

NORTH CAROLINA GENERAL ASSEMBLY
1967 SESSION

CHAPTER 954
HOUSE BILL 401

1 AN ACT TO AMEND THE LAWS RELATING TO CIVIL PROCEDURE.

2
3 The General Assembly of North Carolina do enact:

4
5 **Section 1.** A new chapter is hereby inserted in the General Statutes of North
6 Carolina, to read as follows:

7 **"Chapter 1A**

8 **§ 1A-1. Rules of Civil Procedure.** The Rules of Civil Procedure are as follows:

9 ARTICLE 1

10 Scope of Rules — One Form of Action

11 Rule 1

12 SCOPE OF RULES

13 These Rules shall govern the procedure in the Superior and District Courts of the State of
14 North Carolina in all actions and proceedings of a civil nature except when a differing
15 procedure is prescribed by statute.

16 Rule 2

17 ONE FORM OF ACTION

18 There shall be in this State but one form of action for the enforcement or protection of
19 private rights or the redress of private wrongs, which shall be denominated a civil action.

20 ARTICLE 2

21 Commencement of Action; Service of Process, Pleadings, Motions, and Orders

22 Rule 3

23 COMMENCEMENT OF ACTION

24 A civil action is commenced by filing a complaint with the court. The clerk shall enter the
25 date of filing on the original complaint, and such entry shall be prima facie evidence of the date
26 of filing.

27 A civil action may also be commenced by the issuance of a summons when (1) a person
28 makes application to the court stating the nature and purpose of his action and requesting
29 permission to file his complaint within 20 days and (2) the court makes an order stating the
30 nature and purpose of the action and granting the requested permission. The summons and the
31 court's order shall be served in accordance with the provisions of Rule 4. When the complaint is
32 filed it shall be served in accordance with the provisions of Rule 4 or by registered mail if the
33 plaintiff so elects. If the complaint is not filed within the period specified in the clerk's order,
34 the action shall abate.

35 Rule 4

36 PROCESS

37 (a) **Summons: Issuance; Who May Serve.** Upon the filing of the complaint, summons
38 shall be issued forthwith, and in any event within five days. The complaint and summons shall
39 be delivered to some proper person for service. In this State, such proper person shall be the
40 sheriff of the county where service is to be attempted or some other person duly authorized by
41 law to serve summons. Outside this State, such proper person shall be anyone duly authorized
42 to serve summons by the law of the place where service is to be attempted. Upon request of the
43 plaintiff separate or additional summons shall be issued against any defendants. A summons is

1 issued when, after being filled out and dated, it is signed by the officer having authority to do
2 so. The date the summons bears shall be prima facie evidence of the date of issue.

3 (b) Summons: Contents. The summons shall run in the name of the State and be dated
4 and signed by the clerk, assistant clerk, or deputy clerk of the court in the county in which the
5 action is commenced. It shall contain the title of the cause and the name of the court and county
6 wherein the action has been commenced. It shall be directed to the defendant or defendants and
7 shall notify each defendant to appear and answer within 30 days after its service upon him and
8 further that if he fails so to appear, the plaintiff will apply to the court for the relief demanded
9 in the complaint. It shall set forth the name and address of plaintiff's attorney, or if there be
10 none, the name and address of plaintiff.

11 (c) Summons: Return. Personal service or substituted personal service of summons as
12 prescribed by Rule 4(j)(1) a and b, must be made within 30 days after the date of the issuance
13 of summons, except that in tax and assessment foreclosures under G.S. 105-391 or G.S. 105-
14 414 the time allowed for service is 60 days. But failure to make service within the time allowed
15 shall not invalidate the summons. If the summons is not served within the time allowed upon
16 every party named in the summons, it shall be returned immediately upon the expiration of
17 such time by the officer to the clerk of the court who issued it with notation thereon of its
18 nonservice and the reasons therefor as to every such party not served, but failure to comply
19 with this requirement shall not invalidate the summons.

20 (d) Summons: Extension; Endorsement, Alias and Pluries. When any defendant in a
21 civil action is not served within the time allowed for service, the action may be continued in
22 existence as to such defendant by either of the following methods of extension:

- 23 (1) The plaintiff may secure an endorsement upon the original summons for an
24 extension of time within which to complete service of process. Return of the
25 summons so endorsed shall be in the same manner as the original process.
26 Such endorsement may be secured within 90 days after the issuance of
27 summons or the date of the last prior endorsement, or
- 28 (2) The plaintiff may sue out an alias or pluries summons returnable in the same
29 manner as the original process. Such alias or pluries summons may be sued
30 out at any time within 90 days after the date of issue of the last preceding
31 summons in the chain of summonses or within 90 days of the last prior
32 endorsement.

33 Provided, in tax and assessment foreclosures under G.S. 105-391 and
34 G.S. 105-414, the first endorsement may be made at any time within two
35 years after the issuance of the original summons, and subsequent
36 endorsements may thereafter be made as in other actions; or an alias or
37 pluries summons may be sued out at any time within two years after the
38 issuance of the original summons, and after the issuance of such alias or
39 pluries summons, the chain of summonses may be kept up as in any other
40 action.

41 Provided, further, the methods of extension may be used interchangeably
42 in any case and regardless of the form of the preceding extension.

43 (e) Summons: Discontinuance. When there is neither endorsement by the clerk nor
44 issuance of alias or pluries summons within the time specified in Rule 4(d), the action is
45 discontinued as to any defendant not theretofore served with summons within the time allowed.
46 Thereafter, alias or pluries summons may issue, or an extension be endorsed by the clerk, but,
47 as to such defendant, the action shall be deemed to have commenced on the date of such
48 issuance or endorsement.

49 (f) Summons: Date of Multiple Summonses. If the plaintiff shall cause separate or
50 additional summonses to be issued as provided in Rule 4(a), the date of issuance of such

1 separate or additional summonses shall be considered the same as that of the original summons
2 for purposes of endorsement or alias summons under Rule 4(d).

3 (g) Summons: Docketing by Clerk. The clerk shall keep a record in which he shall note
4 the day and hour of issuance of every summons, whether original, alias, pluries, or endorsement
5 thereon. When the summons is returned, the clerk shall note on the record the date of the return
6 and the fact as to service or non-service.

7 (h) Summons: When Proper Officer Not Available. If at any time there is not in a
8 county a proper officer, capable of executing process, to whom summons or other process can
9 be delivered for service, or if a proper officer refuses or neglects to execute such process, or if
10 such officer is a party to or otherwise interested in the action or proceeding, the clerk of the
11 issuing court, upon the facts being verified before him by written affidavit of the plaintiff or his
12 agent or attorney, shall appoint some suitable person who, after he accepts such process for
13 service, shall execute such process in the same manner, with like effect, and subject to the same
14 liabilities, as if such person were a proper officer regularly serving process in that county.

15 (i) Summons: Amendment. At any time, before or after judgment, in its discretion and
16 upon such terms as it deems just, the court may allow any process or proof of service thereof
17 to be amended, unless it clearly appears that material prejudice would result to substantial rights
18 of the party against whom the process issued.

19 (j) Process: Manner of Service to Exercise Personal Jurisdiction. In any action
20 commenced in a court of this State having jurisdiction of the subject matter and grounds for
21 personal jurisdiction as provided in G.S. 1-75.4, the manner of service of process shall be as
22 follows:

- 23 (1) Natural Person. Except as provided in subsection (2) below, upon a natural
24 person:
- 25 a. By delivering a copy of the summons and of the complaint to the
26 defendant personally either within or without this State.
 - 27 b. If with reasonable diligence the defendant cannot be served under
28 paragraph a, then by leaving a copy of the summons and of the
29 complaint at the defendant's usual place of abode with some person
30 of suitable age and discretion then residing therein.
 - 31 c. If with reasonable diligence the defendant cannot be served under
32 paragraph a or b, and if the plaintiff files with the court an affidavit
33 to that effect, then process may be served by publication and mailing.
34 Service of process by publication shall consist of publishing a notice
35 of service of process by publication in a newspaper published in this
36 State likely to give notice to the defendant once a week for three
37 successive weeks. If the defendant's post office address is known or
38 can with reasonable diligence be ascertained, there shall be mailed to
39 the defendant at or immediately prior to the first publication a copy
40 of the notice of service of process by publication. The mailing may
41 be omitted if the post office address cannot be ascertained with
42 reasonable diligence.

43 The notice of service of process by publication shall (i) designate
44 the court in which the action has been commenced and the title of the
45 action which title may be indicated sufficiently by the name of the
46 first plaintiff and the first defendant; (ii) be directed to the defendant
47 sought to be served; (iii) state either that a pleading seeking relief
48 against the person to be served has been filed or has been required to
49 be filed therein not later than a date specified in the notice; (iv) state
50 the nature of the relief being sought; (v) require the defendant being
51 so served to make defense to such pleading, within 40 days after a

1 date stated in the notice, exclusive of such date, which date so stated
2 shall be the date of the first publication of notice, or the date when
3 the complaint is required to be filed, whichever is later, and notify
4 the defendant that upon his failure to do so the party seeking service
5 of process by publication will apply to the court for the relief sought;
6 (vi) be subscribed by the party seeking service or his attorney and
7 give the post office address of such party or his attorney; and (vii) be
8 substantially in the following form:

9 NOTICE OF SERVICE OF PROCESS BY PUBLICATION
10 STATE OF NORTH CAROLINA
11COUNTY
12 In the Court

13 [Title of action or special proceeding]

14 To [Person to be served]

15 Take notice that

16 A pleading seeking relief against you (has been filed) (is required to be filed not later than
17, 19...) in the above-entitled (action) (special proceeding).

18 The nature of the relief being sought is as follows: (State nature.)

19 You are required to make defense to such pleading not later than, 19..., and upon
20 your failure to do so the party seeking service against you will apply to the court for the relief
21 sought.

22 This, the day of, 19....

23(Attorney) (Party)

24(Address)

- 25 d. In any case, by serving process in a manner specified by any statute
26 upon the defendant or upon an agent authorized by appointment or
27 by law to be served or to accept service of process for the defendant.
- 28 (2) Natural Person Under Disability. Upon a natural person under disability by
29 serving process in any manner prescribed in subsection (1) upon such person
30 under disability and, in addition, where required by paragraph a or b below,
31 upon a person therein designated. A minor 14 years of age or older who is
32 not mentally incompetent and not otherwise under guardianship is not a
33 person under disability for purposes of this subsection.
- 34 a. Where the person under disability is a minor under the age of 14
35 years, process shall be served separately in any manner prescribed in
36 subsection (1) upon a parent or guardian having custody of the child,
37 or if there be none, upon any other person having the care and control
38 of the child. If there is no parent, guardian, or other person having
39 care and control of the child when service is made upon the child,
40 then service of process must also be made upon a guardian ad litem
41 who has been appointed pursuant to Rule 17.
- 42 b. If the plaintiff actually knows that a person under disability is under
43 guardianship of any kind, process shall be served separately upon his
44 guardian in the manner applicable and appropriate under subsection
45 (1), (6), (7), or (8). If the plaintiff does not actually know that a
46 guardian has been appointed when service is made upon a person
47 known to him to be incompetent to have charge of his affairs, then
48 service of process must be made upon a guardian ad litem who has
49 been appointed pursuant to Rule 17.

- 1 (3) The State. Upon the State by personally delivering a copy of the summons
2 and of the complaint to the attorney general or to a deputy or assistant
3 attorney general.
- 4 (4) An Agency of the State. a. Upon an agency of the State by personally
5 delivering a copy of the summons and of the complaint to the process agent
6 appointed by the agency in the manner hereinafter provided.
- 7 b. Every agency of the State shall appoint a process agent by filing with
8 the attorney general the name and address of an agent upon whom
9 process may be served.
- 10 c. If any agency of the State fails to comply with paragraph (b) above,
11 then service upon such agency may be made by personally delivering
12 a copy of the summons and of the complaint to the attorney general
13 or to a deputy or assistant attorney general.
- 14 d. For purposes of this Rule, the term "agency of the State" includes
15 every agency, institution, board, commission, bureau, department,
16 division, council, member of Council of State, or officer of the State
17 government of the State of North Carolina, but does not include
18 counties, cities, towns, villages, other municipal corporations or
19 political subdivisions of the State, county or city boards of education,
20 other local public districts, units, or bodies of any kind, or private
21 corporations created by Act of the General Assembly.
- 22 (5) Counties, Cities, Towns, Villages and Other Local Public Bodies. a. Upon a
23 city, town, or village by personally delivering a copy of the summons and of
24 the complaint to its mayor, city manager or clerk.
- 25 b. Upon a county by personally delivering a copy of the summons and
26 of the complaint to its county manager or to the chairman, clerk or
27 any member of the board of commissioners for such county.
- 28 c. Upon any other political subdivision of the State, any county or city
29 board of education, or other local public district, unit, or body of any
30 kind (i) by personally delivering a copy of the summons and of the
31 complaint to an officer or director thereof, or (ii) by personally
32 delivering a copy of the summons and of the complaint to an agent or
33 attorney in fact authorized by appointment or by statute to be served
34 or to accept service in its behalf.
- 35 d. In any case where none of the officials, officers or directors specified
36 in paragraphs a, b and c can, after due diligence, be found in the
37 State, and that fact appears by affidavit to the satisfaction of the
38 court, or a judge thereof, such court or judge may grant an order that
39 service upon the party sought to be served may be made by
40 personally delivering a copy of the summons and of the complaint to
41 the Attorney General or any deputy or Assistant Attorney General of
42 the State of North Carolina.
- 43 (6) Domestic or Foreign Corporation, Generally. Upon a domestic or foreign
44 corporation:
- 45 a. By personally delivering a copy of the summons and of the
46 complaint to an officer, director, or managing agent of the
47 corporation either within or without this State. In lieu of delivering
48 the copy of the summons and the complaint to the person above
49 specified, the copies may be left in the office of such officer,
50 director, or managing agent with the person who is apparently in
51 charge of the office.

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- b. If with reasonable diligence the defendant cannot be served under paragraph a, then process may be served upon the corporation by publication as provided in paragraph c of subsection (1), and mailing the required notice to an officer, director, or managing agent of the corporation.
 - c. By serving process in a manner specified by any other statute upon the defendant or upon an agent authorized by appointment or by law to be served or to accept service of process for the defendant.
 - d. If against any domestic or foreign insurance corporation, process may also be served upon any agent of such corporation as defined by the insurance laws of this State. Service upon such agent of a domestic or foreign insurance corporation is not valid unless a copy of the summons and proof of service is sent by registered mail to the principal place of business of such corporation within five days after service upon the agent.
- (7) Partnerships. Upon a general or limited partnership: a. By personally delivering a copy of the summons and of the complaint within or without the State to any general partner, or to any attorney in fact or agent authorized by appointment or by law to be served or to accept service of process in its behalf. In lieu of delivering the copy of the summons and the complaint to the person above specified, the copies may be left in the office of such general partner, attorney in fact or agent with the person who is apparently in charge of the office.
- b. If with reasonable diligence the defendant cannot be served under paragraph a, then process may be served upon the partnership by publication as provided in paragraph c of subsection (1) and mailing the required notice to any general partner, or to an attorney in fact or agent authorized by appointment or by law to be served or to accept service of process in its behalf.
 - c. If relief is sought against a partner specifically, a copy of the summons and of the complaint must be served on such partner as provided in the applicable preceding subdivision of Rule 4(j).
- (8) Other Unincorporated Associations and Their Officers. Upon any unincorporated association, organization or society other than a partnership: a. By personally delivering a copy of the summons and of the complaint to an officer, director, managing agent or member of the governing body of the unincorporated association, organization or society either within or without this State. In lieu of delivering a copy of the summons and the complaint to the person above specified, the copies may be left in the office of such officer, director, managing agent or member of the governing body with the person who is apparently in charge of the office.
- b. If with reasonable diligence the defendant cannot be served under paragraph a, then process may be served upon the unincorporated association by publication as provided in paragraph c of subsection (1), and mailing the required notice to an officer, director, managing agent or member of the governing body of the unincorporated association.
 - c. By serving process in a manner specified by any other statute upon the defendant or upon an agent authorized by appointment or by law to be served or to accept service of process for the defendant.

