Judge.** The fact that a case is eligible for court-ordered arbitration does not preclude a party from filing appropriate motions. Motions in cases eligible for court-ordered arbitration can be calendared by a party through the submission of a calendar request to the Trial Court Administrator in accordance with Rule 3.2 herein. However, once an arbitration hearing date has been set and the Notice of Arbitration Hearing has been served on the parties, any motion to be heard before the arbitration hearing (e.g., dispositive motion, discovery motion, etc.) must

be filed and scheduled for hearing in accordance with Rule 3.2 herein so that the motion is heard at least two (2) weeks prior to the scheduled arbitration hearing date.

**14.5 Informal Stay of Case.** Once an arbitration award has been entered, the District Court judge shall not conduct any hearings in the case and the Trial Court Administrator shall not schedule any hearings in a case unless a demand for trial de novo is timely filed.

**14.6 Inactive Orders.** Before the Court will consider a motion seeking Inactive Order in a case that has been selected for arbitration, the plaintiff must file a motion seeking to have the case placed on inactive status, and the parties must agree to waive arbitration in the event the case is returned to active status.

## **15.0 DESIGNATION OF SECURE LEAVE**

**15.1 Generally.** Pursuant to Rule 26 of the General Rules of Practice, attorneys may from time to time designate and enjoy one or more secure leave periods each year as provided herein. The following procedure supplements the requirement of Rule 26 of the General Rules of Practice for attorneys appearing in cases pending before the civil District Court of Wake County.

**15.2 Submission of Notice.** The Notice of Secure Leave that is required to be submitted to the Court pursuant to Rule 26 must be submitted to the Trial Court Administrator at the following address or may be submitted via facsimile at the following telephone number.

Trial Court Administrator's Office  
Post Office Box 1916  
Raleigh, North Carolina 27602  
ATTN: SECURE LEAVE

(919) 792-4951 (facsimile)  
ATTN: SECURE LEAVE

**15.3 No Filing with the Clerk.** Secure leave designations are not filed in the court files and should not contain a case number.

**15.4 Extraordinary Circumstances.** The policy and procedures described herein are not exclusive. In extraordinary circumstances the time limitations for notification of designated weeks may be waived by the court when attorneys have been faced with particular or unusual situations. Furthermore, attorneys shall be able to make other requests to be excused from appearing before the court for personal and professional reasons.

## **16.0 MISCELLANEOUS**

**16.1 Scheduling Conflicts.** When an attorney has more than one case set in different courts at the same time, the scheduling conflict will be resolved pursuant to Rule 3.1 of the General Rules of Practice.

**16.2 Courtroom Presence.** Self-represented persons and counsel for any party have an obligation to be present throughout the course of a trial, including jury selection, opening statements, presentation of evidence, closing statements and jury deliberation. The right to be present during the trial of civil cases shall be deemed to be waived by a party or his/her counsel by voluntary absence from the courtroom at a time when it is known that the proceedings are being conducted, or are about to be conducted.

### **16.3 Obligations of Attorneys and Self-Represented Persons.**

- a) All pleadings, motions, and other papers filed with the Clerk of Superior Court shall include the printed name, mailing address, telephone number, facsimile number and email address of the person who signed the pleading or motion. If an attorney for a party has signed the pleading or motion, the attorney will also include his/her North Carolina bar number and firm name.
- b) Self-represented persons must timely inform the Clerk of Superior Court and the Trial Court Administrator of all changes in his/her mailing address, telephone numbers, email address, and facsimile numbers (if any) until the civil District Court action is fully resolved.
- c) Attorneys must timely inform the Clerk of Superior Court and the Trial Court Administrator of all changes in his/her mailing address, telephone numbers, email address, and facsimile number.

**16.4 Sanctions.** Should counsel or a self-represented person fail to comply in good faith with any provision of these Local Rules or the General Rules of Practice, the Court may impose appropriate sanctions in its discretion.

**16.5 Presiding Judge.** The Chief District Court Judge only shall designate court sessions for general civil District Court and shall assign judges to preside during those sessions. Judges assigned to preside in general civil District Court shall be assigned to preside during selected court sessions. Only in extraordinary circumstances shall a judge become the Assigned Judge for a specific general civil case, pursuant to N.C.G.S. § 7A-146, and such assignment shall be at the discretion of the Chief District Court Judge.

**16.6 Lead Judge in General Civil District Court.** In these Local Rules there are numerous references to the "Chief District Court Judge." Where these words appear, it shall be understood that they include the wording "or his/her designee." The Chief

District Court Judge in his discretion may designate a judge to serve as the lead judge in general civil District Court and that judge shall act in his/her stead in all matters addressed by these rules.

**16.7 Transcripts/Electronic Recordings of Court Proceedings.** Requests for electronic recordings of court proceedings shall be made to the Clerk of Superior Court by completing the form that is available in the Civil Clerk's Office and complying with all specified requirements, including payment of any applicable fees.

**16.8 Adoption Proceedings.**

- a) Adoption proceedings transferred to District Court shall be scheduled in general civil District Court in accordance with the terms of the Amended Administrative Order entered by Judge Rader on December 4, 2012, or any subsequent Administrative Order amending, supplementing or replacing that Order.
  
- b) The adoptions clerk, in consultation with the Trial Court Administrator, shall schedule the case for hearing in civil District Court. The Trial Court Administrator shall ordinarily schedule hearings in adoption cases within three (3) weeks of the appeal to District Court or entry of the order transferring the case to District Court. The petitioner in the adoption case shall assure that proper and timely notice of hearing is filed and served on all parties and respondents.

**16.9 Order/Judgment Submissions.** At the close of a hearing or when a judge renders a decision after taking a matter under advisement, the judge may direct an attorney for one of the parties to draft the proposed order/judgment. Unless a proposed order/judgment is presented to the presiding Judge by the prevailing party at the conclusion of the hearing, then, within twenty (20) days of the Court rendering its decision, the attorney directed to draft the order/judgment shall submit the proposed order/judgment to opposing counsel and/or self-represented persons. If a party fails to appear at the trial or hearing of the matter they may waive their right to review the proposed order.

Opposing counsel and/or self-represented persons must communicate any objections or requested modifications concerning the proposed order/judgment in writing to the drafting attorney within five (5) business days of receipt of the proposed order/judgment. Once five (5) business days have elapsed from opposing counsel and/or self-represented person's receipt of the proposed order/judgment, then the drafting attorney shall deliver the proposed order/judgment and a cover letter to the judge at his/her office in the Wake County Justice Center. The cover letter must include the following information: when the draft order was submitted to opposing counsel and self-represented persons; and identification of changes requested by opposing counsel and/or self-represented persons that were not included in the Order.

If the parties were unable to reach agreement as to the form of the Order, an electronic copy (e.g., CD, email) of the order in Word format must be delivered to the Judge as well. Proposed orders resulting from a hearing shall not be emailed to the Trial Court Administrator or courtroom clerk.

**16.10 Return of Entered Orders/Judgments.** All orders/judgments submitted to a judge for signature, including orders/judgments submitted at the conclusion of a motions hearing and orders entered *ex parte* or without a hearing, will be immediately filed by the Clerk once the judge has signed the order/judgment. The Clerk will retain the original and shall return all file-stamped copies to the prevailing party, and the prevailing party shall serve a copy of the order/judgment on all opposing parties.

Unless the order/judgment is signed and filed at the close of a hearing, all orders/judgments submitted to a judge for signature must be accompanied by a self-addressed stamped envelope or a writing indicating the submitting attorney's courthouse mail box number.

These rules are entered and shall become effective November 18, 2015, and supersede all previous Local Rules implemented for general civil District Court in the Tenth Judicial District as of the effective date. These Rules have been promulgated and approved by the undersigned.

This the 16<sup>th</sup> day of November, 2015.



---

Robert B. Rader  
Chief District Court Judge  
Tenth Judicial District

TCA USE ONLY:

DMOT    DJU    DNJ    CW

**CALENDAR REQUEST FOR WAKE COUNTY CIVIL DISTRICT COURT**

\_\_\_\_\_ FILE NO. \_\_\_\_\_

vs.

\_\_\_\_\_ SESSION BEGINNING: \_\_\_\_\_  
\*You must consult the session calendars for available dates and deadlines prior to submitting this request

<b>MOTION TYPE:</b>	<b>TRIAL</b>
	<input type="checkbox"/> Jury <input type="checkbox"/> Non-Jury

**(1) COMPLETE #1-5 BELOW AND SIGN**

1. Date Motion filed (*motion will not be calendared until it has been filed*): \_\_\_\_\_
2. Approximate hearing time: \_\_\_\_\_ day(s), \_\_\_\_\_ hour(s), \_\_\_\_\_ minutes.
3. Have you conferred with all parties involved?    YES    NO
4. Have all parties agreed to the requested date?    YES    NO
5. Special request: \_\_\_\_\_

This the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

\_\_\_\_\_  
 Plaintiff    Attorney for Plaintiff  
 Defendant    Attorney for Defendant

Print Name: _____
Phone Number: _____      Email: _____
Address: _____

**(2) SUBMIT REQUESTS TO TCA**

**EMAIL (preferred method): [calendarrequestswake@nccourts.org](mailto:calendarrequestswake@nccourts.org)**  
MAIL: PO Box 1916, Raleigh, NC 27602; or FAX: (919) 792-4951

**(3) SEND A COPY OF THIS REQUEST TO ALL PARTIES / ATTORNEYS – List their names and addresses below**

<input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant	<input type="checkbox"/> Attorney for Plaintiff <input type="checkbox"/> Attorney for Defendant	<input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant	<input type="checkbox"/> Attorney for Plaintiff <input type="checkbox"/> Attorney for Defendant
Name: _____		Name: _____	
Address: _____		Address: _____	
Phone Number: _____		Phone Number: _____	

**NOTE: The submission of a calendar request to the TCA's office *does not guarantee* a setting on the requested session. Please check the published calendars <http://www.nccourts.org/County/Wake/Calendars> to verify your court date(s).**

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION  
\_\_\_\_ CVD \_\_\_\_

\_\_\_\_\_  
Plaintiff,  
  
v.  
  
\_\_\_\_\_  
Defendant.

MOTION AND ORDER FOR CONTINUANCE  
CIVIL DISTRICT CASES

**INSTRUCTIONS:** Any motion to continue shall be filed with the Clerk of Superior Court. The motion, along with three copies of the proposed order, shall be delivered to the Clerk of Court, accompanied by WAKE-CVD-05. Opposing counsel and/or self-represented persons must be notified of the motion to continue before filing it with the Clerk of Superior Court. The movant shall NOT deliver a copy of the motion to continue to either the presiding Judge or to the Trial Court Administrator.

**TIMING:** A motion to continue must be filed no later than three (3) business days before the day of court on which the case is set. Objections to motions to continue must be in writing and submitted to the Trial Court Administrator and opposing counsel or self-represented person within two (2) business days of receipt of the motion to continue.

