

Order Adopting Supplemental Rules of Practice and Procedure For the North Carolina eFiling Pilot Project

Supplemental Rules for the North Carolina eFiling Pilot Project are hereby adopted as described below:

SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE NORTH CAROLINA eFILING PILOT PROJECT FOR CHOWAN AND DAVIDSON COUNTIES INITIALLY, AND THEN ALSO FOR WAKE COUNTY
Adopted May 26, 2009, *nunc pro tunc* May 15, 2009

RULE 1—INTRODUCTION

- 1.1—Citation to Rules
- 1.2—Authority and Effective Date
- 1.3—Scope and Purpose
- 1.4—Integration with Other Rules

RULE 2—DEFINITIONS

- 2.1—Cloak
- 2.2—Document
- 2.3—eFiler
- 2.4—Electronic Identity
- 2.5—Holder

RULE 3—ELECTRONIC IDENTITIES

- 3.1—Issuance
- 3.2—Scope of Electronic Identity
- 3.3—Responsibility of Holder
- 3.4—Effect of Use
- 3.5—Use by Others

RULE 4—SIGNATURES AND AUTHENTICITY

- 4.1—Signatures
- 4.2—Signature of Person(s) Other Than eFiler
- 4.3—Authenticity
- 4.4—Preservation of Originals

RULE 5—ELECTRONIC FILING AND SERVICE

- 5.1—Permissive Electronic Filing
- 5.2—Exceptions to Electronic Delivery
- 5.3—*Pro Se* Parties
- 5.4—Format
- 5.5—Cover Sheet Not Required
- 5.6—Payment of Filing Fees
- 5.7—Effectiveness of Filing

- 5.8—Certificate of Service
- 5.9—Procedure When No Receipt is Received
- 5.10—Retransmission of Filed Document
- 5.11—Determination of Filing Date and Time
- 5.12—Issuance of Summons

RULE 6—SEALED DOCUMENTS AND PRIVATE INFORMATION

- 6.1—Filing of Sealed Documents
- 6.2—Requests by a Party for Sealing of Previously Filed Documents
- 6.3—Private Information
- 6.4—Requests for Redaction or Removal of a Document by a Non-party

RULE 7—COMMUNICATION OF MATERIAL NOT FILED

- 7.1—Communication with Court
- 7.2—Discovery

RULE 8—GOOD FAITH EFFORTS

RULE 9—ORDERS, DECREES AND JUDGMENTS

- 9.1—Proposed Order or Judgment
- 9.2—Entry of Order, Judgment and Other Matters
- 9.3—Notice of Entry

RULE 1—INTRODUCTION

1.1—Citation to Rules. These rules shall be known as the “Supplemental Rules of Practice and Procedure for the North Carolina eFiling Pilot Project,” and may be cited as the “eFiling Rules.” A particular rule may be cited as “eFiling Rule —.”

1.2—Authority and Effective Date. The eFiling Rules are promulgated by the Supreme Court of North Carolina pursuant to G.S. 7A-49.5. They are effective as of May 15, 2009.

1.3—Scope and Purpose. The eFiling Rules apply to civil superior court cases and to foreclosures under power of sale filed on or after the effective date in Chowan and Davidson Counties. Upon addition of Wake County to the pilot project by the North Carolina Administrative Office of the Courts (the “AOC”), these rules shall apply to civil superior court cases and to foreclosures under power of sale filed in Wake County on or after the effective date of the implementation of the pilot project in Wake County, and the public announcement thereof by AOC. In general, these rules initially allow, but do not mandate, electronic filing by North Carolina licensed attorneys of pleadings and other documents required to be filed with

the court by the North Carolina Rules of Civil Procedure (the “Rules of Civil Procedure”) and permit electronic notification of the electronic filing of documents between attorneys. Initially, they do not permit electronic filing by *pro se* parties or attorneys not licensed by the State of North Carolina, and they do not permit electronic filing of documents in cases not initially filed electronically.

1.4—Integration with Other Rules. These rules supplement the Rules of Civil Procedure and the General Rules of Practice for Superior and District Courts (the “General Rules”). The filing and service of documents in accordance with the eFiling Rules is deemed to comply with the Rules of Civil Procedure and the General Rules. If a conflict exists between the eFiling Rules and the Rules of Civil Procedure or the General Rules, the eFiling Rules shall control.

RULE 2—DEFINITIONS

2.1—“Cloak” means the process by which portions of an original document within the court’s document management system are obscured when viewed electronically by all non-court personnel other than parties to the case.

2.2—“Document” means data that may be filed electronically under the eFiling Rules.

2.3—“eFiler” means a holder who makes, or who attempts, under eFiling Rule 5, to make an electronic filing or who authorizes another person to make an electronic filing using the holder’s electronic identity.