1 (k) Process: Manner of Service to Exercise Jurisdiction in Rem or Quasi in Rem. In any
2 action commenced in a court of this State having jurisdiction of the subject matter and grounds
3 for the exercise of jurisdiction in rem or quasi in rem as provided in G.S. 1-75.8, the manner of
4 service of process shall be as follows:

5 (1) Defendant Known. If the defendant is known, he may be served in the
6 appropriate manner prescribed for service of process in Section (j).

7 (2) Defendant Unknown. If the defendant is unknown, he may be designated by
8 description and process may be served by publication in the manner
9 provided in Section (j).

10 Rule 5

11 SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

12 (a) Service: When Required. Every order required by its terms to be served, every
13 pleading subsequent to the original complaint unless the court otherwise orders because of
14 numerous defendants, every written motion other than one which may be heard ex parte, and
15 every written notice, appearance, demand, offer of judgment, and similar paper shall be served
16 upon each of the parties, but no service need be made on parties in default for failure to appear
17 except that pleadings asserting new or additional claims for relief against them shall be served
18 upon them in the manner provided for service of summons in Rule 4.

19 (b) Service: How Made. A pleading setting forth a counterclaim or crossclaim shall be
20 filed with the court and a copy thereof shall be served on the party against whom it is asserted
21 or on his attorney of record in the manner provided for service of process in Rule 4. Written
22 return shall be made by the officer making or attempting to make service thereof, but failure to
23 make return shall not invalidate the service. With respect to all other pleadings subsequent to
24 the original complaint and other papers required or permitted to be served, service with due
25 return may be made in the manner provided for service and return of process in Rule 4 and may
26 be made upon either the party or, unless service upon the party himself is ordered by the court,
27 upon his attorney of record. With respect to such other pleadings and papers, service upon the
28 attorney or upon a party may also be made by delivering a copy to him or by mailing it to him
29 at his last known address or, if no address is known, by filing it with the clerk of court.
30 Delivery of a copy within this Rule means handing it to the attorney or to the party; or leaving
31 it at the attorney's office with a partner or employee. Service by mail shall be complete upon
32 deposit of the pleading or paper enclosed in a postpaid, properly addressed wrapper in a post
33 office or official depository under the exclusive care and custody of the United States Post
34 Office Department.

35 (c) Service: Numerous Defendants. In any action in which there are unusually large
36 numbers of defendants, the court, upon motion or of its own initiative, may order that service of
37 the pleadings of the defendants and replies thereto need not be made as between the defendants
38 and that any crossclaim, counterclaim, or matter constituting an avoidance or affirmative
39 defense contained therein shall be deemed to be denied or avoided by all other parties and that
40 the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it
41 to the parties. A copy of every such order shall be served upon the parties in such manner and
42 form as the court directs.

43 (d) Filing. All pleadings subsequent to the complaint shall be filed with the court. All
44 other papers required to be served upon a party shall be filed with the court either before
45 service or within five days thereafter. With respect to all pleadings and other papers as to which
46 service and return has not been made in the manner provided in Rule 4, proof of service shall
47 be made by filing with the court a certificate either by the attorney or the party that the paper
48 was served in the manner prescribed by this Rule, or a certificate of acceptance of service by
49 the attorney or the party to be served. Such certificate shall show the date and method of
50 service or the date of acceptance of service.

1 (e) Filing With the Court Defined. The filing of pleadings and other papers with the
2 court as required by these Rules shall be made by filing them with the clerk of the court, except
3 that the judge may permit the papers to be filed with him, in which event he shall note thereon
4 the filing date and forthwith transmit them to the office of the clerk.

5 Rule 6

6 TIME

7 (a) Computation. In computing any period of time prescribed or allowed by these
8 Rules, by order of court, or by any applicable statute, including Rules, orders or statutes
9 respecting publication of notices, the day of the act, event, default or publication after which
10 the designated period of time begins to run is not to be included. The last day of the period so
11 computed is to be included, unless it is a Saturday, Sunday or a legal holiday, in which event
12 the period runs until the end of the next day which is not a Saturday, Sunday, or a legal holiday.
13 When the period of time prescribed or allowed is less than seven days, intermediate Saturdays,
14 Sundays, and holidays shall be excluded in the computation. A half holiday shall be considered
15 as other days and not as a holiday.

16 (b) Enlargement. When by these Rules or by a notice given thereunder or by order of
17 court an act is required or allowed to be done at or within a specified time, the court for cause
18 shown may at any time in its discretion with or without motion or notice order the period
19 enlarged if request therefor is made before the expiration of the period originally prescribed or
20 as extended by a previous order. Upon motion made after the expiration of the specified period,
21 the judge may permit the act to be done where the failure to act was the result of excusable
22 neglect. Notwithstanding any other provisions of this Rule, the parties may enter into binding
23 stipulations without approval of the court enlarging the time, not to exceed in the aggregate 30
24 days, within which an act is required or allowed to be done under these Rules, provided,
25 however, that neither the court nor the parties may extend the time for taking any action under
26 Rules 50(b), 52, 59(b), (d), (e), 60(b), except to the extent and under the conditions stated in
27 them.

28 (c) Unaffected by Expiration of Session. The period of time provided for the doing of
29 any act or the taking of any proceeding is not affected or limited by the continued existence or
30 expiration of a session of court. The continued existence or expiration of a session of court in
31 no way affects the power of a court to do any act or take any proceeding, but no issue of fact
32 shall be submitted to a jury out of session.

33 (d) For Motions; Affidavits. A written motion, other than one which may be heard ex
34 parte, and notice of the hearing thereof shall be served not later than five days before the time
35 specified for the hearing, unless a different period is fixed by these Rules or by order of the
36 court. Such an order may for cause shown be made on ex parte application. When a motion is
37 supported by affidavit, the affidavit shall be served with the motion; and except as otherwise
38 provided in Rule 59(c), opposing affidavits may unless the court permits them to be served at
39 some other time be served not later than one day before the hearing.

40 (e) Additional Time After Service by Mail. Whenever a party has the right to do some
41 act or take some proceedings within a prescribed period after the service of a notice or other
42 paper upon him and the notice or paper is served upon him by mail, three days shall be added to
43 the prescribed period.

44 ARTICLE 3

45 Pleadings and Motions

46 Rule 7

47 PLEADINGS ALLOWED; FORM OF MOTIONS

48 (a) Pleadings. There shall be a complaint and an answer; a reply to a counterclaim
49 denominated as such; an answer to a crossclaim, if the answer contains a crossclaim; a
50 third-party complaint, if a person who was not an original party is summoned under the
51 provisions of Rule 14; and a third-party answer, if a third-party complaint is served. No other

1 pleading shall be allowed except that the court may order a reply to an answer or a third-party
2 answer.

3 (b) Motions and Other Papers.

4 (1) An application to the court for an order shall be by motion which, unless
5 made during a hearing or trial or at a session at which a cause is on the
6 calendar for that session, shall be made in writing, shall state the grounds
7 therefor, and shall set forth the relief or order sought. The requirement of
8 writing is fulfilled if the motion is stated in a written notice of the hearing of
9 the motion.

10 (2) The Rules applicable to captions, signing, and other matters of form of
11 pleadings apply to all motions and other papers provided for by these Rules.

12 (3) A motion to transfer under G.S. 7A-258 shall comply with the directives
13 therein specified but the relief thereby obtainable may also be sought in a
14 responsive pleading pursuant to Rule 12(b).

15 (c) Demurrers, Pleas, Etc., Abolished. Demurrers, pleas, and exceptions for
16 insufficiency shall not be used.

17 (d) Pleadings Not Read to Jury. Unless otherwise ordered by the judge, pleadings shall
18 not be read to the jury.

19 Rule 8

20 GENERAL RULES OF PLEADINGS

21 (a) Claims for Relief. A pleading which sets forth a claim for relief, whether an original
22 claim, counterclaim, crossclaim, or third-party claim, shall contain (1) a short and plain
23 statement of the claim sufficiently particular to give the court and the parties notice of the
24 transactions, occurrences, or series of transactions or occurrences, intended to be proved
25 showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief to
26 which he deems himself entitled. Relief in the alternative or of several different types may be
27 demanded.

28 (b) Defenses; Form of Denials. A party shall state in short and plain terms his defenses
29 to each claim asserted and shall admit or deny the averments upon which the adverse party
30 relies. If he is without knowledge or information sufficient to form a belief as to the truth of an
31 averment, he shall so state and this has the effect of a denial. Denials shall fairly meet the
32 substance of the averments denied. When a pleader intends in good faith to deny only a part of
33 or a qualification of an averment, he shall specify so much of it as is true and material and shall
34 deny only the remainder. Unless the pleader intends in good faith to controvert all the
35 averments of the preceding pleading, he may make his denials as specific denials of designated
36 averments or paragraphs, or he may generally deny all the averments except such designated
37 averments or paragraphs as he expressly admits; but, when he does so intend to controvert all
38 its averments, he may do so by general denial subject to the obligations set forth in Rule 11.

39 (c) Affirmative Defenses. In pleading to a preceding pleading, a party shall set forth
40 affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory
41 negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality,
42 injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute
43 of limitations, truth in actions for defamation, usury, waiver, and any other matter constituting
44 an avoidance or affirmative defense. Such pleading shall contain a short and plain statement of
45 any matter constituting an avoidance or affirmative defense sufficiently particular to give the
46 court and the parties notice of the transactions, occurrences, or series of transactions or
47 occurrences, intended to be proved. When a party has mistakenly designated a defense as a
48 counterclaim or a counterclaim as a defense, the court, on terms, if justice so requires, shall
49 treat the pleading as if there had been a proper designation.

50 (d) Effect of Failure to Deny. Averments in a pleading to which a responsive pleading
51 is required, other than those as to the amount of damage, are admitted when not denied in the

1 responsive pleading. Averments in a pleading to which no responsive pleading is required or
2 permitted shall be taken as denied or avoided.

3 (e) Pleading to be Concise and Direct; Consistency. (1) Each averment of a pleading
4 shall be simple, concise, and direct. No technical forms of pleading or motions are required.

5 (2) A party may set forth two or more statements of a claim or defense
6 alternatively or hypothetical, either in one count or defense or in separate
7 counts or defenses. When two or more statements are made in the alternative
8 and one of them if made independently would be sufficient, the pleading is
9 not made insufficient by the insufficiency of one or more of the alternative
10 statements. A party may also state as many separate claims or defenses as he
11 has regardless of consistency and whether based on legal or on equitable
12 grounds or on both. All statements shall be made subject to the obligations
13 set forth in Rule 11.

14 (f) Construction of Pleadings. All pleadings shall be so construed as to do substantial
15 justice.

16 Rule 9

17 PLEADING SPECIAL MATTERS

18 (a) Capacity. Any party not a natural person shall make an affirmative averment
19 showing its legal existence and capacity to sue. Any party suing in any representative capacity
20 shall make an affirmative averment showing his capacity and authority to sue. When a party
21 desires to raise an issue as to the legal existence of any party or the capacity of any party to sue
22 or be sued or the authority of a party to sue or be sued in a representative capacity, he shall do
23 so by specific negative averment, which shall include such supporting particulars as are
24 peculiarly within the pleader's knowledge.

25 (b) Fraud, Duress, Mistake, Condition of the Mind. In all averments of fraud, duress or
26 mistake, the circumstances constituting fraud or mistake shall be stated with particularity.
27 Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

28 (c) Conditions Precedent. In pleading the performance or occurrence of conditions
29 precedent, it is sufficient to aver generally that all conditions precedent have been performed or
30 have occurred. A denial of performance or occurrence shall be made specifically and with
31 particularity.

32 (d) Official Document or Act. In pleading an official document or official act it is
33 sufficient to aver that the document was issued or the act done in compliance with law.

34 (e) Judgment. In pleading a judgment, decision or ruling of a domestic or foreign court,
35 judicial or quasi-judicial tribunal, or of a board or officer, it is sufficient to aver the judgment,
36 decision or ruling without setting forth matter showing jurisdiction to render it.

37 (f) Time and Place. For the purpose of testing the sufficiency of a pleading, averments
38 of time and place are material and shall be considered like all other averments of material
39 matter.

40 (g) Special Damage. When items of special damage are claimed each shall be averred.

41 (h) Private Statutes. In pleading a private statute or right derived therefrom it is
42 sufficient to refer to the statute by its title or the day of its ratification, and the court shall
43 thereupon take judicial notice of it.

44 (i) Libel and Slander. (1) In an action for libel or slander it is not necessary to state in
45 the complaint any extrinsic facts for the purpose of showing the application to the plaintiff of
46 the defamatory matter out of which the claim for relief arose, but it is sufficient to state
47 generally that the same was published or spoken concerning the plaintiff; and if such allegation
48 is controverted, the plaintiff is bound to establish on trial that it was so published or spoken.

49 (2) The defendant may in his answer allege both the truth of the matter charged
50 as defamatory, and any mitigating circumstances to reduce the amount of

1 damages; and whether he proves the justification or not, he may give in
2 evidence the mitigating circumstances.

3 Rule 10

4 FORM OF PLEADINGS

5 (a) Caption; Names of Parties. Every pleading shall contain a caption setting forth the
6 division of the court in which the action is filed, the title of the action, and a designation as in
7 Rule 7(a). In the complaint the title of the action shall include the names of all the parties, but
8 in other pleadings it is sufficient to state the name of the first party on each side with an
9 appropriate indication of other parties.

10 (b) Paragraphs; Separate Statement. All averments of claim or defense shall be made in
11 numbered paragraphs, the contents of each of which be limited as far as practicable to a
12 statement of a single set of circumstances; and a paragraph may be referred to by number in all
13 succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each
14 defense other than denials shall be stated in a separate count or defense whenever a separation
15 facilitates the clear presentation of the matters set forth.

16 (c) Adoption by Reference; Exhibits. Statements in a pleading may be adopted by
17 reference in a different part of the same pleading or in another pleading or in any motion in the
18 action. A copy of any written instrument which is an exhibit to a pleading is a part thereof for
19 all purposes.

20 Rule 11

21 SIGNING AND VERIFICATION OF PLEADINGS

22 (a) Signing by Attorney. Every pleading of a party represented by an attorney shall be
23 signed by at least one attorney of record in his individual name, whose address shall be stated.
24 A party who is not represented by an attorney shall sign his pleading and state his address.
25 Except when otherwise specifically provided by these Rules or by statute, pleadings need not
26 be verified or accompanied by affidavit. The signature of an attorney constitutes a certificate by
27 him that he has read the pleading; that to the best of his knowledge, information, and belief
28 there is good ground to support it; and that it is not interposed for delay. If a pleading is not
29 signed or is signed with intent to defeat the purpose of this Rule, it may be stricken as sham and
30 false and the action may proceed as though the pleading had not been served.

31 (b) Verification of Pleadings by a Party. In any case in which verification of a pleading
32 shall be required by these Rules or by statute, it shall state in substance that the contents of the
33 pleading verified are true to the knowledge of the person making the verification, except as to
34 those matters stated on information and belief, and as to those matters he believes them to be
35 true. Such verification shall be by affidavit of the party, or if there are several parties united in
36 interest and pleading together, by at least one of such parties acquainted with the facts and
37 capable of making the affidavit. Such affidavit may be made by the agent or attorney of a party
38 in the cases and in the manner provided in Section (c) of this Rule.

39 (c) Verification of Pleadings by an Agent or Attorney. Such verification may be made
40 by the agent or attorney of a party for whom the pleading is filed, if the action or defense is
41 founded upon a written instrument for the payment of money only and the instrument or a true
42 copy thereof is in the possession of the agent or attorney, or if all the material allegations of the
43 pleadings are within the personal knowledge of the agent or attorney. When the pleading is
44 verified by such agent or attorney, he shall set forth in the affidavit: (1) that the action or
45 defense is founded upon a written instrument for the payment of money only and the
46 instrument or a true copy thereof is in his possession, or

47 (2) (a) that all the material allegations of the pleadings are true to his personal
48 knowledge and

49 (b) the reasons why the affidavit is not made by the party.

50 (d) Verification by Corporation or the State. When a corporation is a party the
51 verification may be made by any officer, or managing or local agent thereof upon whom

1 summons might be served; and when the State or any officer thereof in its behalf is a party, the
2 verification may be made by any person acquainted with the facts.

