RULES OF THE GEORGIA

STATE-WIDE BUSINESS COURT

AUGUST 2020

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Effective August 1, 2020

ARTICLE 1. SCOPE OF RULES

Rule 1-1. Scope of Rules and Construction

These rules shall govern all actions in the Georgia State-wide Business Court. They shall be construed and administered by the Business Court and construed by the parties to secure the just, efficient, and economical resolution of all matters. It is not the intention, nor shall it be the effect, of these rules to conflict with the Constitution of the State of Georgia or substantive State law. These rules shall prevail over a Standing Order of the Business Court.

Rule 1-2. Title and Citation

These rules shall be known and may be cited as the Business Court Rules. Citations to these rules should follow the citation format BCR [article number-rule number] (e.g., BCR 1-2). The parts of each BCR shall be labeled and may cited as follows:

"(a). Section.

(1). Subsection.

(A). Paragraph.

(i). Subparagraph."

Rule 1-3. Amendments

The Business Court may recommend to the Supreme Court changes and additions to these rules if such changes are necessary or desirable. These rules and any amendments to these rules shall be published in the advance sheets to the Georgia Reports. Unless otherwise provided, the effective date of any amendment to these rules is the date of publication in the advance sheets to the Georgia Reports.

[Source: Uniform Superior Court Rule 1.6 (modified)]

Rule 1-4. General Definitions

As used in these rules:

(1) The term "attorney" means any person admitted to practice in the Business Court or any person who is permitted, in accordance with law, to represent a party in an action pending in the Business Court. The term "counsel" has the same meaning as "attorney" in these rules.

(2) The term "Business Court" means the Georgia State-wide Business Court and not a particular Judge of the Business Court.

(3) The term "Judge" means a judge of the Georgia State-wide Business Court exercising jurisdiction with respect to a particular action or proceeding in the Business Court.

(4) The term "Clerk" means the Clerk of Court for the Business Court.

(5) The term "filing" means a submission to the Clerk, either in paper or electronic form.

(6) The term "e-file" means the act of filing via the Business Court's electronic filing system.

(7) The term "Civil Practice Act" means the Georgia Civil Practice Act, OCGA § 9-11-1, et seq.

[Source: Uniform Superior Court Rule 1.7 (modified)]

ARTICLE 2. COMMENCEMENT OF ACTION

Rule 2-1. Fees, Expenses, and Exceptions

(a) **Filing Fee**. Except as provided in sections (c) or (d) of this rule or BCR 2-4, payment of a filing fee in the amount of $3,000 shall be made contemporaneous with the filing of any action. A filing shall not be deemed "filed" unless the filing fee is paid.

(b) **Other Fees and Expenses**. Except as provided in sections (c) or (d) of this rule or BCR 2-4, each party or person serving as an attorney for a party in a Business Court proceeding shall pay any fee or expense reimbursement required by the Court. A schedule of all required fees shall be posted on the Business Court's website.

(c) **Notice of Appeals Excepted**. A notice of appeal shall be deemed "filed" upon receipt.

(d) **Indigence Exception**. A person who is unable to pay a fee in section (a) or (b) of

this rule because of indigence may obtain the necessary papers on the Business Court's website or at the public filing counter to proceed in forma pauperis.

[Source: USDC NDGa – Local Civil Rule 3.2 (modified)]

Rule 2-2. Certificate of Interested Persons and Corporate Disclosure Statement

(a) **Purpose and Scope**. To enable a Judge of the Business Court to evaluate possible disqualification or recusal, counsel for all parties shall, at the time of first appearance, file with the Clerk a "Certificate of Interested Persons and Corporate Disclosure Statement" (the "Certificate") in the form described in section (c) of this rule. Counsel may petition the Business Court for permission to file the Certificate in camera or under seal. It shall be in the Court's discretion as to whether to grant or deny such petition.

(b) **Duties of Counsel**. Each attorney shall have a continuing duty to notify the Business Court of any additions to or deletions from the Certificate.

(c) **Form of Certificate**. The Certificate shall be signed and dated, and shall specifically contain all the following:

(1) The style and number of the case in the Business Court.

(2) The title "Certificate of Interested Persons and Corporate Disclosure Statement."

(3) A certification that the Certificate contains a full and complete list of all —

(A) each party to the action, including a parent corporation or publicly held corporation that owns ten percent or more of the stock of a party;

(B) other persons, associations, firms, partnerships, or corporations having either a financial interest in, or other interest that could be substantially affected by, the outcome of the particular case; and

(C) each person serving as an attorney for the parties in the proceeding.

[Source: USDC NDGa – Local Civil Rule 3.2 (modified)]

Rule 2-3. Venue

(a) **Direct Filing.** For cases directly filed with the Business Court, venue shall be as provided in OCGA § 15-5A-2 (e) (1).

(b) **Removed or Transferred Action.** For a case removed or transferred from a superior or state court, venue shall be as provided in OCGA § 15-5A-2 (e) (2).

(c) **By Agreement.** If all parties agree on the proper venue, venue shall be as provided in OCGA § 15-5A-2 (e) (3).

(d) **Trial.** Absent agreement of the parties, a trial of a case before the Business Court shall take place in the county where venue is proper pursuant to OCGA § 15-5A-2 (e).

Source: OCGA § 15-5A-2 (d)-(e).

Rule 2-4. Direct Filing, Removal, Transfer, Objection to Jurisdiction, Return of Filing Fee, and Related Orders

(a) **Direct Filing, Removal, and Transfer**. An action may be brought to the Business Court in one of three methods: (1) the direct filing of a pleading with the Business Court; (2) the filing of a Petition for Removal of an existing action from a superior or state court by agreement of all parties; or (3) the filing of a Petition to Transfer an existing action from a superior or state court by one or more parties, but not all parties. Methods (1), (2), and (3) in this section shall be governed by the procedures in sections (c)-(j) of this rule.

(b) **Objection to Jurisdiction.** A party who objects to having an action proceed in the Business Court may file an Objection to Jurisdiction, together with a proposed order, seeking the transfer of the case to a superior or state court in which venue is otherwise proper.

(c) **Direct Filing – Generally**. Actions directly filed with the Business Court, and objections to the same, shall be governed by OCGA 15-5A-4 (a) (1). A defendant who objects to having an action proceed in the Business Court shall file an Objection to Jurisdiction, together with a proposed order, seeking the transfer of the case to a superior or state court in which venue is otherwise proper.

(d) **Direct Filing – Forum Selection Clause**. A forum selection clause specifically identifying the Business Court shall be enforced to the extent it is consistent with the requirements of OCGA § 15-5A-4 (a) (1) and not otherwise invalid under State law.

(e) **Removal of Existing Actions by Agreement**. The removal of an existing action pending in superior or state court by agreement of the parties shall be governed by OCGA § 15-5A-4 (a) (2). A party seeking the removal of an action from superior or state court to the Business Court shall file a Petition for Removal containing a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon each party in such action. The Business Court shall

determine whether to grant or deny the petition after such documents are received.

(f) **Transfer of Existing Actions**. Existing actions transferred to the Business Court from a superior or state court, and objections to such transfer, shall be governed by OCGA § 15-5A-4 (3). A party seeking to transfer an existing action from a superior or state court shall file with the Business Court a Petition to Transfer containing a short and plain statement of the grounds for transfer, together with a copy of all process, pleadings, and orders served upon each party in such action. A party objecting to a Petition to Transfer shall file an Objection to Jurisdiction, which shall be in the form of a motion made in accordance with BCR 7-3 (b) (3) (B). The party seeking transfer may respond to the Objection to Jurisdiction. There shall be no automatic right to reply, absent prior order of the Court.

(g) **Further Pleading and Answer**. If the Business Court grants a party's Petition for Removal (see OCGA 15-5A-4 (a) (2)) or Petition to Transfer (see OCGA 15-5A-4 (a) (3)), repleading shall not be required unless the Business Court orders otherwise. A party who did not filed a responsive pleading prior to the filing of a Petition for Removal or Petition to Transfer shall file such pleading within 30 days of the date of the Business Court's order granting such petition.

(h) **Filing Fee Returned**. If the Business Court declines to exercise jurisdiction over an action, the Business Court shall direct the Clerk to reimburse the filing party or parties the full amount of the filing fee, less applicable administrative fees and expenses, if any. See sections (a) and (b) of BCR 2-1.

(i) **Additional Orders and Superior or State Court Records**. In a case removed or transferred from a superior or state court, the Business Court may issue all necessary orders and process to bring before it all proper parties, whether served by process issued by the superior or state courts or otherwise. The Business Court may also require one party or all parties to file with the Clerk copies of all records and proceedings in the superior or state court. If a party is entitled to copies of the records and proceedings in an action in superior or state court and the clerk of such court does not timely deliver certified copies thereof after receiving a timely request and payment of fees for the same, the Business Court may direct such records and proceedings be supplied by a party by affidavit or otherwise. Thereupon such proceedings, trial, and judgment may be had, and all process awarded, as if certified copies had been filed in the Business Court in the first instance.

[28 USC §§ 1447-1449 (modified); FRCP 81]

(j) **Notice to Superior or State Courts**. Promptly after the filing of a Petition for Removal or Petition to Transfer under this article, the party seeking removal or transfer shall file a Notice of Removal or Notice of Transfer, as applicable, with the

clerk of the superior or state court in which the action was then pending. No further action shall proceed, unless and until the Business Court declines to exercise jurisdiction over such action, and, if applicable, transfers the action back to the superior or state court from which it was removed or transferred.

[28 USC § 1446(d) (modified)]

ARTICLE 3. FILING, PROCESSING, AND SERVICE

Rule 3-1. Mandatory Electronic Filing

Electronic filing shall be made available in conformity with statewide minimum standards for electronic filing adopted by the Judicial Council of Georgia. Except as otherwise specified in these rules, all filings in the Business Court shall be made electronically through the Business Court's e-filing system. Counsel appearing in the Business Court must have the capability to use the e-filing system. Instructions for filing documents through the Business Court's e-filing system shall be made available on the Business Court's website.

[Source: North Carolina Business Court Rules 3.1 (modified)]

Rule 3-2. Who May File

A filing through the Business Court's e-filing system may be made by counsel, a person filing on counsel's behalf, or a self-represented litigant. Parties who desire not to use the e-filing system may file a motion for relief from using the system; however, the Business Court will grant relief from the requirements of this rule only upon a showing of exceptional circumstances. A request by a self-represented litigant to forgo use of the e-filing system shall be determined by the Court on a case-by-case basis.

[Source: North Carolina Business Court Rules 3.2 (modified)]

Rule 3-3. User Account and E-mail Address

Attorneys who appear in the Business Court in a particular matter, and a self-represented litigant who is not excused from using the e-filing system, shall promptly create a user account through the Business Court's website. A person who has established a Business Court user account shall be solely responsible for maintaining the security of his or her password and account. An attorney or self-represented litigant who has established a user account shall provide the Business Court with a current e-mail address and maintain a functioning e-mail account. All Court correspondence and electronic service shall be sent to the e-mail address that a person with a user account has provided to the Court.

[Source: North Carolina Business Court Rules 3.3 (modified)]

Rule 3-4. Electronic Signatures

(a) **Form**. A document filed and signed by counsel shall be signed using an electronic signature. A self-represented litigant shall also use an electronic signature on any document that the party is permitted to file by e-mail. For purposes of this rule, an electronic signature means a person's typed name preceded by the symbol "/s/." An electronic signature shall serve as a signature for purposes of the Civil Practice Act.

[Source: North Carolina Business Court Rules 3.4 (a) (modified)]

(b) **Multiple Signatures**. A filing submitted by multiple parties shall bear the electronic signature of at least one attorney for each party that submits the filing. By filing a document with multiple electronic signatures, the attorney whose electronic identity is used to file the document shall certify that each signatory has authorized the use of his or her signature.

[Source: North Carolina Business Court Rules 3.4(b) (modified)]

(c) **Form of Signature Block**. Every signature block shall contain the signatory's name, bar number (if applicable), physical address, phone number, and e-mail address.

[Source: North Carolina Business Court Rules 3.4 (c) (modified)]

Rule 3-5. Time of Filing and Service

Except for initial pleadings and notices of appeal, a party shall file all motions, briefs, or other documents required to be filed before midnight Eastern Time to be considered timely filed on that day, unless otherwise agreed to by the parties or ordered by the Court. The foregoing shall also apply to service of all other documents required to be exchanged, but not filed, during litigation (e.g., discovery responses), unless otherwise agreed to be the parties or ordered by the Court.

[Source: North Carolina Business Court Rules 3.6 (modified)]

Rule 3-6. Notice of Filing

When a document is filed and received by the Clerk, the Court's e-filing system shall generate a Notice of Filing and send such notice by e-mail to the filing party. Filing shall not be complete until the issuance of a Notice of Filing. A document filed electronically shall be deemed filed on the date and at the time stated in the Notice of

Filing. If a Notice of Filing is not generated, or the e-filing system otherwise fails, an e-filer shall follow the procedures in BCR 3-15 (Procedures If E-Filing System Appears to Fail).

[Source: North Carolina Business Court Rules 3.7 (modified)]

Rule 3-7. Notice and Entry of Orders, Judgments, and Other Matters

The Business Court shall transmit all orders, decrees, judgments, notices, and other documents through the Court's e-filing system or case management system or both, which, in turn, shall send a notice to all counsel of record at the e-mail address used to register for the electronic filing account. The issuance by the e-filing system of such notice shall constitute entry and service of the same for purposes of the Civil Practice Act. If a self-represented litigant is permitted to forgo use of the e-filing system under these rules, the Business Court shall deliver a paper copy of all Court correspondence to that self-represented litigant by alternative means.

[Source: North Carolina Business Court Rules 3.8 (modified)]

Rule 3-8. Service

(a) **Electronic Service**. After an action has been filed with the Business Court, a Notice of Electronic Service shall be automatically generated by the e-filing system and sent to all counsel of record. Such notice shall constitute adequate service under the Civil Practice Act with respect to the filed document. Service by other means shall not be required unless the party served is a self-represented litigant who has not established a user account.

(b) **Service of Non-Filed Documents**. When a document must be served but not filed, the document shall be served by e-mail unless (1) the parties have agreed to a different method of service, or (2) the Case Management Order calls for another manner of service. Service by e-mail under this rule constitutes adequate service under the Civil Practice Act.

(c) **Service on a Self-Represented Litigant**. All documents filed with the Business Court shall be served upon a self-represented litigant by any method allowed by the Civil Practice Act, unless the Court or these rules direct otherwise.

[Source: North Carolina Business Court Rules 3.9 (modified)]

Rule 3-9. Formats, Margins, Case Captions, and Numbering

(a) **Format – Generally.** Pleadings, motions, and other documents presented to the

Business Court for filing shall be computer processed, typed, or hand printed on one side of the page only; double-spaced between lines; and free of erasures or interlineations.