2.4—“Electronic Identity” means the combination of username and password issued to a person by the AOC under eFiling Rule 3.1.

2.5—“Holder” means a person with an AOC approved electronic identity.

RULE 3—ELECTRONIC IDENTITIES

3.1—Issuance. Upon application and upon completion of the training, if any, required by the AOC, the AOC shall issue an electronic identity to any attorney who

- (a) is licensed to practice law in this state;
- (b) has pending or intends to file or appear in a civil superior court case or a foreclosure under power of sale in a pilot county;
- (c) designates a valid and operational email address; and
- (d) provides all other information required by the AOC.

3.2—Scope of Electronic Identity. Electronic identities are not case specific.

3.3—Responsibility of Holder. Each holder is responsible for the confidentiality, security, and use of the holder's electronic identity. If an electronic identity becomes compromised, or any organization or affiliation change occurs, the holder shall immediately notify the AOC and request a change to the holder's user name, password or profile information as appropriate.

3.4—Effect of Use. Use of an electronic identity constitutes:

- (a) an agreement by the holder to comply with the eFiling Rules;
- (b) an appearance in the matter by the holder; and
- (c) acknowledgement by the holder that the holder's designated email address is current.

3.5—Use by Others. If a holder authorizes another person to file using the holder's electronic identity, the holder retains full responsibility for any filing by the authorized person, and the filing has the same effect as use by the holder. An electronic filing by use of an electronic identity is deemed to have been made with the authorization of the holder unless the contrary is shown by the holder to the satisfaction of the trier of fact by clear and convincing evidence. A filing made by use of an electronic identity without authorization of the holder is void.

RULE 4—SIGNATURES AND AUTHENTICITY

4.1—Signatures. An electronically filed document requiring a signature is deemed to be signed by the eFiler pursuant to Rule 11 of the Rules of Civil Procedure, regardless of the existence of a handwritten signature on the paper, and must contain the name, postal address, e-mail address, and State Bar number of the eFiler, and the name of the eFiler preceded by the symbol "/s/" in the location at which a handwritten signature normally would appear. However, affidavits and exhibits to pleadings with the original handwritten signatures must be scanned and filed in Portable Document Format (PDF) or TIFF format.

4.2—Signature of Person(s) Other than eFiler. An eFiler who files a document signed by two or more persons representing different parties shall confirm that all persons signing the document have agreed to its content, represent to the court in the body of the document or in an accompanying affidavit that the agreement has been obtained, and insert in the location where each handwritten signature otherwise would appear the typed signature of each person,

other than the person filing, preceded by the symbol “/s/” and followed by the words “by permission.” Thus, the correct format for the typed signature of a person other than the person filing is: “/s/ Jane Doe by permission.” Unless required by these Rules, a document filed electronically should not be filed in an optically scanned format displaying an actual signature.

4.3—Authenticity. Documents filed electronically in accordance with the eFiling Rules and accurate printouts of such documents shall be deemed authentic.

4.4—Preservation of Originals. The eFiler shall retain originals of each filed document until a final determination of the case is made by a court of competent jurisdiction. The court may order the eFiler to produce the original document.

RULE 5—ELECTRONIC FILING AND SERVICE

5.1—Permissive Electronic Filing. Pending implementation of revised rules by the North Carolina Supreme Court, electronic filing by a licensed North Carolina attorney is permitted only to commence a proceeding or in a proceeding that was commenced electronically. Electronic filing is not required to commence a proceeding. Subsequent filings made in a proceeding commenced electronically may be electronic or non-electronic at the option of the filer.

5.2—Exceptions to Electronic Delivery. Pleadings required to be served under Rule 4 and subpoenas issued pursuant to Rule 45 of the Rules of Civil Procedure must be served as provided in those rules and not by use of the electronic filing and service system. Unless otherwise provided in a case management order or by stipulation, filing by or service upon a *pro se* party is governed by eFiling Rule 5.3.

5.3—Pro se Parties. A party not represented by counsel shall file, serve and receive documents pursuant to the Rules of Civil Procedure and the General Rules.

5.4—Format. Documents must be filed in PDF or TIFF format, or in some other format approved by the court, in black and white only, unless color is required to protect the evidentiary value of the document, and scanned at 300 dots per inch resolution.

5.5—Cover Sheet Not Required. Completion of the case initiation requirements of the electronic filing and service system, if it contains all the required fields and critical elements of the filing, shall constitute compliance with the General Rules as well as G.S. 7A-34.1, and no separate AOC cover sheet is required.