3 Rule 12

4 DEFENSES AND OBJECTIONS — WHEN AND HOW PRESENTED BY PLEADING OR
5 MOTION

6 MOTION FOR JUDGMENT ON PLEADING

7 (a) (1) When Presented. A defendant shall serve his answer within 30 days after service of
8 the summons and complaint upon him. A party served with a pleading stating a crossclaim
9 against him shall serve an answer thereto within 30 days after service upon him. The plaintiff
10 shall serve his reply to a counterclaim in the answer within 30 days after service of the answer
11 or, if a reply is ordered by the court, within 30 days after service of the order, unless the order
12 otherwise directs. Service of a motion permitted under this Rule alters these periods of time as
13 follows, unless a different time is fixed by order of the court: (1) if the court denies the motion
14 or postpones its disposition until the trial on the merits, the responsive pleading shall be served
15 within 20 days after notice of the court's action; (2) if the court grants a motion for a more
16 definite statement, the responsive pleading shall be served within 20 days after service of the
17 more definite statement.

18 (2) Cases Removed to United States District Court. Upon the filing in a district
19 court of the United States of a petition for the removal of a civil action or
20 proceeding from a court in this State and the filing of a copy of the petition
21 in the State court, the State court shall proceed no further therein unless and
22 until the case is remanded. If it shall be finally determined in the United
23 States courts that the action or proceeding was not removable or was
24 improperly removed, or for other reason should be remanded, and a final
25 order is entered remanding the action or proceeding to the State court, the
26 defendant or defendants, or any other party who would have been permitted
27 or required to file a pleading had the proceedings to remove not been
28 instituted, shall have 30 days after the filing in such State court of a certified
29 copy of the order of remand to file motions and to answer or otherwise
30 plead.

31 (b) How Presented. Every defense, in law or fact, to a claim for relief in any pleading,
32 whether a claim, counterclaim, crossclaim, or third-party claim, shall be asserted in the
33 responsive pleading thereto if one is required, except that the following defense may at the
34 option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2)
35 lack of jurisdiction over the person, (3) improper venue or division, (4) insufficiency of
36 process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can
37 be granted, (7) failure to join a necessary party. A motion making any of these defenses shall be
38 made before pleading if a further pleading is permitted. The consequences of failure to make
39 such a motion shall be as provided in Sections (g) and (h). No defense or objection is waived
40 by being joined with one or more other defenses or objections in a responsive pleading or
41 motion. If a pleading sets forth a claim for relief to which the adverse party is not required to
42 serve a responsive pleading, he may assert at the trial any defense in law or fact to that claim
43 for relief. If, on a motion asserting the defense, numbered (6), to dismiss for failure of the
44 pleading to state a claim upon which relief can be granted, matters outside the pleading are
45 presented to and not excluded by the court, the motion shall be treated as one for summary
46 judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable
47 opportunity to present all material made pertinent to such a motion by Rule 56.

48 (c) Motion for Judgment on the Pleadings. After the pleadings are closed but within
49 such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a
50 motion for judgment on the pleadings, matters outside the pleadings are presented to and not
51 excluded by the court, the motion shall be treated as one for summary judgment and disposed

1 of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all
2 material made pertinent to such a motion by Rule 56.

3 (d) Preliminary Hearings. The defenses specifically enumerated (1) through (7) in
4 Section (b) of this Rule, whether made in a pleading or by motion, and the motion for judgment
5 on the pleadings mentioned in Section (c) of this Rule shall be heard and determined before
6 trial on application of any party, unless the judge orders that the hearing and determination
7 thereof be deferred until the trial.

8 (e) Motion for More Definite Statement. If a pleading to which a responsive pleading is
9 permitted is so vague or ambiguous that a party cannot reasonably be required to frame a
10 responsive pleading, he may move for a more definite statement before interposing his
11 responsive pleading. The motion shall point out the defects complained of and the details
12 desired. If the motion is granted and the order of the judge is not obeyed within 20 days after
13 notice of the order or within such other time as the judge may fix, the judge may strike the
14 pleading to which the motion was directed or make such order as he deems just.

15 (f) Motion to Strike. Upon motion made by a party before responding to a pleading or,
16 if no responsive pleading is permitted by these Rules, upon motion made by a party within 30
17 days after the service of the pleading upon him or upon the judge's own initiative at any time,
18 the judge may order stricken from any pleading any insufficient defense or any redundant,
19 irrelevant, immaterial, impertinent, or scandalous matter.

20 (g) Consolidation of Defenses in Motion. A party who makes a motion under this Rule
21 may join with it any other motions herein provided for and then available to him. If a party
22 makes a motion under this Rule but omits therefrom any defense or objection then available to
23 him which this Rule permits to be raised by motion, he shall not thereafter make a motion
24 based on the defense or objection so omitted, except a motion as provided in Section (h)(2)
25 hereof on any of the grounds there stated.

26 (h) Waiver or Preservation of Certain Defenses. (1) A defense of lack of jurisdiction
27 over the person, improper venue, insufficiency of process, or insufficiency of service of process
28 is waived (i) if omitted from a motion in the circumstances described in Section (g), or (ii) if it
29 is neither made by motion under this Rule nor included in a responsive pleading or an
30 amendment thereof permitted by Rule 15(a) to be made as a matter of course.

31 (2) A defense of failure to state a claim upon which relief can be granted, a
32 defense of failure to join a necessary party, and an objection of failure to
33 state a legal defense to a claim may be made in any pleading permitted or
34 ordered under Rule 7(a), or by motion for judgment on the pleadings, or at
35 the trial on the merits.

36 (3) Whenever it appears by suggestion of the parties or otherwise that the court
37 lacks jurisdiction of the subject matter, the court shall dismiss the action.

38 Rule 13

39 COUNTERCLAIM AND CROSSCLAIM

40 (a) Compulsory Counterclaims. A pleading shall state as a counterclaim any claim
41 which at the time of serving the pleading the pleader has against any opposing party, if it arises
42 out of the transaction or occurrence that is the subject matter of the opposing party's claim and
43 does not require for its adjudication the presence of third parties of whom the court cannot
44 acquire jurisdiction. But the pleader need not state the claim if (1) at the time the action was
45 commenced the claim was the subject of another pending action, or (2) the opposing party
46 brought suit upon his claim by attachment or other process by which the court did not acquire
47 jurisdiction to render a personal judgment on that claim, and the pleader is not stating any
48 counterclaim under this Rule.

49 (b) Permissive Counterclaims. A pleading may state as a counterclaim any claim
50 against an opposing party not arising out of the transaction or occurrence that is the subject
51 matter of the opposing party's claim.

1 (c) Counterclaim Exceeding Opposing Claim. A counterclaim may or may not diminish
2 or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or
3 different in kind from that sought in the pleading of the opposing party.

4 (d) Counterclaim Against the State of North Carolina. These Rules shall not be
5 construed to enlarge beyond the limits fixed by law the right to assert counterclaims or to claim
6 credit against the State of North Carolina or an officer or agency thereof.

7 (e) Counterclaim Maturing or Acquired After Pleading. A claim which either matured
8 or was acquired by the pleader after serving his pleading may, with the permission of the court,
9 be presented as a counterclaim by supplemental pleading.

10 (f) Omitted Counterclaim. When a pleader fails to set up a counterclaim through
11 oversight, inadvertence, or excusable neglect, or when justice requires, he may by leave of
12 court set up the counterclaim by amendment.

13 (g) Crossclaim Against Co-Party. A pleading may state as a crossclaim any claim by
14 one party against a co-party arising out of the transaction or occurrence that is the subject
15 matter either of the original action or of a counterclaim therein or relating to any property that
16 is the subject matter of the original action. Such crossclaim may include a claim that the party
17 against whom it is asserted is or may be liable to the crossclaimant for all or part of a claim
18 asserted in the action against the crossclaimant.

19 (h) Additional Parties May be Brought in. When the presence of parties other than those
20 to the original action is required for the granting of complete relief in the determination of a
21 counterclaim or crossclaim, the court shall order them to be brought in as defendants as
22 provided in these Rules, if jurisdiction of them can be obtained.

23 (i) Separate Trial; Separate Judgment. If the court orders separate trials as provided in
24 Rule 42(b), judgment on a counterclaim or crossclaim may be rendered in accordance with the
25 terms of Rule 54(b) when the court has jurisdiction so to do, even if the claims of the opposing
26 party have been dismissed or otherwise disposed of.

27 Rule 14

28 THIRD-PARTY PRACTICE

29 (a) When Defendant May Bring in Third Party. At any time after commencement of the
30 action a defendant, as a third-party plaintiff, may cause a summons and complaint to be served
31 upon a person not a party to the action who is or may be liable to him for all or part of the
32 plaintiff's claim against him. Leave to make the service need not be obtained if the third-party
33 complaint is filed not later than five days after the answer to the complaint is served. Otherwise
34 leave must be obtained on motion upon notice to all parties to the action. The person served
35 with the summons and third-party complaint, hereinafter called the third-party defendant, shall
36 make his defense to the third-party plaintiff's claim as provided in Rule 12 and his
37 counterclaims against the third-party plaintiff and crossclaims against other third-party
38 defendants as provided in Rule 13. The third-party defendant may assert against the plaintiff
39 any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party
40 defendant may also assert any claim against the plaintiff arising out of the transaction or
41 occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The
42 plaintiff may assert any claim against the third-party defendant arising out of the transaction or
43 occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and
44 the third-party defendant thereupon shall assert his defenses as provided in Rule 12 and his
45 counterclaims and crossclaims as provided in Rule 13. Any party may move for severance,
46 separate trial, or dismissal of the third-party claim. A third-party defendant may proceed under
47 this Rule against any person not a party to the action who is or may be liable to him for all or
48 part of the claim made in the action against the third-party defendant.

49 (b) When Plaintiff May Bring in Third Party. When a counterclaim is asserted against a
50 plaintiff, he may cause a third party to be brought in under circumstances which under this Rule
51 would entitle a defendant to do so.

1 Rule 15

2 AMENDED AND SUPPLEMENTAL PLEADINGS

3 (a) Amendments. A party may amend his pleading once as a matter of course at any
4 time before a responsive pleading is served or, if the pleading is one to which no responsive
5 pleading is permitted and the action has not been placed upon the trial calendar, he may so
6 amend it at any time within 30 days after it is served. Otherwise a party may amend his
7 pleading only by leave of court or by written consent of the adverse party; and leave shall be
8 freely given when justice so requires. A party shall plead in response to an amended pleading
9 within 30 days after service of the amended pleading, unless the court otherwise orders.

10 (b) Amendments to Conform to the Evidence. When issues not raised by the pleadings
11 are tried by the express or implied consent of the parties, they shall be treated in all respects as
12 if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary
13 to cause them to conform to the evidence and to raise these issues may be made upon motion of
14 any party at any time, either before or after judgment, but failure so to amend does not affect
15 the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is
16 not within the issues raised by the pleadings, the court may allow the pleadings to be amended
17 and shall do so freely when the presentation of the merits of the action will be served thereby
18 and the objecting party fails to satisfy the court that the admission of such evidence would
19 prejudice him in maintaining his action or defense upon the merits. The court may grant a
20 continuance to enable the objecting party to meet such evidence.

21 (c) Relation Back of Amendments. A claim asserted in an amended pleading is deemed
22 to have been interposed at the time the claim in the original pleading was interposed, unless the
23 original pleading does not give notice of the transactions, occurrences, or series of transactions
24 or occurrences, to be proved pursuant to the amended pleading.

25 (d) Supplemental Pleadings. Upon motion of a party the court may, upon reasonable
26 notice and upon such terms as are just, permit him to serve a supplemental pleading setting
27 forth transactions or occurrences or events which may have happened since the date of the
28 pleading sought to be supplemented, whether or not the original pleading is defective in its
29 statement of a claim for relief or defense. If the court deems it advisable that the adverse party
30 plead thereto, it shall so order, specifying the time therefor.

31 Rule 16

32 PRE-TRIAL PROCEDURE; FORMULATING ISSUES

33 In any action, the judge may in his discretion direct the attorneys for the parties to appear
34 before him for a conference to consider

- 35 (1) The simplification and formulation of the issues;
36 (2) The necessity or desirability of amendments to the pleadings;
37 (3) The possibility of obtaining admissions of fact and of documents which will
38 avoid unnecessary proof;
39 (4) The limitation of the number of expert witnesses;
40 (5) The advisability or necessity of a reference of the case, either in whole or in
41 part;
42 (6) Matters of which the court is to be asked to take judicial notice;
43 (7) Such other matters as may aid in the disposition of the action.

44 If a conference is held, the judge may make an order which recites the action taken at the
45 conference, the amendments allowed to the pleadings, and the agreements made by the parties
46 as to any of the matters considered, and which limits the issues for trial to those not disposed of
47 by admissions or agreements of counsel; and such order when entered controls the subsequent
48 course of the action, unless modified at the trial to prevent manifest injustice. If any issue for
49 trial as stated in the order is not raised by the pleadings in accordance with the provisions of
50 Rule 8, upon motion of any party, the order shall require amendment of the pleadings.

51 ARTICLE 4

Parties

Rule 17

PARTIES PLAINTIFFS AND DEFENDANT; CAPACITY

(a) Real Party in Interest. Every claim shall be prosecuted in the name of the real party in interest; but an executor, administrator, guardian, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in his own name without joining with him the party for whose benefit the action is brought; and when a statute of the State so provides, an action for the use or benefit of another shall be brought in the name of the State of North Carolina.

(b) Infants, Incompetents, Etc.:

(1) Infants, Etc., Sue by Guardian or Guardian Ad Litem. In actions or special proceedings when any of the parties plaintiff are infants or incompetent persons, whether residents or nonresidents of this State, they must appear by general or testamentary guardian, if they have any within the State or by guardian ad litem appointed as hereinafter provided; but if the action or proceeding is against such guardian, or if there is no such known guardian, then such persons may appear by guardian ad litem. The duty of the State solicitors to prosecute in the cases specified in Chapter 33 of the General Statutes, entitled 'Guardian and Ward', is not affected by this Section.

(2) Infants, Etc., Defend by Guardian Ad Litem. In actions or special proceedings when any of the defendants are infants or incompetent persons, whether residents or nonresidents of this State, they must defend by general or testamentary guardian, if they have any within this State or by guardian ad litem appointed as hereinafter provided; and if they have no known general or testamentary guardian in the State, and any of them have been summoned, the court in which said action or special proceeding is pending, upon motion of any of the parties, may appoint some discreet person to act as guardian ad litem, to defend in behalf of such infants, or incompetent persons, and fix and tax his fee as part of the costs. The guardian so appointed shall, if the cause is a civil action, file his answer to the complaint within the time required for other defendants, unless the time is extended by the court; and if the cause is a special proceeding, a copy of the complaint, with the summons, must be served on him. After 20 days' notice of the summons and complaint in the special proceeding, and after answer filed as above prescribed in the civil action, the court may proceed to final judgment as effectually and in the same manner as if there had been personal service upon the said infant or incompetent persons or defendants.

(3) Appointment of Guardian Ad Litem Notwithstanding the Existence of a General or Testamentary Guardian. Notwithstanding the provisions of subsections (b)(1) and (b)(2), a guardian ad litem for an infant or incompetent person may be appointed in any case when it is deemed by the court in which the action is pending expedient to have the infant, or insane or incompetent person so represented, notwithstanding such person may have a general or testamentary guardian.

(4) Appointment of Guardian Ad Litem for Unborn Persons. In all actions in rem and quasi in rem and in all actions and special proceedings which involve the construction of wills, trusts and contracts or any instrument in writing, or which involve the determination of the ownership of property or the distribution of property, if there is a possibility that some person may thereafter be born who, if then living, would be a necessary or proper party to such action or special proceeding, the court in which said action or special

1 proceeding is pending, upon motion of any of the parties or upon its own
2 motion, may appoint some discreet person guardian ad litem to defend on
3 behalf of such unborn person. Service upon the guardian ad litem appointed
4 for such unborn person shall have the same force and effect as service upon
5 such unborn person would have had if such person had been living. All
6 proceedings by and against the said guardian ad litem after appointment
7 shall be governed by all provisions of the law applicable to guardians ad
8 litem for living persons.