Calendared Hearing / Trial Date	Requested Reschedule Date (within 90 days)
Opposing Counsel / Party Name	Date Case Filed

**MOTION**

Pursuant to the local rules for motions for continuance in effect in the Tenth Judicial District, the party named below moves that the above civil case be continued from the calendared date shown above to the requested reschedule date shown above, for the following compelling reasons (*may attach additional sheets, if necessary*):

You must select at least one of the options below:

- I have distributed a copy of this Motion to all counsel of record and unrepresented parties by U.S. mail, facsimile transmission, hand delivery, or placement in a distribution box maintained in the courthouse facility.
- I have conferred, or attempted in good faith to confer, with all parties before filing this motion.
- I certify that the opposing party consents to the above requested continuance (*attach correspondence*).

Name and Address of Movant	Date
	Signature
Telephone No.	

**ORDER**

It is ORDERED that:

- The motion is ALLOWED and the case is continued and shall be held on the rescheduled date shown below.
- The motion is DENIED and the case shall be heard on the calendared hearing / trial date.

Rescheduled Date	Date of Order
Name of District Court Judge	Signature of District Court Judge

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION  
\_\_\_\_ CVD \_\_\_\_\_

\_\_\_\_\_  
Plaintiff,  
  
v.  
  
\_\_\_\_\_  
Defendant.

**REQUEST FOR PEREMPTORY SETTING**

**(1) COMPLETE THE FOLLOWING SECTION, DATE AND SIGN.**

The undersigned requests a peremptory setting of the above captioned case based on the following:

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

Estimated length of trial: \_\_\_\_\_  JURY  NON-JURY

Requested Trial Date: \_\_\_\_\_ Have all parties agreed to the requested date?  YES  NO

Date: \_\_\_\_\_ Signature: \_\_\_\_\_  
 Plaintiff  Attorney for Plaintiff  
 Defendant  Attorney for Defendant

**(2) SEND A COPY OF THIS REQUEST TO ALL PARTIES / ATTORNEYS – List their names and addresses below**

<input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant	<input type="checkbox"/> Attorney for Plaintiff <input type="checkbox"/> Attorney for Defendant	<input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant	<input type="checkbox"/> Attorney for Plaintiff <input type="checkbox"/> Attorney for Defendant
Name: _____		Name: _____	
Address: _____		Address: _____	
Phone Number: _____		Phone Number: _____	

**(3) SUBMIT THIS REQUEST TO THE TRIAL COURT ADMINISTRATOR**

RECOMMENDATION OF TRIAL COURT ADMINISTRATOR	
<input type="checkbox"/> APPROVED <input type="checkbox"/> DENIED	Date: _____ Signature: _____ TCA / Designee
ORDER	
The undersigned hereby authorizes the Trial Court Administrator to set the above referenced case peremptorily on: _____.	
Date: _____	Signature: _____ District Court Judge

NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION

FILE NO. \_\_\_\_\_

_____
Plaintiff,
v.
_____
Defendant.

**WAIVER OF COURT-ORDERED, NONBINDING  
ARBITRATION**

G.S. §7A-37.1

Pursuant to N.C.G.S. §7A-37.1, this case has been selected for court-ordered, nonbinding arbitration. Pursuant to N.C.G.S. §7A-37.1(c), all parties to this action voluntarily agree to waive court-ordered, nonbinding arbitration as evidenced by the signatures below.

Party name: _____
Address: _____
_____ Telephone: ( ) _____ - _____
_____ Date: _____
Signature: Party / Attorney for Party

Party name: _____
Address: _____
_____ Telephone: ( ) _____ - _____
_____ Date: _____
Signature: Party / Attorney for Party

Party name: _____
Address: _____
_____ Telephone: ( ) _____ - _____
_____ Date: _____
Signature: Party / Attorney for Party

Party name: _____
Address: _____
_____ Telephone: ( ) _____ - _____
_____ Date: _____
Signature: Party / Attorney for Party

***The original of this form must be filed with the Wake County Clerk of Court (Civil) and a copy of this filed form must be submitted to the Wake County Arbitration Coordinator upon filing with the Clerk.***

NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION  
FILE NO. \_\_\_\_\_

Plaintiff(s)
<b>VERSUS</b>
Defendant(s)

**CIVIL MOTIONS COVER SHEET-  
FOR MOTIONS DECIDED  
WITHOUT A HEARING**

Pursuant to the Local Rules for Civil District Court, Tenth Judicial District, a party filing any of the following types of motions, subpoenas, consent orders or judgments that can be decided without a hearing must submit the following to the Clerk of Superior Court in Room 102 of the Wake County Courthouse:

**MOTIONS/SUBPOENAS:** The file-stamped original Motion and all filed-stamped copies of the motion along with 3 copies of the proposed order (unfiled).

**CONSENT ORDERS/JUDGMENTS:** Unfiled copies of the proposed order/judgment.

**TYPE OF SUBMISSION**

<input type="checkbox"/> Motion for Default Judgment Without a Hearing (Rule 55(b)2)(b))	<input type="checkbox"/> Motion for Order to Show Cause
<input type="checkbox"/> Motion to Continue	<input type="checkbox"/> Motion to Withdraw
<input type="checkbox"/> Motion for Inactive Order ( <i>excluding cases scheduled for arbitration</i> )	<input type="checkbox"/> Motion, Other: _____
<input type="checkbox"/> Motion for Order in Aid of Execution	<input type="checkbox"/> Subpoena Request
	<input type="checkbox"/> Consent Judgment/Order

Name And Address of Attorney Or Party (if self-represented) Submitting Documents	Telephone No: ( ) - _____ Email Address: _____ Courthouse Mailbox number _____
	<input type="checkbox"/> Plaintiff/Attorney <input type="checkbox"/> Defendant/Attorney

**ALL ATTACHED MOTIONS, SUBPOENAS, CONSENT ORDERS AND JUDGMENTS WILL BE SUBMITTED BY THE CLERK TO THE PRESIDING DISTRICT COURT JUDGE.**

**ALL SUBMISSIONS MUST BE ACCOMPANIED BY A STAMPED, SELF-ADDRESSED ENVELOPE UNLESS A COURTHOUSE MAILBOX NUMBER IS PROVIDED ABOVE**

**LOCAL RULES FOR CIVIL SUPERIOR COURT  
TENTH JUDICIAL DISTRICT  
NORTH CAROLINA**

Effective January 7, 2013  
*Amended November 13, 2015*

Rule 1	Purpose of the Rules
Rule 2	Calendaring and Notice to Attorneys
Rule 3	Motions and Other Non-Jury Matters
Rule 4	Case Management Orders and Setting Matters for Trial
Rule 5	Discovery
Rule 6	Pre-Trial Orders, Pre-Trial Conferences and Exhibits
Rule 7	Peremptory and Priority Settings
Rule 8	Continuances
Rule 9	Judicial Review of Administrative Decision
Rule 10	Bankruptcy
Rule 11	Production of Medical Records In Lieu of Appearance
Rule 12	Judicial Review of Settlements (Minor Settlements)
Rule 13	Condemnation Actions
Rule 14	Requests for Injunctive Relief
Rule 15	Mediation
Rule 16	Designation of Secure Leave
Rule 17	Miscellaneous

**Appendices:**

11/13/2015	Administrative Order Amending Local Rules
Local Form 1:	Calendar Request
Local Form 2:	Response to Notice of Status Calendar
Local Form 3:	Condemnation Case Status Report
Local Form 4:	Stipulated Order Extending Completion Date for Mediation
Local Form 5:	Request for Peremptory Setting
Local Form 6:	Motion / Order for Continuance
e-Discovery:	Sample Litigation Hold
e-Discovery:	Preparing for a Rule 26(f)(1) Discovery Meeting
e-Discovery:	Sample Protocol for Discovery of Electronically Stored Information

**Local Forms are available in fillable PDF format on the Trial Court Administrator's Website:**  
[www.nccourts.org/WakeTCA](http://www.nccourts.org/WakeTCA)

## 1.0 PURPOSE OF THE RULES

- 1.1 The purpose of these rules is to provide for the just, orderly, and prompt consideration, determination and disposition of civil matters to be heard in Wake County Superior Court. They shall at all times be construed and enforced to avoid technical delay.
- 1.2 These rules are promulgated pursuant to Rule 2 of the General Rules of Practice for Superior and District Court and N.C. Gen. Stat. §1A-1, Rule 40.
- 1.3 The rules and all amendments here after shall be filed with the Clerk of Superior Court for Wake County and published on the North Carolina Administrative Office of the Courts website, [www.nccourts.org](http://www.nccourts.org). The Trial Court Administrator shall maintain a supply of printed rules to be furnished upon request.
- 1.4 The North Carolina Supreme Court standards for resolution of cases filed in civil Superior Court are as follows: 90% resolved within one year, 98% within 18 months and 100% within two years. These rules are to be read consistently with the standards as set forth by the Supreme Court. (See Court Performance Management System at [www.nccourts.org/Citizens/SRPlanning/Performance/Default.asp](http://www.nccourts.org/Citizens/SRPlanning/Performance/Default.asp).)
- 1.5 These rules are not complete in every detail and will not cover every situation. In the event the rules do not cover a specific situation, the Trial Court Administrator is authorized to act, subject to consultation with the Senior Resident Superior Court Judge or the Judge Presiding.

## 2.0 CALENDARING AND NOTICE TO ATTORNEYS

- 2.1 The Trial Court Administrator shall prepare the necessary calendars for the disposition of civil cases in the Superior Court of Wake County in accordance with these rules.
- 2.2 The Senior Resident Superior Court Judge may designate a specific resident judge or a specific judge assigned to hold court in the District to preside over all proceedings in a particular case.
- 2.3 There shall be a calendar call of the cases on the calendar by the presiding judge at 10:00 a.m. on the first day of the session of court. Cases will normally be called for trial or hearing in the order they appear on the calendar; however, any case may be called for trial by the presiding judge at any time during the week. Attorneys and unrepresented parties should be prepared for their case to be called at any time.
- 2.4 **Calendar Publication** All calendars will be prepared by the Trial Court Administrator and published on the Administrative Office of the Courts website no later than three weeks prior to the first day of the court session. Publication of the calendar shall serve as sufficient notice to counsel that a case has been set. Civil court calendars are available at: [www1.aoc.state.nc.us/www/calendars/Civil.jsp?county=WAKE](http://www1.aoc.state.nc.us/www/calendars/Civil.jsp?county=WAKE).