5.6—Payment of Filing Fees. Payment of any applicable filing and convenience fees must be done at the time of filing through the

electronic payment component of the electronic filing and service system. Payments shall not include service of process fees or any other fees payable to any entity other than the clerk of superior court.

5.7—Effectiveness of Filing. Transmission of a document to the electronic filing system in accordance with the eFiling Rules, together with the receipt by the eFiler of the automatically generated notice showing electronic receipt of the submission by the court, constitutes filing under the North Carolina General Statutes, the Rules of Civil Procedure, and the General Rules. An electronic filing is not deemed to be received by the court without receipt by the eFiler of such notice. If, upon review by the staff of the clerk of superior court, it appears that the filing is inaccessible or unreadable, or that prior approval is required for the filing under G.S. 1-110, or for any other authorized reason, the clerk's office shall send an electronic notice thereof to the eFiler. Upon review and acceptance of a completed filing, personnel in the clerk's office shall send an electronic notice thereof to the eFiler. If the filing is of a case initiating pleading, personnel in the clerk's office shall assign a case number to the filing and include that case number in said notice. As soon as reasonably possible thereafter, the clerk's office shall index or enter the relevant information into the court's civil case processing system (VCAP).

5.8—Certificate of Service. Pending implementation of the court's document management system, and the integration of the electronic filing and service system with the court's civil case processing system, a notice to the eFiler showing electronic receipt by the court of a filing does not constitute proof of service of a document upon any party. A certificate of service must be included with all documents, including those filed electronically, indicating thereon that service was or will be accomplished for applicable parties and indicating how service was or will be accomplished as to those parties.

5.9—Procedure When No Receipt Is Received. If a receipt with the status of "Received" is not received by the eFiler, the eFiler should assume the filing has not occurred. In that case, the eFiler shall make a paper filing with the clerk and serve the document on all other parties by the most reasonably expedient method of transmission available to the eFiler, except that pleadings required to be served under Rule 4 and subpoenas issued pursuant to Rule 45 of the Rules of Civil Procedure must be served as provided in those rules.

5.10—Retransmission of Filed Document. After implementation of the court's document management system, if, after filing a document electronically, a party discovers that the version of

the document available for viewing through the electronic filing and service system is incomplete, illegible, or otherwise does not conform to the document as transmitted when filed, the party shall notify the clerk immediately and, if necessary, transmit an amended document, together with an affidavit explaining the necessity for the transmission.

5.11—Determination of Filing Date and Time. Documents may be electronically filed 24 hours a day, except when the system is down for maintenance, file saves or other causes. For the purpose of determining the timeliness of a filing received pursuant to Rule 5.7, the filing is deemed to have occurred at the date and time recorded on the receipt showing a status of “Received.”

5.12.—Issuance of Summons. At case initiation, the eFiler shall include in the filing one or more summons to be issued by the clerk. Upon the electronic filing of a counterclaim, crossclaim, or third-party complaint, the eFiler may include in the filing one or more summons to be issued by the clerk. Pursuant to Rule 4 of the Rules of Civil Procedure, the clerk shall sign and issue those summons and scan them into the electronic filing and service system. The eFiler shall print copies of the filed pleading and summons to be used for service of process. Copies of documents to be served, any summons, and all fees associated with service shall be delivered by the eFiler to the process server. Documents filed subsequent to the initial pleading shall contain a certificate of service as provided in Rule 5.8.

RULE 6—SEALED DOCUMENTS AND PRIVATE INFORMATION

6.1—Filing of Sealed Documents. A motion to file a document under seal may be filed electronically or in paper form and designated “Motion to Seal.” A document which is the subject of a motion to seal must be submitted to the court in paper form for *in camera* review. Documents submitted under seal in paper form shall be retained by the clerk under seal until a final ruling is made on the motion to seal. The court may partially grant the motion and order the submission of a redacted version to be made a part of the record. If the court authorizes the filing of a redacted version, the filer shall perform the redaction authorized by the court, and re-file the redacted version in paper form. A paper copy of any order authorizing the filing of a document under seal or the filing of a redacted document must be attached to the document and delivered to the clerk’s office. Upon implementation of the court’s document management system, documents for which a motion to seal was denied, documents unsealed by order of the court, and redacted versions ordered filed by the court shall be scanned into the electronic filing and service system by personnel in

the clerk's office as soon as reasonably possible. Sealed documents and original versions of documents later ordered filed in redacted form shall be retained in paper form under seal pending further orders of the court.