9 (5) Appointment of Guardian Ad Litem for Corporations, Trusts, or Other
10 Entities Not in Existence. In all actions which involve the construction of
11 wills, trusts, contracts or written instruments, or the determination of the
12 ownership of property or the disposition or distribution of property pursuant
13 to the provisions of a will, trust, contract or written instrument, if such will,
14 trust, contract or written instrument provides benefits for dispositions or
15 distribution of property to a corporation, a trust, or an entity thereafter to be
16 formed for the purpose of carrying into effect some provision of the said
17 will, trust, contract or written instrument, the court in which said action or
18 special proceeding is pending, upon motion of any of the parties or upon its
19 own motion, may appoint some discreet person guardian ad litem for such
20 corporation, trust or other entity. Service upon the guardian ad litem
21 appointed for such corporation, trust or other entity shall have the same force
22 and effect as service upon such corporation, trust or entity would have had if
23 such corporation, trust or other entity had been in existence. All proceedings
24 by and against the said guardian ad litem after appointment shall be
25 governed by all provisions of the law applicable to guardians ad litem for
26 living persons.

27 (6) Miscellaneous Provisions. The provisions of this Rule are in addition to any
28 other remedies or procedures authorized or permitted by law, and it shall not
29 be construed to repeal or to limit the doctrine of virtual representation or any
30 other law or rule of law by which unborn persons or nonexistent
31 corporations, trusts or other entities may be represented in or bound by any
32 judgment or order entered in any action or special proceeding. This Rule
33 shall apply to all pending actions and special proceedings to which it may be
34 constitutionally applicable. All judgments and orders heretofore entered in
35 any action in which a guardian or guardians ad litem have been appointed
36 for any unborn person or persons or any nonexistent corporations, trusts or
37 other entities, are hereby validated as of the several dates of entry thereof in
38 the same manner and to the full extent that they would have been valid if this
39 Rule had been in effect at the time of the appointment of such guardians ad
40 litem; provided, however, that the provisions of this sentence shall be
41 applicable only in such cases and to the extent to which the application
42 thereof shall not be prevented by any constitutional limitation.

43 (c) Guardian Ad Litem for Infants, Insane or Incompetent Persons; Appointment
44 Procedure. When a guardian ad litem is appointed to represent an infant or insane or
45 incompetent person, he must be appointed as follows:

46 (1) When an infant or insane or incompetent person is plaintiff, the appointment
47 shall be made at any time prior to or at the time of the commencement of the
48 action, upon the written application of any relative or friend of said infant or
49 insane or incompetent person or by the court on its own motion.

50 (2) When an infant is defendant and service under Rule 4(j)(1)a or Rule 4(j)(1)b
51 is made upon him the appointment may be made upon the written

1 application of any relative or friend of said infant, or, if no such application
2 is made within 10 days after service of summons, upon the written
3 application of any other party to the action or, at any time by the court on its
4 own motion.

5 (3) When an infant or insane or incompetent person is defendant and service can
6 be made upon him only by publication, the appointment may be made upon
7 the written application of any relative or friend of said infant, or upon the
8 written application of any other party to the action, or by the court on its own
9 motion, at any time after the filing of the affidavit required by Rule 4(j)(1)c
10 and before completion of publication, whereupon service of the summons
11 with copy of the complaint shall be made forthwith upon said guardian so
12 appointed requiring him to make defense at the same time that the defendant
13 is required to make defense in the notice of publication.

14 (4) When an insane or incompetent person is defendant and service by
15 publication is not required, the appointment may be made upon the written
16 application of any relative or friend of said defendant, or upon the written
17 application of any other party to the action, or by the court on its own
18 motion, prior to or at the time of the commencement of the action, and
19 service upon the insane or incompetent defendant may thereupon be
20 dispensed with by order of the court making such appointment.

21 (d) Guardian Ad Litem for Persons Not Ascertained or for Persons, Trusts or
22 Corporations Not in Being. When under the terms of a written instrument, or for any other
23 reason, a person or persons who are not in being, or any corporation, trust, or other legal entity
24 which is not in being, may be or may become legally or equitably interested in any property,
25 real or personal, the court in which an action or proceeding of any kind relative to or affecting
26 such property is pending, may, upon the written application of any party to such action or
27 proceeding or of other person interested, appoint a guardian ad litem to represent such person
28 or persons not ascertained or such persons, trusts or corporations not in being.

29 (e) Duty of Guardian Ad Litem; Effect of Judgment or Decree Where Party
30 Represented by Guardian Ad Litem. Any guardian ad litem appointed for any party pursuant to
31 any of the provisions of this Rule shall file and serve such pleadings as may be required within
32 the times specified by these Rules, unless extension of time is obtained. After the appointment
33 of a guardian ad litem under any provision of this Rule and after the service and filing of such
34 pleadings as may be required by such guardian ad litem, the court may proceed to final
35 judgment, order or decree against any party so represented as effectually and in the same
36 manner as if said party had been under no legal disability, had been ascertained and in being,
37 and had been present in court after legal notice in the action in which such final judgment,
38 order or decree is entered.

39 Rule 18

40 JOINDER OF CLAIMS AND REMEDIES

41 (a) Joinder of Claims. The plaintiff in his complaint or in a reply setting forth a
42 counterclaim and the defendant in an answer setting forth a counterclaim may join either as
43 independent or as alternate claims as many claims either legal or equitable or both as he may
44 have against an opposing party. There may be a like joinder of claims when there are multiple
45 parties if the requirements of Rules 19, 20, and 22 are satisfied. There may be a like joinder of
46 crossclaims or third-party claims if the requirements of Rules 13 and 14 are satisfied.

47 (b) Joinder of Remedies; Fraudulent Conveyances. Whenever a claim is one heretofore
48 cognizable only after another claim has been prosecuted to a conclusion, the two claims may be
49 joined in a single action; but the court shall grant relief in that action only in accordance with
50 the relative substantive rights of the parties. In particular, a plaintiff may state a claim for

1 money and a claim to have set aside a conveyance fraudulent as to him, without first having
2 obtained a judgment establishing the claim for money.

3 Rule 19

4 NECESSARY JOINDER OF PARTIES

5 (a) Necessary Joinder. Subject to the provisions of Rule 23, those who are united in
6 interest must be joined as plaintiffs or defendants; but if the consent of anyone who should have
7 been joined as plaintiff cannot be obtained he may be made a defendant, the reason therefor
8 being stated in the complaint; provided, however, in all cases of joint contracts, a claim may be
9 asserted against all or any number of the persons making such contracts.

10 (b) Joinder of Parties Not United in Interest. The court may determine any claim before
11 it when it can do so without prejudice to the rights of any party or to the rights of others not
12 before the court; but when a complete determination of such claim cannot be made without the
13 presence of other parties, the court shall order such other parties summoned to appear in the
14 action.

15 (c) Same: Names of Omitted Persons and Reasons for Nonjoinder to be Plead. In any
16 pleading in which relief is asked, the pleader shall set forth the names, if known to him, of
17 persons who ought to be parties if complete relief is to be accorded between those already
18 parties, but who are not joined, and shall state why they are omitted.

19 Rule 20

20 PERMISSIVE JOINDER OF PARTIES

21 (a) Permissive Joinder. All persons may join in one action as plaintiffs if they assert any
22 right to relief jointly, severally, or in the alternative in respect of or arising out of the same
23 transaction, occurrence, or series of transactions or occurrences and if any question of law or
24 fact common to all parties will arise in the action. All persons may be joined in one action as
25 defendants if there is asserted against them jointly, severally, or in the alternative, any right to
26 relief in respect of or arising out of the same transaction, occurrence, or series of transactions or
27 occurrences and of any question of law or fact common to all parties will arise in the action. A
28 plaintiff or defendant need not be interested in obtaining or defending against all the relief
29 demanded. Judgment may be given for one or more of the plaintiffs according to their
30 respective rights to relief, and against one or more defendants according to their respective
31 liabilities.

32 (b) Separate Trial. The court shall make such orders as will prevent a party from being
33 embarrassed, delayed, or put to expense by the inclusion of a party against whom he asserts no
34 claim and who asserts no claim against him, and shall order separate trials or make other orders
35 to prevent delay or prejudice.

36 Rule 21

37 PROCEDURE UPON MISJOINDER AND NONJOINDER

38 Neither misjoinder of parties nor misjoinder of parties and claims is ground for dismissal of
39 an action; but on such terms as are just parties may be dropped or added by order of the court
40 on motion of any party or on its own initiative at any stage of the action. Any claim against a
41 party may be severed and proceeded with separately.

42 Rule 22

43 INTERPLEADER

44 Persons having claims against the plaintiff may be joined as defendants and required to
45 interplead when their claims expose or may expose the plaintiff to double or multiple liability.
46 It is not ground for objection to the joinder that the claims of the several claimants or the titles
47 on which their claims depend do not have a common origin or are not identical but are adverse
48 to and independent of one another, or that the plaintiff avers that he is not liable in whole or in
49 part to any or all of the claimants. A defendant exposed to similar liability may obtain such
50 interpleader by way of crossclaim or counterclaim. The provisions of this Rule supplement and
51 do not in any way limit the joinder of parties permitted in Rule 20.

1 Rule 23
2 CLASS ACTIONS

3 (a) Representation. If persons constituting a class are so numerous as to make it
4 impracticable to bring them all before the court, such of them, one or more, as will fairly insure
5 the adequate representation of all may, on behalf of all, sue or be sued.

6 (b) Secondary Action by Shareholders. In an action brought to enforce a secondary right on
7 the part of one or more shareholders or members of a corporation or an unincorporated
8 association because the corporation or association refuses to enforce rights which may properly
9 be asserted by it, the complaint shall be verified by oath.

10 (c) Dismissal or Compromise. A class action shall not be dismissed or compromised
11 without the approval of the judge. In an action under this Rule, notice of a proposed dismissal
12 or compromise shall be given to all members of the class in such manner as the judge directs.

13 Rule 24
14 INTERVENTION

15 (a) Intervention of Right. Upon timely application anyone shall be permitted to
16 intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2)
17 when the applicant claims an interest relating to the property or transaction which is the subject
18 of the action and he is so situated that the disposition of the action may as a practical matter
19 impair or impede his ability to protect that interest, unless the applicant's interest is adequately
20 represented by existing parties.

21 (b) Permissive Intervention. Upon timely application anyone may be permitted to
22 intervene in an action: (1) when a statute confers a conditional right to intervene; or (2) when
23 an applicant's claim or defense and the main action have a question of law or fact in common.
24 When a party to an action relies for ground of claim or defense upon any statute or executive
25 order administered by a federal or State governmental officer or agency or upon any regulation,
26 order, requirement, or agreement issued or made pursuant to the statute or executive order, such
27 officer or agency upon timely application may be permitted to intervene in the action. In
28 exercising its discretion the court shall consider whether the intervention will unduly delay or
29 prejudice the, adjudication of the rights of the original parties.

30 (c) Procedure. A person desiring to intervene shall serve a motion to intervene upon all
31 parties affected thereby. The motion shall state the grounds therefor and shall be accompanied
32 by a pleading setting forth the claim or defense for which intervention is sought. The same
33 procedure shall be followed when a statute gives a right to intervene, except when the statute
34 prescribes a different procedure.

35 Rule 25
36 SUBSTITUTION OF PARTIES UPON DEATH, INCOMPETENCY OR TRANSFER OF
37 INTEREST; ABATEMENT

38 (a) Death. No action abates by reason of the death of a party if the cause of action
39 survives. In such case, the court, on motion at any time within one year thereafter, or afterwards
40 on a supplemental complaint, may order the substitution of said party's personal representative
41 or successor in interest and allow the action to be continued by or against the substituted party.

42 (b) Insanity or Incompetency. No action abates by reason of the incompetency or
43 insanity of a party. If such incompetency or insanity is adjudicated, the court, on motion at any
44 time within one year after such adjudication, or afterwards on a supplemental complaint, may
45 order that said party be represented by his general guardian or trustee or a guardian ad litem,
46 and, allow the action to be continued. If there is no adjudication, any party may suggest such
47 incompetency or insanity to the court and it shall enter such order in respect thereto as justice
48 may require.

49 (c) Abatement Ordered Unless Action Continued. At any time after the death, insanity
50 or incompetency of a party, the court in which an action is pending, upon notice to such person
51 as it directs and upon motion of any party aggrieved, may order that the action be abated,

1 unless it is continued by the proper parties, within a time to be fixed by the court, not less than
2 six nor more than 12 months from the granting of the order.

3 (d) Transfer of Interest. In case of any transfer of interest other than by death, the action
4 shall be continued in the name of the original party; but, upon motion of any party, the court
5 may allow the person to whom the transfer is made to be joined with the original party.

6 (e) Death of Receiver of Corporation. No action against a receiver of a corporation
7 abates by reason of his death, but, upon suggestion of the facts on the record, it continues
8 against his successor or against the corporation in case a new receiver is not appointed and such
9 successor or the corporation is automatically substituted as a party.

10 (f) Public Officers; Death or Separation From Office. (1) When a public officer is a
11 party to an action in his official capacity and during its pendency dies, resigns or otherwise
12 ceases to hold office, the action does not abate and his successor is automatically substituted as
13 a party. Proceedings following the substitution shall be in the name of the substituted party, but
14 any misnomer not affecting substantial rights of the parties shall be disregarded. An order of
15 substitution may be entered at any time, but the omission to enter such an order shall not affect
16 the substitution.

17 (2) When a public officer sues or is sued in his official capacity, he may be
18 described as a party by his official title rather than by name; but the court
19 may require his name to be added.

20 (g) No Abatement After Verdict. After a verdict is rendered in any action, the action
21 does not abate by reason of the death of a party, whether or not the cause of action upon which
22 it is based is of a type which survives.

23 ARTICLE 5

24 Depositions and Discovery

25 Rule 26

26 DEPOSITIONS IN A PENDING ACTION

27 (a) When Depositions May be Taken. After the commencement of an action and before
28 a final judgment, any party may take the testimony of any person, including a party, by
29 deposition upon oral examination or written interrogatories for the purpose of discovery or for
30 use as evidence in the action or for both purposes. The deposition may be taken without leave
31 of court, except that leave, granted with or without notice, must be obtained if notice of the
32 taking is served by the plaintiff within 30 days after commencement of the action. The
33 attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45.
34 Depositions shall be taken only in accordance with these Rules. The deposition of a person
35 confined in prison or of a patient in an institution or hospital for the mentally ill, mentally
36 handicapped, or epileptic, or any other hospital, home, or institution, may be taken only by
37 leave of court on such terms as the court prescribes.

38 (b) Scope of Examination. Unless otherwise ordered by the judge as provided by Rule
39 30(b) or (d), the deponent may be examined regarding any matter, not privileged, which is
40 relevant to the subject matter in the pending action, whether it relates to the claim or defense of
41 the examining party or to the claim or defense of any other party, including the existence,
42 description, nature, custody, condition and location of any books, documents, or other tangible
43 things and the identity and location of persons having knowledge of relevant facts. It is not
44 ground for objection that the testimony will be inadmissible at the trial if the testimony sought
45 appears reasonably calculated to lead to the discovery of admissible evidence nor is it ground
46 for objection that the examining party has knowledge of the matters as to which testimony is
47 sought. But the deponent shall not be required to produce or submit for inspection any writing
48 obtained or prepared by the adverse party, his attorney, surety, indemnitor, or agent in
49 anticipation of litigation or in preparation for trial unless the judge otherwise orders on the
50 ground that a denial of production or inspection will result in an injustice or undue hardship;
51 but, in no event shall the deponent be required to produce or submit for inspection any part of a

1 writing which reflects an attorney's mental impressions, conclusions, opinions or legal theories,
2 or except as provided in Rules 35, the conclusions of an expert.

3 (c) Examination and Cross-Examination. Examination and cross-examination of
4 deponents may proceed as permitted at the trial under the provisions of Rule 43(b).

5 (d) Use of Depositions. Any part or all of a deposition, so far as admissible under the
6 rules of evidence, may be used at the trial or upon the hearing of a motion or an interlocutory
7 proceeding or upon a hearing before a referee, against any party who was present or
8 represented at the taking of the deposition or who had due notice thereof, as follows:

9 (1) When the deponent is a party adverse to the party offering the deposition in
10 evidence or is a person who at the time of taking the deposition was an
11 officer, director or managing agent of a public or private corporation,
12 partnership, or association which is a party adverse to the party offering the
13 deposition in evidence, the deposition may be used for any purpose, whether
14 or not deponent testifies at the trial or hearing.