- 2.5 **Calendar Updates** Updates to court calendars will be posted online not later than 2:00 p.m. on the last business day before the first day of the court session. Parties must provide notice to the Trial Court Administrator's Office of any updates, including settlements and continuances, in cases appearing on the calendar. Any updates arising after the calendar is posted must be made directly to the Court at the call of the calendar.
- 2.6 **Attorney Query Tool** Attorneys may search cases on published calendars using the Civil Calendar Attorney Query by Bar Number tool at [www.nccourts.org](http://www.nccourts.org). To ensure accuracy of this tool, attorneys must provide the Clerk of Superior Court with information regarding withdrawals, notice of appearance, and substitution of counsel in specific cases. Filings must include the North Carolina State Bar number for each attorney of record. Only attorneys active with the North Carolina State Bar and who have a valid North Carolina State Bar identification number may use this search tool.
- 2.7 **Subscription** The North Carolina Court Calendar subscription service is available for civil Superior court cases set for hearing on published calendars in Wake County at the following web address:  
[www1.aoc.state.nc.us/www/calendars/Civil.jsp?county=WAKE](http://www1.aoc.state.nc.us/www/calendars/Civil.jsp?county=WAKE).
- 2.8 **Notice to Unrepresented Parties** Unrepresented parties will be provided notice of the calendar by the Trial Court Administrator. Notice will served by any method authorized for service by North Carolina Rule of Civil Procedure 5(b)(2). Unrepresented parties are required to comply with these local rules and the NC Rules of Civil Procedure and the NC General Rules of Practice in all respects.
- 2.9 **Court Appearance** When an attorney is notified to appear for a pre-trial conference, motion hearing, trial or any other court appearance, the attorney must, consistent with ethical requirements, appear or have a partner, associate, or another attorney familiar with the case appear. Unless an attorney has been excused in advance by the judge before whom the case is scheduled and has given prior notice to his opponent, an attorney's absence should not be grounds for a continuance.
- 3.0 **MOTIONS AND OTHER NON-JURY MATTERS**
- 3.1 **Generally** Motions, administrative appeals and other non-jury matters will normally be set during specially designated non-jury sessions. Parties should refer to the sessions schedule to determine the next available non-jury session. The sessions schedule is available online at <http://www.nccourts.org/County/Wake/Calendars.asp>. Non-jury sessions are denominated as "NJ" on the sessions schedule. Matters that are expected to require an hour or more of court time may be placed on trial calendars in the discretion of the Trial Court Administrator, depending on the need to balance courtroom utilization while ensuring that all cases are heard during the requested session. Parties are encouraged to check all published calendars for the setting of their case. In exigent circumstances, the Trial Court Administrator may set a motion for hearing at any time, if all notice requirements are satisfied or all parties consent.

- 3.2 **Calendar Requests** Any party requesting that a matter be heard during a non-jury session must submit a completed calendar request form to the Trial Court Administrator. Calendar requests shall be filed within the deadlines established on the sessions schedule. Calendar requests should not be filed with the Clerk. Calendar requests may be hand-delivered, mailed, emailed or faxed to the Trial Court Administrator's Office. The email address to send calendar requests is: [calendarrequestswake@nccourts.org](mailto:calendarrequestswake@nccourts.org). Submission of only one copy of the request is sufficient. Any special requests regarding the setting of the motion must be included in the calendar request. No calendar request may be made before filing the motion that is the subject of the hearing. Requests submitted before the filing of a motion will be without effect and ignored. If the opposing party has a conflict with the request made, the Trial Court Administrator's Office must be notified within 3 days of service of the calendar request.
- 3.3 **Removal of cases from non-jury calendars** Cases set for non-jury hearing will be removed from the calendar only under the following conditions: (1) settlement of the case and/or final resolution of the motion; (2) written withdrawal of the motion by the moving party; or (3) continuance by the court for good cause shown pursuant to Local Rule 8.
- 3.4 **Consent Motions** Motions consented to by the parties may be presented to the Trial Court Administrator for assignment to a judge for review and decision, without the necessity of formal calendaring. The party filing the motion shall include with the submission a proposed order which shall recite that the motion is consented to or otherwise unopposed. A party filing any of the following motions must make a good faith effort to determine whether there is opposition to the motion:
- (1) Motion for Extension of Time to Respond or Otherwise Plead
  - (2) Motion to Amend a Pleading or Add a Party
  - (3) Motion to Transfer to Superior Court Division
  - (4) Motion to Withdraw as Counsel
  - (5) Motion to Stay Agency Decision Pending Judicial Review
  - (6) Motion for Extension of Time for Discovery Responses
  - (7) Motion to Extend the Period of Time for Discovery
- 3.5 **Motions to Withdraw** Motions to withdraw must include a certificate of service showing service on the client from whom representation is being withdrawn. The motion also must indicate whether all parties consent or if any party opposes the motion. The motion and proposed order must set forth the name and address of substitute counsel, or if not known, the current address of the party from whom representation is being withdrawn. No action will be taken on a motion and proposed order that does not include this information. If the motion to withdraw is granted, the withdrawing attorney must serve a copy of the signed order on the Trial Court Administrator.

#### 4.0 CASE MANAGEMENT ORDERS AND SETTING CASES FOR TRIAL

- 4.1 **Generally** Approximately 120 days after filing of the Complaint, all cases will be reviewed by the Trial Court Administrator for a determination of the status of the case. Cases will either be set for trial or a Status Conference for review. Consistent with the provisions of North Carolina Rule of Civil Procedure Rule 26(f) and Local Rule 5.3, the Trial Court Administrator will use his/her discretion in determining whether a case is appropriate for: (a) entry of a Case Management Order setting a trial or hearing date; (b) requesting written information concerning scheduling and mediation from the parties followed by the entry of a Case Management Order; (c) setting the matter for review at a Status Conference; or (d) setting the matter on a non-jury calendar for hearing and disposition.
- 4.2 **Entry of Case Management Orders** In appropriate cases, the Trial Court Administrator may give the parties written notice that an order will be entered setting a trial date and designating a mediator, and may request written submissions from the parties as to appropriate deadlines. The parties shall confer and use Local Form 2 to respond to the notice. After receipt of such responses, the Trial Court Administrator will enter a Case Management Order which will contain scheduling deadlines and a trial date. If no response is received by the parties, the Trial Court Administrator will set the matter for a Status Conference for a determination of all scheduling matters. The parties may request a scheduling conference with the Trial Court Administrator if the case presents unusual scheduling issues.
- 4.3 **Consent Modification to Case Management Order** The parties may modify the dates in the Case Management Order by consent within 30 days of the issuance of the order. After the 30-day period, the parties may, by consent, modify any deadlines except the trial date. All requests to modify, including consent modifications, must be made in writing and served on the Trial Court Administrator's Office. For all other modifications and continuances, see Local Rule 8.
- 4.4 **Status Conference** The Trial Court Administrator may notice a Status Conference for any case more than four months old. A list of cases set for Status Conference will be published on the Wake County website at [www.nccourts.org](http://www.nccourts.org). Status Conferences will normally occur beginning at 11:00 a.m. on Friday during a specially designated non-jury session of court.
- At the Status Conference, the parties will discuss with the Trial Court Administrator an appropriate trial date, an appropriate mediator, and any other scheduling matters requiring attention. At the conclusion of the Status Conference, the Trial Court Administrator will issue a Case Management Order setting the trial date, selection or appointment of the mediator, and otherwise dealing with any scheduling issues requiring attention. The Trial Court Administrator has full authority to act for the Senior Resident Superior Court Judge in issuing Case Management Orders.
- If the parties agree on scheduling issues and the selection of the mediator, and return Local Form 2 containing this information to the Trial Court Administrator before the Status Conference, the parties will not be required to attend the Status Conference.

Should the parties not agree with dates provided at the Status Conference, the matter will be set for hearing before the Senior Resident Superior Court Judge or his/her designee for a determination of all scheduling matters.

- 4.5 **Failure to Appear at Status Calendar** In the absence of good cause, any attorney or unrepresented party who fails to appear for a noticed status conference, either with the Trial Court Administrator or the Senior Resident Superior Court Judge, when required by these rules will be considered by the Court to have waived any conflicts or problems with dates in the Case Management Order and will be bound by the dates as if all had been present and consented to the schedule.

## 5.0 DISCOVERY

- 5.1 ~~Generally Parties are expected to make a good faith effort to participate in discovery as set forth in Rule 8 of the General Rules of Practice.~~

AMENDED RULES 5.1 & 5.2: SEE NOVEMBER 13, 2015 ADMINISTRATIVE ORDER ON PAGE 15

- 5.2 ~~Method Discovery is expected to begin promptly upon the close of the pleadings and, except as supplemented by these Rules, shall be governed by the North Carolina Rules of Civil Procedure. All forms of discovery may be used in any sequence during the discovery process, unless otherwise ordered. No agreement to delay discovery or engage in informal discovery may serve as a basis to continue the trial date.~~

- 5.3 **Time Period for Discovery** Subject to an order modifying discovery procedures, the Court expects discovery to be completed within 6 months from the issuance of the Case Management Order. Modifications to the discovery deadline in the Case Management Order shall not serve to delay the trial absent good cause. Requests to extend the deadline for discovery shall be submitted to the Trial Court Administrator prior to the expiration of the deadline in the Case Management Order. A Discovery Plan as set forth in Rule 26(f) of the North Carolina Rules of Civil Procedure may be incorporated into or supplant, if expressly ordered, the Case Management Order. All Discovery Plans shall include a trial date and must be submitted to the Trial Court Administrator for presentation to the Senior Resident Superior Court Judge.

- 5.4 **Discovery Motions and Objections** The Court will not consider motions and objections to discovery unless the moving party 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 participants, and the specific results achieved. The filed certificate must be attached to any request to calendar a discovery dispute and sent to the Trial Court Administrator's Office.

- 5.5 **Medical Malpractice Cases** Discovery plan conferences in medical malpractice actions as defined by N.C. Gen. Stat. § 90-21.11 shall be conducted pursuant to Rule 26(g) of the North Carolina Rules of Civil Procedure. The Discovery Plan shall include a trial date and must be submitted to the Trial Court Administrator for presentation to the Senior Resident Superior Court Judge.

5.6 **Commissions for Discovery to be Conducted Out-of-State** In cases where a party is seeking a commission for obtaining discovery outside of the State, a motion must be filed and calendared for hearing as set forth in Rule 45(f) of the North Carolina Rules of Civil Procedure. Cases requiring a hearing within 20 days must be promptly brought to the Trial Court Administrator for a determination of the next available calendar setting.

NEW 5.7 ELECTRONIC DISCOVERY: SEE NOVEMBER 13, 2015 ADMINISTRATIVE ORDER ON PAGE 15  
6.0 **PRE-TRIAL ORDERS, PRE-TRIAL CONFERENCES AND EXHIBITS**

6.1 **Pre-Trial Orders** Proposed pre-trial orders are due to the Trial Court Administrator's Office no later than 5:00 p.m. on the Friday prior to the session of court in which the case is calendared for trial. The pre-trial order shall be in substance as shown on the sample form set out in the General Rules of Practice for the Superior and District courts. The pre-trial order shall include a list of the witnesses expected to be called at trial, a list of exhibits, and a list of the issues the parties request be submitted to the jury.

6.2 **Pre-Trial Conference** Any party, or the Court on its own motion, may request a pre-trial conference to address matters relating to final trial preparation or settlement of a case. Any party requesting a conference with the presiding judge pursuant to Rule 7 of the General Rules of Practice must send a written request to the Trial Court Administrator no later than 15 days before the date the case is scheduled for trial. At the time of or immediately following the pre-trial conference, unless otherwise ordered or agreed, it shall be the duty of the plaintiff to prepare the final proposed pre-trial order to be signed by all counsel.

6.3 **Exhibits** Exhibits shall be pre-marked with appropriate stickers with sequential numbers. A list of all exhibits in sequential order shall be provided to the courtroom clerk at the beginning of the trial. If publication of hard copies to the jury is intended, counsel are encouraged to provide a sufficient number of copies of exhibits for use by the jury.