(b) **Format – Fonts and Footnotes.** Computer documents shall be prepared in one of the following fonts: Times New Roman (at least 14 point), Courier New (at least 12 point), or Book Antigua (at least 13 point). Footnotes, headings, and indented quotations may be single-spaced.

[Source: USDC NDGa – Local Civil Rule 5.1 (C) (modified)]

(c) **Margins**. All pleadings, motions, and other documents shall be prepared with a margin of at least one inch at the right, left, top, and bottom of each page.

[Source: USDC NDGa – Local Civil Rule 5.1 (D) (modified)]

(d) **Paper Filings**. All documents filed with the Business Court, if presented on paper, shall be presented for filing on white opaque paper of good quality, eight and one-half inches by 11 inches in size, with writing appearing only on one side of the page. Paper filings shall not be accepted absent a prior order of the Business Court.

[Source: USDC NDGa – Local Civil Rule 5.1 (B); Uniform Superior Court Rule 36.1 (modified)]

(e) **Case Captions and Civil Action Numbers**. All documents presented for filing shall bear a caption that sets out the exact nature of the document filed. Generalized captions, such as "Responsive Pleadings," shall not be accepted for filing. Upon filing, all actions filed in the Business Court shall be assigned a civil action number, which shall designate the year, the Court's initials, the numerical sequence in which the case was filed, and a three-initial suffix, identifying the Judge to whom the case is assigned (e.g., 20-GSBC-00001-WWD). Once assigned, all documents presented to the Clerk for filing and all case-related correspondence shall include the assigned civil action number. Any document presented for filing that does not reflect the complete civil action number as described in this section shall not be accepted for filing.

[Source: Uniform Superior Court Rule 36.3, 36.8, and 36.9; USDC NDGa – Local Civil Rule 5.1 (K)]

(f) **Numbering**. All pages shall be numbered consecutively at the bottom center of the page. Attachments to pleadings shall be numbered consecutively within the attachment.

[Source: USDC NDGa – Local Civil Rule 5.1 (E)]

Rule 3-10. Minutes and Final Record

There shall be one or more books or microfilm records (combined "Minutes Book," "Writ or Pleading Record," and "Final Record") called Minutes and Final Record in which each entire matter shall be recorded after completion. After recording, the original may be destroyed according to the State retention schedule or stored off premises as provided by law.

[Source: Uniform Superior Court Rule 36.6 (modified)]

Rule 3-11. Filing of Transcripts

Transcripts in all matters shall be filed as provided by law and the Clerk shall not be required to record or preserve transcripts in a bound book or on microfilm.

[Source: Uniform Superior Court Rule 36.7 (modified)]

Rule 3-12. Filing Requirements

Complaints or other initial pleadings presented to the Clerk for filing shall be filed only when accompanied by the proper filing fee, administrative fee, or affidavit of indigence; a case initiation form (see BCR 3-14); and, if applicable, any other form required by law or rule to be completed by the parties. Judgments, settlements, dismissals, and other dispositions presented to the Clerk for filing shall be filed only when accompanied by a case disposition form (see BCR 19-4).

[Source: Uniform Superior Court Rule 36.10 (modified)]

Rule 3-13. Return of Service

Entry of return of service shall be filed with the Clerk.

[Source: Uniform Superior Court Rule 36.11 (modified)]

Rule 3-14. Case Initiation Form

Counsel filing a complaint or other initial pleading shall prepare and submit to the Clerk a case initiation form, which shall be made available on the Business Court's website. Incomplete case initiation forms shall be rejected, and a complaint shall not be deemed filed until such form is completed in full. If additional information is deemed necessary by the Court at filing, the case initiation form may be modified to include new items by using the blank space available at the bottom of the form.

[Source: USDC NDGa – Local Civil Rule 5.1 (H) (modified); Uniform Superior Court Rules 39.2.1; 39.2.2 (modified)]

Rule 3-15. Procedure If E-Filing System Appears to Fail and Anticipated Difficulties

(a) If a person attempts to e-file a document, but (1) the person is unable for technical reasons to transmit the filing to the Business Court; (2) the document appears to have been transmitted to the Business Court, but the person who filed the document does not receive a Notice of Filing; or (3) some other technical reason prevents the person from filing the document, then the person attempting to file the document shall e-mail the document for which filing attempts were made to the Clerk at filinghelp@gsbc.us, copying all parties of record and including a brief explanation of the relevant technical failure and the date and time of such failure. If timely delivered in accordance with BCR 3-5 (as evidenced by the time and date stamp on the e-mail), the e-mail to filinghelp@gsbc.us shall satisfy all applicable requirements of this article.

(b) If a party anticipates difficulties, or actually experiences difficulties, with filing voluminous materials (e.g., exhibits to motions or transcripts) using the Business Court's e-filing system, then counsel should proactively contact the Court's for assistance.

[Source: North Carolina Business Court Rule 3.9 (modified)]

Rule 3-16. Sensitive Information

(a) In accord with OCGA § 9-11-7.1 and to promote public electronic access to court records while also protecting sensitive information, unless otherwise ordered by the Court, all documents filed in the Business Court shall include only the following when listing certain sensitive information:

(1) The last four digits of a social security number.

(2) The last four digits of a taxpayer identification number.

(3) The last four digits of a financial account number.

(4) The year of an individual's birth.

(b) Counsel and the parties shall also limit, if possible, public disclosure of non-public residential addresses, phone numbers, and e-mail addresses belonging to another party, a witness, or a potential witness.

(c) The responsibility for omitting or redacting personal identifiers rests solely with counsel and the parties. The Clerk will not review filings for compliance with this rule.

(d) A party having a legitimate need for sensitive information may obtain it through the ordinary course of discovery without further order of the Business Court.

(e) This rule shall not create a private right of action against the Business Court, the Clerk, counsel for the parties, or any other individual or entity that may have erroneously included sensitive identifying information in a filed document that is made available electronically or otherwise.

(f) This rule shall not amend or modify any requirements in Article 15 of these rules (Access to Court Records).

[Source: Uniform Superior Court Rule 36.17 (modified)]

ARTICLE 4. ATTORNEY APPEARANCE, WITHDRAWAL, AND DUTIES

Rule 4-1. Entry of Appearance and Pleadings

(a) An attorney shall not appear before the Business Court until such attorney has entered an appearance by filing a signed entry of appearance form or by filing a signed pleading in a pending action. The entry of appearance form or pleading shall state —

(1) the style and number of the case;

(2) the identity of the party for whom the appearance is made; and

(3) the name, assigned State Bar number, current office address, telephone number, and e-mail address of the attorney (the attorney's e-mail address shall be the e-mail address registered with the State Bar of Georgia).

(b) The filing of a pleading shall contain the information required in section (a) of this rule and shall constitute an appearance by each person signing the pleading, unless otherwise specified by the Business Court. The filing of a signed entry of appearance form alone shall not be a substitute for the filing of an answer or any other required pleading.

(c) Any attorney who has been admitted to practice in this State but who fails to maintain active membership in good standing with the State Bar of Georgia and makes or files any appearance or pleading in the Business Court while not in good standing

shall be subject to the contempt powers of the Court.

[Source: Uniform Superior Court Rule 4.2]

Rule 4-2. Attorney Withdrawal

(a) An attorney who wishes to withdraw as counsel for any party after appearing of record in any matter pending before the Business Court shall submit a written request to the Court with a proposed order permitting such withdrawal. The request shall state that the attorney has given written notice to the affected client setting forth the attorney's intent to withdraw, that ten days have expired since the notice, and that there has been no objection to withdrawal or the withdrawal is with the client's consent. The request to withdraw shall be granted unless, in the Judge's discretion, doing so would delay the trial or otherwise interrupt the orderly operation of the Business Court or be manifestly unfair to the client.

(b) The attorney requesting an order permitting withdrawal shall give notice to opposing counsel. A notice of withdrawal shall be filed with the Clerk and served upon the withdrawing attorney's client personally or at that client's last known physical mailing and e-mail addresses. The notice of withdrawal shall also contain at a minimum all the following information:

(1) The attorney wishes to withdraw.

(2) The Business Court retains jurisdiction over the action.

(3) The client has the burden of keeping the Business Court informed of the address where notices, pleadings, or other papers may be served.

(4) The client has the obligation to prepare for trial or hire new counsel to prepare for trial when the trial date has been scheduled.

(5) The client has the obligation to actively participate in the discovery process (e.g., responding to discovery requests) and to respond to all motions filed in the case.

(6) If the client fails or refuses to meet the burdens described in this rule, he or she may suffer adverse consequences.

(7) Dates of any scheduled proceedings (including trial) and that the holding of scheduled proceedings will not be affected by the withdrawal of counsel.

(8) Service of notices may be made upon the client at the client's last known mailing address.

(9) If the client is a corporation, that a corporation may only be represented in the Business Court by an attorney, that an attorney must sign all pleadings submitted to the Court, and that a corporate officer may not represent the corporation in the Business Court unless that officer is also an attorney licensed to practice law in the State of Georgia or is otherwise permitted by law.

(10) Unless the withdrawal is with the client's consent, the client's right to object within ten days of the date of the notice and state with specificity when the tenth day will occur.

(c) An attorney requesting to withdraw shall prepare a written notification certificate stating that the notification requirements have been met, the manner by which notification was given to the client, and the client's last known mailing and e-mail addresses and telephone number. The notification certificate shall be e-filed in accordance with the requirements of BCR 3-1. The attorney seeking withdrawal shall also provide a copy to the client by the most expedient means available due to the strict ten-day time restraint (e.g., e-mail, hand delivery, or overnight mail). After the entry of an order permitting withdrawal, the client shall be notified by the withdrawing attorney of the effective date of the withdrawal. After the effective date of the withdrawal, all notices or other papers shall be served on the party directly by mail at the last known mailing address of the party until new counsel enters an appearance, unless the party has agreed to receive such filings via e-mail. If the party has agreed to receive such filings via e-mail, he or she shall be subject to, and have the benefit of, the Business Court's e-filing system and related rules.

(d) If an attorney has already filed an entry of appearance and the client wishes to substitute counsel, it shall not be necessary for the former attorney to comply with the requirements in section (a) of this rule. Instead, the new attorney shall file with the Clerk a notice of substitution of counsel signed by the new attorney. The notice of substitution of counsel shall contain the style of the case and the name, address, phone number, and State Bar number of the substitute attorney. The new attorney shall e-file a copy of the notice with the Business Court (as required by BCR 3-1) and serve a copy of such notice on the former attorney, opposing counsel, or self-represented litigant. No further action shall be required by the former attorney to withdraw from representing the party. The substitution shall not delay any proceeding or hearing in the case.

[Source: Uniform Superior Court Rule 4.3 (modified)]

Rule 4-3. Admission Pro Hac Vice

(a) **Definitions**. As used in this rule:

(1) The term "Domestic Lawyer" means a person not admitted to practice law in this State but who is admitted in another state or territory of the United States or the District of Columbia and not disbarred or suspended from practice in any jurisdiction.

(2) The term "Foreign Lawyer" means a person authorized to practice law by the duly constituted and authorized governmental body of any foreign nation but not authorized by the Supreme Court of Georgia or its rules to practice law in the State of Georgia and is not suspended from practice in any domestic or foreign jurisdiction.

(3) The term "Office of General Counsel" means the Office of General Counsel of the State Bar of Georgia.

(4) The term "client" means a person or entity for whom the Domestic Lawyer or Foreign Lawyer has rendered services or by whom the lawyer has been retained prior to the lawyer's performance of services in this State.

(5) The term "this State" refers to the State of Georgia. This rule shall not govern proceedings before a federal court or federal agency located in this State, unless that body adopts or incorporates this rule.

(b) **Eligibility**. A Domestic Lawyer or Foreign Lawyer shall be "eligible" for admission pro hac vice if that lawyer —

(1) lawfully practices solely on behalf of the lawyer's employer and its commonly owned organizational affiliates, regardless of where such lawyer may reside or work;

(2) neither resides nor is regularly employed at an office in this State; or

(3) resides in this State but (A) lawfully practices from offices in one or more other states and (B) practices no more than temporarily in this State, whether pursuant to admission pro hac vice or in other lawful ways and, in the case of a Foreign Lawyer, is and remains in the United States in lawful immigration status.

(c) **Admission of Domestic or Foreign Lawyer**. The Business Court may, in its discretion, admit an eligible Domestic Lawyer or Foreign Lawyer retained to appear in a particular proceeding pending before the Court to appear pro hac vice as counsel in that proceeding.

(d) **Role of Georgia Counsel**. When a Domestic Lawyer or Foreign Lawyer appears for a client in a proceeding pending in this State, either in the role of co-counsel of record with Georgia Counsel, or in an advisory or consultative role, the Georgia Counsel who

is co-counsel or counsel of record for the client in the proceeding remains responsible to the client and responsible for the conduct of the proceeding before the Business Court. It is the duty of the Georgia Counsel to advise the client of the Georgia Counsel's independent judgment on contemplated actions in the proceeding if that judgment differs from that of the Domestic Lawyer or Foreign Lawyer. Georgia Counsel shall receive service of all filings in the action. Georgia Counsel shall also attend in person all proceedings before the Business Court, unless the Court waives this requirement in advance of such proceedings. Attendance of Georgia Counsel at depositions shall not be required unless otherwise ordered by the Business Court.

(e) **Application Procedures**. The application procedures to appear pro hac vice before the Business Court shall be as follows:

(1) **Verified Application**. An eligible Domestic Lawyer or Foreign Lawyer seeking to appear in a proceeding pending in the Business Court as counsel pro hac vice shall file a verified application with the Court. The application shall be served on all parties who have appeared in the case and the Office of General Counsel. The Business Court has the discretion to grant or deny the application summarily if there is no opposition.

(2) **Objection to Application**. The Office of General Counsel or a party to the proceeding may file an objection to the application or seek the Business Court's imposition of conditions to the application being granted. The Office of General Counsel or an objecting party shall file with its objection information establishing a factual basis for the objection. The Office of General Counsel or objecting party may seek denial or modification of the application. If the application has already been granted, the Office of General Counsel or objecting party may move that the pro hac vice admission be withdrawn.

(3) **Standard for Admission and Revocation of Admission**. The Business Court shall have discretion as to whether to grant an application for admission pro hac vice and to set the terms and conditions of such admission. An application ordinarily should be granted unless the Business Court or Office of General Counsel finds reason to believe that —

(A) such admission may be detrimental to the prompt, fair, and efficient administration of justice;

(B) such admission may be detrimental to a legitimate interest of a party to the proceedings other than a client the applicant proposes to represent;

(C) such admission may place a client the applicant proposes to represent at risk of receiving inadequate representation and such client cannot adequately

appreciate that risk;

(D) the applicant has engaged in such frequent appearances as to constitute the regular practice of law in this State; or

(E) the applicant has filed or appeared in an action in a court of this State without securing prior approval prior to his or her application to the Business Court.