6.2—Requests by a Party for Sealing of Previously Filed Documents. Any attorney licensed in North Carolina and representing a party may file, electronically or in paper form, a motion to seal all or part of any previously filed document, regardless of who previously filed that document. A party not represented by counsel may file such a motion in paper form only. The court may partially grant the motion and order the movant to submit a redacted version to be made a part of the record. A paper copy of any order authorizing the filing of a redacted replacement document must be attached to the redacted version and delivered to the clerk's office. As soon as practicable after receiving the order sealing a previously filed document or replacing it with a newly filed redacted version, the clerk shall print, seal and retain the original document in paper form pending further orders of the court, and, when so ordered, remove and replace the original document in the electronic filing and service system with the redacted version.

6.3—Private Information. Except where otherwise expressly required by law, filers must comply with G.S. 132-1.10(d) to exclude or partially describe sensitive, personal or identifying information such as any social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords from documents filed with the court. In addition, minors may be identified by initials, and, unless otherwise required by law, social security numbers may be identified by the last four numbers. It is the sole responsibility of the filer to omit or redact non-public and unneeded sensitive information within a document. The clerk of superior court will not review any document to determine whether it includes personal information.

6.4—Requests for Redaction or Removal of a Document by a Non-party. Any person not a party to a proceeding has the right to request the removal or redaction of all or part of a document previously filed and available on-line for public viewing in the electronic filing and service system, if the document contains sensitive, personal or identifying information about the requester, by filing a request in compliance with G.S. 132-1.10(f). As soon as practicable after the receipt of such a request, the clerk shall (1) prepare a redacted version of the electronic document removing the identifying information identified by the requester, or (2) otherwise cloak the affected portions of the document in the electronic filing and service system, so

that the designated portions of the document are not viewable by the public on-line. The request for redaction or removal is not a public record and access thereto is restricted to the clerk of superior court or the clerk's staff, or upon order of the court. The original unredacted or uncloaked electronic version of the document shall remain available to parties to the proceeding.

RULE 7—COMMUNICATION OF MATERIAL NOT FILED

7.1—Communication with Court. A communication with the court that is not filed electronically must be simultaneously sent by the author to all attorneys for parties in the case. If a party is not represented by counsel, or if an attorney cannot receive e-mail, the communication shall be sent to such party or attorney by the most reasonably expedient method available to the sending party. The communication to other parties shall contain an indication, such as "cc via e-mail," indicating the method of transmission.

7.2—Discovery. Discovery and other materials required to be served on other counsel or a party, and not required to be filed with the court, shall not be electronically filed with the court.

RULE 8—GOOD FAITH EFFORTS

Parties shall endeavor reasonably, and in good faith, to resolve technical incompatibilities or other obstacles to electronic communications among them, provided that no extensive manual reformatting of documents is required. If a party asserts that it did not receive an e-mail communication or could not fully access its contents, the sending party shall promptly forward the communication to the party by other means. Any attempt or effort to avoid, compromise or alter any security element of the electronic filing and service system is strictly prohibited and may subject the offending party to civil and criminal liability. Any person becoming aware of evidence of such an occurrence shall immediately notify the court.

RULE 9—ORDERS, DECREES AND JUDGMENTS

9.1—Proposed Order or Judgment. Any proposed order or judgment shall be tendered to the court in paper form or as an electronic filing in Microsoft Office Word 2000 format or other file format approved by the court.

9.2—Entry of Order, Judgment and Other Matters. Upon implementation of the document management component of the electronic filing and service system, a judge, or the clerk of superior court when acting as the trier of fact, may file electronically all orders, decrees, judgments and other docket matters. Such filing shall con-

stitute entry of the order, decree, judgment or other matter pursuant to Rule 58 of the Rules of Civil Procedure. Each order, judgment, or decree must bear the date and the name of the judge or clerk issuing the order. Signed orders, decrees and judgments in paper form shall be forwarded as soon as reasonably possible by the judge to the clerk of superior court, and shall be deemed entered under Rule 58 of the Rules of Civil Procedure when filed with the clerk. As soon as reasonably possible, personnel in the clerk's office shall scan the document into the electronic filing and service system.

9.3—Notice of Entry. After implementation of the court's document management system and the integration of the electronic filing and service system with the court's civil case processing system, immediately upon the electronic entry of an order, decree, judgment or other matter, the electronic filing and service system shall broadcast a notification of electronic filing to all persons registered electronically to participate in the case. Transmission of the notice of entry constitutes service pursuant to Rule 58 of the Rules of Civil Procedure.

These Supplemental Rules for the North Carolina eFiling Pilot Project shall be effective on the 15th day of May, 2009.

Adopted by the Court in Conference this 26th day of May, 2009, *nunc pro tunc* 15 May 2009. These rules shall be promulgated by publication in the Advance Sheets of the Supreme Court and the Court of Appeals. These rules shall also be published as quickly as practicable on the North Carolina Judicial Branch of Government Internet Home Page (<http://www.nccourts.org>).

Hudson, J.
For the Court