## 7.0 **PEREMPTORY AND PRIORITY SETTINGS**

7.1 **Generally** Written requests for the peremptory setting of a case shall be served on the Trial Court Administrator's Office within 30 days of the issuance of the Case Management Order. Local Form 5 may be used. All counsel of record and unrepresented parties must be copied on the request. Parties may request a peremptory setting at the time of the issuance of the Case Management Order. Only the Senior Resident Superior Court Judge may authorize a peremptory setting.

7.2 **Reasons for request** The request must state the reason(s) for the need to have a peremptory setting. Travel of short distances for parties or witnesses typically will not warrant the setting of a case peremptorily. Factors that are considered in determining whether a case will receive a peremptory setting include: the age of the case; the number of times the case has previously been set; travel distance and means required of those involved in the case; the number of expert witnesses expected to testify at trial; and any other reason that may greatly impact the just and proper resolution of the case.

- 7.3 **Setting by the Court** The Court may set a case peremptorily at any time.
- 7.4 **Continuance of a Peremptory Setting** Cases that have peremptory settings may be continued only by the Senior Resident Superior Court Judge or his/her designee.
- 7.5 **Approval of Dates** Attorneys and unrepresented parties must consult with the Trial Court Administrator's Office to determine the availability of a peremptory setting. Generally, no more than two peremptory settings will be approved during a single session of court. Requests for peremptory settings included in consent Discovery Scheduling Orders, especially in the case of medical malpractice actions, must be approved by the Trial Court Administrator before presentation to the Senior Resident Superior Court Judge for approval.
- 7.6 **Other Priority Settings** Counsel shall notify the Trial Court Administrator in cases in which there is statutory authority granting a priority setting.

## 8.0 CONTINUANCES

- 8.1 **Generally** Any motion to continue must initially be filed with the Clerk of Superior Court then submitted to the Trial Court Administrator. Opposing counsel and/or unrepresented parties must be notified of the motion to continue before delivery of the motion to the Trial Court Administrator. No continuance shall be granted solely because all parties agree. Motions to continue a case set for trial are generally disfavored and will not be granted absent good cause shown.
- 8.2 **Content** Any motion to continue must be in writing and contain the following information:
- (a) Caption and file number of the case;
  - (b) Session at which the case is set;
  - (c) The basis for the motion;
  - (d) The number of times the case has previously been continued;
  - (e) A certification that the moving party conferred, or attempted in good faith to confer, with all parties before filing the motion, and a statement of whether the motion is opposed; and
  - (f) A proposed session within 90 days for the rescheduling of the case. When the parties do not include a proposed reschedule date, the Trial Court Administrator shall reset the case.
- 8.3 **Timing** A motion to continue must be filed no later than 3 business days before the first day of the session of court in which the case is set. Motions to continue filed thereafter will not be considered until the calling of the calendar, except where the motion reflects extreme hardship or extraordinary circumstances. Parties who are moving to continue a case set for trial should be prepared to move forward with trial in the event the motion to continue is denied. Before the date of trial, only the Senior

Resident Superior Court Judge or his/her designee may rule on a motion to continue a case set for trial.

- 8.4 **Objections** Objections to motions to continue must be in writing and submitted to the Trial Court Administrator within 2 days of receipt of the motion to continue. Objections not made within 2 days are considered waived.
- 8.5 **Cases Not Reached or Mistried** If a case is not reached for trial or is mistried, counsel and unrepresented parties may submit an agreed-upon date for rescheduling to the Trial Court Administrator's Office no later than close of business on the first Friday following the session of court in which the case was originally set. If counsel and unrepresented parties fail to submit such an agreed-upon date, the case shall be reset by the Trial Court Administrator.

## 9.0 JUDICIAL REVIEW OF ADMINISTRATIVE ACTION

- 9.1 **Generally** The judicial review of a final agency decision shall commence by the filing of a Petition for Judicial Review with the Clerk of Superior Court pursuant to N.C. Gen. Stat 150B-43, et seq or by the filing of a Petition for writ of Certiorari. Petitioner shall serve a copy of the Petition or Writ upon the agency. Within 30 days after receipt of the petition or writ, the agency shall cause to be filed with the Clerk of Superior court the original or a certified copy of the official record in the case under review from which the final agency decision was entered. The agency or the Petitioner may move for additional time within which to file the record. Counsel for the agency shall notify Petitioner in writing when the record is filed with the clerk.
- 9.2 **Briefs** Petitioner shall have 30 days from notice of the record being filed to serve its brief on Counsel for the agency. The agency shall have 30 days from receipt of Petitioner's brief to serve its response brief on Petitioner. The brief of any Intervenor shall be served on all parties concurrently with the motion to intervene. No reply brief shall be allowed except by order of the court. The court for good cause may alter or enlarge the times provided for the filing of briefs.
- 9.3 **Hearings** Judicial review proceedings shall be set by the Trial Court Administrator upon the submission of a completed calendar request. Hearings projected to last less than one hour may be scheduled during specially designated non-jury sessions of court. Hearings projected to last one hour or longer will be scheduled for hearing on final calendars. Counsel and unrepresented parties are encouraged to check all calendars for the scheduling of their case. Judicial review proceedings are not subject to mandatory mediation unless ordered by the Senior Resident Superior court Judge.
- 9.4 **Special Provision for the Denial of a Special Use Permit for a Sexually-Oriented Business** An applicant who has been denied a special use permit for a sexually-oriented business by a municipality or county may request, in writing, expedited judicial review after filing a timely petition for certiorari. The applicant's brief required under Local Rule 9.2 shall accompany the request.

## **10.0 BANKRUPTCY CASES**

- 10.1 Any request to continue, stay, or in any other way delay disposition of a case due to bankruptcy of one of the parties must be accompanied by a copy of the stay of proceeding order from the United States Bankruptcy Court having jurisdiction and shall apply only to cases involving the party filing for relief in Bankruptcy.
- 10.2 Any case that has been the subject of an approved request pursuant to Rule 10.1 shall be placed on inactive status and removed from the active docket of cases pending with the Clerk of Superior Court. Upon resolution of the bankruptcy proceedings or dissolution of the stay, the case may be reopened upon motion to the Court and placed on the active docket of cases pending before the Superior Court.

## **11.0 PRODUCTION OF MEDICAL RECORDS IN LIEU OF APPEARANCE**

- 11.1 **Generally** The Trial Court Administrator shall be the designee to accept by registered mail or personal delivery certified copies of medical records pursuant to G.S. §1A-1, Rule 45(c).
- 11.2 **Release of Medical Records** The Trial Court Administrator shall release medical records by presentation of a copy of a written order of the Court or upon request from the presiding judge for use in court proceedings. In the Trial Court Administrator's discretion, records may be released when all parties, including the person who is the subject of the medical records, agree to the release in writing.
- 11.3 **Retention of Medical Records** Once a case has been closed and all direct appeals exhausted, the Trial Court Administrator shall destroy any medical records in the case that remain unclaimed, unless otherwise directed by an order of the Court.

## **12.0 JUDICIAL REVIEW OF SETTLEMENTS (MINOR SETTLEMENTS)**

- 12.1 All requests for review of settlements requiring judicial approval, including minor settlements, shall be submitted to the Trial Court Administrator. Such matters will be given priority and will be set for hearing at the next available session of court. A notice of hearing must be sent to the Trial Court Administrator no later than 5:00 p.m. on the Wednesday before the first day of the court session requested.
- 12.2 The Minor and his/her Guardian *ad Litem* must be present at the hearing, unless excused in advance by the Judge Presiding.

## **13.0 CONDEMNATION ACTIONS**

- 13.1 Parties must submit Local Form 3 no later than 60 days after service of the last answer filed in public condemnation actions. This form must include agreed upon proposed dates for: completion of the project at issue in the condemnation action, the expected start of discovery and a deadline for its completion, a mediation deadline and a trial

date. Based on this information, the Trial Court Administrator will issue a Case Management Order.

- 13.2 If the parties are not able to agree or do not submit Local Form 3 within 60 days of service of the last answer filed, the case will be set for a Status Conference. The parties must then report to the Court for a determination of the posture of the case and the entry of a Case Management Order.

#### **14.0 REQUESTS FOR INJUNCTIVE RELIEF**

- 14.1 **Generally** Applications for Temporary Restraining Orders and Motions for Preliminary Injunctions made pursuant to North Carolina Rule of Civil Procedure 65 will be heard only after the commencement of a civil action through the filing of a complaint and/or issuance of the summons.
- 14.2 **Application for Temporary Restraining Orders** Requests for hearings on Applications for Temporary Restraining Orders shall be presented to the Trial Court Administrator for assignment. Hearings normally will be scheduled at 2:00 p.m. before the judge presiding in civil court. Alternate arrangements may be made in the discretion of the Trial Court Administrator. No hearing will be scheduled later in the court week than 2:00 p.m. on Friday without the approval of the Senior Resident Superior Court Judge or his/her designee.
- 14.3 **Notice** Litigants requesting injunctive relief must notify opposing counsel, if any, that such judicial action is being requested and shall so certify to the Trial Court Administrator that notice was given before the request for hearing was made. Upon the scheduling of the motion by the Trial Court Administrator, counsel shall notify opposing counsel in writing of the time and place of hearing.
- 14.4 **Preliminary Injunctions** Motions for preliminary injunctions that are set by the court during a hearing on the application for the temporary restraining order must be presented to the Trial Court Administrator's office to ensure the motion is properly set for hearing. No preliminary injunction shall be issued without notice to the adverse party. Preliminary Injunctions are set for hearing on the next available session of court and are given priority over all other matters, except older matters that are of the same character.

#### **15.0 MEDIATION**

- 15.1 **Rules Governing Mediation** The North Carolina Supreme Court's Rules governing mediated settlement conferences are available at [www.nccourts.org/Courts/CRS/Councils/DRC/NARules.asp](http://www.nccourts.org/Courts/CRS/Councils/DRC/NARules.asp). The Court expects the parties to follow these rules in conducting the mediated settlement conference. Sanctions will be imposed when appropriate.
- 15.2 **Eligible Cases** All civil actions in Superior Court shall be ordered into the mediated settlement conference except for administrative appeals, declaratory judgment

actions and actions in which a party is seeking the issuance of an extraordinary writ. Requests to dispense with mediation are generally disfavored and may only be granted by the Senior Resident Superior Court Judge.

- 15.3 **Mediation Deadlines and Extensions** The deadline for the mediated settlement conference will appear in the Case Management Order and will normally be 60 days prior to the trial date. Short extensions of the deadline may be allowed so long as the trial date is not affected. The parties may submit a proposed stipulated order in lieu of a motion to continue for consideration by the Senior Resident Superior Court Judge to extend the mediation deadline. Parties may use Local Form 4 for this purpose.
- 15.4 **Designation of Mediator** Parties are encouraged to timely select a mediator for their case. The Designation of Mediator form shall be filed with the Clerk of Superior Court and a copy sent to the Trial Court Administrator's office. Parties are encouraged to consider the availability and schedule of the mediator during the selection process. Scheduling conflicts concerning the mediated settlement conference will not serve as a basis to continue trial. If the parties are unable to agree upon the selection of a mediator, the Trial Court Administrator will designate a mediator from the list of court approved mediators. This designation will appear in the Case Management Order. Once a mediator has been appointed, motions to substitute will only be allowed if the designated mediator has a conflict, is otherwise unable to mediate the case or for good cause shown. Substitutions must be authorized by the Senior Resident Superior Court Judge.