15 (2) When the deponent testifies at the trial or hearing, the deposition may be
16 used

17 (i) by any party adverse to the party calling deponent as a witness, for
18 the purpose of impeaching or contradicting the testimony of
19 deponent as a witness, or as substantive evidence, and

20 (ii) by the party calling deponent as a witness, as substantive evidence of
21 such facts stated in the deposition as are in conflict with or
22 inconsistent with the testimony of deponent as a witness.

23 (3) Except as provided in paragraphs (1) and (2) of this Section of this Rule, a
24 deposition may be used only if the court finds: (i) that the deponent is dead;
25 or (ii) that the deponent is at a greater distance than 75 miles from the place
26 of trial or hearing, unless it appears that the absence of the deponent was
27 procured by the party offering the depositions; or (iii) that the deponent is a
28 physician who either resides or maintains his office outside the county where
29 the trial or hearing is held; or (iv) that the deponent is unable to attend or
30 testify because of age, sickness, infirmity, or imprisonment; or (v) that the
31 party offering the deposition has been unable to procure the attendance of
32 the witness by subpoena; or (vi) upon motion and notice, that such
33 exceptional circumstances exist as to make it desirable, in the interest of
34 justice and with due regard to the importance of presenting the testimony of
35 witnesses orally in open court, to allow the deposition to be used. If the court
36 makes any such finding, the deposition may be used by any party for any
37 purpose, whether or not deponent is a party.

38 (4) If only a part of a deposition is offered in evidence by a party, any party may
39 require him to introduce all of it which is relevant to the part introduced, and
40 any party may introduce any other part.

41 Substitution of parties does not affect the right to use depositions previously taken; and,
42 when an action in any court of this State or of any other State or of the United States has been
43 dismissed and another action involving the same subject matter is afterward brought between
44 the same parties or their representatives or successors in interest, all depositions lawfully taken
45 and duly filed in the former action may be used in the later action as if originally taken therefor.

46 (e) Effect of Taking or Using Depositions. A party shall not be deemed to make a
47 person his own witness for any purpose by taking his deposition. The introduction in evidence
48 of the deposition or any part thereof for any purpose other than that of contradicting or
49 impeaching the deponent makes the deponent the witness of the party introducing the
50 deposition, but this shall not apply to the use by an adverse party of a deposition as described in

1 Section (d)(1). At the trial or hearing any party may rebut any relevant evidence contained in a
2 deposition whether introduced by him or by any other party.

3 Rule 27

4 DEPOSITIONS BEFORE ACTION OR PENDING APPEAL

5 (a) Before Action.

6 (1) Petition. A person who desires to perpetuate his own testimony or that of
7 another person regarding any matter may file a verified petition in the court
8 in the county where any expected adverse party resides.

9 The petition shall be entitled in the name of the petitioner and shall show
10 (1) that the petitioner expects that he, or his personal representative, heirs,
11 legatees, or devisees, will be a party to an action cognizable in any court, but
12 that he is presently unable to bring it or cause it to be brought, (2) the subject
13 matter of the expected action and his interest therein, (3) the facts which he
14 desires to establish by the proposed testimony and his reasons for desiring to
15 perpetuate it, (4) the names or a description of the persons he expects will be
16 adverse parties and their addresses so far as known, and (5) the names and
17 addresses of the person to be examined and the substance of the testimony
18 which he expects to elicit from each, and shall ask for an order authorizing
19 the petitioner to take the depositions of the persons to be examined named in
20 the petition, for the purpose of perpetuating their testimony.

21 (2) Notice and Service. The petitioner shall thereafter serve a notice upon each
22 person named in the petition as an expected adverse party, together with a
23 copy of the petition, stating that the petitioner will apply to the court, at a
24 time and place named therein, for the order described in the petition. At least
25 20 days before the date of hearing, or within such time as the court may
26 direct, the notice shall be served in the appropriate manner provided in Rule
27 4(j)(1) or (2) for service of summons; but if such service cannot with due
28 diligence be made upon any expected adverse party named in the petition,
29 the court may make such order as is just for service by publication or
30 otherwise, and shall appoint, for persons not served in the manner provided
31 in Rule 4(j)(1) or (2), an attorney who shall represent them. If any expected
32 adverse party is a minor or incompetent, the provisions of Rule 17(c) shall
33 apply.

34 (3) Order and Examination. If the court is satisfied that the perpetuation of the
35 testimony may prevent a failure or delay of justice, it shall make an order
36 designating or describing the persons whose depositions may be taken and
37 specifying the subject matter of the examination and whether, the
38 depositions shall be taken upon oral examination or written interrogatories.
39 The depositions may then be taken in accordance with these Rules; and the
40 court may make orders of the character provided for by Rules 34 and 35. For
41 the purpose of applying these Rules to depositions for perpetuating
42 testimony, each reference therein to the court in which the action is pending
43 shall be deemed to refer to the court in which the petition for such deposition
44 was filed.

45 (4) Use of Deposition. If a deposition to perpetuate testimony is taken under
46 these Rules or if, although not so taken, it would be admissible in evidence
47 in the courts of the United States or the state in which it is taken, it may be
48 used in any action involving the same subject matter subsequently brought in
49 a court of this State in accordance with the provisions of Rule 26(d).

50 (b) Depositions Before Action for Obtaining Information to Prepare a Complaint.

1 (1) Petition. A person who expects to commence an action but who desires to
2 obtain information from an expected adverse party or from any person for
3 whose immediate benefit the expected action will be defended for the
4 purpose of preparing a complaint may file a verified petition in the county
5 where any expected adverse party resides or in the county where resides any
6 person for whose immediate benefit the expected action will be defended. If
7 an expected adverse party is not a natural person, the petition may be filed in
8 the county where the expected adverse party has its principal office or place
9 of business.

10 The petition shall be entitled in the name of the petitioner and shall show
11 (1) that the petitioner expects to commence an action cognizable in a court
12 of this State, (2) the names and addresses of the expected adverse parties, (3)
13 the nature and purpose of the expected action, (4) the subject matter of the
14 expected action and the petitioner's interest therein, (5) why the petitioner is
15 unable to prepare a complaint with the information presently available, and
16 (6) that the petition is filed in good faith. The petition shall also designate
17 with reasonable particularity the matters as to which information will be
18 sought.

19 (2) Notice and Service. After the petition is filed, proceedings shall be in
20 conformity with Section (a)(2).

21 (3) Order and Examination. If the court finds that the facts are as set forth in the
22 petition and that the examination of an expected adverse party or such party's
23 officer, agent or employee is necessary to enable the petitioner to prepare a
24 complaint, it shall make an order designating or describing the persons
25 whose depositions may be taken and specifying the subject matter of the
26 examination and whether the deposition shall be taken upon oral
27 examination or written interrogatories. The depositions may then be taken in
28 accordance with these Rules; and the court may make orders of the character
29 provided for by Rules 34 and 35. For the purpose of applying these Rules to
30 depositions for obtaining information to prepare a complaint, each reference
31 therein to the court in which the action is pending shall be deemed to refer to
32 the court in which the petition for such deposition was filed.

33 (4) Use of Deposition. If a deposition to obtain information to prepare a
34 complaint is taken under these Rules, it may be used in any action involving
35 the same subject matter subsequently brought in a court of this State in
36 accordance with the provisions of Rule 26(d).

37 (c) Pending Appeal. If an appeal has been taken from the determination of any court or
38 petition for review has been filed or before the taking of an appeal or the filing of a petition if
39 the time therefor has not expired, the court in which the determination was made may allow the
40 taking of the depositions of witnesses to perpetuate their testimony for use in the event of
41 further proceedings in the court. In such case the party who desires to perpetuate the testimony
42 may make a motion in the court for leave to take the depositions, upon the same notice and
43 service thereof as if the action was pending in the court. The motion shall show (1) the names
44 and addresses of persons to be examined and the substance of the testimony which he expects
45 to elicit from each, (2) the reasons for perpetuating their testimony. If the court finds that the
46 perpetuation of the testimony is proper to avoid a failure or delay of justice, it may make an
47 order allowing the depositions to be taken and may make orders of the character provided for
48 by Rules 34 and 35, and thereupon the depositions may be taken and used in the same manner
49 and upon the same conditions as are prescribed in these Rules for depositions taken in actions
50 pending in the court.

1 (d) Perpetuation by Action. This Rule does not limit the power of a court to entertain an
2 action to perpetuate testimony.

3 Rule 28

4 PERSONS BEFORE WHOM DEPOSITIONS MAY BE TAKEN

5 (a) Within the United States. Within the United States or within a territory or insular
6 possession subject to the dominion of the United States, depositions shall be taken (1) before a
7 person authorized to administer oaths by the laws of this State or of the United States or of the
8 place where the examination is held, or (2) before such person as may be appointed by the court
9 in which the action is pending.

10 (b) In Foreign Countries. In a foreign state or country depositions shall be taken (1) on
11 notice before a secretary of embassy or legation, consul general, consul, vice consul, or
12 consular agent of the United States, or (2) before such person or officer as may be appointed by
13 commission or under letters rogatory. A commission or letters rogatory shall be issued only
14 when necessary or convenient, on application and notice, and on such terms and with such
15 directions as are just and appropriate. Officers may be designated in notices or commissions
16 either by name or descriptive title and letters rogatory may be addressed 'To the Appropriate
17 Judicial Authority in (here name the country).'

18 (c) Disqualifications for Interest. No deposition shall be taken before a person who is a
19 relative or employee or attorney or counsel of any of the parties, or is a relative or employee of
20 such attorney or counsel, or is financially interested in the action, unless the parties otherwise
21 agree by stipulation as provided in Rule 29.

22 (d) Depositions to be Used Outside This State.

23 (1) A person desiring to take depositions in this State to be used in proceedings
24 pending in the courts of any other state or country may present to a judge of
25 the superior or district court a commission, order, notice, consent, or other
26 authority under which the deposition is to be taken, whereupon it shall be the
27 duty of the judge to issue the necessary subpoenas pursuant to Rule 45.
28 Orders of the character provided in Rules 30(b), 30(d), and 45(b) may be
29 made upon proper application therefor by the person to whom such
30 subpoena is directed. Failure by any person without adequate excuse to obey
31 a subpoena served upon him pursuant to this Rule may be deemed a
32 contempt of the court from which the subpoena issued.

33 (2) The commissioner herein provided for shall not proceed to act under and by
34 virtue of his appointment until the party seeking to obtain such deposition
35 has deposited with him a sufficient sum of money to cover all costs and
36 charges incident to the taking of the deposition, including such witness fees
37 as are allowed to witnesses in this State for attendance upon the superior
38 courts. From such deposit the commissioner shall retain whatever amount
39 may be due him for services, pay the witness fees and other costs that may
40 have been incurred by reason of taking such deposition, and if any balance
41 remains in his hands, he shall pay the same to the party by whom it was
42 advanced.

43 Rule 29

44 STIPULATIONS REGARDING THE TAKING OF DEPOSITIONS

45 If the parties so stipulate in writing, depositions may be taken before any person, at any
46 time or place, upon any notice, and in any manner, and when so taken, may be used in the same
47 manner as other depositions.

48 Rule 30

49 DEPOSITIONS UPON ORAL EXAMINATIONS

50 (a) Notice of Examination: Time and Place. A party desiring to take the deposition of
51 any person upon oral examination shall give notice in writing to every other party to the action.

1 The notice shall state the time and place for taking the deposition and the name and address of
2 each person to be examined, if known, and, if the name is not known, a general description
3 sufficient to identify him or the particular class or group to which he belongs. The notice shall
4 be served on all parties at least 15 days prior to the taking of the deposition when any party
5 required to be served resides without the State and shall be served on all parties at least 10 days
6 prior to the taking of the deposition when all of the parties required to be served reside within
7 the State.

8 (b) Orders for the Protection of Parties and Deponents. After notice is served for taking
9 a deposition by oral examination, upon motion seasonably made by any party or by the person
10 to be examined and upon notice and for good cause shown, the judge of the court in which the
11 action is pending may make an order that the deposition shall not be taken, or that it may be
12 taken only at some designated time or place other than that stated in the notice, or that it may be
13 taken only on written interrogatories, or that certain matters shall not be inquired into, or that
14 the scope of the examination shall be limited to certain matters, or that the examination shall be
15 held with no one present except the parties to the action and their officers or counsel, or that
16 after being sealed the deposition shall be opened only by order of the judge or that secret
17 processes, developments, or research need not be disclosed, or that the parties shall
18 simultaneously file specified documents or information enclosed in sealed envelopes to be
19 opened as directed by the court; or the court may make any other order which justice requires
20 to protect the party or witness from unreasonable annoyance, embarrassment, expense, or
21 oppression.

22 (c) Record of Examination; Oath; Objections. The person before whom the deposition
23 is to be taken shall administer an oath to the deponent and shall personally, or by someone
24 acting under his direction and in his presence, record the testimony of the deponent. The
25 testimony shall be taken stenographically or by some method by which the testimony is written
26 or typed as it is given and transcribed unless the parties agree otherwise. Where transcription is
27 requested by a party other than the one taking the deposition, the court may order the expense
28 of transcription or a portion thereof paid by the party making the request. All objections made
29 at the time of the examination to the qualifications of the person before whom the deposition is
30 taken, or to the manner of taking it, or to the evidence presented, or to the conduct of any party,
31 and any other objection to the proceedings, shall be noted upon the deposition by the person
32 before whom the deposition is taken. Subject to the limitation imposed by an order under
33 Section (b) or Section (d), evidence objected to shall be taken subject to the objections. In lieu
34 of participating in the oral examination, parties served with notice of taking a deposition may
35 transmit written interrogatories to the officer, who shall propound them to the deponent and
36 record the answers verbatim.

37 (d) Motion to Terminate or Limit Examination. At any time during the taking of the
38 deposition, on motion of any party or of the deponent and upon a showing that the examination
39 is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or
40 oppress the deponent or party, a judge of the court in which the action is pending or any judge
41 in the county where the deposition is being taken may order the person before whom the
42 deposition is being taken to cease taking the deposition, or may limit the scope and manner of
43 the taking of the deposition as provided in Section (b). If the order made terminates the
44 examination, it shall be resumed thereafter only upon the order of the judge of the court in
45 which the action is pending. Upon demand of the objecting party or deponent, the taking of the
46 deposition shall be suspended for the time necessary to make a motion for an order. In granting
47 or refusing such order the judge may impose upon either party or upon the deponent the
48 requirement to pay such costs or expenses as the judge may deem reasonable.

49 (e) Submission to Deponent; Changes; Signing. When the deposition is transcribed, it
50 need not be submitted to the deponent for his examination and signature unless one of the
51 parties or the deponent makes a request therefor. When such request is made, the deposition

1 shall be submitted to the deponent for examination, and any changes in form or substance
2 which the deponent desires to make shall be entered upon the deposition by the person before
3 whom the deposition is taken with a statement of the reasons given by the deponent for making
4 them. The deposition shall then be signed by the deponent unless he refuses to sign. If the
5 deponent refuses to sign, the person before whom the deposition is taken shall state on the
6 record the fact that the deponent refused to sign, together with the reason, if any, given
7 therefor; and the deposition may then be used as fully as though signed, unless on motion to
8 suppress under Rule 32(d) the judge holds that the reasons given for the refusal to sign require
9 rejection of the deposition in whole or in part.

10 (f) Certification and Filing; Copies; Notice of Filing.

- 11 (1) When a deposition is transcribed, the person before whom it was taken shall
12 certify on the deposition that the deponent was duly sworn by him and that
13 the deposition is a true record of the testimony given by the deponent. He
14 shall then securely seal the original of the deposition in an envelope
15 endorsed with the title of the action and marked 'Deposition of [here insert
16 name of deponent]' and shall promptly file it and one copy with the court in
17 which the action is pending or send it and one copy by registered mail to the
18 clerk thereof for filing.
- 19 (2) Upon payment of reasonable charges therefor, the officer shall furnish a
20 copy of the deposition to any party or to the deponent.
- 21 (3) The party taking the deposition shall give prompt notice of its filing and
22 furnish a copy to all other parties.