(4) **Revocation of Admission**. Admission to appear as counsel pro hac vice in a proceeding may be revoked for any reason for revocation of admission listed in subsection (3) of section (e) of this rule.

(5) **Required Information, Fee, and Exemption**. The required information, application fee, and exemptions for admission pro hac vice to the Business Court shall be as follows:

(A) **Required Information**. An application shall state the information listed in Appendix A to these rules. The applicant may also include any other matters supporting admission pro hac vice.

(B) **Application Fee**. An applicant for permission to appear as counsel pro hac vice under this rule shall pay a one-time, non-refundable fee of $400 for each application for pro hac vice admission payable to the State Bar of Georgia at the time of filing the application.

(C) **Exemption for Pro Bono Representation**. An applicant shall not be required to pay the fee established above if the applicant (i) will not charge an attorney fee to his or her client, and (ii) is employed or associated with a pro bono project or nonprofit legal services organization in a civil case involving a client of such programs.

(f) **Authority of the Office of General Counsel and Business Court over an Applicant, Domestic Lawyer, or Foreign Lawyer**. The authority of the Office of General Counsel and Business Court regarding the application of ethical rules, discipline, contempt, and sanctions to an applicant, Domestic Lawyer, or Foreign Lawyer shall be as follows:

(1) **Authority Over an Applicant, Domestic Lawyer, or Foreign Lawyer.** While an application for admission pro hac vice is pending, and upon the granting of such application, a Domestic Lawyer or Foreign Lawyer shall submit to the authority of the Business Court and the Office of General Counsel for all conduct relating in any way to the proceeding in which the Domestic Lawyer or Foreign Lawyer seeks to appear. The applicant or a Domestic Lawyer or Foreign Lawyer

who has obtained pro hac vice admission in a proceeding shall submit to this authority for all of his or her conduct —

(A) within this State while the proceeding is pending; and

(B) arising out of or relating to the application or the proceeding.

(2) An applicant or a Domestic Lawyer or Foreign Lawyer who has pro hac vice authority for a proceeding may be disciplined in the same manner as an in-State lawyer.

(3) The authority of the Business Court and Office of General Counsel includes, without limitation, the authority to —

(A) enforce these rules and the State Bar of Georgia's Rules of Professional Conduct;

(B) issue contempt and sanctions orders;

(C) enforce the rules of other courts; and

(D) mandate compliance with other court policies and procedures.

(g) **Familiarity with Rules**. An applicant for pro hac vice in matters before the Business Court shall become familiar with the Georgia Rules of Professional Conduct, these rules, and any Standing Order of the Court.

(h) **Temporary Practice**. An out-of-state lawyer will be eligible for admission pro hac vice or to practice in another lawful way only on a temporary basis.

(i) **Conflicts**. The conflicts of the Domestic Lawyer or Foreign Lawyer shall not delay any deadlines, depositions, mediation, hearings, or trials in connection with the case for which admission has been granted by the Business Court.

[Source: Uniform Superior Court Rule 4.4 (modified)]

Rule 4-4. Entry of Appearance and Withdrawal by Member or Employee of Law Firm or Professional Corporation

The entry of an appearance or request for withdrawal by an attorney who is a member or an employee of a law firm or professional corporation shall relieve the other members or employees of the same law firm or professional corporation from the necessity of filing additional entries of appearance or requests for withdrawal in the same action.

[Source: Uniform Superior Court Rule 4.5]

Rule 4-5. Duty to Notify of Representation and Related Changes

(a) **Notice of Representation**. In any matter pending in the Business Court, promptly upon agreeing to represent a client, an attorney shall provide written notice to the Clerk and opposing counsel of record of —

(1) the fact of such representation;

(2) the name of his or her client;

(3) the applicable case caption and civil action number; and

(4) the attorney's firm name, mailing address, e-mail address, and telephone number.

(b) **Notice of Changes**. An attorney shall provide written notice to the Clerk and each opposing attorney promptly upon any change of representation, name, office address, e-mail address, or telephone number.

[Source: Uniform Superior Court Rule 4.6]

Rule 4-6. Duty to Notify of Related Cases

An attorney shall promptly advise the Business Court any time he or she is counsel in an action which —

(1) the attorney knows is or may be related to another action, either previously or presently pending before the Business Court or other court of this State; and

(2) involves some or all of the same subject matter, or some or all of the same factual issues.

[Source: Uniform Superior Court Rule 4.8 (modified)]

Rule 4-7. Duty to Notify of Previous Presentation to Another Judge

An attorney shall not present to the Business Court any matter previously presented to another court of this State without first advising the Business Court of this fact and the result of such previous presentation.

[Source: Uniform Superior Court Rule 4.9 (modified)]

Rule 4-8. Binding Authority of Oral Agreements

Attorneys of record shall have apparent authority to enter into agreements on behalf of their clients in actions pending in the Business Court. The Business Court shall enforce oral agreements entered into by counsel if such oral agreements are sufficiently established.

[Source: Uniform Superior Court Rule 4.12 (modified)]

ARTICLE 5. CASE MANAGEMENT

Rule 5-1. Case Management Meeting

(a) **General Principles**. The case-management process described in this rule should be applied in a flexible and case-specific manner. This article is designed to encourage parties to identify and to implement the case-management techniques — including novel and creative ideas — that are most likely to support the efficient resolution of the case.

(b) **Timing**. Except as provided in section (c) of this rule or otherwise ordered by the Business Court, counsel shall hold a Case Management Meeting within 30 days of the filing of an answer by a defendant.

(c) **Objection to Jurisdiction Exception**. If a party files an Objection to Jurisdiction in accordance with BCR 2-4 (b), the parties shall not be required to hold a Case Management Meeting until the Business Court issues an order on such objection, at which time the parties will receive further direction from the Court.

(c) **Procedures**. The Case Management Meeting may be held by telephone, video conference, in person, or some combination thereof. Counsel for the first named plaintiff is responsible for contacting all other counsel of record and scheduling the Case Management Meeting. A party may, by motion, request that the Business Court alter the process or schedule for the Case Management Meeting, Case Management Report, or both. Any motion for relief under this article shall be made in accordance with the requirements of Article 7 of these rules. The Court may schedule a status conference in advance of the Case Management Meeting if requested by a party or if circumstances otherwise warrant a status conference.

(d) **Topics**. Unless the Court orders otherwise, the Case Management Meeting shall, at minimum, cover the following topics:

(1) The nature and basis of each party's claim and defense and the possibilities of

settling the case, including by early mediation (see subsection (9) of this section).

(2) Any initial motions that a party might file and whether certain issues may be presented to the Business Court for early resolution.

(3) The discovery topics, issues, and requirements described in BCRs 6-1 through 6-5.

(4) A proposed deadline for amending pleadings, adding parties, or both.

(5) A proposed deadline for filing dispositive motions.

(6) A proposed trial date.

(7) Whether a protective order is needed.

(8) Whether any law other than Georgia law might govern an aspect of the case and, if so, what law and which aspect of the case.

(9) Each party's view on the timing of mediation, including any plans for early mediation, a mediation deadline, and each agreed-upon mediator.

(10) Whether periodic Case Management Conferences with the Business Court (see BCR 5-3) would be beneficial and, if so, the proposed frequency of such conferences.

(11) Whether a Case Management Conference should be transcribed.

(12) Whether a matter might be appropriate for a special master.

(13) Whether client attendance at the Case Management Conference would be beneficial or detrimental.

(14) Whether areas of disagreement exist among the parties that need to be resolved at the Case Management Conference.

(e) **Discovery Management**. These rules envision a full discussion at the Case Management Meeting of the discovery topics, issues, and requirements described in BCRs 6-1 through 6-5. If, because of the circumstances of the case, the parties need additional time after the Case Management Meeting to complete their discussion of discovery, then the parties should arrange to have additional meetings, as needed, on any discovery issues that remain to be discussed. All such additional meetings should be held as soon as is practicable, but not later than 30 days after the date of the first Case Management Meeting.

(f) **Relief from Requirements**. Parties may seek relief from, or modifications of, the requirements of this rule, including BCR 5-1 (d), by petitioning the Court in the manner outlined in BCR 7-3 (b) (3) (C) (Letters). Such petition must be filed at least seven days prior to the deadline for holding the Case Management Meeting.

[Source: North Carolina Business Court Rule 9.1 (modified)]

Rule 5-2. Case Management Report

(a) The parties shall jointly file a Case Management Report no later than ten days after the date of the first Case Management Meeting.

(b) Counsel for the first named plaintiff shall circulate the initial draft of the Case Management Report, which shall incorporate the views of all other counsel, to prepare for finalizing and filing the report. The Case Management Report shall state whether the parties have completed their discussion of the discovery topics, issues, and requirements described in BCRs 6-1 through 6-5 and, if they have not, counsel shall identify the issues that remain to be discussed and the likely date on which a second discovery meeting will occur. If the parties participate in additional discovery meetings, then the parties shall promptly file a joint supplement to the Case Management Report.

(c) A party that is not served with process until after the Case Management Meeting may file a supplement to the Case Management Report if the Business Court has not already issued a Case Management Order. A supplement to the Case Management Report shall be filed within ten days after the date a party makes its first appearance in the case.

[Source: North Carolina Business Court Rule 9.2 (modified)]

Rule 5-3. Case Management Conference

The Business Court shall have discretion regarding when and whether to convene a Case Management Conference and whether more than one such conference is needed. The Business Court may require representatives of each party, in addition to counsel, to attend any Case Management Conference. The Court may conduct the conference in person or by technological means accessible to all parties. Unless it orders otherwise, the Court will not hear substantive motions at a Case Management Conference. The conference shall not be transcribed unless a party arranges for a court reporter to transcribe the proceedings or the Court orders otherwise.

[Source: North Carolina Business Court Rule 9.3 (modified)]

Rule 5-4. Case Management Order

Following submission of the Case Management Report and, if applicable, the Case Management Conference, the Business Court shall issue a Case Management Order. The Case Management Order shall address the issues developed in the Case Management Report, Case Management Conference, or both, as well as any other issues that the Court deems appropriate. Any party may move to modify the terms of the Case Management Order on a showing of good cause after consultation with all other parties.

[Source: North Carolina Business Court Rule 9.4 (modified)]

ARTICLE 6. DISCOVERY IN CIVIL ACTIONS

[Source: North Carolina Business Court Rule 10.2 (modified)]

Rule 6-1. Discovery Management

(a) Counsel shall fully discuss discovery management at the Case Management Meeting, if possible. As stated in BCR 5-1 (e), the parties may conduct additional meetings, no later than 30 days after the initial Case Management Meeting, to complete their discussion of discovery management. The parties may, in the alternative, petition the Court for an extension of the deadline to discuss discovery management.

(b) This article is intended to facilitate a process through which the parties can set expectations, with reasonable specificity, concerning the information each party seeks to discover and how that information will be identified, preserved, retrieved, and produced. The parties should at least discuss all the following discovery topics:

(1) **Necessary Scope of Discovery**. Counsel should discuss the scope of discovery (taking into account the needs of the case), the amount in controversy, limitations on the resources of each party, the burden and expense of the expected discovery compared with its likely benefit, the importance of the issues at stake in the litigation, and the importance of the discovery for the adjudication of the merits of the case.

(2) **Phased Discovery**. Counsel should consider whether phased discovery is appropriate and, if so, counsel should discuss proposals for specific phases.

(3) **Electronically Stored Information ("ESI")**. Counsel should prepare an ESI agreement between the parties for the identification, preservation, collection, and production of ESI. The ESI agreement shall be determined on a case-by-case basis

and shall include, at minimum, the following topics:

(A) The specific sources, location, and estimated volume of ESI.

(B) Whether ESI should be searched on a custodian-by-custodian basis and, if so, (i) the identity and number of the custodians whose ESI will be searched, and (ii) the search parameters.

(C) A method for designating documents as confidential.

(D) Plans and schedules for any rolling production.

(E) De-duplication of data.

(F) Whether a device needs to be forensically examined and, if so, a process for the examination.

(G) The production format of documents.

(H) The fields of metadata to be produced.

(I) How data produced will be transmitted to other parties (e.g., in read-only media, segregated by source, encrypted, or password protected).

(4) **Treatment of Privileged or Protected Information**. The treatment of privileged or protected information shall be governed by BCR 6-3.

(c) Counsel should jointly prepare a written discovery agreement promptly after they complete their discovery-management discussions. The discovery agreement should not be filed with the Business Court unless otherwise ordered. The parties should include in the Case Management Report whether the parties intend to prepare a written discovery agreement, and if so, the status of such agreement.

[Source: North Carolina Business Court Rules 10.2 and 10.3 (modified)]

Rule 6-2. Prompt Completion and Presumptive Limits

(a) **Discovery Period and Presumptive Limits**. The discovery period and presumptive limits on discovery shall be governed by the following:

(1) A party may begin discovery before the entry of the Case Management Order, but the presumptive discovery period shall be set in the Case Management Order. The Business Court shall presume that an eight-month discovery period should be

sufficient to complete all fact discovery. This period may be lengthened or shortened in consideration of the claims and defenses of a particular case, but a significantly longer discovery period shall require a showing of good cause (e.g., the parties demonstrate a need for expert discovery).

(2) Each party shall ensure that discovery is completed within the time specified in the Case Management Order. A party should serve interrogatories, requests for production, and requests for admission early enough that answers and responses can be completed before the end of the discovery period, such as expert discovery or other time-consuming matters.

(3) Any motion that seeks to extend the discovery period or take discovery beyond the limits in the Case Management Order shall be made before the current deadline for discovery. The motion to extend the discovery period shall explain the good cause that justifies the relief sought and demonstrate that the parties have diligently pursued discovery to date.

(b) **Written Discovery**. Unless otherwise permitted by the Business Court, a party may serve no more than 50 interrogatories on each party. Each subpart of an interrogatory counts as a separate interrogatory for purposes of this limit. The same limit shall apply to requests for admission.

(c) **Depositions Upon Oral Examination – Duration and Number**. Unless otherwise permitted by the Business Court or stipulated by the parties, a deposition shall be limited to one day of seven hours. A party may take no more than 15 fact depositions in the absence of an order by the Business Court. For purposes of counting depositions taken by any party, for depositions conducted pursuant to OCGA § 9-11-30 (b) (6) of the Civil Practice Act, each period of seven hours of testimony shall count as a single deposition, regardless of the number of designees presented during that seven-hour period.