## 16.0 DESIGNATION OF SECURE LEAVE

- 16.1 Pursuant to Rule 26 of the General Rules of Practice for the Superior and District Courts, attorneys may designate periods of Secure Leave. Attorneys appearing in cases pending before the civil Superior Court of Wake County must submit their Notice of Secure Leave to the Trial Court Administrator.
- 16.2 Notice of Secure Leave shall be sent to the following address:
- Trial Court Administrator's Office  
Post Office Box 1916  
Raleigh, North Carolina 27602  
ATTN: SECURE LEAVE
- 16.3 Secure leave designations are not filed in the court files and should not contain a case number. The Trial Court Administrator will enter the information into a database used to track periods of Secure Leave.
- 16.4 The policy and procedures described herein are not exclusive. In extraordinary circumstances the time limitations for notification of designated weeks may be waived by the court when attorneys have been faced with particular or unusual situations. Furthermore, attorneys shall be able to make other requests to be excused from appearing before the court for personal and professional reasons.

## 17.0 MISCELLANEOUS

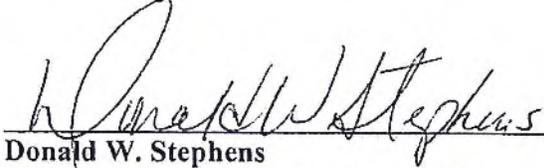
- 17.1 **Cases Under Advisement** Attorneys or unrepresented parties should notify the Trial Court Administrator of cases that have been heard and taken under advisement when a period of more than 90 days has passed since the hearing without a ruling. The Trial Court Administrator will then notify the presiding judge in writing of the need for a prompt and fair resolution in the matter. If no decision is rendered by the presiding judge, the Senior Resident Superior Court Judge may then enter an order finding that the presiding judge has relinquished jurisdiction over the matter and instruct the Trial Court Administrator to re-calendar the case before another judge for a hearing *de novo*.
- 17.2 **Courtroom Utilization** Upon resolution of the civil Superior Court trial calendar, Superior Court Judges may be assigned to preside over cases from the Criminal Division. The Trial Court Administrator shall designate such assignments. Civil clerks will coordinate with criminal clerks to facilitate the addition of cases to the calendar.
- 17.3 **Scheduling Conflicts** When an attorney has more than one case set in different courts at the same time, the scheduling conflict will be resolved pursuant to Rule 3 of the General Rules of Practice.
- 17.4 **Courtroom Presence** Counsel for each party and the presiding judge shall remain in the courtroom throughout the course of a trial, including jury selection, opening statements and closing arguments. The absence of the presiding judge or of counsel during any trial phase conveys to jurors the impression that those procedures are unimportant. Courtroom absences by the presiding judge increase the risk that jurors will be exposed to prejudicial information which cannot be corrected by a jury instruction. If emergencies arise, presiding judges should deal with such by taking a brief recess to avoid any attorney or judge's absences from the courtroom proceedings.
- 17.5 **Removal** When a case is removed to Federal Court, notice of such removal must be provided to the Trial Court Administrator. The State case will be inactivated and removed from the docket of cases pending before the Superior Court of Wake County.
- 17.6 **Sanctions** Should counsel or an unrepresented litigant fail to comply in good faith with any provision of these local Rules, or the General Rules of Practice for the Superior and District Courts, the Court may impose appropriate sanctions in its discretion. An order obtained in substantial violation of these rules is subject to modification or vacation by the Senior Resident Superior Court Judge.
- 17.7 **Transcripts/Electronic Recordings of Court Proceedings** Requests for transcripts of court proceedings shall be made to the resident Court Reporters of the 10<sup>th</sup> District who will determine the reporter that kept record of each case. If the court proceeding was electronically recorded, a request for the recording shall be made to the supervisor of Courtroom Clerks in the Clerk's Office. An electronic recording of the hearing and a list of persons authorized and approved to prepare a transcript will be provided.

These rules shall become effective January 7, 2013.<sup>1</sup> They have been promulgated and approved by the undersigned.

This, the 4 day of January, 2013.

---

**Kristen L. Fetter**  
Trial Court Administrator



---

**Donald W. Stephens**  
Senior Resident Superior Court Judge

---

<sup>1</sup> To the extent Rule 2(a) of the General Rules of Practice for Superior and District Court applies, these Rules shall be considered preliminary in nature and will become final rules of the Court effective July 1, 2013.

NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

WAKE COUNTY

2015 NOV 13 PM 2:34

In re:

Modification to Civil Superior Court Local Rules  
and Forms

**ADMINISTRATIVE ORDER  
MODIFYING CIVIL SUPERIOR COURT LOCAL  
RULES AND FORMS**

Local Rules for Civil Superior Court (Tenth Judicial District – Promulgated January 7, 2013) are hereby modified and amended in the following manner:

1. Rule 5.1 is rewritten as follows:

**5.1 General Provisions**

**(a) Cooperation.** Parties and their counsel are expected to reach agreements cooperatively on how to conduct discovery under Rules 26-37 of the Rules of Civil Procedure. Counsel have a professional responsibility to deal with each other and opposing parties fairly and in full compliance with the letter and spirit of the Rules of Civil Procedure, the Rules of Professional Conduct, and the General Rules of Practice. Parties and their counsel are reminded that Rule 8 of the General Rules of Practice requires the parties to begin discovery promptly so that it does not delay the adjudication of a case.

**(b) Proportionality.** Parties are expected to use reasonable, good faith and proportional efforts to preserve, identify and produce relevant information. This includes identifying appropriate limits to discovery, including limits on custodians, identification of relevant subject matter, date ranges for discovery and other parameters to limit and guide preservation and discovery issues. Discovery requests that do not comply with Rules 26(b)(1a) and 26(g) of the Rules of Civil Procedure are beyond the scope of proper discovery and are considered an impediment to the proper administration of justice.

**(c) Preservation of Discoverable Information.** Parties have an obligation to take reasonable and proportional steps to preserve potentially responsive information within their possession, custody, or control. (See Appendix: *Sample Litigation Hold*)

**(1) Back up and Archived Data.** Absent a showing of good cause by the requesting party, parties shall not be required to modify, on a going-forward basis, the procedures used by them in the ordinary course of business to back up and archive data unless a party has reason to believe that relevant information that cannot be found in active sources is on back up and archived locations and modification of document retention procedures is necessary to preserve this relevant information.

**(2) Exempted Categories of Electronically Stored Information.** Absent a showing of good cause by the requesting party, the categories of electronically stored information identified below need not be preserved.

**(A)** Random access memory (RAM), temporary files, or other ephemeral data that are difficult to preserve without disabling the operating system.

**(B)** On-line access data such as temporary Internet files, history, cache, cookies, and the like.

**(C)** Data in metadata fields that are frequently updated automatically, such as last-opened dates.

**(D)** Back-up data that are duplicative of data that are more accessible elsewhere.

**(E)** Instant messages that are not ordinarily printed or saved on a server dedicated to instant messaging. (NOTE: Text messages are not exempt from a party's preservation obligation unless otherwise agreed between the parties.)

**(F)** Electronic mail or pin-to-pin messages sent to or from mobile devices (e.g., iPhone and Blackberry devices), provided that a copy of such mail is routinely saved elsewhere.

**(G)** Other electronic data stored on a mobile device, such as calendar or contact data or notes, provided that a copy of such information is routinely saved elsewhere.

**(H)** Logs of calls made from mobile devices.

**(I)** Server, system or network logs.

**(J)** Electronic data temporarily stored by laboratory equipment or attached electronic equipment, provided that such data is not ordinarily preserved as part of a laboratory report.

**(K)** Data remaining from systems no longer in use that is unintelligible on the systems in use.

**(d) Privilege.**

**(1) Privilege Logs.**

**(A)** Parties are encouraged to confer on the nature and scope of privilege logs for the case, including whether categories of information (such as work product) may be excluded from any logging requirements and whether alternatives to document-by-document logs (such as identifying documents by category) can be exchanged.

- (B) Unless the parties agree or the court orders otherwise, parties are not required to include in privilege logs any attorney-client privileged or work product material that was generated after the filing of the complaint.

**(2) Inadvertent Disclosure.** Parties should be familiar with, and should consider submitting for the court's approval, an Order providing for the Non-Waiver of Attorney-Client Privilege and Work Product Protection. Parties are cautioned that Rule 26(b)(5) of the Rules of Civil Procedure only provides for the return, sequestration, or destruction of such information. Rule 26(b)(5) does not address whether and to what extent there has been a waiver of privilege or work product protection.

**(e) Electronic Service.** Parties may agree to electronically serve discovery requests and written responses. Unless the parties agree or the court orders otherwise, service of an electronically transmitted request or written response shall be deemed to occur when sent; provided, however, that a request or written response sent after 5 p.m. shall be deemed sent at 8 a.m. the following day. If the parties agree to electronic service of requests and written responses, then the sender must make reasonable efforts to confirm receipt.

2. Rule 5.2 is rewritten as follows:

#### **5.2 Method**

Discovery is expected to begin promptly upon the close of the pleadings and, except as supplemented by these Rules, shall be governed by the North Carolina Rules of Civil Procedure. All forms of discovery may be used in any sequence during the discovery process, unless otherwise ordered or set pursuant to statute. No agreement to delay discovery or engage in informal discovery may serve as a basis to continue the trial date.

3. Rule 5.7 is added as follows:

#### **5.7. Electronic Discovery**

**(a) Discovery Meeting and Discovery Plan.** Pursuant to Rule 26(f)(1) of the Rules of Civil Procedure, any party may request a meeting regarding the discovery of electronically stored information. Following their meeting, the parties shall submit to the court a discovery plan, or a joint report, pursuant to Rule 26(f)(2). In addition to the subjects referenced in Rule 26(f)(3), a discovery plan shall address the following subjects regarding the discovery of electronically stored information: (1) custodians, (2) non-custodial data sources (i.e., sources that are not organized, managed, or maintained by custodians, such as an enterprise system or database), (3) relevant date ranges, and (4) search methodologies (e.g., search terms, identification of specific email folders, or other culling methodology such as predictive coding). The parties are encouraged to discuss the technical specifications regarding formatting and metadata of electronically stored information. (See Appendices: *Preparing for a Rule 26(f)(1) Discovery Meeting* and *Sample Protocol for Discovery of Electronically Stored Information*)

**(b) Electronic Discovery in the Absence of a Rule 26(f)(3) Discovery Plan.** If no discovery plan has been agreed upon or entered, and a producing party produces documents in an electronic format or uses electronic means to identify potentially responsive documents,

such party shall disclose upon request the following information at the time of production:

**(1) Custodians.** The producing party shall identify the custodians from whom the party is producing documents.

**(2) Non-Custodial Data Sources.** The producing party shall identify a list of the non-custodial data sources (i.e., sources that are not organized, managed, or maintained by custodians, such as an enterprise system or database) from which the party is producing documents.

**(3) Date Ranges.** If the producing party used date ranges to locate documents being produced, the producing party shall provide the date ranges searched for each custodian and for each non-custodial data source.