23 (g) Failure to Attend or to Serve Subpoenas; Expenses.

- 24 (1) If the party giving the notice of the taking of a deposition fails to attend and
25 proceed therewith and another party attends in person or by attorney
26 pursuant to the notice, the judge may order the party giving the notice to pay
27 to such other party the amount of the reasonable expenses incurred by him
28 and his attorney in so attending, including reasonable attorney's fees.
- 29 (2) If the party giving the notice of the taking of a deposition of a witness fails
30 to serve a subpoena upon him and the witness because of such failure does
31 not attend, and if another party attends in person or by attorney because he
32 expects the deposition of that witness to be taken, the judge may order the
33 party giving the notice to pay to such other party the amount of the
34 reasonable expenses incurred by him and his attorney in so attending,
35 including reasonable attorney's fees.

36 (h) Judge, Definition.

- 37 (1) In respect to actions in the superior court, a judge of the court in which the
38 action is pending shall, for the purposes of this Rule, and Rule 31, Rule 33,
39 Rule 34, Rule 35, Rule 36 and Rule 37, be either a resident judge of the
40 judicial district or a judge regularly presiding over the courts of the district
41 or any special superior court judge holding court within the judicial district
42 or residing therein.
- 43 (2) In respect to actions in the district court, a judge of the court in which the
44 action is pending shall, for the purposes of this Rule, Rule 31, Rule 33, Rule
45 34, Rule 35, Rule 36 and Rule 37, be the chief district judge or any judge
46 designated by him pursuant to G.S. 7A-192.
- 47 (3) In respect to actions in either the superior court or the district court, a judge
48 of the court in the county where the deposition is being taken shall, for the
49 purposes of this Rule, be either a resident judge of the judicial district or a
50 judge regularly presiding over the courts, or any special superior court judge
51 holding court within the judicial district or residing therein, or the chief

1 judge of the district court or any judge designated by him pursuant to
2 G.S. 7A-192.

3 Rule 31

4 DEPOSITIONS OF WITNESSES UPON WRITTEN INTERROGATORIES

5 (a) Serving Interrogatories; Notice. A party desiring to take the deposition of any
6 person upon written interrogatories shall serve them upon every other party with a notice
7 stating the name and address of the person who is to answer them and the name or descriptive
8 title and address of the officer before whom the deposition is to be taken. Within 10 days
9 thereafter a party so served may serve cross interrogatories upon the party proposing to take the
10 deposition. Within five days thereafter the latter may serve redirect interrogatories upon a party
11 who has served cross interrogatories. Within three days after being served with redirect
12 interrogatories, a party may serve recross interrogatories upon the party proposing to take the
13 deposition.

14 (b) Person to Take Responses and Prepare Record. A copy of the notice and copies of
15 all interrogatories served shall be delivered by the party taking the deposition to the person
16 designated to take the deposition, who shall proceed promptly, in the manner provided by Rule
17 30(c), (e) and (f), to take the testimony of the witnesses in response to the interrogatories and to
18 prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the
19 interrogatories received by him.

20 (c) Notice of Filing. When the deposition is filed, the party taking it shall give prompt
21 notice of its filing and furnish a copy to all other parties.

22 (d) Orders for the Protection of Parties and Deponents. After the service of
23 interrogatories and prior to the taking of the testimony of the deponent, a judge of the court in
24 which the action is pending as defined in Rule 30(h), on motion promptly made by a party or a
25 deponent, upon notice and good cause shown, may make any order specified in Rule 30 which
26 is appropriate and just or an order that the deposition shall not be taken before the officer
27 designated in the notice or that it shall not be taken except upon oral examination.

28 Rule 32

29 ERRORS AND IRREGULARITIES IN DEPOSITIONS

30 (a) As to Notice. All errors and irregularities in the notice for taking a deposition are
31 waived unless written objection is promptly served upon the party giving the notice.

32 (b) As to Disqualification of Person Before Whom Taken. Objection to taking a
33 deposition because of disqualification of the person before whom it is to be taken is waived
34 unless made before the taking of the deposition begins or as soon thereafter as the
35 disqualification becomes known or could be discovered with reasonable diligence.

36 (c) As to Taking of Deposition.

37 (1) Objections to the competency of a witness or to the competency, relevancy,
38 or materiality of testimony are not waived by failure to make them before or
39 during the taking of the deposition.

40 (2) Objections to the form of written interrogatories submitted under Rule 31 are
41 waived unless served in writing upon the party propounding them within the
42 time allowed for serving the succeeding cross or other interrogatories and
43 within three days after service of the last interrogatories authorized.

44 (d) As to Completion and Return of Deposition. Errors and irregularities in the manner
45 in which the testimony is transcribed or the deposition is prepared, signed, sealed, endorsed,
46 transmitted, filed, or otherwise dealt with by the person before whom the deposition is taken
47 under Rules 30 and 31 are waived unless a motion to suppress the deposition or some part
48 thereof is made with reasonable promptness after such defect is, or with due diligence might
49 have been ascertained.

50 (e) Objection to Deposition Before Trial. The clerk shall file the deposition with the
51 other papers in the action and notify all parties that it is on file and open for inspection. Except

1 as otherwise provided by this Rule, any party may file written exceptions to the deposition
2 either in whole or in part for any good cause. Such exceptions shall be passed upon by the
3 judge on motion day or at pretrial.

4 Rule 33

5 INTERROGATORIES TO PARTIES

6 Any party may serve upon any adverse party written interrogatories to be answered by the
7 party served or, if the party served is a public or private corporation or a partnership or
8 association, by any officer or agent, who shall furnish such information as is available to the
9 party. Interrogatories may be served after commencement of the action and without leave of
10 court, except that, if service is made by the plaintiff within 30 days after such commencement,
11 leave of court granted with or without notice must first be obtained. The interrogatories shall be
12 answered separately and fully in writing under oath. The answers shall be signed by the person
13 making them; and the party upon whom the interrogatories have been served shall serve a copy
14 of the answers on the party submitting the interrogatories within 15 days after the service of the
15 interrogatories, unless the court, on motion and notice and for good cause shown, enlarges or
16 shortens the time. Within 10 days after service of interrogatories a party may serve written
17 objections thereto together with a notice of hearing the objections at the earliest practicable
18 time. Answers to interrogatories to which objection is made shall be deferred until the
19 objections are determined, but the making of objections to certain interrogatories shall not
20 delay the answering of interrogatories to which objection is not made. If the objections are
21 overruled, the court shall fix the time for answering the interrogatories.

22 Interrogatories may relate to any matters which can be inquired into under Rule 26(b), and
23 the answers may be used to the same extent as provided in Rule 26(d) for the use of the
24 deposition of a party. Interrogatories may be served after a deposition has been taken, and a
25 deposition may be sought after interrogatories have been answered, but a judge of the court in
26 which the action is pending, as defined by Rule 30(h), on motion of the deponent or the party
27 interrogated, may make such protective order as justice may require. The number of
28 interrogatories or of sets of interrogatories to be served is not limited except as justice requires
29 to protect the party from annoyance, expense, embarrassment, or oppression. The provisions of
30 Rule 30(b) are applicable for the protection of the party from whom answers to interrogatories
31 are sought under this Rule.

32 Rule 34

33 DISCOVERY AND PRODUCTION OF DOCUMENTS AND THINGS FOR INSPECTION, 34 COPYING, OR PHOTOGRAPHING

35 (a) Discovery on Court Order. Upon motion of any party showing good cause therefor
36 and upon notice to all other parties, and subject to the provisions of Rule 30(b), the clerk of the
37 court in which an action is pending or a judge of the court in which an action is pending, as
38 defined by Rule 30(h) may (1) order any party to produce and permit the inspection and
39 copying or photographing, by or on behalf of the moving party, of any designated documents,
40 papers, books, accounts, letters, photographs, objects, or tangible things, not privileged, which
41 constitute or contain evidence relating to any of the matters within the scope of the examination
42 permitted by Rule 26(b) and which are in his possession, custody, or control; or (2) order any
43 party to permit entry upon designated land or other property in his possession or control for the
44 purpose of inspecting, measuring, surveying, or photographing the property or any designated
45 object or operation thereon within the scope of the examination permitted by Rule 26(b). The
46 order shall specify the time, place, and manner of making the inspection and taking the copies
47 and photographs and may prescribe such terms and conditions as are just.

48 (b) Discovery Without Court Order. Copies of such designated documents or other
49 things listed in Section (a)(1) as are subject to discovery without a showing of necessity or
50 justification may be obtained without a court order by requiring such copies to be attached to
51 the answers to interrogatories under Rule 33 or produced in response to a subpoena under Rule

1 45(d). In lieu of furnishing copies of such documents or other things, the party against whom
2 discovery is sought may afford an opportunity for their examination and copying. Copies of
3 statements concerning the action or its subject matter previously given by the party seeking
4 such statement shall be obtainable without court order in accord with the procedure of this
5 subdivision.

6 Rule 35

7 PHYSICAL AND MENTAL EXAMINATION OF PERSONS

8 (a) Order for Examination. In an action in which the mental or physical condition or the
9 blood relationship of a party, or of an agent or a person in the custody or under the legal control
10 of a party, is in controversy, a judge of the court in which the action is pending as denned by
11 Rule 30(h), may order the party to submit to a physical or mental or blood examination by a
12 physician, or to produce for such examination his agent or the person in his custody or legal
13 control. The order may be made only on motion for good cause shown and upon notice to the
14 person to be examined and to all parties and shall specify the time, place, manner, conditions,
15 and scope of the examination and the person or persons by whom it is to be made.

16 (b) Report of Findings.

17 (1) If requested by the party against whom an order is made under Section (a) or
18 by the person examined, the party causing the examination to be made shall
19 deliver to him a copy of a detailed written report of the examining physician
20 setting out his findings and conclusions, together with like reports of all
21 earlier examinations of the same condition. After such request and delivery
22 the party causing the examination to be made shall be entitled upon request
23 to receive from the party or person examined a like report of any
24 examination, previously or thereafter made, of the same condition. If the
25 party or person examined refuses to deliver such report, the judge on motion
26 and notice may make an order requiring delivery on such terms as are just,
27 and if a physician fails or refuses to make such a report, the judge may
28 exclude his testimony if offered at the trial.

29 (2) By requesting and obtaining a report of the examination so ordered or by
30 taking the deposition of the examiner, the party examined waives any
31 privilege he may have in that action or any other involving the same
32 controversy, regarding the testimony of every other person who has
33 examined or may thereafter examine him in respect of the same condition.

34 Rule 36

35 ADMISSION OF FACTS AND OF GENUINENESS OF DOCUMENTS

36 (a) Request for Admission. After commencement of an action a party may serve upon
37 any other party a written request for the admission by the latter of the genuineness of any
38 relevant documents described in and exhibited with the request or of the truth of any relevant
39 matters of fact set forth in the request. If a plaintiff desires to serve a request within 10 days
40 after commencement of the action, leave to do so must be obtained. Such leave may be granted
41 with or without notice, and by the clerk of the court in which the action is pending or by a
42 judge of the court in which the action is pending, as denned by Rule 30(h). Copies of the
43 documents shall be served with the request unless copies have already been furnished. Each of
44 the matters of which an admission is requested shall be deemed admitted unless, within a
45 period designated in the request, not less than 20 days after service thereof or within such
46 shorter or longer time as may be allowed on motion and notice, the party to whom the request
47 is directed serves upon the party requesting the admission either (1) a sworn statement denying
48 specifically the matters of which an admission is requested or setting forth in detail the reasons
49 why he cannot truthfully admit or deny those matters or (2) written objections on the ground
50 that some or all of the requested admissions are privileged or irrelevant or that the request is
51 otherwise improper in whole or in part. If written objections to a part of the request are made,

1 the remainder of the request shall be answered within the period designated in the request. A
2 denial shall fairly meet the substance of the requested admission, and when good faith requires
3 that a party deny only a part or a qualification of a matter of which an admission is requested,
4 he shall specify so much of it as is true and deny only the remainder. If a request is refused
5 because of lack of information or knowledge upon the part of the party to whom the request is
6 directed, he shall also show in his sworn statement that the means of securing the information
7 or knowledge are not reasonably within his power.

8 (b) Procedure on Objections. If written objections are made, the party serving the
9 request may, on motion and notice to all other parties, apply to a judge of the court in which the
10 action is pending, as defined by Rule 30(h), for an order directing the objecting party to
11 respond to the request. The party serving the request may apply, in like manner, for a similar
12 order when he regards the reasons set forth for neither admitting or denying the request as
13 insufficient.

14 (c) Use of Admissions; Effect Thereof. Objection to the use of an admission obtained
15 under this Rule at the trial or hearing may be made irrespective of whether there has been prior
16 objection. Any admission made pursuant to this Rule is for the purpose of the pending action
17 only and neither constitutes an admission by the party for any other purpose nor may the
18 admission be used against him in any other proceeding.

19 Rule 37

20 FAILURE TO MAKE DISCOVERY; CONSEQUENCES

21 (a) Failure to Answer. If a party or other deponent does not answer any question
22 propounded upon oral examination, the examination shall be completed on other matters and
23 then adjourned. Thereafter, on five days' notice to all persons affected thereby, the proponent
24 may apply to a judge of the court in which the action is pending or a judge of the court in the
25 county where the deposition is being taken, as defined by Rule 30(h), for an order compelling
26 an answer. Upon the failure of a deponent to answer any interrogatory submitted under Rule 31
27 or upon the failure of a party to answer any interrogatory submitted under Rule 33, the
28 proponent may on like notice make like application for such an order. If the motion is granted,
29 the order shall fix a time and place for further examination or a time for responding to the
30 interrogatory as the case may be. No additional notice of examination need be given.

31 (b) Failure to Comply With Order or to Answer After Denial of Protective Order.

32 (1) If a party or other witness fails without good cause to be sworn or fails
33 without good cause to answer any question or interrogatory after being
34 directed to do so by the judge, such failure may be considered a contempt of
35 court.

36 (2) Other consequences: If any party or an officer or managing agent of a party
37 fails without good cause to obey an order made under Section (a) of this
38 Rule requiring him to answer designated questions or interrogatories, or an
39 order made under Rule 34, Rule 35 or Rule 36, the judge may make such
40 orders in respect to the failure to answer as are just. The relief granted may
41 include, if just, the following:

42 (i) An order that the matters regarding which the questions were asked,
43 or the character or description of the thing or land, or the contents of
44 the paper, or the physical or mental or blood condition sought to be
45 examined, or any other designated facts shall be taken to be
46 established for the purposes of the action in accordance with the
47 claim of the party obtaining the order.

48 (ii) An order refusing to allow the disobedient party to support or oppose
49 designated claims or defenses, or prohibiting him from introducing in
50 evidence designated documents or things or items of testimony, or

1 from introducing evidence of the physical or mental or blood
2 condition sought to be examined.

3 (iii) An order striking out pleadings or parts thereof, or staying further
4 proceedings until the order is obeyed or the question or interrogatory
5 is answered, or dismissing the action or proceeding or any part
6 thereof, or rendering a judgment by default against the disobedient
7 party.

8 (iv) When a party has failed to comply with an order under Rule 35(a)
9 requiring him to produce another for examination, such orders as are
10 listed in subdivisions (i), (ii) and (iii) of this subdivision of this Rule
11 unless the party failing to comply shows that he is unable to produce
12 such person for examination.

13 (c) Expenses on Refusal to Admit. If a party, after being served with a request under
14 Rule 36 to admit the genuineness of any documents or the truth of any matters of fact, serves a
15 sworn denial thereof and if the genuineness of any such document or the truth of any such
16 matter of fact is thereafter established by the admission of such party, or by the verdict of the
17 jury, or by a finding by the court when there is a trial without a jury, he may apply to the judge
18 for an order requiring the other party to pay him the reasonable expenses incurred in making
19 such proof, excluding attorney's fees. If the judge finds that there were no good reasons for the
20 denial and that the admissions sought were of substantial importance, the order shall be made.

21 (d) Failure of Party to Attend or Serve Answers. If a party or an officer or managing
22 agent of a party without good cause fails to appear before the person before whom the
23 deposition is to be taken, after being served with a proper notice, or without good cause fails to
24 serve answers to interrogatories submitted under Rule 33, after proper service of such
25 interrogatories, a judge of the court in which the action is pending, as denned by Rule 30(h), on
26 motion and notice may make such orders as may be just including, among others, the striking
27 of all or any part of any pleading of that party, or dismissing the action or proceeding or any
28 part thereof, or the entry of a judgment by default against that party.