(d) **Agreement, Reduction, and Modification of Limits**. The parties should attempt to agree, where appropriate, on reductions to the presumptive limits in this rule. Absent agreement of the parties, the presumptive limits may be increased only upon a showing of good cause. If each party agrees to conduct discovery after the discovery deadline without seeking an order permitting discovery after the deadline, the Business Court shall not entertain a motion to compel or a motion for sanctions in connection with that discovery.

[Source: North Carolina Business Court Rule 10.4 (modified)]

Rule 6-3. Privilege or Protected Information

(a) **Meet and Confer**. In accordance with BCR 6-1 (b) (4) and as part of the Case Management Meeting, the parties shall confer regarding the scope of any privilege review, the amount of information to be set out in a privilege log, the use of categories to reduce document-by-document logging, whether any categories of information may be excluded from the logging requirement, the date by which privilege logs shall be exchanged, and any other issues pertinent to privilege review.

(b) **Information Withheld**. If a party withholds information otherwise discoverable by claiming that the information is privileged or subject to protection as trial preparation material, the party shall —

(1) expressly make the claim; and

(2) describe the nature of the documents, communications, or tangible things not produced or disclosed and do so in a manner that will enable other parties to assess such claim without revealing information itself privileged or protected.

(c) **Privilege Log - Form**.

(1) The parties should use categorical designations, if appropriate, to reduce the time and costs associated with preparing privilege logs and to utilize any reasoned method of organizing the documents that will facilitate an orderly assessment as to the appropriateness of withholding documents in the specified category. For each category of documents that is established, the producing party shall provide a certification setting forth with specificity those facts supporting the privileged or protected status of the information included within the category. The certification shall also describe the steps taken to identify the documents so categorized, including but not limited to whether each document was reviewed or some form of sampling was employed, and if sampling was employed, how the sampling was conducted. The certification shall be signed by the Responsible Attorney, as defined in section (f) of this rule, or by the party, through an authorized and knowledgeable representative.

(2) If the requesting party objects to a categorical approach and insists on a document-by-document listing on the privilege log, absent an order of the Business Court to the contrary, the producing party shall proceed with preparing a document-by-document privilege log. After a showing of good cause, the producing party may apply to the Court for an allocation of costs (including attorneys' fees) incurred in the preparation of the document-by-document log.

(3) To the extent that a party insists upon a document-by-document log, and absent an order to the contrary, each uninterrupted e-mail chain shall constitute a single entry, and the description accompanying the entry shall include all the following:

(A) An indication that the e-mails represent an uninterrupted dialogue.

(B) The beginning and ending dates and times (as noted on the e-mails) of the dialogue.

(C) The number of e-mails within the dialogue.

(D) The names of all authors and recipients, together with sufficient identifying information about each person (e.g., name of employer, job title, role in the case) to allow for a considered assessment of privilege issues.

(d) **Information Produced**. If information produced in discovery is subject to a claim of privilege or otherwise protected from disclosure, the party making the claim may notify any party that received the information of the claim and the basis for it. The producing party shall preserve the information until the claim is resolved. After being notified, a party —

(1) shall promptly return or destroy the specified information and any copies thereof;

(2) shall take reasonable steps to retrieve the information if the party disclosed it before being notified; and

(3) may promptly present the dispute to the Business Court for determination of the claim.

(e) **Agreements to Prevent Privilege and Work Product Waiver**. Parties should agree to an order that provides for the non-waiver of the attorney-client privilege or work-product protection if privileged or work-product material is inadvertently produced.

(f) **Responsible Attorney**. As used in this rule, the term "Responsible Attorney" means an attorney having supervisory responsibility over the privilege review. A Responsible Attorney shall be actively involved in establishing and monitoring the procedures used to collect and review documents to determine that a reasonable and good faith effort is made to ensure that responsive, non-privileged documents are timely produced.

[Source: Commercial Division of the Supreme Court of New York, Rule 11-b of Section 202.70(g).]

Rule 6-4. Depositions

(a) **Time Limits**. The Business Court may extend any seven-hour deposition period for good cause. See BCR 6-2 (c).

(b) **Conduct**. Counsel shall conduct depositions as follows:

(1) Counsel should cooperate to schedule depositions.

(2) Counsel shall not direct a witness to refrain from answering a question unless —

(A) counsel objects to the question on the ground that the answer is protected by a privilege or another discovery immunity;

(B) counsel proceeds immediately to seek relief under the Civil Practice Act; or

(C) counsel objects to a question that seeks information in contravention of a Business Court-ordered limitation on discovery.

(3) Objections should be succinct and state only the basis for the objection. Counsel shall not make speaking objections (i.e., argumentative or suggestive in manner).

(4) Counsel and any witness shall not engage in private, off-the-record conferences while a question is pending, except to decide whether to assert a privilege, discovery immunity, or Business Court-ordered limitation on discovery.

(c) **Sanctions**. The Business Court may impose an appropriate sanction for conduct that impedes, delays, or frustrates the fair examination of a deponent. An appropriate sanction for a violation of this section may include reasonable attorney's fees incurred by any party.

(d) **Depositions of Organizations**. Depositions of organizations shall proceed as follows:

(1) After a party serves a deposition notice under OCGA § 9-11-30 (b) (6) of the Civil Practice Act, the organization to which the notice is issued should present any objections to the noticing party within a reasonable time of service and sufficiently in advance of the deposition.

(2) Counsel for the noticing party and for the organization to which the notice was issued shall then meet and confer in good faith to resolve any disputes over the topics for the deposition.

(3) The parties shall also discuss and attempt to agree on whether a deponent under OCGA § 9-11-30 (b) (6) of the Civil Practice Act may be asked questions about the deponent's personal knowledge. Absent an agreement to the contrary, a deposition seeking discovery of a designee's personal knowledge in his or her individual capacity should be taken separately from the designee's deposition on behalf of an organization noticed under OCGA § 9-11-30 (b) (6).

[Source: North Carolina Business Court Rule 10.7 (modified)]

Rule 6-5. Expert Witnesses

(a) **Timely Designation of Expert Witness**. A party who desires to use the testimony of an expert witness shall designate the expert sufficiently early in the discovery period to permit the opposing party the opportunity to depose the expert and, if desired, to name his or her own expert witness sufficiently in advance of the close of discovery so that a similar discovery deposition of the second expert may also be conducted prior to the close of discovery. A party who does not comply with this section shall not be permitted to offer the testimony of his or her expert, unless otherwise ordered by the Business Court.

(b) **Procedures**. Each party shall attempt to agree on procedures that will govern expert discovery, including limits on the number of experts or the number of expert depositions or both. In the absence of agreement, the Case Management Report should list each party's respective position on expert discovery. The parties may elect to exchange disclosures only, or they may elect to exchange reports in addition to or instead of disclosures. The procedures for expert witnesses may include the following:

(1) **Expert Reports**. If the parties agree to exchange expert reports, then the parties should further agree that the name of each expert, the subject matter on which the expert is expected to testify, and the expert's qualifications be exchanged 30 days prior to the date of service of the expert report.

(2) **Timing and Manner of Disclosure**. If the parties agree not to exchange expert reports, then they shall agree on a schedule for exchange of expert information in the form of interrogatory responses. In the absence of such an agreement, the Business Court shall establish a sequence for the exchange of expert information in the Case Management Order.

(3) **Facts and Data Considered by the Expert Witness**. The parties shall attempt to agree on when they will provide a copy of previously unproduced material that an expert witness considers in forming his or her opinion.

(c) **Expert Depositions**. Unless the parties agree otherwise, each expert witness may be deposed by a party adverse to the party designating the expert. The expert witness shall only be subject to a single deposition at which all adverse parties may appear.

[Source: North Carolina Business Court Rule 10.8 (modified)]

ARTICLE 7. MOTIONS IN CIVIL ACTIONS

Rule 7-1. Form of Motion

(a) Unless made during a hearing or trial, an application to the Business Court for an order shall be made by motion, which shall be in writing, state with particularity the grounds for the motion, and set forth clearly the relief sought.

(b) All briefs filed in support of motions made prior to trial shall include or be accompanied by citations of supporting authorities and, where allegations of unstipulated facts are relied upon, supporting affidavits or citations to evidentiary materials of record.

[Source: Delaware Chancery Court Rule 7; Uniform Superior Court Rule 6.1 (modified)]

Rule 7-2. Briefing Schedule

(a) With respect to all written motions, these rules do not specify a rigid time period for the briefing of motions, response briefs, or reply briefs. Rather, the parties may enter into a stipulated brief schedule that reflects the particular demands of the case. If the parties are unable to agree to such a schedule, the following default briefing schedule shall govern:

(1) **Opening Briefs**. Unless otherwise ordered by the Business Court, a party shall file an opening brief at the same time the corresponding motion is filed.

(2) **Response Briefs**. Unless otherwise ordered by the Court, a party opposing an opening brief shall file a response brief within 14 days of service of the motion. This period is extended to 21 days after service for responses to motions for summary judgment. If a party fails to file a response within the time required by this rule, the motion will be considered and decided as an uncontested motion, absent good cause.

(3) **Reply Briefs**. Parties are permitted, but not required, to file reply briefs. When a party deems it necessary to file a reply brief, the reply must be served within ten days of service of a responsive brief. This period is extended to 14 days after service for responses to motions for summary judgment. A reply brief must be limited to

discussion of matters newly raised in the responsive brief. The Court retains discretion to strike any reply brief that violates this rule.

(b) If the parties are unable to agree upon a briefing schedule, and special considerations warrant modification of the default schedule in section (a) of this rule, counsel may petition the Business Court for modification of such schedule by letter as provided in BCR 7-3 (b) (3) (C) (Letters).

[Source: Delaware Chancery Court Rule 7 (b) (4); North Carolina Business Court Rule 7.4 and 7.6 (modified)]

Rule 7-3. Briefs

(a) **Order of Service and Filing of Briefs**. Unless otherwise directed by the Business Court, briefs shall be served and filed in the following order:

(1) First, the opening brief of the moving party.

(2) Second, the response brief of the party opposing the opening brief.

(3) Third, the reply brief of the party who filed the opening brief.

(b) **Form of Briefs**. The form of briefs shall be as follows:

(1) **Content of Covers**. On the front cover of each brief it shall state —

(A) "Georgia State-wide Business Court";

(B) the caption of the case;

(C) the civil action number;

(D) a description of the nature of the brief;

(E) the name and designation of the party for whom it is filed; and

(F) the name, physical address, e-mail address, and telephone number of counsel filing the brief.

(2) **Contents of Brief**. Briefs shall contain all the following (in separate divisions):

(A) A table of contents or index.

(B) A table of citations arranged in alphabetical order.

(C) In the opening and response briefs, a concise statement of all relevant facts with a page reference to the transcript of testimony (if any), and to pleadings, exhibits, or other sources of the facts.

(D) In the opening and response briefs, a concise and accurate statement of the questions involved.

(E) An argument divided into sections (and subsections, if needed) under appropriate headings indicating the points discussed and correlating the sections with the stated questions involved.

(3) **Word Limits**. Unless the Court orders otherwise, filings shall comply with all the following word limits in this subsection:

(A) **Merit-Related Motions**. Merit-related motions shall comply with all of the following requirements:

(i) Opening briefs in support of a motion pursuant to OCGA §§ 9-11-12; 9-11-23; 9-11-56; or 9-11-65 of the Civil Practice Act, and opening pre-trial or post-trial briefs, shall not exceed 14,000 words.

(ii) Response briefs shall not exceed 14,000 words.

(iii) Reply briefs, if any, shall not exceed 7,500 words.

(iv) The front cover, table of contents, table of citations, and signature block shall not count toward the word limitations in this paragraph. All other text (e.g., footnotes, headings, subheadings, etc.) shall count toward the limitations.

(B) **Other Motions or Petitions**. Except as otherwise provided in this rule, all other applications (e.g., motions made pursuant to BCRs 7-4) shall be made by motion without a supporting brief and in accordance with all of the following requirements:

(i) The motion or petition seeking relief shall not exceed 4,000 words.

(ii) Response briefs, if any, to the motion or petition shall not exceed 4,000 words.

(iii) Reply briefs, if any, shall not exceed 2,000 words.

(iv) The caption, title, and signature block shall not count toward the word limitations in this paragraph. All other text (e.g., footnotes, headings, subheadings, etc.) shall count toward the limitation.

(v) Limitations relating to discovery motions shall be governed by BCR 7-5.

(C) **Letters**. Letters shall comply with all the following requirements:

(i) A letter to the Business Court shall not exceed 1,000 words. Parties may use letters to provide updates to the Court or to address logistical or scheduling issues. All such letters shall be filed electronically via the Court's e-filing system.

(ii) Letters shall not be used to request substantive relief.

(iii) The letterhead, header, address and delivery information, caption, salutation, complimentary close, signature, statement of enclosures, and copy recipients shall not count toward the word limitation. All other text shall count toward the limitation.

(D) **Certificate of Compliance**. Any document listed in subsection (3) of section (b) this rule shall include in the signature block the term "Words:" followed by the number of words in the document. Use of the foregoing term constitutes a certification by the signatory of the document, whether counsel or self-represented litigant, that the document complies with the typeface and word limitation requirements of this rule. In so certifying, the signatory may rely on the word count of the word processing system used to prepare the document.

[Source: Delaware Chancery Court Rule 171-173 (modified); see generally North Carolina Business Court Rule 7]

Rule 7-4. Emergency Motions and Motions for Expedited Proceeding

(a) **Notice to the Court**. If a party files or intends to file a motion for emergency relief or expedited proceedings in the Business Court, such party should contact chambers as soon as practicable, but in all instances, contact shall not be made later than 24 hours after filing such a motion. If circumstances permit, the moving party shall give notice to all other interested parties before or contemporaneously with the filing of the motion. The moving party or any interested party may request a scheduling conference to address the motion. The moving party shall promptly advise all other interested parties of all conference dates and times obtained.

(b) **Briefing Schedule**. As with other briefs filed pursuant to this article, the parties are expected to agree on a mutually-acceptable briefing schedule, where possible, for all motions filed under this rule. Absent such an agreement, the Business Court will, in its discretion, establish a briefing schedule on a case-by-case basis.

(c) **Briefing Limitations**. Unless the Court orders otherwise, the briefing limitations and other requirements of BCR 7-3 – including word count limitations – will apply to all briefs filed under this rule.

[Source: Delaware Chancery Court Rule 173 (modified); see generally North Carolina Business Court Rule 7.3 (modified)]

Rule 7-5. Discovery Motions

This rule applies to motions under OCGA §§ 9-11-26 through 9-11-37 and 9-11-45 of the Civil Practice Act. References to "party" in this rule shall include non-parties subject to subpoena under OCGA § 9-11-45 of the Civil Practice Act.