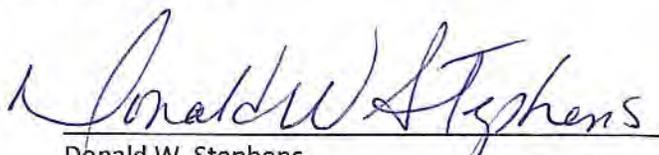
**(4) Search Methodology for Electronically Stored Information.** If a producing party used a search methodology (e.g., search terms, identification of specific email folders, or other culling methodology such as predictive coding) to locate potentially responsive documents, the producing party shall provide a description and identification of the search methodology. The description must be in sufficient detail so as to enable the requesting party and the court, if necessary, to determine the adequacy of the methodology.

**(c) Format.** Rule 34(b) of the Rules of Civil Procedure requires a party to produce documents as they are kept in the usual course of business, or organize and label them to correspond to the requests, and to produce those documents in a reasonably usable form or forms. Unless the parties agree or the court orders otherwise, black and white image files (e.g., "PDF" or "TIFF") with a load file containing extracted text or OCR and the metadata referenced in Rule 26(b)(1) shall be deemed to satisfy the requirements of Rule 34(b). The only documents that must be produced in their native format are those that are not in a reasonably usable form or forms when produced as PDF or TIFF files (such as Excel spreadsheets or documents with color that are not readable in TIFF or PDF format).

4. Local Forms 1 – 5 shall be amended as attached.
5. Local Form 6 shall be added as attached.

These Local Rules as modified shall become effective immediately. A copy of this order shall be attached to the January 7, 2013 Local Rules.

So ordered this, the 12 day of November, 2015.

  
Donald W. Stephens  
SENIOR RESIDENT SUPERIOR COURT JUDGE

TCA USE ONLY			
<input type="checkbox"/> AM	<input type="checkbox"/> JU	<input type="checkbox"/> CW	<input type="checkbox"/> NB

**WAKE COUNTY CIVIL SUPERIOR COURT  
CALENDAR REQUEST**

_____	FILE NO. _____ CVS _____
vs.	SESSION BEGINNING: _____ *
_____	<i>*Consult the session calendars for available dates and deadlines prior to submitting this request</i>

<b>MOTION(S) / OTHER:</b>
---------------------------

**(1) COMPLETE #1-5 BELOW AND SIGN**

1. Date Motion filed (*motion will not be calendared until it has been filed*): \_\_\_\_\_
2. Approximate hearing time: \_\_\_\_\_ day(s), \_\_\_\_\_ hour(s), \_\_\_\_\_ minutes.
3. Have you conferred with all parties involved?     YES     NO
4. Have all parties agreed to the requested date?     YES     NO
5. Special request: \_\_\_\_\_

This the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

- |                                    |   |
|------------------------------------|---|
| <input type="checkbox"/> Plaintiff | <input type="checkbox"/> Attorney for Plaintiff |
| <input type="checkbox"/> Defendant | <input type="checkbox"/> Attorney for Defendant |

Print Name: _____	
Phone Number: _____	Email: _____
Address: _____	

**(2) SUBMIT REQUESTS TO TCA**

**EMAIL (*preferred method*): [calendarrequestswake@nccourts.org](mailto:calendarrequestswake@nccourts.org)**  
MAIL: PO Box 1916, Raleigh, NC 27602; or FAX: (919) 792-4951

**(3) SEND A COPY OF THIS REQUEST TO ALL PARTIES / ATTORNEYS – List their names and addresses below**

<input type="checkbox"/> Plaintiff	<input type="checkbox"/> Attorney for Plaintiff	<input type="checkbox"/> Plaintiff	<input type="checkbox"/> Attorney for Plaintiff
<input type="checkbox"/> Defendant	<input type="checkbox"/> Attorney for Defendant	<input type="checkbox"/> Defendant	<input type="checkbox"/> Attorney for Defendant
Name: _____		Name: _____	
Address: _____		Address: _____	
Phone Number: _____		Phone Number: _____	

**NOTE: The submission of a calendar request to the TCA's office *does not guarantee* a setting on the requested session. Please check the published calendars <http://www.nccourts.org/County/Wake/Calendars> to verify your court date(s).**

**WAKE COUNTY CIVIL SUPERIOR COURT  
RESPONSE TO STATUS CONFERENCE NOTICE**

\_\_\_\_\_ FILE NO. \_\_\_\_\_ CVS \_\_\_\_\_

vs.

In response to the Notice that the above referenced case is scheduled on the upcoming Status Conference Calendar in Wake County Superior Court for the entry of a Case Management Order, the parties submit the following, **agreed-upon** information.

**NOTE:** Parties are encouraged to submit a Consent Case Management Order to the Trial Court Administrator in lieu of submitting this form.

**(1) Trial Date**

- Date must be within 12 months of filing; or within 18 months of filing for medical malpractice claims and unusual cases.      File Date \_\_\_\_\_
- First Choice \_\_\_\_\_      Second Choice \_\_\_\_\_

**(2) Length of Trial**

Estimated length \_\_\_\_\_ day(s)       Jury       Non-Jury

**(3) Mediation**

- The deadline for the mediated settlement conference will be 60 days prior to the trial date, pursuant to Local Rule 15.3, unless otherwise set pursuant to court order.
- The Designation of Mediator (AOC-CV-812) **must be filed by the parties**, and a file-stamped copy sent to the Trial Court Administrator, within 21 days of issuance of the Case Management Order **or one shall be appointed**, in accordance with MSC Rule 2.

**(4) Discovery**

- Discovery Deadline shall be 60 days before trial, unless otherwise set by court order.
- Expert Witness Discovery shall comply with amended N.C. Gen. Stat. §1A-1, Rule 26(b)(4), for all actions commenced on or after October 1, 2015.

**(5) Special request(s):** \_\_\_\_\_

<input type="checkbox"/> Plaintiff	<input type="checkbox"/> Attorney for Plaintiff	<input type="checkbox"/> Defendant	<input type="checkbox"/> Attorney for Defendant
Signature: _____		Date: _____	
Name: _____			
Address: _____			
Phone Number: _____			

**DELIVER COPIES OF THIS FORM TO ALL COUNSEL, UNREPRESENTED PARTIES, AND THE TRIAL COURT ADMINISTRATOR**

**WAKE COUNTY CIVIL SUPERIOR COURT  
 CONDEMNATION CASE STATUS REPORT**

FILE NO. \_\_\_\_\_ CVS \_\_\_\_\_

\_\_\_\_\_

vs.

\_\_\_\_\_

**COMPLETE ALL SECTIONS BELOW, DATE AND SIGN**

Pursuant to Tenth District Civil Superior Court Local Rule 13 and in accordance with N.C. Gen. Stat. §40A-50 / N.C. Gen. Stat. §136-110, the following parties (“Reporting Parties”) report the current status of the condemnation case as set out below:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

1. Plaintiff estimates the completion date of the project for which it filed this case as: \_\_\_\_\_.
2. The Reporting Parties estimate that they will begin discovery by \_\_\_\_\_ and complete it by \_\_\_\_\_.
3. The Reporting Parties estimate that they will be ready to select a mediator in this case not earlier than \_\_\_\_\_ and to complete mediation not earlier than \_\_\_\_\_.
4. The Reporting Parties estimate that any motion pursuant to N.C. Gen. Stat. §40A-47 / N.C. Gen. Stat. §136-108 or any dispositive motions would be ready for hearing by \_\_\_\_\_.
5. The Reporting Parties estimate that, if this case is not settled, it would be ready for trial on \_\_\_\_\_.
6. The Reporting Parties have consulted, or attempted to consult, any other parties whose positions on the matters addressed in this report are as follows:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

This the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

By:

By:

<input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant	<input type="checkbox"/> Attorney for Plaintiff <input type="checkbox"/> Attorney for Defendant	<input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant	<input type="checkbox"/> Attorney for Plaintiff <input type="checkbox"/> Attorney for Defendant
Name:		Name:	
Address:		Address:	
Phone Number:		Phone Number:	

**SUBMIT REPORT TO TCA**

**EMAIL (preferred method): [calendarrequestswake@nccourts.org](mailto:calendarrequestswake@nccourts.org)**

MAIL: PO Box 1916, Raleigh, NC 27602; or FAX: (919) 792-4951

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
\_\_\_\_\_ CVS \_\_\_\_\_

\_\_\_\_\_

Plaintiff,

vs.

\_\_\_\_\_

Defendant.

**STIPULATED ORDER EXTENDING  
COMPLETION DATE FOR MEDIATION**

**THIS COURT HEREBY extends the completion date for mediated settlement conference in the above captioned matter and finds as follows:**

1. Plaintiff filed the complaint in this matter on: \_\_\_\_\_.
2. The trial date is set for: \_\_\_\_\_.
3. Basis for extension: \_\_\_\_\_  
\_\_\_\_\_.
4. The current deadline for completion of the mediated settlement conference is: \_\_\_\_\_.
5. Counsel for all parties have conferred and agreed to this extension of time for completion of the mediated settlement conference.

**IT IS HEREBY ORDERED that the completion date for the mediated settlement conference shall be extended until \_\_\_\_\_.**

This the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

\_\_\_\_\_  
Senior Resident Superior Court Judge

**WAKE COUNTY CIVIL SUPERIOR COURT  
 PEREMPTORY SETTING REQUEST**

\_\_\_\_\_ FILE NO. \_\_\_\_\_ CVS \_\_\_\_\_  
 vs.  
 \_\_\_\_\_

**(1) COMPLETE THE FOLLOWING SECTION, DATE AND SIGN.**

The undersigned requests a peremptory setting of the above captioned case based on the following:  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Estimated length of trial: \_\_\_\_\_  JURY    NON-JURY  
 Requested Trial Date: \_\_\_\_\_  
 Have all parties agreed to the requested date?    YES    NO

Date: \_\_\_\_\_ Signature: \_\_\_\_\_  
 Plaintiff    Attorney for Plaintiff  
 Defendant    Attorney for Defendant

**(2) SEND A COPY OF THIS REQUEST TO ALL PARTIES / ATTORNEYS – List their names and addresses below**

<input type="checkbox"/> Plaintiff <input type="checkbox"/> Attorney for Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Attorney for Defendant	<input type="checkbox"/> Plaintiff <input type="checkbox"/> Attorney for Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Attorney for Defendant
Name: _____	Name: _____
Address: _____	Address: _____
Phone Number: _____	Phone Number: _____

**(3) SUBMIT THIS REQUEST TO THE TRIAL COURT ADMINISTRATOR**

RECOMMENDATION OF TRIAL COURT ADMINISTRATOR	
<input type="checkbox"/> APPROVED <input type="checkbox"/> DENIED	Date: _____ Signature: _____ <div style="text-align: right; font-size: small;">TCA / Designee</div>
ORDER	
The undersigned hereby authorizes the Trial Court Administrator to set the above referenced case peremptorily on: _____ .  Date: _____ Signature: _____ <div style="text-align: right; font-size: small;">Senior Resident Superior Court Judge</div>	

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
\_\_\_\_\_ CVS \_\_\_\_\_

\_\_\_\_\_,  
Plaintiff,  
vs.  
\_\_\_\_\_,  
Defendant.

