
N.C. Supreme Court Amends Business Court Rules

BLOG | JUNE 27, 2022

The North Carolina Supreme Court recently amended the North Carolina Business Court Rules by order dated June 15, 2022. These Amended Rules will become effective on July 1, 2022 and will apply to all cases pending before the Business Court on or after that date. However, the Amended Rules do not alter or modify case management orders in pending cases if those orders conflict with the Amended Rules. The most significant changes include the following:

Rule 3. Filing and Service:

- **Rule 3.5** now incorporates the Business Court's font preference of Century Schoolbook, consistent with the preference of the North Carolina Court of Appeals. This Rule also now governs almost all documents filed with the Court, eliminating the need for the portions of prior **Rules 7.2** and **8** that governed font preferences for motions and briefs.

Rule 5, addressing sealed documents and protective orders, was completely revised:

- **Rule 5.1(b)** now defines the term "Provisionally under seal" as a document "filed electronically with a confidential designation in the electronic-filing system or if it is filed in paper inside of a sealed envelope or container marked 'Contains Confidential Information - Provisionally Under Seal.'"
- **Rule 5.1(c)** provides that while the person seeking to have a document sealed still bears the burden of establishing the need for sealing the document, this burden is not met simply by reference to a stipulation or protective order allowing a party to designate a document as confidential.
- **Rule 5.1(d)** clarifies that the sealing procedures do not apply to documents that are closed to public inspection by statute or other legal authority. Additionally, the Rule does not affect a person's responsibility to omit or redact private information from court documents pursuant to statute or other legal authority.
- **Rule 5.2(a)** was amended to require persons seeking to have a document sealed by the court file the document provisionally under seal and file a motion *asking the court to seal the document* rather than filing a motion *for leave to file the document under seal*.
- **Rule 5.2(b)(7)** (prior Rule 5.2(b)(5)) was amended to add the requirement that where a nonparty has designated a document as confidential under the terms of a protective order, the motion to seal must contain a statement that the nonparty who designated the document as confidential has been served with a copy of the motion *and notified of the right under Rule 5.2(c) to file a brief in support of the motion*. The prior Rule did not require notification to

the nonparty of the right to file a brief in support of the motion.

- **Rule 5.2(c)** permits both parties and nonparties who are interested in the confidentiality of a document to file a brief in support of or in opposition of a motion to seal within 20 days of being served with the motion, regardless of who designated the document as confidential.
- **Rule 5.2(d)** was amended to allow the disclosure of provisionally sealed documents to unrepresented parties before the Court rules on the motion.
- **Rule 5.2(f)** provides that if the movant seeks to have only part of a document sealed by the Court, Rule 5.2(f) now gives the movant 10 days to file a public, redacted version of a document filed provisionally under seal rather than the 5 days permitted under the old Rules. Additionally, where the movant filed the document provisionally under seal because another person designated the document as confidential and the terms of a protective order required the movant to file the document provisionally under seal, this Rule now requires that the movant consult with the person who designated the document as confidential before filing the public, redacted version of the document.

Rule 6. Hearings and Conduct:

- **Rule 6.2** was amended to state that the Court has discretion to conduct pretrial hearings by audio or video transmission (e.g., by Zoom) in accordance with N.C.G.S. § 7A-49.6.
- **Rule 6.4** now requires that all e-mails to the Court or court personnel about a pending matter include all *pro se* parties and all counsel of record as recipients.

Rule 7. Motions:

- As noted above, **Rules 7.2** and **8** were amended to remove the formatting preferences that are now covered in Rule 3.5.
- **Rule 7.7** still states that reply briefs “*must be* limited to discussion of matters newly raised in the responsive brief.” However, the amended Rule now explicitly states that the Court “*may* decline to consider issues or arguments raised by the moving party for the first time in the reply brief.” Thus, although the Rule expressly limits the content in a reply brief, the Amendment apparently gives the Court discretion to consider the issues and arguments raised for the first time in the reply brief.
- **Rule 7.8** now makes explicit that parties may not circumvent the Rule’s word limits by incorporating by reference arguments made in another brief or by filing multiple motions to artificially increase the word limit.
- **Rule 7.10** was amended to add motions to withdraw as counsel and motions for a bill of costs to the list of motions that can be filed without supporting briefs.

Rule 12. Pretrial and Trial:

- **Rule 12.7** no longer contains the requirement that pretrial hearings be attended in person, consistent with the amendment to Rule 6.2.

Rule 15 and **Appendix 3** addressing receivers have been deleted as a result of the passage of the North Carolina

Related links:

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- [North Carolina Business Court Rules](#)
- [Order amending North Carolina Business Court Rules](#)

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