(a) **Pre-Filing Requirements**. The pre-filing requirements for discovery motions shall be as follows:

(1) **Summary of Dispute**. Before filing a motion related to discovery, including the failure of a party to make discovery, a party shall engage in a good faith attempt to resolve or narrow the dispute. If the dispute remains unresolved, then the party seeking relief shall notify the Business Court as to the existence of the dispute, and unless the Court orders otherwise, the parties shall be directed to submit simultaneous summaries of the dispute via letter and in accordance with BCR 7-3 (b) (3) (C). If the parties cannot agree on a deadline for the filing of the summaries, the Court shall set the deadline. No replies will be permitted absent an order of the Court.

(2) **Certification of Good Faith Effort to Resolve the Dispute**. A dispute summary under subsection (1) of this section shall include a certification that, after consultation and diligent attempts to resolve differences, the parties could not resolve the dispute. The certificate shall state the date of each conference, the name of each attorney who participated, and the specific results achieved. The certificate shall state, if applicable, whether the parties discussed cost-shifting or alternative discovery methods that might resolve the dispute. The certificate shall not exceed 300 words and must be submitted with the dispute summary.

(3) **Discovery Conference**. After the summaries and certificates are submitted, the Business Court may schedule a telephone conference with counsel to discuss the dispute, order the parties to file a motion and brief regarding the dispute or provide

additional materials, or issue an order deciding the issue raised or providing the parties with further instructions. If the Business Court elects to conduct a telephone conference, the Court may make a decision regarding the dispute during the conference.

(b) **Briefs on Discovery Motions**. No discovery motion shall be filed unless the pre-filing requirements described in section (a) of this rule have been followed and the Court has permitted or instructed briefing on the dispute.

(c) **Cost-Shifting Requests**. If a party contends that cost shifting is warranted as to any discovery sought, then the party's letter or brief should address estimated costs of responding to the requests in relation to the breadth, complexity, or other considerations bearing upon the specific discovery at issue. Counsel's estimate must have a reasoned factual basis and the Business Court may require that any such basis be demonstrated by affidavit.

(d) **Depositions**. This rule shall not preclude a party from seeking an immediate ruling by telephone from the Business Court on any dispute that arises during a deposition that justifies such a conference with the Court.

[Source: North Carolina Business Court Rule 10.9 (modified)]

Rule 7-6. Motion for Summary Judgment

(a) **Statement of Recovery Theory and Material Facts**. Upon a motion for summary judgment pursuant to the Civil Practice Act, there shall be annexed to the notice of motion a separate, short, and concise statement of each theory of recovery and of each of the material facts as to which the moving party contends there is no genuine issue to be tried. Each material fact shall be numbered separately and supported by a citation to evidence proving such fact. The Business Court shall not consider any fact —

(1) not supported by a citation to evidence (including page or paragraph number);

(2) supported by a citation to a pleading rather than to evidence;

(3) stated as an issue or legal conclusion; or

(4) set out only in the brief and not in the movant's statement of undisputed facts.

(b) **Documents with Response Brief**. A party responding to a summary judgment motion shall include all the following documents with the response brief:

(1) A response to the movant's statement of undisputed facts.

(A) This response shall contain individually numbered, concise, and non-argumentative responses corresponding to each of the movant's numbered undisputed material facts.

(B) The Business Court shall deem each of the movant's facts as admitted unless the respondent —

(i) directly refutes the movant's fact with concise responses supported by specific citations to evidence (including page or paragraph number);

(ii) states a valid objection to the admissibility of the movant's fact; or

(iii) points out that the movant's citation does not support the movant's fact or that the movant's fact is not material or otherwise has failed to comply with the provisions set out in section (a) of this rule.

(C) The Court will deem the movant's citations supportive of its facts unless the respondent specifically informs the Court to the contrary in the response.

(D) The response that a party has insufficient knowledge to admit or deny a fact is not an acceptable response unless the party can establish that facts essential to the opposition are then-unavailable pursuant to OCGA § 9-11-56 (f).

(2) A statement of additional facts which the respondent contends are material and present a genuine issue for trial. Such separate statement of material facts shall meet the requirements set out in section (a) of this rule.

[Source: Uniform Superior Court Rule 6.5 (modified); USDC NDGA LR 56.1 (modified)]

(c) **Reply to Respondent's Facts**. If the respondent provides a statement of additional material facts, then, within the time allowed for filing a reply, the movant shall file a response to each of the respondent's facts. The range of acceptable responses shall be limited to —

(1) an objection to the admissibility of the evidence upon which the respondent relies;

(2) an objection pointing out that the respondent's evidence does not support the respondent's fact;

(3) an objection on the ground that the respondent's fact is not material or does not

otherwise comply with the provisions set out in section (a) of this rule; and

(4) a concession that the Business Court can properly consider the respondent's evidence for purposes of the summary judgment motion.

(d) **Filed Sufficiently Early**. Motions for summary judgment shall be filed sufficiently early so as not to delay the trial. No trial shall be continued because of the delayed filing of a motion for summary judgment.

[Source: Uniform Superior Court Rule 6.6 (modified)]

ARTICLE 8. PRESENTATION TECHNOLOGY

Rule 8-1. Electronic Presentation Favored

(a) A presentation in the Business Court —

(1) shall not be permitted unless it meaningfully contributes to the Court's understanding of key issues; and

(2) should, if possible, be presented by electronic means.

(b) Counsel should limit the use of paper handouts at Business Court proceedings. Any paper handout that a party provides to the Court shall also be provided to all parties, the court reporter, and the Court's staff attorney.

[Source: North Carolina Business Court Rule 8.1 (modified)]

Rule 8-2. Courtroom Technology

Parties may bring and use their own electronic technology and hardware to present to the Business Court. Each party shall consult in advance with courthouse personnel regarding security, power, and other logistics associated with the use of any external technology or hardware. Counsel who plan to use the available courtroom technology shall be familiar with that technology and shall follow any rules established by the Court for that technology's use.

[Source: North Carolina Business Court Rule 8.2 (modified)]

ARTICLE 9. PRE-TRIAL CONFERENCES

Rule 9-1. Pre-Trial Conferences Generally

The Business Court may set pre-trial conferences on its own motion or upon a motion by a party. In scheduling actions for pre-trial conferences, the Court shall consider the nature of the action, its complexity, and the time required to address pre-trial issues. If a pre-trial conference is ordered, all the following shall apply:

(1) A written order shall be issued specifying the time and place for the pre-trial conference.

(2) The Court shall consider the issues stated in OCGA § 9-11-16 of the Civil Practice Act, among other issues.

(3) Subject to the provisions of OCGA § 9-11-17 of the Civil Practice Act, the attorneys who will actually try the action shall attend the pre-trial conference. Additional attorneys of record in the action who are authorized to define the issues and enter into stipulations may also attend the pre-trial conference.

(4) Upon written order of the Business Court, at the commencement of the pre-trial conference or prior to such conference, counsel for each party shall present to the Court a written proposed pre-trial order in conformance with these rules or a Standing Order of the Court.

(5) Failure of counsel to appear at the pre-trial conference without legal excuse or failure to present a proposed pre-trial order shall authorize the Business Court to remove the action from any trial calendar, enter such pre-trial order as the Court deems appropriate, or impose any other appropriate sanction except dismissal of the action with prejudice.

[Source: Uniform Superior Court Rule 7.1 (modified)]

Rule 9-2. Pre-Trial Order

Within five business days prior to the date of the pre-trial conference, counsel for each party shall have prepared and shall file with the Business Court a proposed pre-trial order.

[Source: Uniform Superior Court Rule 7.2 (modified)]

Rule 9-3. Interpreters

(a) In all actions before the Business Court, either the party or the party's attorney shall provide the Court reasonable notice of the need for a qualified interpreter, if known, within a reasonable time before any hearing, trial, or other court proceeding. For purposes of this rule, "reasonable notice" means at least five days before the date

the interpreter is needed. Such notice shall be filed and shall comply with any other service requirements established by the Court. The notice of the need for a qualified interpreter shall —

(1) designate the participants in the proceeding who will need the services of an interpreter;

(2) estimate the length of the proceeding for which the interpreter is required;

(3) state whether the interpreter will be needed for all proceedings in the case; and

(4) indicate each language, including sign language for the Deaf or Hard of Hearing, for which the interpreter is required.

(b) Upon receipt of notice of the need for a qualified interpreter, the Business Court shall make a diligent effort to locate and appoint a licensed interpreter at the Court's expense and in accordance with the Supreme Court of Georgia's Rules on the Use of Interpreters for Non-English Speaking and Hearing Impaired Persons. If the Business Court determines that the nature of the case (e.g., an emergency) warrants the use of a non-licensed interpreter, then the Court shall follow the procedures outlined in the Supreme Court of Georgia's Commission on Interpreters' Instructions for Use of a Non-Licensed Interpreter. If a non-licensed interpreter is used initially, the Business Court shall make a diligent effort to ensure that a licensed interpreter is appointed for all subsequently scheduled proceedings, if one is available.

(c) If a party or party's attorney fails to timely notify the Business Court of a need for an interpreter, the Court may assess costs against that party for any delay caused by the need to obtain an interpreter unless that party establishes good cause for the delay. If timely notice is not provided or on other occasions when it may be necessary to utilize an interpreter not licensed by the Supreme Court of Georgia's Commission on Interpreters ("COI"), the Registry for Interpreters of the Deaf ("RID"), or another industry-recognized credentialing entity (such as a telephonic language service or a less qualified interpreter), the Court will weigh the need for immediacy in conducting a hearing against the potential compromise of due process, or the potential of substantive injustice, if interpreting is inadequate. Unless immediacy is a primary concern, some delay may be more appropriate than the use of an interpreter not licensed by the COI, RID, or other industry-recognized credentialing entity.

(d) Regardless of whether a party or party's attorney notifies the Business Court of the need for an interpreter, the Court shall appoint an interpreter whenever it becomes apparent from the Court's own observations or from disclosures by any other person that a participant in a proceeding is unable to hear, speak, or otherwise communicate in the English language to the extent reasonably necessary to meaningfully participate

in the proceeding.

(e) If the time or date of a proceeding is changed or canceled by the parties, and interpreter services have been arranged by the Business Court, the party that requested the interpreter shall notify the Court 24 hours in advance of the change or cancellation. If a party fails to timely notify the Court of a change or cancellation of interpretation services, the Court may assess any reasonable interpreter expenses it may have incurred on that party, unless the party can show good cause for the failure to provide timely notice.

[Source: Uniform Superior Court Rule 7.3]

ARTICLE 10. TRIAL CALENDAR

Rule 10-1. Trial Scheduling Generally

(a) The Business Court shall schedule all trials in the Business Court and arrange for the publication of all necessary calendars in advance of trial dates. In scheduling actions for trial, the Judge shall consider the nature of the action, its complexity, and the reasonable time requirements of the action for trial.

(b) The Business Court shall not permit a matter pending before it to languish, and the Court shall ensure the orderly movement and disposition of all assigned matters.

[Source: Uniform Superior Court Rule 8.1 (modified)]

Rule 10-2. Ready List

(a) All actions ready for trial in accordance with OCGA § 9-11-40 shall be placed upon a list of actions ready for trial to be maintained as a "ready list" by the Clerk. A case shall be presumed ready for trial after the filing of the pre-trial order.

(b) The Judge shall place actions ready for trial on the ready list and shall notify parties of the same. Except for cause and as provided in section (c) of this rule, the Judge shall place actions on the ready list by order of the date of filing of the pre-trial order.

(c) If an action is already on the ready list, it shall retain its superior position over new actions unless it is entitled by statute to a superior position.

[Source: Uniform Superior Court Rule 8.2 (modified)]

Rule 10-3. Trial Calendar Preparation and Publishing

The Business Court shall designate a calendar clerk, who shall publish the trial calendar and need not be an employee of the Clerk. The calendar clerk shall prepare a trial calendar from the actions on the ready list in the order they appear on the ready list. The trial calendar shall state the place of trial and the date and time during which the action shall be tried. The trial calendar shall be distributed or published for a sufficient period of time. For purposes of this rule, "a sufficient period of time" means not less than 20 days before the date the action listed is to be tried. The calendar clerk may distribute the calendar by sending an electronic copy via e-mail to the attorneys of record. Self-represented litigants shall be notified by regular mail or e-mail only if consent for e-mail notification has been provided.

[Source: Uniform Superior Court Rule 8.3 (modified)]

Rule 10-4. Trial Date

The parties and their counsel shall appear ready for trial on the date specified by the Business Court unless otherwise directed by the Court.

[Source: Uniform Superior Court Rule 8.4 (modified)]

Rule 10-5. Continuance After Trial Scheduled

Continuances shall not be granted solely by agreement of counsel. Actions shall not be removed from the Business Court's trial calendar except by direction of the Court and upon such terms as reasonably may be imposed by the Court. Such terms may include the imposition of a penalty of up to $50 upon the moving party if a motion for continuance of an action is first made within five days before the trial week scheduled, absent statutory grounds or good cause for such motion.

[Source: Uniform Superior Court Rule 8.5 (modified)]

ARTICLE 11. REMOTE CONFERENCING

Rule 11-1. Telephone Conferencing

The Business Court may, in its sole discretion and on its own motion or upon the request of any party, conduct pre-trial or post-trial proceedings by telephone conference with attorneys for all affected parties. The Judge may specify any of the following regarding a pre-trial or post-trial telephone conference:

(1) The time and the person who will initiate the conference.

(2) The party which is to incur the initial expense of the conference call, if any, or

the apportionment of such costs among the parties, if any. The Court may adjust the apportionment of such costs upon final resolution of the case.

(3) Any other matter or requirement necessary to accomplish or facilitate the telephone conference.

[Source: Uniform Superior Court Rule 9.1 (modified)]

Rule 11-2. Video Conferencing

(a) **Use of Video Conferencing**. The Business Court may, in its sole discretion and on its own motion or upon the request of any party, conduct a pre-trial or post-trial proceeding by video conference with attorneys for all affected parties. The Judge may specify any of the following regarding a pre-trial or post-trial proceeding:

(1) The time and the person who will initiate the conference.

(2) The party which is to incur the initial expense of the conference call, if any, or the apportionment of such costs among the parties, if any. The Court may adjust the apportionment of such costs upon final the resolution of the case.

(3) Any other matter or requirement necessary to accomplish or facilitate the video conference.

(b) Nothing in this rule shall preclude the Judge from ordering a party, witness, or other individual to personally appear in the Business Court for any hearing or proceeding.

(c) **Confidential Attorney-Client Communication**. If video conferencing is used, the Business Court shall preserve the confidentiality of attorney-client communications and privilege in accordance with Georgia law.

(d) **Witnesses**. In any pending matter, a witness may testify via video conference. Any party desiring to call a witness by video conference shall promptly file a notice of intent to present testimony by video conference at least 14 days before the date scheduled for such testimony. Any other party may file an objection to the testimony of a witness by video conference within ten days after the date of the filing of the notice of intent. The discretion to allow testimony via video conference shall rest with the Judge.