**MOTION AND ORDER FOR CONTINUANCE  
CIVIL SUPERIOR CASES**

**INSTRUCTIONS:** MOVING PARTY must complete all information requested below. A copy of the completed form must be faxed, mailed, or hand delivered to opposing counsel or unrepresented party prior to filing with the Clerk of Superior Court. Upon receipt, OPPOSING PARTY must immediately communicate any objections to the Trial Court Administrator's office pursuant to Civil Superior Court Local Rule 8.

Calendared Hearing / Trial Date	Requested Reschedule Date (within 90 days)
Opposing Counsel / Party Name	Date Case Filed

**MOTION**

Pursuant to the local rules for motions for continuance in effect in the Tenth Judicial District, the party named below moves that the above civil case be continued from the calendared date shown above to the requested reschedule date shown above, for the following compelling reasons (*may attach additional sheets, if necessary*):

**Moving party must select at least one of the options below:**

- I have distributed a copy of this Motion to all counsel of record and unrepresented parties by U.S. mail, facsimile transmission, hand delivery, or placement in a distribution box maintained in the courthouse facility.
- I have conferred, or attempted in good faith to confer, with all parties before filing this motion.
- I certify that the opposing party consents to the above requested continuance (*attach correspondence*).

Name and Address of Movant	Date
	Signature
Telephone No.	

**ORDER**

**It is ORDERED that:**

- The motion is ALLOWED and the case is continued and shall be held on the rescheduled date shown below.
- The motion is DENIED and the case shall be heard on the calendared hearing / trial date.

Rescheduled Date	Date of Order
Name of Superior Court Judge	Signature of Superior Court Judge

## Sample Litigation Hold

<b>PRIVILEGED AND CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION AND ATTORNEY WORK PRODUCT</b>
--

### *Memorandum*

**TO:** Distribution List

**FROM:** [Inside Counsel/Responsible Person/Law Firm]

**DATE** [ ]

**RE:** Legal Hold Notice related to [brief description of matter]

---

**I. ATTENTION PLEASE:** This Legal Hold Notice (“Notice”) contains important legal information regarding the need to save and preserve certain documents and information related to [potential lawsuit(s) or other legal action(s) that may result] from [brief description]. All employees have a duty to ensure that [Company] is preserving all appropriate records and information as described below. As discussed in more detail below, document preservation encompasses a number of different obligations. First and foremost, do not delete, alter or destroy any Potentially Relevant Documents (as defined below). Any routine or *ad hoc* deletion of electronically-stored information should be suspended and should not occur, even as to electronically-stored information on back-up tapes.

Please understand that document preservation is both a company and an individual responsibility, and we require your full attention and cooperation in this matter. **Any failure** to follow these procedures **may result in severe penalties** against [Company] and could form the basis of legal claims for destroying evidence. Therefore, please review this memorandum carefully and adhere to the mandatory document retention policy outlined below.

**II. REASON FOR THE NOTICE:** Following [description of cause for sending Litigation Hold Notice with enough detail to permit recipients to discern which documents are potentially relevant].

**III. OBLIGATION TO PRESERVE:** It is imperative that you immediately take every reasonable step necessary to preserve, and to not lose, alter, or destroy, any Potentially Relevant Documents (as defined below). This means that you must save and preserve every paper and electronic document and any and all data now in existence or that may be created in the future that is related in any way to the subject of this dispute. The obligation to preserve and retain documents extends to all recipients of this Notice.

**IV. CONFIDENTIALITY; NOTIFICATION REGARDING DISTRIBUTION LIST:** The fact that a lawsuit has been filed, and any communication regarding it, including this litigation hold Notice, should be kept strictly confidential and should not be discussed with anyone except [Inside Counsel/Responsible Person] or with counsel at [Law Firm]. If you are aware of anyone else (whether or not he or she is currently an employee)

NOTE: This document is provided for information purposes only.

who may possess documents concerning this matter and who does not appear on the attached distribution list, please immediately inform [Inside Counsel/Responsible Person] or counsel at [Law Firm].

**V. POTENTIALLY RELEVANT DOCUMENTS:** Potentially Relevant Documents are defined to mean Documents or physical things in your possession or under your control – whether located on your work or home computer, personal electronic device, cell phone, or any other device over which you have control; whether in your office or elsewhere – concerning [list/categories]. Potentially Relevant Documents must be saved and preserved because they may be relevant to the litigation.

**V. DEFINITION OF DOCUMENTS:** “Documents” are more than just paper records. The term “Documents” is used in this Notice in its broadest possible context and covers all computer files and written, recorded, or graphic materials of every kind. It means all documents and **all forms of information** of any type, and all other preserved data, regardless of whether it is hard copy or electronic and regardless of the storage medium. All Potentially Relevant Documents must be preserved, including any “personal” copies you have saved separately from any “official” or “firm” file.

**VI. PRESERVATION IN PLACE AND IN CURRENT FORM:** [Company] has a legal obligation to preserve all relevant paper and electronic documents and all relevant physical things in the form in which they were created and maintained in the normal course of business.

- For example, if the document is paper clipped, leave the paper clip on it. If the document has post-it notes on it, leave the post-it notes on it. Documents should be filed as you normally maintain them.
- Do not copy electronic files and delete the originals, and do not change the format of electronic files (e.g., from .doc to .pdf).

All files containing Potentially Responsive Documents must be retained, including any files that have been sent to storage or to other individuals, or any files kept by you or your assistant. Your preservation obligation extends to the preservation of relevant data on external media, including hard drives, DVDs, CDs, flash drives, personal home computers, laptops and mobile devices, including PDAs, cell phones and tablets. If you have any doubt about whether a document falls within a category listed above, please retain it. For any potentially relevant documents, you should preserve the original and all non-identical copies and drafts of the same documents. You should preserve the documents in the files in which they would be normally stored and should not segregate them in response to this memorandum.

You need not — and should not — create any records that do not currently exist to respond to this request. You must simply preserve all documents in the categories described above that have already been created or that are created in the future as part of your normal business activities.

This Notice is intended to preserve Potentially Relevant Documents. **As a follow-up to this Notice, counsel for [Company] will be involved in the company’s process of searching for, collecting and duplicating your Potentially Relevant Documents for possible use in the court litigation.**

**VII. CONTINUING OBLIGATION TO PRESERVE DOCUMENTS:** Even after your Potentially Responsive Documents have been collected, you must continue to preserve your responsive documents until instructed otherwise. Your preservation obligations are ongoing requirements. Any responsive documents that you receive or create after your documents have been collected also must be preserved.

NOTE: This document is provided for information purposes only.

This Notice and the directions it contains supplements any other litigation hold policies, memoranda or instructions. You must continue to apply the directions contained in this notice until you receive written notice from [Inside Counsel/Responsible Person/Law Firm] that it is no longer in effect.

**VIII. IF YOU HAVE ANY QUESTIONS OR NEED HELP:** Please call if you have questions concerning this litigation hold or preserving Potentially Relevant Documents. Your discussions about the matter should be directed solely to [Inside Counsel/Responsible Person/Law Firm].

**IX. ACKNOWLEDGEMENT.** Within five (5) days of receipt of this Notice, please email [Inside Counsel/Responsible Person/Law Firm] acknowledging that you have read and understood the preservation obligations it imposes on you.

**X. DISTRIBUTION LIST:**


## **Preparing for a Rule 26(f)(1) Discovery Meeting**

Counsel should consider the areas where consensus may be possible.

Be prepared to offer a concrete protocol and schedule.

Be prepared to discuss:

- 1. Relevant facts.**
- 2. Document preservation issues.**
- 3. Relevant media and technology involved in data collection.**
- 4. Search terms and search methodology.**
- 5. Format of data production.**
- 6. Privilege.**
- 7. Disclosure procedures / costs.**
- 8. Scheduling and discovery limitation.**

### **1. Relevant Facts**

- Who are the key players?
- What are the issues?
- What events are relevant?
- What are the relevant time frames?

### **2. Preservation Issues**

- Who are the persons most knowledgeable about ESI systems?
- What events and time frames are relevant?
- What data are at greatest risk of alteration or destruction?
- Are any electronic systems slated for replacement or disposal?
- What steps have been or will be taken to preserve ESI?
- What third parties hold information that must be preserved?
  - How will they be notified?
  - How will compliance be ensured?
- What data, if any, require forensically sound preservation?
- Are there unique chain of custody needs to be met?
- What metadata are relevant, and how will it be preserved, extracted and produced?
- Are there data retention policies and practices in place?
- What are the backup practices? What tape archives exist?
- Are there legacy systems to be addressed?
- How will the parties handle portable devices, social networking content, cloud storage, voicemail, instant messaging and other challenging ESI?
- Is there a preservation duty going forward and, if so, how will it be met?
- Is a protective order needed?

### **3. Media and Technology**

- What e-mail applications are used currently?
- What e-mail applications were used in the relevant past?
- Are personal e-mail accounts and computer systems involved?
- What principal applications are used in the business?
- What principal applications were used in the business in the relevant past?
- What electronic formats are common, and in what anticipated volumes?
- Is there a document or messaging archival system?
- What relevant databases, if any, exist?

### **4. Search Terms and Methodology**

- If keyword searching is contemplated, can the parties agree on keywords?
  - What are the key search terms for both sides, based on the facts as known?
- Can supplementary keyword searches be pursued?
- Should a follow up meeting be scheduled specifically on search terms and search methodology?

### **5. Production Formats**

- Will paper documents need be scanned and OCR'ed, or produced in hard copy?
- How will data de-duplication be handled?
- What forms of production are offered or sought?
- Will single or multipage TIFFs, PDFs or other image formats be produced?
- Will load files accompany document images and, if so, how will they be structured and populated?
- Will bates numbering be used?
- Will there be a need for native file production?
- On what media will ESI be delivered?

### **6. Privilege**

- What procedure should be used in case of inadvertent disclosure of privileged documents?
- Will a non-waiver agreement be used?
- Will the scope of the privilege log be narrowed (e.g., no entries for communications between client and litigation counsel after date of filing of Complaint; work product exclusion)?

### **7. Disclosure Procedures and Costs**

- How much time is required to identify, collect, process, review, redact and produce ESI?
- How will the parties handle inadvertent production of privileged ESI?
- How will the parties protect trade secrets and other confidential information in the ESI?

- Do regulatory prohibitions on disclosure, foreign privacy laws or export restrictions apply?
- How can production be structured to accommodate depositions and deadlines?
- How will the parties handle the authentication of native ESI used in a deposition or at trial?
- What ESI, if any, will be claimed as being unreasonably accessible, and on what basis?
- Will a person be appointed to serve as liaison or coordinator for each side on ESI issues?
- Will technical assistants be permitted to communicate directly with each other?
- Is there a need for an e-discovery special master or neutral?
- Can any costs be shared or shifted by agreement?
- Can cost savings be realized using shared vendors, repositories or neutral experts?
- When is the next conference under Rule 26(f) of the NCRCP (if more than one conference is necessary)?