29 ARTICLE 6

30 Trials

31 Rule 38

32 JURY TRIAL OF RIGHT

33 (a) Right Preserved. The right of trial by jury as declared by the Constitution or statutes
34 of North Carolina shall be preserved to the parties inviolate.

35 (b) Demand. Any party may demand a trial by jury of any issue triable of right by a jury
36 by serving upon the other parties a demand therefor in writing at any time after commencement
37 of the action and not later than 10 days after the service of the last pleading directed to such
38 issue. Such demand may be made in the pleading of the party or endorsed on the pleading.

39 (c) Demand: Specification of Issues. In his demand a party may specify the issues
40 which he wishes so tried; otherwise, he shall be deemed to have demanded trial by jury for all
41 the issues so triable. If a party has demanded trial by jury for only some of the issues, any other
42 party within 10 days after service of the last pleading directed to such issues or within 10 days
43 after service of the demand, whichever is later, or such lesser time as the court may order, may
44 serve a demand for trial by jury of any other or all of the issues in the action.

45 (d) Waiver. Except in actions wherein jury trial cannot be waived, the failure of a party
46 to serve a demand as required by this Rule and file it as required by Rule 5(d) constitutes a
47 waiver by him of trial by jury. A demand for trial by jury as herein provided may not be
48 withdrawn without the consent of the parties who have pleaded or otherwise appear in the
49 action.

50 Rule 39

51 TRIAL BY JURY OR BY THE COURT

1 (a) By Jury. When trial by jury has been demanded and has not been withdrawn as
2 provided in Rule 38, the action shall be designated upon the docket as a jury action. The trial of
3 all issues so demanded shall be by jury, unless (1) the parties who have pleaded or otherwise
4 appeared in the action or their attorneys of record, by written stipulation filed with the court or
5 by an oral stipulation made in open court and entered in the minutes, consent to trial by the
6 court sitting without a jury, or (2) the court upon motion or of its own initiative finds that a
7 right of trial by jury of some or all of those issues does not exist under the Constitution or
8 statutes.

9 (b) By the Court. Issues not demanded for trial by jury as provided in Rule 38 shall be
10 tried by the court; but, notwithstanding the failure of a party to demand a trial by jury in an
11 action in which such a demand might have been made of right, the court in its discretion upon
12 motion or of its own initiative may order a trial by jury of any or all issues.

13 (c) Advisory Jury and Trial by Consent. In all actions not triable of right by a jury the
14 court upon motion or of its own initiative may try any issue or question of fact with an advisory
15 jury or the court, with the consent of the parties, may order a trial with a jury whose verdict has
16 the same effect as if trial by jury had been a matter of right. In either event the jury shall be
17 selected in the manner provided by Rule 47(a).

18 Rule 40

19 ASSIGNMENT OF CASES FOR TRIAL

20 The resident judge of any judicial district senior in point of continuous service on the
21 superior court may provide by rule for the calendaring of actions for trial in the superior court
22 division of the various counties within his district. Calendaring of actions for trial in the district
23 court shall be in accordance with G.S. 7A-146. Precedence shall be given to actions entitled
24 thereto by any statute of this State.

25 Rule 41

26 DISMISSAL OF ACTIONS

27 (a) Voluntary Dismissal; Effect Thereof.

28 (1) By Plaintiff; by Stipulation. Subject to the provisions of Rule 23(c) and of
29 any statute of this State, an action or any claim therein may be dismissed by
30 the plaintiff without order of court (i) by filing a notice of dismissal at any
31 time before service by the adverse party of an answer or of a motion for
32 summary judgment or of any motion treated as a motion for summary
33 judgment under these Rules, whichever first occurs, or (ii) by filing a
34 stipulation of dismissal signed by all parties who have appeared in the
35 action. Unless otherwise stated in the notice of dismissal or stipulation, the
36 dismissal is without prejudice, except that a notice of dismissal operates as
37 an adjudication upon the merits when filed by a plaintiff who has once
38 dismissed in any court of this or any other state or of the United States, an
39 action based on or including the same claim. If a claim is dismissed without
40 prejudice under (i) of this subsection (1), a new action based on the same
41 claim may be commenced within one year after such dismissal.

42 (2) By Order of Judge. Except as provided in subsection (1) of this Section, an
43 action or any claim therein shall not be dismissed at the plaintiff's instance
44 save upon order of the judge and upon such terms and conditions as justice
45 requires. Unless otherwise specified in the order, a dismissal under this
46 subsection is without prejudice. If any action or claim is dismissed without
47 prejudice under this subsection (2), a new action based on the same claim
48 may be commenced within one year after such dismissal unless the judge
49 shall specify a shorter time.

50 (b) Involuntary Dismissal; Effect Thereof. For failure of the plaintiff to prosecute or to
51 comply with these Rules or any order of court, a defendant may move for dismissal of an action

1 or of any claim against him. After the plaintiff has completed the presentation of his evidence,
2 the defendant, without waiving his right to offer evidence in the event the motion is not
3 granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff
4 has shown no right to relief. In an action tried by the court without a jury the court as trier of
5 the facts may then determine them and render judgment against the plaintiff or may decline to
6 render any judgment until the close of all the evidence. If the court renders judgment on the
7 merits against the plaintiff, the court shall make findings as provided in Rule 52(a). Unless the
8 court in its orders for dismissal otherwise specifies, a dismissal under this Section operates as
9 an adjudication upon the merits. If the dismissal is not on the merits, the time within which a
10 new action based on the same claim may be commenced shall be determined by the judge, but
11 in no event shall the time exceed one year from the entry of the judgment of dismissal.

12 (c) Dismissal of Counterclaim, Crossclaim, or Third-Party Claim. The provisions of
13 this Rule apply to the dismissal of any counterclaim, crossclaim, or third-party claim. A
14 voluntary dismissal by the claimant alone pursuant to Section (a) shall be made before a motion
15 for summary judgment or any motion so treated under these Rules, or before a responsive
16 pleading is served by the adverse party, or, if there is none, before the introduction of evidence
17 at the trial or hearing.

18 (d) Costs. A plaintiff who dismisses an action or claim under Section(a) of this Rule
19 shall be taxed with the costs of the action unless the action was brought in forma pauperis. If a
20 plaintiff who has once dismissed an action in any court commences an action based upon or
21 including the same claim against the same defendant before the payment of the costs of the
22 action previously dismissed, unless such previous action was brought in forma pauperis, the
23 court, upon motion of the defendant, shall dismiss the action.

24 Rule 42

25 CONSOLIDATION; SEPARATE TRIALS

26 (a) Consolidation. When actions involving a common question of law or fact are
27 pending in one division of the court, the judge may order a joint hearing or trial of any or all the
28 matters in issue in the actions; he may order all the actions consolidated; and he may make such
29 orders concerning proceedings therein as may tend to avoid unnecessary costs or delay. When
30 actions involving a common question of law or fact are pending in both the superior and the
31 district court of the same county, a judge of the superior court in which the action is pending
32 may order all the actions consolidated, and he may make such orders concerning proceedings
33 therein as may tend to avoid unnecessary costs or delay.

34 (b) Separate Trials. The court may in furtherance of convenience or to avoid prejudice
35 and shall for considerations of venue upon timely motion order a separate trial of any claim,
36 crossclaim, counterclaim, or third-party claim, or of any separate issue or of any number of
37 claims, crossclaims, counterclaims, third-party claims, or issues.

38 Rule 43

39 EVIDENCE

40 (a) Form. In all trials the testimony of witnesses shall be taken orally in open court,
41 unless otherwise provided by these Rules.

42 (b) Examination of Hostile Witnesses and Adverse Parties. A party may interrogate any
43 unwilling or hostile witness by leading questions and may contradict and impeach him in all
44 respects as if he had been called by the adverse party. A party may call an adverse party or an
45 agent or employee of an adverse party, or an officer, director, or employee of a public or
46 private corporation or of a partnership or association which is an adverse party, or an officer,
47 agent or employee of a State, county or municipal government or agency thereof which is an
48 adverse party, and interrogate him by leading questions and contradict and impeach him in all
49 respects as if he had been called by the adverse party.

50 (c) Record of Excluded Evidence. In an action tried before a jury, if an objection to a
51 question propounded to a witness is sustained by the court, the court on request of the

1 examining attorney shall order a record made of the answer the witness would have given. The
2 court may add such other or further statement as clearly shows the character of the evidence,
3 the form in which it was offered, the objection made and the ruling thereon. In actions tried
4 without a jury the same procedure may be followed, except that the court upon request shall
5 take and report the evidence in full, unless it clearly appears that the evidence is not admissible
6 on any grounds or that the witness is privileged.

7 (d) Affirmation in Lieu of Oath. Whenever under these Rules an oath is required to be
8 taken, a solemn affirmation may be accepted in lieu thereof.

9 (e) Evidence on Motions. When a motion is based on facts not appearing of record the
10 court may hear the matter on affidavits presented by the respective parties, but the court may
11 direct that the matter be heard wholly or partly on oral testimony or depositions.

12 Rule 44

13 PROOF OF OFFICIAL RECORD

14 (a) Authentication of Copy. An official record or an entry therein, when admissible for
15 any purpose, may be evidenced by an official publication thereof or by a copy attested by the
16 officer having the legal custody of the record, or by his deputy, and accompanied with a
17 certificate that such officer has the custody. If the office in which the record is kept is without
18 the State of North Carolina but within the United States or within a territory or insular
19 possession subject to the dominion of the United States, the certificate may be made by a judge
20 of a court of record of the political subdivision in which the record is kept, authenticated by the
21 seal of the court, or may be made by any public officer having a seal of office and having
22 official duties in the political subdivision in which the record is kept, authenticated by the seal
23 of his office. If the office in which the record is kept is in a foreign state or country, the
24 certificate may be made by a secretary of embassy or legation, consul general, consul, vice
25 consul, or consular agent or by any officer in the foreign service of the United States stationed
26 in the foreign state or country in which the record is kept, and authenticated by the seal of his
27 office.

28 (b) Proof of Lack of Record. A written statement signed by an officer having the
29 custody of an official record or by his deputy that after diligent search no record or entry of a
30 specified tenor is found to exist in the records of his office, accompanied by a certificate as
31 above provided, is admissible as evidence that the records of his office contain no such record
32 or entry.

33 (c) Other Proof. This Rule does not prevent the proof of official records specified in
34 Title 28, U.S.C. §§ 1738 and 1739 in the manner therein provided; nor of entry or lack of entry
35 in official records by any method authorized by any other applicable statute or by the rules of
36 evidence at common law.

37 Rule 45

38 SUBPOENA

39 (a) For Attendance of Witnesses; Issuances; Form. A subpoena for the purpose of
40 obtaining the testimony of a witness in a pending cause shall, except as hereinafter provided, be
41 issued at the request of any party by the clerk of superior court for the county in which the
42 hearing or trial is to be held. A subpoena shall be directed to the witness, shall state the name of
43 the court and the title of the action, the name of the party at whose instance the witness is
44 summoned, and shall command the person to whom it is directed to attend and give testimony
45 at a time and place therein specified. The clerk shall issue a subpoena, or a subpoena for the
46 production of documentary evidence, signed but otherwise in blank, to a party requesting it,
47 who shall fill it in before service.

48 (b) Issuance by a Judge. Such subpoena may also be issued by any judge of the superior
49 court, judge of the district court, or magistrate.

50 (c) For Production of Documentary Evidence. A subpoena may also command the
51 person to whom it is directed to produce the records, books, papers, documents, or tangible

1 things designated therein; but the judge, upon motion made promptly and in any event at or
2 before the time specified in the subpoena for compliance therewith, may (1) quash or modify
3 the subpoena if it is unreasonable and oppressive and in such case may order the party in whose
4 behalf the subpoena is issued to pay the person to whom the subpoena is directed part or all of
5 his reasonable expenses including attorneys' fees or (2) grant the motion unless the party in
6 whose behalf the subpoena is issued advances the reasonable cost of producing the records,
7 books, papers, documents, or tangible things.

8 (d) Subpoena for Taking Depositions; Place of Examination.

9 (1) Proof of service of a notice to take a deposition as provided in Rules 30(a)
10 and 31(a) constitutes a sufficient authorization for the issuance by the clerk
11 of the superior court for the county in which the deposition is to be taken of
12 subpoenas for the persons named or described therein. The subpoena may
13 command the person to whom it is directed to produce designated records,
14 books, papers, documents, or tangible things which constitute or contain
15 evidence relating to any of the matters within the scope of the examination
16 permitted by Rule 26(b), but in that event the subpoena will be subject to the
17 provisions of Section (b) of Rule 30 and Section (c) of this Rule.

18 (2) A resident of the State may be required to attend for examination by
19 deposition only in the county wherein he resides or is employed or transacts
20 his business in person. A nonresident of the State may be required to attend
21 for such examination only in the county wherein he is served with a
22 subpoena, or within 40 miles from the place of service, or at such other
23 convenient place as is fixed by an order of court.

24 (e) Service. All subpoenas may be served by the sheriff, by his deputy, by a constable,
25 by a coroner or by any other person who is not a party. Service may be made only by the
26 delivery of a copy to the person named therein by any person authorized in this subdivision to
27 serve subpoenas, or by telephone communication with the person named therein by any process
28 officer as specified in this Section, or by mailing the subpoena, registered or certified mail,
29 return receipts requested, by any process officer specified in this Section. Personal service shall
30 be proved by return of the process officer making service and by return under oath of any other
31 person making service. Service by telephone communication shall be proved by return of the
32 process officer noting the method of service. Service by registered or certified mail shall be
33 proved by filing the return receipt with the return.

34 (f) Punishment for Failure to Obey. Failure by any person without adequate cause to
35 obey a subpoena served upon him may be deemed a contempt of the court from which the
36 subpoena issued. Failure by a party without adequate cause to obey a subpoena served upon
37 him shall also subject such party to the sanctions provided in Rule 37(d).

38 Rule 46

39 OBJECTIONS AND EXCEPTIONS

40 (a) Rulings on Admissibility of Evidence.

41 (1) When there is objection to the admission of evidence on the ground that the
42 witness is for a specified reason incompetent or not qualified or disqualified,
43 it shall be deemed that a like objection has been made to any subsequent
44 admission of evidence from the witness in question. Similarly, when there is
45 objection to the admission of evidence involving a specified line of
46 questioning, it shall be deemed that a like objection has been taken to any
47 subsequent admission of evidence involving the same line of questioning.

48 (2) If there is proper objection to the admission of evidence and the objection is
49 overruled, the ruling of the court shall be deemed excepted to by the party
50 making the objection. If an objection to the admission of evidence is
51 sustained or if the court for any reason excludes evidence offered by a party,

1 the ruling of the court shall be deemed excepted to by the party offering the
2 evidence.

- 3 (3) No objections are necessary with respect to questions propounded to a
4 witness by the court or a juror but it shall be deemed that each such question
5 has been properly objected to and that the objection has been overruled and
6 that an exception has been taken to the ruling of the court by all parties to the
7 action.

8 (b) Rulings and Orders Not Directed to the Admissibility of Evidence. With respect to
9 rulings and orders of the court not directed to the admissibility of evidence, formal objections
10 and exceptions are unnecessary. In order to preserve an exception to any such ruling or order or
11 to the court's failure to make any such ruling or order, it shall be sufficient if a party, at the time
12 the ruling or order is made or sought, makes known to the court his objection to the action of
13 the court or makes known the action which he desires the court to take and his ground therefor;
14 and if a party has no opportunity to object or except to a ruling or order at the time it is made,
15 the absence of an objection or exception does not thereafter prejudice him.

16 (c) Instruction. If there is error, either in the refusal of the judge to grant a prayer for
17 instructions, or in granting a prayer, or in his instructions generally, the same is deemed
18 excepted to without the filing of any formal objections.

19 Rule 47

20 JURORS

21 Inquiry as to the fitness and competency of any person to serve as a juror and the
22 challenging of such person shall be as provided in Chapter 9 of the General Statutes.