(e) **Recording of Hearings**. A record of any proceeding conducted by video conference shall be made in the same manner as a similar proceeding not conducted by video conference (i.e., by court reporter). Upon the consent of all parties, a portion of the

proceedings conducted by video conference may be recorded by an audio-visual recording system. Such recording shall become part of the record of the case and shall be transmitted to the applicable appellate courts as if part of the transcript if a case is appealed.

(f) **Technical Standards**. Any video-conferencing system utilized under this rule shall conform to all the following minimum requirements:

(1) All participants must be able to see, hear, and communicate with each other simultaneously.

(2) All participants must be able to see, hear, and otherwise observe any physical evidence or exhibits presented during the proceeding, either by video, facsimile, or other method.

(3) Video quality must be adequate to allow participants to observe each other's demeanor and nonverbal communications.

(4) The location from which the Judge is presiding shall be accessible to the public to the same extent as such proceeding would be if not conducted by video conference. The Business Court shall accommodate any request by an interested party to observe the entire proceeding.

[Source: Uniform Superior Court Rule 9.2 (modified)]

ARTICLE 12. TRIALS

Rule 12-1. Voir Dire

(a) The Business Court may propound, or cause to be propounded by counsel, such questions of the jurors as provided in OCGA § 15-12-133. The form, time required, and number of such questions is within the sole discretion of the Court.

(b) The Business Court may require that questions be asked once only to the full array of the jurors rather than to every juror (i.e., one at a time), provided that the question be framed and the response given in a manner that provides the propounder with an individual response prior to the interposition of challenge.

(c) Counsel shall not ask hypothetical questions, but such questions may be allowed in the discretion of the Business Court. Counsel shall not ask how a juror would act in certain contingencies or on a certain hypothetical state of facts.

(d) Counsel shall not frame questions so as to require a response from a juror that might

amount to a prejudgment of the action.

(e) Counsel shall not ask questions calling for an opinion by a juror on matters of law.

(f) The Court shall exclude questions that have been answered in substance previously by the same juror.

(g) The Court may, in its sole discretion, permit examination of each juror without the presence of the remainder of the panel.

(h) Objections to the mode and conduct of voir dire shall be raised promptly or such objections will be deemed waived.

[Source: Uniform Superior Court Rule 10.1 (modified)]

Rule 12-2. Jury Charge Requests and Exceptions

(a) Except as provided in section (b) of this rule, all requests to charge the jury shall be numbered consecutively on separate sheets of paper and submitted to the Business Court in duplicate by counsel for all parties at the commencement of trial, unless otherwise provided by pre-trial order.

(b) Additional requests to charge the jury may be submitted after the commencement of trial to cover unanticipated points which arise during trial.

[Source: Uniform Superior Court Rule 10.3 (modified)]

Rule 12-3. Authority to Excuse from Courtroom

During the course of a proceeding, only the Judge may excuse a party, a witness (including one who has testified or will testify), or counsel from the courtroom.

[Source: Uniform Superior Court Rule 10.4 (modified)]

Rule 12-4. Jury Selection

(a) A party may, in the Business Court's sole discretion, have additional time to prepare for jury selection after completion of the examination of jurors upon their voir dire.

(b) During the selection of jurors, the Business Court may, in its sole discretion, restrict to not less than one minute the time within which each party may exercise a peremptory challenge.

(c) A party will forfeit a challenge by failing to exercise it within the time allowed.

[Source: Uniform Superior Court Rule 11 (modified)]

ARTICLE 13. DISMISSAL, DEFAULT JUDGMENT, AND WITHDRAWAL OF FUNDS

Rule 13-1. Voluntary Dismissal of Actions

Except in actions that are the result of a final settlement agreement, the terms of which are dictated in court or in chambers into the record, if an action in the Business Court is voluntarily dismissed (after the trial jury has been empaneled), all court costs including juror fees incurred for all panels from which the trial jury was selected will be taxed against the dismissing party.

[Source: Uniform Superior Court Rule 12 (modified)]

Rule 13-2. Dismissal Generally

On its own motion or upon request of a party, the Business Court may dismiss without prejudice any action, or if appropriate, any pleading filed on behalf of any party upon the failure to properly respond to the call of the action for trial or other proceeding. The Court may adjudge any attorney in contempt for failure to appear without good cause upon the call of any proceeding.

[Source: Uniform Superior Court Rule 14 (modified)]

Rule 13-3. Default Judgment

(a) The party seeking entry of a default judgment in any action shall certify to the Business Court all of the following:

(1) The date and type of service effected.

(2) That proof of service was filed with the Business Court within five business days of the date of service, or, if not filed within five business days of the service date, the date on which proof of service was filed.

(3) That no defensive pleading has been filed by the defendant as shown by Court records.

(4) The defendant's military status, if applicable.

(b) The certification required by this rule shall be in writing and be attached to the proposed default judgment when presented to the Judge for his or her signature.

[Source: Uniform Superior Court Rule 15 (modified)]

Rule 13-4. Procedure for Withdrawal of Funds

When counsel for a party presents to the Judge a proposed order requesting that the Clerk be directed to pay funds from the registry of the Business Court, counsel for the party presenting such order shall at the same time submit to the Court a certificate in the form provided in Appendix B of these rules.

[Source: Uniform Superior Court Rule 23 (modified)]

ARTICLE 14. LEAVE OF ABSENCE

Rule 14-1. Leave for 30 Calendar Days or Less

(a) Absent good cause, an attorney of record shall be entitled to a leave of absence for 30 days or less from court appearance in a pending matter, which has not been specially set nor has been noticed for a hearing during the requested time, by filing a written notice at least 30 calendar days prior to the effective date of the proposed leave, containing all the following:

(1) A list of the actions to be protected which includes the action numbers.

(2) The reasons for the leave of absence.

(3) The duration of the requested leave of absence.

(b) Unless opposing counsel files a written objection to a request for a leave of absence within five days with the Clerk or if the Court responds denying the leave of absence, such leave shall stand granted without entry of an order.

(c) If an objection is filed and requested by any counsel, the Business Court shall conduct a conference with all counsel to determine whether the Court will issue an order granting the requested leave of absence.

(d) The Clerk shall retain leave of absence notices in a chronological file for two calendar years. After two years, the notices may be discarded.

Rule 14-2. Certain Leave Requests in Writing

(a) Application for leaves of absence for more than 30 days, or those either on a published calendar, noticed for a hearing, or not submitted within the time limits contained in BCR 14-1, shall be in writing and filed at least ten days prior to the date of submission to the Business Court.

(b) This requirement may be waived if opposing counsel consents in writing to the application.

(c) The procedure required in section (a) of this rule shall permit opposing counsel to object or to consent to the grant of the application for leave. Approval of an application for leave under this rule shall be at the sole discretion of the Business Court.

(d) An application for a leave of absence under this rule shall contain all of the following:

(1) A list of the actions to be protected, which includes the action numbers.

(2) The reasons for the leave of absence.

(3) The duration of the requested leave of absence.

Rule 14-3. Relief if Leave Granted

Absent a prior order of the Court, leave granted under this article shall relieve any attorney from all trials, hearings, depositions, and other legal proceedings in that matter.

Rule 14-4. Leave Application Denied

Any application for leave not filed in conformance with this article shall be denied.

[Source: Uniform Superior Court Rules 16.1, 16.4 (modified)]

ARTICLE 15. ACCESS TO COURT RECORDS

Rule 15-1. Access to Court Records Generally

All Business Court records are public and shall be made available for public inspection unless public access is limited by law or by the procedures set forth in this article.

Rule 15-2. Motions and Orders to Limit Access to Records

Upon a motion by any party to any civil action or upon the Business Court's own motion and after a hearing on such motion, the Business Court may limit access to court files

respecting that action. The order of limitation shall specify the part of the file to which access is limited, the nature and duration of the limitation, and the reason for the limitation.

Rule 15-3. Finding of Harm

An order limiting access shall not be granted by the Business Court except upon a finding that the harm otherwise resulting to the privacy of a person in interest clearly outweighs the public interest.

Rule 15-4. Ex Parte Orders

Under compelling circumstances, a motion for temporary limitation of access to a Business Court record for up to 30 days may be granted ex parte when accompanied by supporting affidavit.

Rule 15-5. Review of Request to Limit Access

An order limiting access may be reviewed by interlocutory application to the appellate court that has jurisdiction to hear such appeal.

Rule 15-6. Amendment to a Request to Limit Access

Upon notice to all parties of record and after a hearing, an order limiting access may be reviewed and amended by the Business Court or by the appropriate appellate court at any time on its own motion or upon the motion of any person for good cause.

Rule 15-7. Redaction and Filing Under Seal

(a) As used in these rules, the term "protected identifier" means an item of identifying information subject to protection from placement on the public record as described in OCGA § 9-11-7.1.

(b) This rule applies to both parties and non-parties. References to a "party" in this rule therefore include non-party.

(c) Parties should limit the materials that they seek to file under seal. The party seeking to maintain materials under seal bears the burden of establishing the need for filing under seal.

(d) Parties are encouraged to agree on terms for a proposed protective order that governs the confidentiality of discovery materials when exchanged between or among the parties.

(e) **Procedures for Sealed Filing**. The procedures for a sealed filing shall be as follows:

(1) **Pursuant to a Protective Order**. The Business Court may enter a protective order under OCGA § 9-11-26 (c) of the Civil Practice Act, which contains standards and processes for the handling, filing, and service of sealed documents. Proposed protective orders submitted to the Court should include procedures similar to, and be consistent with, those described in subsections (2)-(4) of this section.

(2) **In the Absence of a Protective Order**. In the absence of an order described in subsection (1) of this section, any party that seeks to file a document or part of a document under seal shall provisionally file the document under seal together with a motion for leave to file the document under seal. The motion shall contain information sufficient for the Business Court to determine whether sealing is warranted, such as –

(A) A non-confidential description of the material sought to be sealed.

(B) The circumstances that warrant sealed filing.

(C) Each reason why no reasonable alternative to a sealed filing exists.

(D) If applicable, a statement that the party is filing the material under seal because another party (the "designating party") has designated the material under the terms of a protective order in a manner that triggered an obligation to file the material under seal and that the filing party has unsuccessfully sought the consent of the designating party to file the materials without being sealed.

(E) If applicable, a statement that any designating party that is not a party to the action is being served with a copy of the motion for leave.

(F) Aa statement that specifies whether the party is requesting that the document be accessible only to counsel of record rather than to the parties.

(G) A statement that specifies how long the party seeks to have the material maintained under seal and how the material is to be handled upon unsealing.

(3) Until the Business Court rules on the sealing motion, or in the absence of an order described in this rule, any document provisionally filed under seal may be disclosed only to counsel of record and their staff until otherwise ordered by the Court or agreed to by the parties.

(4) Within five business days after the date of the filing or provisional filing of a document under seal, the party that filed the document should file a public version of the document. The public version may bear redactions or omit material, but the redactions or omissions should be as limited as practicable. In the rare circumstance that an entire document is filed under seal, in lieu of filing a public version of the document, the filing party shall file a notice that the entire document has been filed under seal. The notice shall contain a non-confidential description of the document that has been filed under seal.

[Source: Uniform Superior Court Rule 21.1–21.6 (modified); NCBC Rule 5.2 (modified)]

ARTICLE 16. ELECTRONIC DEVICES AND RECORDING

Rule 16-1. Electronic Devices and Recording Generally

(a) **General Policy**. Open courtrooms are an indispensable element of an effective and respected judicial system. It is the policy of Georgia courts to promote access to and understanding of court proceedings not only by the participants in them but also by the general public and by news media who will report on the proceedings to the public. Such access shall be balanced with the need to protect the legal rights of the participants in the proceedings and ensure appropriate security and decorum.

(b) **Devices to Record Sounds or Images**. Except as otherwise required by law, this rule shall govern the use of devices to record sounds or images in a courtroom and comport with the standards provided in OCGA § 15-1-10.1 regarding the use of devices to record judicial proceedings.

(c) **Electronic Devices**. This rule shall govern the use of electronic devices, including mobile phones and computers, in a courtroom for purposes other than recording sounds and images. Such use shall be generally allowed by lawyers, by employees of lawyers, and by self-represented litigants. To ensure decorum and avoid distraction, such use shall be generally prohibited by jurors, witnesses, parties, and spectators, including representatives of the news media. Such person may use his or her device by stepping outside the courtroom, and nothing in this rule prevents a Judge from permitting parties and spectators to use their devices for non-recording purposes as the Judge may allow in his or her discretion.

(d) Nothing in this article shall prohibit making written notes and sketches pertaining to any judicial proceeding in the Business Court.

Rule 16-2. Electronic Device and Recording Definitions

As used in this article:

(1) The term "recording device" means a device capable of electronically or mechanically storing, accessing, or transmitting sounds or images. The term encompasses, among other things, a —

(A) computer of any size, including a tablet, notebook, or laptop;

(B) smart phone, a cell phone, or other wireless phone;

(C) camera and other audio or video recording device;

(D) personal digital assistant; or

(E) any similar device.

(2) The term "record" means to electronically or mechanically store, access, or transmit a sound or image, including by photographing, making an audio or video recording, or broadcasting.

(3) The term "courtroom" means the room in which a Judge will conduct a Business Court proceeding and the areas immediately outside the courtroom entrances or any areas providing visibility into the courtroom.

Rule 16-3. Jurors, Witnesses, Parties, and Spectators

The following restrictions shall apply to the use of a recording device by a juror, a prospective juror, a witness, a party, a spectator, and a representative of the news media:

(1) **Jurors**. A juror shall turn the power off to any recording device while present in a courtroom and while present in a jury room during the jury's deliberations and discussions concerning a case. A juror may use his or her device during breaks, as authorized by the Judge. A juror shall not record Business Court proceedings.

(2) **Witnesses**. A witness shall turn the power off to any recording device while present in a courtroom but may use such device while testifying with permission of the Judge. Witnesses shall not record Business Court proceedings.

(3) **Parties and Spectators**. All parties and spectators shall turn the power off to any recording device while present in a courtroom, unless the Judge communicates orally or in writing permission to use a recording device in the courtroom for purposes other than recording sounds and images. The Court, in its sole discretion, may freely grant such permission if such use would not be distracting and is not

otherwise contrary to the administration of justice. When such use is permitted, a recording device shall be silenced and may not be used to make or receive telephone calls or for other audible functions without the express permission of the Judge. A party or spectator may use a recording device to record a proceeding only as specifically authorized by the Business Court pursuant to this rule.

Rule 16-4. Attorneys, Employees of Attorneys, and Self-Represented Litigants

(a) **Use of Recording Devices to Record**. Unless otherwise ordered by the Business Court, an attorney representing a party in a proceeding or a self-represented litigant may make audio recordings of the proceeding in a non-disruptive manner after announcing to the Court and all parties that they intend to do so. Recordings made pursuant to this section may be used only in litigating the case or as otherwise allowed by the Court or provided by law.