#### **8. Scheduling and limits on discovery**

**Be prepared to offer options and negotiate the following:**

- Date for completion of discovery.
- Date for completion of fact and expert depositions.
- Date for designation of experts.
- Limit on number of interrogatories, depositions or other discovery device.
- Limit on time for single deposition.
- Date for dispositive motions (consistent with the deadlines set in the Case Management Order).

**Sample Protocol for Discovery of Electronically Stored Information**

[COURT]

PLAINTIFF,  Plaintiff,  v.  DEFENDANT,  Defendant.
--

**PROTOCOL FOR DISCOVERY OF ELECTRONICALLY STORED INFORMATION**

**A.    Purpose**

          This Order will govern discovery and production of electronically stored information (“ESI”) in this case as a supplement to the North Carolina Rules of Civil Procedure, this Court’s Local Rules, and any other applicable orders and rules.

**B.    Cooperation**

          The parties are aware of the importance the Court places on cooperation and commit to cooperate in good faith throughout this action.

**C.    Liaison**

1.    **Appointment of E-Discovery Liaisons:** The parties have identified liaisons to each other who are and will be knowledgeable about and responsible for discussing their respective ESI. Each e-discovery liaison will be, or have access to those who are, knowledgeable about the technical aspects of e-discovery, including the location, nature, accessibility, format, collection, search methodologies, and production of ESI in this matter. The parties will rely on the liaisons, as needed, to confer about ESI and to help resolve disputes without court intervention.
2.    **Plaintiff:** Plaintiff appoints \_\_\_\_\_ as its e-discovery liaison.
3.    **Defendant:** Defendant appoints \_\_\_\_\_ as its e-discovery liaison.

NOTE: This document is provided for information purposes only.

**D. Preservation**

1. **Preservation in General:** The parties have discussed their preservation obligations and needs and agree that preservation of potentially relevant ESI will be reasonable and proportionate.
2. **Data Sources That Are Not Reasonably Accessible:** These data sources are not reasonably accessible because of undue burden or cost pursuant to N.C. R. Civ. P. 26(b)(2)(B) and ESI from these sources will not be preserved, searched, reviewed, or produced, unless otherwise ordered by the Court upon a motion of a party:
  - a. backup systems and/or tapes used for disaster recovery;
  - b. systems no longer in use that cannot reasonably be accessed;
  - c. voicemail messages;
  - d. information from handsets, mobile devices, personal digital assistants, and tablets that is duplicative of information that resides in a reasonably accessible data source;
  - e. deleted, slack, fragmented, or other data only accessible by forensics;
  - f. random access memory (RAM), temporary files, or other ephemeral data that are difficult to preserve without disabling the operating system;
  - g. dynamic fields of databases or log files that are not retained in the usual course of business; and
  - h. information created or copied during the routine, good-faith performance of processes for the deployment, maintenance, retirement, and disposition of computer equipment.

**E. Search**

1. **Meet and Confer regarding Search Methods:** The parties agree that they will meet and confer about methods to search ESI to identify ESI that is subject to production in discovery and filter out ESI that is not subject to discovery.

2. **Filtering of Non-User Created Files:** A party may use multiple commercially reasonable means to exclude common system files and application executable files from its production and include files that contain user-created information in its production.
3. **Deduplication:** Neither party is required to produce more than a single copy of a responsive document. Each party may de-duplicate responsive ESI (based on MD5 hash values at the document level) across Custodians. For emails with attachments, the hash value is generated based on the parent/child document grouping. To the extent that de-duplication through MD5 hash values is not possible, the parties may meet and confer to discuss any other proposed method of de-duplication.

**F. Privilege: Clawback and Nonwaiver**

No party intends to produce document(s) or information that are protected by the attorney-client privilege or the work product doctrine. In the event that such document(s) or information are produced, the producing party may request their return from the receiving party, which will immediately cease to use such documents and will within five (5) days return or destroy all copies of such document(s) and any materials paraphrasing, summarizing, referencing or otherwise using such document(s). Any such inadvertent production of document(s) or information protected by the attorney-client privilege or the work product doctrine shall not constitute a waiver of attorney-client privilege or work product protection.

**G. Production Formats**

The parties agree to produce documents in a format described in Schedule 1 to this Protocol. If particular documents warrant a different format, the parties will cooperate to arrange for the mutually acceptable production of such documents. The parties agree not to degrade the searchability of documents as part of the document production process.

**H. Modification**

This Protocol may be modified by written agreement of the parties.

NOTE: This document is provided for information purposes only.

IT IS SO STIPULATED, through Counsel of Record.

\* \* \* \*

Dated: \_\_\_\_\_

Respectfully submitted,

/s/ DRAFT  
*Attorneys for Plaintiff*

/s/ DRAFT  
*Attorneys for Defendant*

NOTE: This document is provided for information purposes only.

## SCHEDULE 1: PRODUCTION FORMAT AND METADATA

### **A. Production Format**

1. **TIFFs.** Documents that exist only in hard copy format must be scanned and produced as TIFFs. Documents that exist as electronically stored information (“ESI”) must be converted to and produced as TIFFs, except for audio, video, and multi-media files and spreadsheets and databases, which must be produced as described below. Unless excepted below, single page TIFFs should be provided for all documents. Each TIFF image must be named according to a unique corresponding Bates number associated with the document. Each TIFF image must be branded according to the Bates number and the agreed upon confidentiality designation. Original document orientation should be maintained (i.e., portrait to portrait and landscape to landscape). Where the TIFF image is unreadable or has materially degraded the quality of the original, the producing party must provide a higher quality TIFF image or the native or original file.
2. **Native files.** Spreadsheets (e.g. MS Excel) will be produced in native format with redactions, if any, clearly marked. To the extent that they are produced in this action, audio, video, and multi-media files will be produced in native format. For each native file produced, a Bates numbered TIFF placeholder indicating that the document was provided only in native format must accompany the native file. The parties will make reasonable efforts to ensure that any native files that are produced only as TIFF images are formatted so as to be readable and so as to not degrade the image quality of the original.
3. **Text Files.** A text file must be provided as a single text file for each document, and the filename itself should match its respective TIFF filename. A commercially acceptable technology for optical character recognition “OCR” must be used for all scanned, hard copy documents. When possible, the text of native files should be extracted directly from the native file. Text files will not contain the redacted portions of the documents

NOTE: This document is provided for information purposes only.

and OCR text files will be substituted instead of extracted text files for redacted documents.

4. **General Quality Control of Load Files.** Each TIFF in a production must be referenced in the corresponding image load file. The total number of documents referenced in a production's data load file should match the total number of designated document breaks in the Image Load file(s) in the production. The total number of pages referenced in a production's image load file should match the total number of TIFF files in the production. The total number of documents in a production should match the total number of records in the data load file.
5. **Bates Numbering.** All images must be assigned a unique Bates number that is sequential within a given document and across the production sets. Image file names and Bates numbers must meet the following requirements: (i) have a consistent format within and between productions, including a consistent number of characters; (ii) have the same number of numerals to prevent issues with image display and use leading zeros where necessary to achieve this; (iii) not use a space or special characters to separate the prefix from numbers; and (iv) be sequential within a given document.
6. **Presentations.** The parties must process presentations (e.g. MS PowerPoint) with hidden slides and speaker's notes unhidden, and show both the slide and the speaker's notes on the TIFF image.
7. **Redaction of Information.** If documents are produced containing redacted information, an electronic copy of the original, unredacted data must be securely preserved in such a manner so as to preserve without modification, alteration, or addition the content of such data including any metadata therewith.
8. **Confidentiality Designation.** Responsive documents in TIFF format will be stamped with the appropriate confidentiality designations in accordance with the Protective Order in this matter and include the appropriate confidentiality designation in the CONFIDENTIALITY field of the appropriate load file. Each responsive document

produced in native format will have its confidentiality designation identified in the filename of the native file and include the appropriate confidentiality designation in the CONFIDENTIALITY field of the appropriate load file.

9. **Production Media.** Documents must be produced on external hard drives, readily accessible computer(s), or other electronic media ("Production Media"). Each piece of Production Media must identify a production number corresponding to the production volume (e.g., "VOL001", "VOL002"), as well as the volume of the material in that production (e.g. "-001", "-002"). Each piece of Production Media must also identify: (1) the producing party's name; (2) the production date; and (3) the Bates Number range of the materials contained on the Production Media. Where possible, Production Media will be USB drives (external or flash drives).

**B. Metadata Fields and Metadata File**

1. Each of the metadata and coding fields set forth below that can be extracted must be produced for that document. The parties are not obligated to populate manually any of the fields below if such fields cannot be extracted from a document, with the exception of the following: (a) BEGDOC, (b) ENDDOC, (c) BEGATTACH, (d) ENDATTACH, (e) CONFIDENTIALITY, (k) CUSTODIAN, (l) DEDUPED\_CUSTODIAN, (m) NATIVEFILE, (n) NATIVEFILEPATH, (o) TEXTFILEPATH, and (p) PAGECOUNT, which should be populated by the party or the party's vendor.
2. The parties will make reasonable efforts to ensure that metadata fields automatically extracted from the documents are correct.
3. Each party will provide the following metadata fields, where available:

Field Name	Field Description
BEGDOC	Beginning Bates number as stamped on the production image
ENDDOC	Ending Bates number as stamped on the production image
BEGATTACH	First production Bates number of the first document in a family
ENDATTACH	Last production Bates number of the last document in a family
CONFIDENTIALITY	Confidentiality designation assigned to document
CUSTODIAN	Individual from whom the documents originated
DEDUPED_CUSTODIAN	Individual(s) whose documents de-duplicated out; only relevant for global de-duplication.
FILENAME	Filename of an electronic document (Edoc only)
DOCTYPE	Type of document
NATIVEFILE	"Yes" for Edoc produced in its native file format
LANGUAGE	Primary language of document
DOCEXT	File extension associated with document (if any)
FILESIZE	File size, in bytes
FULLPATH	The directory structure of the original file(s).
TITLE	Any value populated in the Title field of the document properties (Edoc only)
AUTHOR	Any value populated in the Author field of the document properties (Edoc only)
SUBJECT	Any value populated in the Subject field of the document properties (Edoc only)
DOCDATE	Date the document was created (format: MM/DD/YYYY) (Edoc only)
DATEMODIFIED	Date when document was last modified according to file system information (Edoc only)
HASHVALUE	MD5 hash value of document
PARENTID	BEGBATES of parent document (Edoc attachments only)
HASATTACH	"Yes" for parent Edocs
ATTACHCOUNT	Number of attachments to parent document (Edoc parents only)

NOTE: This document is provided for information purposes only.

Field Name	Field Description
FROM	The name and email address of the sender of the email
TO	All recipients that were included on the "To" line of the email
CC	All recipients that were included on the "CC" line of the email
BCC	All recipients that were included on the "BCC" line of the email
EMAILSUBJECT	Subject of email
DATRECEIVED	Date email was received (format: MM/DD/YYYY)
TIMERECEIVED	Time email was received
DATESENT	Date email was sent (format: MM/DD/YYYY)
TIMESENT	Time email was sent
NATIVEFILEPATH	Native File Link (Native Files only)
TEXTFILEPATH	Path to extracted text/OCR file for document
PAGECOUNT	Number of TIFF pages in document

NOTE: This document is provided for information purposes only.