(b) **Use of Recording Devices for Non-recording Purposes**. An attorney and his or her employee, such as a paralegal or investigator, may use a recording device in a courtroom for purposes other than recording sounds and images, including word processing, storing or retrieving information, accessing the internet, and sending or receiving messages or information. A self-represented litigant may do the same, but only in direct relation to his or her proceeding. A recording device shall be silenced and may not be used to make or receive a telephone call or for another audible function without the express permission of the Judge.

(c) **Limitation**. Any allowed use of a recording device under this article is subject to the authority of the Judge to terminate activity that is disruptive, distracting, or otherwise contrary to the administration of justice.

Rule 16-5. Celebratory or Ceremonial Proceedings

Nothing in this article shall preclude a person from requesting (orally or in writing) and the Business Court from approving (orally or in writing) the use of a recording device in a courtroom to record a celebratory or ceremonial proceeding or use of a recording device in a courtroom when the Court is not in session.

Rule 16-6. Other Requests to Record

Any other person or organization, including a representative of the news media, desiring to record a court proceeding, shall apply to the Business Court for an order granting such request to record. The Court's determination of such request shall be governed by the following:

(1) **Submission of a Request to Record**. The person or organization shall submit

the request to the Business Court or to an officer of the Court designated to receive such requests under this rule. The request should address any logistical issues that are expected to arise.

(2) **Time Limit for Submitting a Request to Record**. The person or organization shall submit the request sufficiently in advance of the proceeding to allow the Business Court to consider it in a timely manner. For purposes of this subsection, "sufficiently in advance" means at least 24 hours before the date of the proceeding, if practicable under the circumstances.

(3) **Notice and Hearing**. The Business Court shall notify all parties of its receipt of a request for recording. A party shall then notify his or her witnesses. The Court shall promptly hold a hearing if the Judge intends to deny the request or a portion thereof, or if a party or witness objects to a request. The hearing under this subsection shall be part of the official record of the proceeding.

(4) **Time for a Party or Witness to Object to a Request to Record**. A properly notified party or witness waives any objection to a request to record a proceeding if the party or witness does not object to the request in writing or on the record before or at the start of the proceeding.

Rule 16-7. Denial or Limits on Recording

A properly submitted request for recording will generally be approved by the Business Court, but the Court may deny or limit the request as provided in this rule. The Court's decision on a request, or on an objection to a request, is reviewable as provided by law and as follows:

(1) **Denial of Recording**. The Business Court may deny a request to record only after making specific findings on the record that (i) there is a substantial likelihood of harm, (ii) the harm outweighs the benefit of recording to the public, and (iii) the Business Court has considered more narrow restrictions on recording than a complete denial of the request. In considering whether there is substantial likelihood of harm, the Court shall consider one or more of the following factors:

(A) The nature of the particular proceeding at issue.

(B) The consent or objection of a party or witness whose testimony will be presented in the proceedings.

(C) Whether the proposed recording will promote increased public access to the courts and openness of judicial proceedings.

(D) The impact on the integrity and dignity of the Court.

(E) The impact on the administration of the Court.

(F) The impact on due process and the truth-finding function of the judicial proceeding.

(G) Whether the proposed recording would contribute to the enhancement of or detract from the ends of justice.

(H) Any special circumstances of the parties, witnesses, or other participants, such as the need to protect children or factors involving the safety of participants in the judicial proceeding.

(I) Any other factor affecting the administration of justice.

(J) Any other factor the Business Court deems significant under the circumstances of the case.

(2) **Limitation of Recording**. Upon its motion or upon the request of a party, the Business Court may allow recording as requested or may, only after making specific findings on the record based on the factors listed in subsection (1) of this rule, impose the least restrictive possible limitations such as an order that —

(A) no recording may be made of a civil party, witness, or other person;

(B) such person's identity shall be effectively obscured in any image or video recording; or

(C) only an audio recording may be made of such person.

Rule 16-8. Manner of Recording and Pooling of Devices

(a) The Judge shall attempt to preserve the dignity of the proceeding by designating the placement of equipment and personnel for recording the proceeding. All persons and affiliated individuals engaged in recording must avoid conduct or appearance that may disrupt or detract from the dignity of the proceeding. No person shall use any recording device in a manner that disrupts a proceeding.

(b) The Business Court may require the pooling of recording devices, if appropriate. A person or organization authorized to record has the responsibility to implement proper pooling procedures that meet the approval of the Court.

Rule 16-9. Prohibitions on Recording

The following uses of recording devices shall be prohibited:

(1) **No Use of Recording Devices if Judge is Outside the Courtroom**. Except as otherwise provided in BCRs 16-4 and 16-5, a person may use a recording device in a courtroom only when the Judge is present and the use of a recording device shall terminate when the Judge leaves the courtroom.

(2) **Recording of Jurors**. A recording device shall be placed to avoid recording images of a juror or prospective juror. An audio recording of a juror's or prospective juror's statement or conversation shall also be prohibited, except that the jury foreperson's announcement of the verdict or his or her question to the Judge may be audio recorded.

(3) **No Recording of Privileged or Confidential Communication**. To preserve the attorney-client privilege and client confidentiality as set forth in the Georgia Rules of Professional Conduct and statutory or decisional law, no person shall make a recording of any communication subject to the attorney-client privilege or client confidentiality.

(4) **No Recording of Bench Conferences**. No person other than the court reporter may record a bench conference, unless prior express permission is granted by the Business Court.

Rule 16-10. Recording Not an Official Court Record

No recording of a Business Court proceeding made pursuant to this article may be used to modify or supplement the official court record of that proceeding without express permission of the Court pursuant to OCGA § 5-6-41 (f).

Rule 16-11. Disciplinary Authorities Exempt and Enforcement

(a) This article shall not apply to disciplinary authorities acting in the course of their official duties.

(b) Persons who violate this article may be removed or excluded from the courtroom. A willful violation of this article may be punishable by contempt of court.

[Source: Uniform Superior Court Rule 22 (modified)]

ARTICLE 17. RECUSAL AND DISQUALIFICATION

Rule 17-1. Motion for Recusal and Affidavits in Support

(a) A motion to recuse or disqualify a Business Court Judge presiding in a particular case or proceeding shall be timely filed in writing. A motion to recuse or disqualify shall be filed with an affidavit that —

(1) presents all evidence supporting the motion; and

(2) fully asserts the facts upon which the motion is founded.

(b) The motion to recuse or disqualify shall be filed not later than five days after the date the filing party first learned of the alleged grounds for recusal or disqualification. Such filing shall also be not later than ten days prior to the date of the hearing or trial which is the subject of recusal or disqualification. The time requirements in this section shall be enforced unless good cause is shown for failure to meet such requirements. The motion to recuse or disqualify shall not be allowed to delay the trial or proceeding.

Rule 17-2. Affidavit in Support of Recusal or Disqualification

(a) The affidavit in support of the motion to recuse or disqualify shall clearly state (i) the specific provision of the Code of Judicial Conduct or OCGA § 15-1-8 the affiant believes warrants disqualification of the Judge from presiding over the case or proceeding; and (ii) the specific facts and reasons for the belief that bias or prejudice exists.

(b) The facts and reasons stated in the affidavit in support of recusal or disqualification shall be definite and specific as to time, place, persons, and circumstances of extra-judicial conduct or statements that demonstrate any of the following which would influence the Judge and impede or prevent impartiality:

(1) Bias in favor of any adverse party.

(2) Prejudice toward the moving party in particular.

(3) A systematic pattern of prejudicial conduct toward persons similarly situated to the moving party.

(c) Allegations consisting of bare conclusions and opinions shall not be legally sufficient to support the motion to recuse or disqualify or warrant further proceedings.

Rule 17-3. Duty of Judge

(a) When a Judge is presented with a motion to recuse or disqualify, accompanied by a

supporting affidavit, the Judge shall temporarily cease to act upon the merits of the matter and shall immediately determine the timeliness of the motion and the legal sufficiency of the affidavit, and make a determination, assuming any of the facts alleged in the affidavit to be true, whether recusal would be warranted.

(b) If it is found that the motion to recuse or disqualify is timely, the affidavit sufficient, and that recusal would be authorized if some or all of the facts set forth in the affidavit are true, then the motion shall be handled in the manner prescribed in this rule and BCR 17-4.

(c) The allegations of the motion to recuse or disqualify shall stand denied automatically. The Judge shall not otherwise oppose the motion. In reviewing a motion to recuse, the Judge or justice (as provided in BCR 17-4) shall be guided by Canon 3 (E) of the Georgia Code of Judicial Conduct.

Rule 17-4. Procedure Upon Motion for Disqualification

The motion to recuse or disqualify shall be assigned for hearing to another Business Court Judge, if any, or a justice of the Supreme Court of Georgia (pursuant to OCGA § 15-5A-2 (f)), who shall be selected in the following manner:

(1) If the Business Court consists of only one Judge, then the motion shall be referred to the Chief Justice of the Supreme Court of Georgia (pursuant to OCGA § 15-5A-2 (f)), who in his or her discretion, shall either hear the motion or shall otherwise select another justice of the Supreme Court to hear the motion. If the motion is sustained, the Chief Justice shall order a sitting judge of the Georgia Court of Appeals, a superior court, or a state court to sit by designation as a temporary judge of the Georgia State-wide Business Court.

(2) If the Business Court consists of two Judges, the other Business Court Judge, unless also disqualified, shall hear the motion. If he or she is disqualified, then the assignment of the motion shall follow the procedures set forth in subsection (1) of this rule.

(3) If the Business Court consists of three or more Judges, selection shall be made by use of the Court's existing random impartial case assignment method. If the Court does not have random, impartial case assignment rules, then assignment shall be determined by one of the following methods:

(A) The Chief Judge of the Business Court, if any, shall select a Business Court Judge to hear the motion, unless the Chief Judge is the one against whom the motion is filed.

(B) If the Court has no designated Chief Judge or the Chief Judge is the one against whom the motion is filed, the assignment shall be made by the Judge of the Business Court who is the next most senior by years of service, unless the Judge with the next most seniority is also a Judge against whom the motion is filed. The process contemplated in this paragraph shall continue until either the case is assigned to a Business Court Judge who is not disqualified, or all Business Court Judges are disqualified from hearing the motion.

(4) If all Judges of the Business Court are disqualified from hearing the motion, the assignment of the motion shall follow the procedures set forth in subsection (1) of this rule.

Rule 17-5. Findings and Ruling

The Judge or Supreme Court Justice assigned to hear the motion to recuse or disqualify may consider the motion solely based upon the affidavit in support or may convene a hearing to consider additional evidence. After consideration of the evidence, the Judge or Supreme Court Justice assigned shall rule on the merits of the motion and shall make written findings and conclusions. If the motion is sustained, the selection of another Judge to hear the case shall follow the same procedure as established in BCR 17-4. Any determination of disqualification shall not be competent evidence in any other case or proceedings.

Rule 17-6. Voluntary Recusal

If a Business Court Judge, either on the motion of one of the parties or the Judge's own motion, voluntarily disqualifies him or herself from hearing a particular case, another Judge selected by the procedure set forth in BCR 17-4 shall be assigned to hear the matter involved. A voluntary recusal shall not be construed as either an admission or denial of any allegations which have been set out in the motion.

[Source: Uniform Superior Court Rule 25.1 – 25.7 (modified); see also OCGA § 15-5A-2 (f) (addressing Supreme Court's role in recusal process)]

ARTICLE 18. REMITTITUR AND JUDGMENT

Rule 18-1. Filing of Remittitur and Judgment

After receiving the remittitur and judgment of an appellate court, a copy of the notice of appeal, the remittitur, and the index of each appeal shall be filed with the original action and the balance of the copy of the record shall be destroyed. The original record shall be retained. If two or more cases are involved in one appeal, the material referenced in this rule shall be placed in one of the case files and a cross-reference to

that file shall be noted in each remaining file.

[Source: Uniform Superior Court Rule 38]

ARTICLE 19. DOCKET, FORMS, AND CASELOAD REPORTING

Rule 19-1. Docket Maintenance

The Clerk shall maintain the docket, which includes the information required under these rules. The docket shall bear the name of the docket and a unique consecutive number. No other dockets shall be kept.

Rule 19-2. Docket Indexing

The docket shall contain separate civil action number entries for all filed actions. Each action in the docket shall be indexed by the name of all parties to the action. This docket shall contain entries of all the following information:

(1) Action Number – i.e., a unique civil action number shall be assigned to each action.

(2) Cause of Action – i.e., an entry of the specific type of action filed.

(3) Names of all counsel of record.

(4) Names of all parties.

(5) Date of filing.

(6) Costs paid.

(7) Date and type of service.

(8) The date and type of specific disposition of the action, including clear entries for each of the following:

(A) Dismissals (with or without prejudice).

(B) Settlements.

(C) Judgments and the type of judgment (i.e., summary, default, on the pleadings, consent, on the verdict, notwithstanding the verdict, and directed verdict).

(D) Five-year or other administrative termination.

(E) Transfer to court with proper jurisdiction and venue.

(F) Whether the verdict or judgment is for the plaintiff or the defendant.

(G) Whether there was a mistrial.

(H) The date of the trial, if any.

(I) Whether the case was tried (with or without jury).

(J) The name of the Judge making the final disposition of the case.

Rule 19-3. Case Initiation Form Processing

In accordance with BCR 3-14, the Clerk shall require an attorney filing an action in the Business Court to complete a case initiation form. The Clerk shall enter the civil action number for the case on the case initiation form and the form shall become part of the file for the case. The Clerk shall use each cause of action indicated by the attorney completing the form to enter the cause of action upon the docket of the Court, unless it appears to the satisfaction of the Clerk by an inspection of the pleadings that a cause of action has been recorded in error by the attorney. If an erroneous cause of action has been recorded, the Clerk shall correct the case initiation form and enter each correct cause of action upon the docket of the Court.

Rule 19-4. Case Disposition Form

An order disposing of an action presented for consideration to the Business Court by any attorney or party shall be accompanied by a completed case disposition form. If the order is prepared or reframed by the Business Court, the Court shall cause the case disposition form to be completed or corrected, if necessary. The case disposition form shall be sent to the Clerk along with the relevant order to become part of the file for the case. The Clerk shall require any attorney or party filing a voluntary dismissal or settlement of an action to complete a case disposition form. The form shall become part of the file for the case. The Clerk shall use the specific type of disposition found on the completed case disposition form to enter the specific type of disposition upon the docket of the Court, unless it appears to the satisfaction of the Clerk by an inspection of the order that the type of disposition has been recorded in error. If the wrong type of disposition has been recorded, the Clerk shall correct the case disposition form and enter the correct type of disposition upon the docket of the Court. If additional information is deemed necessary by the Business Court at disposition, the case

disposition form may be modified to include new items by using the blank space available at the bottom of the form.

Rule 19-5. Caseload Reporting

The Business Court shall prepare a caseload management report within ten days after the last calendar day of each month. The Chief Justice of the Supreme Court of Georgia may request copies of the information that is prepared by the Business Court pursuant to this rule. The case types, events types, and disposition methods used in the caseload management reports shall conform to Judicial Council guidelines for reporting caseload. Each such report shall include all the following:

(1) The number of cases filed by case type in the prior month and year-to-date.

(2) The number of cases disposed of by case type and disposition method in the prior month and year-to-date.

(3) The number and type of pending cases.

(4) A list of cases more than 180 days old, to include —

(A) case number;

(B) style;

(C) case type;

(D) filing date;

(E) next event scheduled;

(F) date of that event; and

(G) any other information available to the Business Court within its standardized computer programs.

[Source: Uniform Superior Court Rule 39 (modified)]

ARTICLE 20. MOTIONS FOR NEW TRIAL

Rule 20-1. Time for Hearing on Motion

(a) Counsel shall make a reasonable effort to expedite litigation consistent with the

interests of his or her client. The Business Court shall hear a motion for new trial as promptly as possible. A ruling on such motion shall be rendered within the time period required by law and on the record, provided that the motion is complete and the transcript and post-hearing motions or other matters are submitted.

(b) The Business Court shall monitor the progress of each case. Priority should ordinarily be given to cases pending the longest.

Rule 20-2. Transcript Cost

Except where leave to proceed in forma pauperis (i.e., a person unable to pay court costs and fees due to indigence) has been granted by the Business Court, an attorney who files a motion for new trial, or a notice of appeal which specifies that the transcript of evidence or hearing shall be included in the record, shall be personally responsible for compensating the court reporter for the cost of transcription. The filing of such motion or notice shall constitute a certificate by the attorney that the transcript has been ordered from the court reporter. The filing of such motion or notice prior to ordering the transcript from the reporter shall subject the attorney to disciplinary action by the Court.

Rule 20-3. Transmission of Record

Upon filing of a notice of appeal, the Clerk shall compile and transmit the record in accordance with the requirement of the appropriate appellate court as required by OCGA § 5-6-43.

[Source: Uniform Superior Court Rule 41 (modified)]

ARTICLE 21. COURT SECURITY AND JUDICIAL EMERGENCY

Rule 21-1. Security and Emergencies Generally

In consultation with the Supreme Court of Georgia, the Business Court shall prepare for emergencies by developing both a court security plan (the "Court Security Plan") to address the safety of the public and Court employees and a judicial emergency operations plan (the "Emergency Operations Plan") to provide for an immediate response to any type of emergency and provide for continuity of operations during such emergency.

Rule 21-2. Court Security Plan

The Georgia State Patrol, in consultation with the Chief Judge of the Business Court, if any, shall develop and implement a comprehensive Court Security Plan. If no Chief

Judge is so designated, it shall be the responsibility of the senior most Judge of the Business Court to develop and implement the Court Security Plan. The Court Security Plan shall be reviewed and updated annually, and employees shall be educated annually on their role, if any, in such plan.

Rule 21-3. Emergency Operations Plan

(a) The Business Court shall develop and implement an Emergency Operations Plan for the Court. If no Chief Judge is so designated, it shall be the responsibility of the senior most Judge of the Business Court to develop and implement the Emergency Operations Plan. Such plan shall at a minimum include all of the following:

(1) A method for collecting and maintaining contact information for all employees to be utilized during an emergency.

(2) Identification of relocation sites and provisions for preparing such sites.

(3) Identification of essential activities and functions to be performed.

(4) Identification of employees designated to perform essential activities and method for training of said employees at least annually.

(5) A person designated to provide information to the public and the press during and immediately following the emergency.

(6) Identification of vital records and equipment and provisions for their protection or back-up.

(b) The Administrative Office of the Courts shall make available materials to assist the Business Court in complying with this rule.

Rule 21-4. Judicial Emergency Order

(a) If the Court is experiencing a judicial emergency or disruption in operations, it may issue an order authorizing relief from deadlines imposed by statutes, rules, regulations, or Court orders until the restoration of normal Court operations or as specified.

(b) The judicial emergency order may also designate one or more facilities as a temporary court facility. Such facility must be suitable for Court business.

(c) The judicial emergency order shall contain all of the following:

(1) The identity of the Judge.

(2) The date, time, and place executed.

(3) The nature of the emergency.

(4) The period of duration.

(5) Other information relevant to the suspension or restoration of court operations.

(d) The duration of a judicial emergency order shall be limited to a maximum of 30 days. The order may only be extended twice by the issuing Judge for two additional 30-day periods. Such an extension shall contain the information required in section (c) of this rule.

[Source: Uniform Superior Court Rule 45 (modified)]

ARTICLE 22. SPECIAL MASTER

Rule 22-1. Appointment, Removal, and Substitution

(a) Unless a statute provides otherwise, upon the motion of a party or upon the Business Court's own motion, the Court may appoint a special master to conduct any of the following:

(1) To perform duties consented to by the parties.

(2) To address pretrial and post-trial matters that the Court cannot efficiently, effectively or promptly address.

(3) To provide guidance, advice, and information to the Court on complex or specialized subjects, including technology issues related to the discovery process.

(4) To monitor implementation of and compliance with orders of the Court or, in appropriate cases, to monitor implementation of settlement agreements.

(5) To investigate and report to the Court on matters identified by the Court.

(6) To conduct an accounting as instructed by the Court and to report upon the results of the same.

(7) Upon a showing of good cause, to attend and supervise depositions conducted outside of the Court's jurisdiction.

(8) To hold trial proceedings and make or recommend findings of fact on issues to be decided by the Court without a jury if appointment is warranted by —

(A) some exceptional condition, or

(B) the need to perform an accounting, to resolve a difficult computation of damages, or if the matter involves issues for which a special substantive competence would be beneficial.

(b) A special master shall not have a relationship to the parties, counsel, action, or Judge that would require disqualification of a Judge under applicable standards, unless the parties consent to the appointment of a particular person after disclosure of all potential grounds for disqualification and the Court thereafter approves such appointment.

(c) In appointing a special master, the Business Court must, if possible, consider the fairness of imposing the likely expenses on the parties and should protect against unreasonable expense and delay, taking into account the burdens and the benefits such an appointment would produce. The appointment of a special master shall not deprive any party access to the courts or the civil justice system.

(d) A special master may be removed or substituted by order of the Business Court, upon the motion of a party or on the Court's own motion.

Rule 22-2. Order Appointing Special Master

(a) **Notice**. The Court shall give the parties notice and an opportunity to be heard before appointing a special master.

(b) **Contents**. The order appointing a special master shall direct such master to proceed with all reasonable diligence and shall state all the following:

(1) The special master's duties, including any investigative or enforcement duties, and any specific limits on the master's authority.

(2) The circumstances, if any, in which the special master may communicate ex parte with the Court or a party.

(3) The nature of the materials to be preserved and filed as the record of the special master's activities.

(4) The time limits, method of filing the record, other procedures, and standards for reviewing the special master's orders, findings, and recommendations.

(5) The basis, terms, and procedure for fixing the special master's compensation pursuant to BCR 22-8.

(c) **Entry of Order of Appointment**. The Business Court may enter an order appointing a special master only after the prospective special master has filed an affidavit: (1) disclosing whether there is any ground for his or her disqualification and, if a ground for disqualification is disclosed, after the parties have consented with the Court's approval to waive the disqualification; and (2) certifying that the special master shall discharge his or her duties required by law and pursuant to the Court's instructions without favor to, or prejudice against, any party.

(d) **Amendment**. The order appointing a special master may be amended at any time by the Business Court after notice to the parties and an opportunity to be heard.

Rule 22-3. Authority of Special Master

Unless the order of appointment expressly directs otherwise, a special master shall have authority to regulate all proceedings and take all appropriate measures to perform fairly and efficiently all assigned duties. Unless otherwise indicated in the Business Court's order of appointment, the special master shall have the power to take evidence, hear motions, and pass on questions of law and fact within the scope of the referral order. The special master may by order impose upon a party any non-contempt sanction provided by OCGA §§ 9-11-37 and 9-11-45, and may recommend to the Court a contempt sanction against a party and any sanction against a nonparty.

Rule 22-4. Evidentiary Hearing by Special Master

Unless the order of appointment expressly directs otherwise, a special master conducting an evidentiary hearing may exercise the power of the Business Court to compel, take, or record evidence.

Rule 22-5. Service of Order by Special Master

A special master who makes an order shall promptly serve a copy of such order on each party.

Rule 22-6. Special Master's Report

(a) Unless otherwise indicated in the order of appointment, a special master shall report all of the following to the Business Court:

(1) All motions submitted by the parties.

(2) All rulings made on all issues presented and all conclusions of law and findings of fact.

(3) All evidence offered by the parties and all rulings as to the admissibility of such evidence.

(4) Such other matters as the special master may deem appropriate.

(b) The special master shall file his or her report and promptly serve a copy of the report on each party, unless the Business Court directs otherwise.

Rule 22-7. Action on Special Master's Order, Report, or Recommendation

(a) **Action**. In acting on a special master's order, report, or recommendation, the Business Court shall afford the parties an opportunity to be heard and to object to any portion of such order, report, or recommendation. The Court may receive evidence, and may adopt or affirm, modify, reject, or reverse in whole or in part, or resubmit all or some issues to the special master with instructions.

(b) **Time to Object or Move**. A party may file a motion to reject or to modify the special master's order, report, or recommendation within 20 days from the date on which the master's order, report, or recommendation is served, unless the Business Court sets a different time. The special master's order, report, or recommendation shall be deemed received three days after the date it is mailed by United States mail or on the same day if transmitted electronically or by hand-delivery. In the absence of a motion to reject or modify an order, report, or recommendation within the time provided, the order, report, or recommendation shall have the force and effect of an order of the Court.

(c) **Fact Findings**. The Business Court shall decide de novo all objections to findings of fact made or recommended by a special master, unless the parties stipulate with the Court's consent that —

(1) the special master's findings will be reviewed for clear error, or

(2) the findings of a special master appointed under this article will be final.

(d) **Legal Conclusions**. The Business Court shall decide de novo all objections to conclusions of law made or recommended by a special master.

(e) **Procedural Matters**. Unless the order of appointment establishes a different standard of review, the Business Court may set aside a special master's ruling on a

procedural matter only for an abuse of discretion.

Rule 22-8. Compensation of Special Master

(a) **Fixing Compensation**. The Business Court shall fix the special master's compensation on the basis and terms stated in the order of appointment, but the Court may set a new basis and terms following notice and an opportunity to be heard.

(b) **Payment**. The compensation fixed shall be paid either —

(1) by a party or parties; or

(2) from a fund or subject matter of the action within the Business Court's control.

(c) **Allocation**. The Business Court shall allocate payment of the special master's compensation among the parties after considering the nature of the dispute and amount in controversy, the means of the parties, and the extent to which any party is more responsible than other parties for the reference to a special master. An interim allocation may be amended to reflect a decision on the merits.

[Source: Uniform Superior Court Rule 46 (modified)]

ARTICLE 23. GENERAL PROVISIONS

Rule 23-1. Georgia State-wide Business Court Seal

The Chief Judge, if any, may designate a Business Court seal, which shall be the official Court seal for use in such official and ceremonial purposes as the Chief Judge, if any, shall designate. If no Chief Judge is so designated, it shall be the responsibility of the senior most Judge of the Business Court to designate an official seal for the Court.

[Source: Delaware Chancery Court Rule 80 (modified)]

APPENDIX A. PRO HAC VICE CERTIFICATION

The application of the Domestic Lawyer or Foreign Lawyer for admission pro hac vice to the Business Court shall include all of the following:

1. The applicant's residence and business address.

2. The name, address, and phone number of each client sought to be represented.

3. The courts before which the applicant has been admitted to practice and each respective period of admission, as well as contact information for each such court.

4. Whether the applicant (a) has been denied admission pro hac vice in this State, (b) had admission pro hac vice revoked in this State, or (c) has otherwise formally been disciplined or sanctioned by any court in this State, and if so, he or she must specify: the nature of the allegations, the name of the authority bringing such proceedings, the caption of the proceedings, the date filed, and what findings were made and what action was taken in connection with those proceedings.

5. Whether any formal, written disciplinary proceeding has ever been brought against the applicant by a disciplinary authority in any other jurisdiction and, as to each such proceeding: the nature of the allegations; the name of the person or authority bringing such proceedings and contact information as to such person or authority; the date the proceedings were initiated and finally concluded; the style of the proceedings; and the findings made and actions taken in connection with such proceedings.

6. Whether the applicant has been held formally in contempt or otherwise sanctioned by any court in a written order for disobedience of its rules or orders, and, if so: the nature of the allegations; the name and contact information of the court before which such proceedings were conducted; the date of the contempt order or sanction; the caption of the proceedings; and the substance of the court's rulings (a copy of the written order or transcript of the oral rulings must be attached to the application).

7. The name and address of each court or agency and a full identification of each proceeding in which the applicant has filed an application to appear pro hac vice in this State within the preceding two years; the date of each application; and the outcome of each application.

8. An averment as to the applicant's familiarity with the Georgia Rules of

Professional Conduct, local court rules, and court procedures of the Business Court.

9. The name, address, e-mail address, telephone number, and bar number of an active member in good standing of the State Bar of Georgia who will sponsor the applicant's pro hac vice request (and who shall appear of record together with the Domestic Lawyer or Foreign Lawyer).

10. An affidavit attesting that the applicant shall, throughout the period of appearance pro hac vice, comply with all relevant provisions of the United States immigration laws and shall maintain valid immigration status.

The Domestic Lawyer's or Foreign Lawyer's application may provide any of the following optional information:

1. The applicant's prior or continuing representation in other matters of one or more of the clients that the applicant proposes to represent and any relationship between each such other matter and the proceeding for which the applicant seeks admission.

2. Any special experience, expertise, or other factor that the applicant believes is relevant to the Court's consideration of his or her application.

APPENDIX B. CERTIFICATION FOR WITHDRAWAL OF FUNDS FROM COURT

I hereby certify that the order presented in Civil Action No. _____ on this, the _____day of _____, 20__, to draw down funds from the registry of the Georgia Statewide Business Court, is done with written consent of all parties, or their counsel, who have filed claims of record in this case, and whose interest has not previously been foreclosed by judicial decree.

I understand that the truth of the statements contained in this certificate is a condition precedent to the issuance of a valid order to pay the funds from the registry of the Court.

_____
Signature

_____
Name

_____
Party Represented