23 Rule 48

24 JURIES OF LESS THAN TWELVE — MAJORITY VERDICT

25 Except in actions in which a jury is required by statute, the parties may stipulate that the
26 jury shall consist of any number less than 12 or that a verdict or a finding of a stated majority of
27 the jurors shall be taken as the verdict or finding of the jury.

28 Rule 49

29 VERDICTS

30 (a) General and Special Verdicts. The judge may require a jury to return either a
31 general or a special verdict and in all cases may instruct the jury, if it renders a general verdict,
32 to find upon particular questions of fact, to be stated in writing, and may direct a written
33 finding thereon. A general verdict is that by which the jury pronounces generally upon all or
34 any of the issues, either in favor of the plaintiff or defendant. A special verdict is that by which
35 the jury finds the facts only.

36 (b) Framing of Issues. Issues shall be framed in concise and direct terms, and prolixity
37 and confusion must be avoided by not having too many issues. The issues, material to be tried,
38 must be made up by the attorneys appearing in the action, or by the judge presiding, and
39 reducing to writing, before or during the trial.

40 (c) Waiver of Jury Trial on Issue. If, in submitting the issues to the jury, the judge omits
41 any issue of fact raised by the pleadings or by the evidence, each party waives his right to a trial
42 by jury of the issue so omitted unless before the jury retires he demands its submission to the
43 jury. As to an issue omitted without such demand the judge may make a finding; or, if he fails
44 to do so, he shall be deemed to have made a finding in accord with the judgment entered.

45 (d) Special Finding Inconsistent with General Verdict. Where a special finding of facts
46 is inconsistent with the general verdict, the former controls, and the judge shall give judgment
47 accordingly.

48 Rule 50

49 MOTION FOR A DIRECTED VERDICT AND FOR JUDGMENT NOTWITHSTANDING
50 THE VERDICT

1 (a) When Made; Effect. A party who moves for a directed verdict at the close of the
2 evidence offered by an opponent may offer evidence in the event that the motion is not granted,
3 without having reserved the right so to do and to the same extent as if the motion had not been
4 made. A motion for a directed verdict which is not granted is not a waiver of trial by jury even
5 though all parties to the action have moved for directed verdicts. A motion for a directed
6 verdict shall state the specific grounds therefor. The order granting a motion for a directed
7 verdict shall be effective without any assent of the jury.

8 (b) Motion for Judgment Notwithstanding the Verdict. Whenever a motion for a
9 directed verdict made at the close of all the evidence is denied or for any reason is not granted,
10 the submission of the action to the jury shall be deemed to be subject to a later determination of
11 the legal questions raised by the motion. Not later than 10 days after entry of judgment, a party
12 who has moved for a directed verdict may move to have the verdict and any judgment entered
13 thereon set aside and to have judgment entered in accordance with his motion for a directed
14 verdict; or if a verdict was not returned such party, within 10 days after the jury has been
15 discharged, may move for judgment in accordance with his motion for a directed verdict. In
16 either case the motion shall be granted if it appears that the motion for directed verdict could
17 properly have been granted. A motion for a new trial may be joined with this motion, or a new
18 trial may be prayed for in the alternative. If a verdict was returned the judge may allow the
19 judgment to stand or may set aside the judgment and either order a new trial or direct the entry
20 of judgment as if the requested verdict had been directed. If no verdict was returned the judge
21 may direct the entry of judgment as if the requested verdict had been directed or may order a
22 new trial. No review of the failure to grant a motion for directed verdict shall be had unless the
23 party also moves for judgment after submission of the action to the jury. But a motion to set
24 aside or otherwise nullify a verdict or for a new trial shall be deemed to include a motion for
25 judgment in accordance with the motion for a directed verdict as an alternative.

26 (c) Same; Conditional Rulings on Grant of Motion.

27 (1) If the motion for judgment notwithstanding the verdict, provided for in
28 Section (b) of this Rule, is granted, the court shall also rule on the motion for
29 new trial, if any, by determining whether it should be granted if the
30 judgment is thereafter vacated or reversed, and shall specify the grounds for
31 granting or denying the motion for the new trial. If the motion for new trial
32 is thus conditionally granted, the order thereon does not affect the finality of
33 the judgment. In case the motion for new trial has been conditionally granted
34 and the judgment is reversed on appeal, the new trial shall proceed unless the
35 appellate division has otherwise ordered. In case the motion for new trial has
36 been conditionally denied, the appellee on appeal may assert error in that
37 denial; and if the judgment is reversed on appeal, subsequent proceedings
38 shall be in accordance with the order of the appellate division.

39 (2) The party whose verdict has been set aside on motion for judgment
40 notwithstanding the verdict may serve a motion for a new trial pursuant to
41 Rule 59 not later than 10 days after entry of the judgment notwithstanding
42 the verdict.

43 (d) Same; Denial of Motion. If the motion for judgment notwithstanding the verdict is
44 denied, the party who prevailed on that motion may, as appellee, assert grounds entitling him to
45 a new trial in the event the appellate division concludes that the trial court erred in denying the
46 motion for judgment notwithstanding the verdict. If the appellate division reverses the
47 judgment, nothing in this Rule precludes it from determining that the appellee is entitled to a
48 new trial, or from directing the trial court to determine whether a new trial shall be granted.

49 Rule 51

50 INSTRUCTIONS TO JURY

1 (a) Judge to Explain Law but Give No Opinion on Facts. In charging the jury in any
2 action governed by these Rules, no judge shall give an opinion whether a fact is fully or
3 sufficiently proved, that being the true office and province of the jury, but he shall declare and
4 explain the law arising on the evidence given in the case. The judge shall not be required to
5 state such evidence except to the extent necessary to explain the application of the law thereto:
6 provided, the judge shall give equal stress to the contentions of the various parties.

7 (b) Requests for Special Instructions. Requests for special instructions must be in
8 writing, entitled in the cause, and signed by the counsel or party submitting them. Such requests
9 for special instructions must be submitted to the judge before the judge's charge to the jury is
10 begun. The judge may, in his discretion, consider such requests regardless of the time they are
11 made. Written requests for special instructions shall, after their submission to the judge, be
12 filed with the clerk as a part of the record.

13 (c) Judge Not to Comment on Verdict. The judge shall make no comment on any
14 verdict in open court in the presence or hearing of any member of the jury panel; and if any
15 judge shall make any comment as herein prohibited or shall praise or criticize any jury on
16 account of its verdict, whether such praise, criticism or comment be made inadvertently or
17 intentionally, such praise, criticism or comment by the judge shall for any party to any other
18 action remaining to be tried constitute valid grounds as a matter of right for a continuance of
19 any action to a time when all members of the jury panel are no longer serving. The provisions
20 of this Section shall not be applicable upon the hearing of motions for a new trial or for
21 judgment notwithstanding the verdict.

22 Rule 52

23 FINDINGS BY THE COURT

24 (a) Findings. In all actions tried upon the facts without a jury or with an advisory jury,
25 the court shall find the facts specially and state separately its conclusions of law thereon and
26 direct the entry of the appropriate judgment. Except as provided in Rule 41(b), findings of fact
27 and conclusions of law are unnecessary on decisions of any motion unless requested by a party.
28 Similarly, findings of fact and conclusions of law are unnecessary on the granting or denying of
29 a temporary injunction or any other provisional remedy except as otherwise provided by statute
30 expressly relating to such remedy or unless requested by a party.

31 (b) Amendment. Upon motion of a party made not later than 10 days after entry of
32 judgment the court may amend its findings or make additional findings and may amend the
33 judgment accordingly. The motion may be made with a motion for a new trial pursuant to Rule
34 59.

35 (c) Review on Appeal. When findings of fact are made in actions tried by the court
36 without a jury, the question of the sufficiency of the evidence to support the findings may be
37 raised on appeal whether or not the party raising the question has made in the trial court an
38 objection to such findings or has made a motion to amend them or a motion for judgment, or a
39 request for specific findings.

40 Rule 53

41 REFEREES

42 (a) Kinds of Reference.

43 (1) By Consent. Any or all of the issues in an action may be referred upon the
44 written consent of the parties except in actions to annul a marriage, and
45 actions for divorce and separation.

46 (2) Compulsory. Where the parties do not consent to a reference, the court may,
47 upon the application of any party or on its own motion, order a reference in
48 the following cases:

49 (i) Where the trial of an issue requires the examination of a long or
50 complicated account; in which case the referee may be directed to

1 hear and decide the whole issue, or to report upon any specific
2 question of fact involved therein.

3 (ii) Where the taking of an account is necessary for the information of
4 the court before judgment, or for carrying a judgment or order into
5 effect.

6 (iii) Where the case involves a complicated question of boundary, or
7 requires a personal view of the premises.

8 (iv) Where a question of fact arises outside the pleadings, upon motion or
9 otherwise, at any stage of the action.

10 (b) Jury Trial.

11 (1) Where the reference is by consent, the parties waive the right to have any of
12 the issues within the scope of the reference passed on by a jury.

13 (2) A compulsory reference does not deprive any party of his right to a trial by
14 jury, which right he may preserve by

15 (i) Objecting to the order of compulsory reference at the time it is made,
16 and

17 (ii) By filing specific exceptions to particular findings of fact made by
18 the referee within 30 days after the referee files his report with the
19 clerk of the court in which the action is pending, and

20 (iii) By formulating appropriate issues based upon the exceptions taken
21 and demanding a jury trial upon such issues. Such issues shall be
22 tendered at the same time the exceptions to the referee's report are
23 filed. If there is a trial by jury upon any issue referred, the trial shall
24 be only upon the evidence taken before the referee.

25 (c) Appointment. The parties may agree in writing upon one or more persons not
26 exceeding three, and a reference shall be ordered to such person or persons in appropriate cases.
27 If the parties do not agree, the court shall appoint one or more referees, not exceeding three, but
28 no person shall be appointed referee to whom all parties in the action object.

29 (d) Compensation. The compensation to be allowed a referee shall be fixed by the court
30 and charged in the bill of costs. After appointment of a referee, the court may from time to time
31 order advancements by one or more of the parties of sums to be applied to the referee's
32 compensation. Such advancements may be apportioned between the parties in such manner as
33 the court sees fit. Advancements so made shall be taken into account in the final fixing of costs
34 and such adjustments made as the court then deems proper.

35 (e) Powers. The order of reference to the referee may specify or limit his powers and
36 may direct him to report only upon particular issues or to do or perform particular acts or to
37 receive and report evidence only and may fix the time and place for beginning and closing the
38 hearings and for the filing of the referee's report. Subject to the specifications and limitations
39 stated in the order, every referee has power to administer oaths in any proceeding before him,
40 and has generally the power vested in a referee by law. The referee shall have the same power
41 to grant adjournments and to allow amendments to pleadings and to the summons as the judge
42 and upon the same terms and with like effect. The referee shall have the same power as the
43 judge to preserve order and punish all violations thereof, to compel the attendance of witnesses
44 before him by attachment, and to punish them as for contempt for nonattendance or for refusal
45 to be sworn or to testify. The parties may procure the attendance of witnesses before the referee
46 by the issuance and service of subpoenas as provided in Rule 45.

47 (f) Proceedings.

48 (1) Meetings. When a reference is made, the clerk shall forthwith furnish the
49 referee with a copy of the order of reference. Upon receipt thereof unless the
50 order of reference otherwise provides, the referee shall forthwith set a time
51 and place for the first meeting of the parties or their attorneys to be held

1 within 20 days after the date of the order of reference and shall notify the
2 parties or their attorneys. It is the duty of the referee to proceed with all
3 reasonable diligence. Any party, on notice to all other parties and the referee,
4 may apply to the court for an order requiring the referee to expedite the
5 proceedings and to make his report. If a party fails to appear at the time and
6 place appointed, the referee may proceed ex parte, or, in his discretion, may
7 adjourn the proceedings to a future day, giving notice to the absent party of
8 the adjournment.

9 (2) Statement of Accounts. When matters of accounting are in issue before the
10 referee, he may prescribe the form in which the accounts shall be submitted
11 and in any proper case may require or receive in evidence a statement by a
12 certified public accountant or other qualified accountant who is called as a
13 witness. Upon objection of a party to any of the items thus submitted or
14 upon a showing that the form of statement is insufficient, the referee may
15 require a different form of statement to be furnished, or the accounts of
16 specific items thereof to be proved by oral examination of the accounting
17 parties or upon written interrogatories or in such other manner as he directs.

18 (3) Testimony Reduced to Writing. The testimony of all witnesses must be
19 reduced to writing by the referee, or by someone acting under his direction
20 and shall be filed in the cause and constitute a part of the record.

21 (g) Report.

22 (1) Contents and Filing. The referee shall prepare a report upon the matters
23 submitted to him by the order of reference and shall include therein his
24 decision on all matters so submitted. If required to make findings of fact and
25 conclusions of law, he shall set them forth separately in the report. He shall
26 file the report with the clerk of the court in which the action is pending and
27 unless otherwise directed by the order of reference, shall file with it a
28 transcript of the proceedings and of the evidence and the original exhibits.
29 Before filing his report a referee may submit a draft thereof to counsel for all
30 parties for the purpose of receiving their suggestions. The clerk shall
31 forthwith mail to all parties notice of the filing.

32 (2) Exceptions and Review. All or any part of the report may be excepted to by
33 any party within 30 days from the filing of the report. Thereafter, and upon
34 10 days' notice to the other parties, any party may apply to the judge for
35 action on the report. The judge after hearing may adopt, modify or reject the
36 report in whole or in part, render judgment, or may remand the proceedings
37 to the referee with instructions. No judgment may be rendered on any
38 reference except by the judge.

39 ARTICLE 7

40 Judgment

41 Rule 54

42 JUDGMENTS

43 (a) Definitions. A judgment is either interlocutory or the final determination of the
44 rights of the parties.

45 (b) Judgment Upon Multiple Claims or Involving Multiple Parties. When more than one
46 claim for relief is presented in an action, whether as a claim, counterclaim, crossclaim, or
47 third-party claim, or when multiple parties are involved, the court may enter a final judgment as
48 to one or more but fewer than all of the claims or parties only if there is no just reason for delay
49 and it is so determined in the judgment. Such judgment shall then be subject to review by
50 appeal or as otherwise provided by these Rules or other statutes. In the absence of entry of such
51 a final judgment, any order or other form of decision, however designated, which adjudicates

1 fewer than all the claims or the rights and liabilities of fewer than all the parties shall not
2 terminate the action as to any of the claims or parties and shall not then be subject to review
3 either by appeal or otherwise except as expressly provided by these Rules or other statutes.
4 Similarly, in the absence of entry of such a final judgment, any order or other form of decision
5 is subject to revision at any time before the entry of judgment adjudicating all the claims and
6 the rights and liabilities of all the parties.

7 (c) Demand for Judgment. A judgment by default shall not be different in kind from or
8 exceed in amount that prayed for in the demand for judgment. Except as to a party against
9 whom a judgment is entered by default, every final judgment shall grant the relief to which the
10 party in whose favor it is rendered is entitled, even if the party has not demanded such relief in
11 his pleadings.

12 Rule 55
13 DEFAULT

14 (a) Entry. When a party against whom a judgment for affirmative relief is sought has
15 failed to plead or is otherwise subject to default judgment as provided by these Rules or by
16 statute and that fact is made to appear by affidavit or otherwise, the clerk shall enter his
17 default.(b) Judgment. Judgment by default may be entered as follows:

18 (1) By the Clerk. When the plaintiff's claim against a defendant is for a sum
19 certain or for a sum which can by computation be made certain, the clerk
20 upon request of the plaintiff and upon affidavit of the amount due shall enter
21 judgment for that amount and costs against the defendant, if he has been
22 defaulted for failure to appear and if he is not an infant or incompetent
23 person.

24 In all cases wherein, pursuant to this Rule, the clerk enters judgment by
25 default upon a claim for debt which is secured by any pledge, mortgage,
26 deed of trust or other contractual security in respect of which foreclosure
27 may be had, or upon a claim to enforce a lien for unpaid taxes or
28 assessments under G.S. 105-414, the clerk may likewise make all further
29 orders required to consummate foreclosure in accordance with the procedure
30 provided in Article 29A of Chapter 1 of the General Statutes, entitled
31 'Judicial Sales'.

32 (2) By the Judge. In all other cases the party entitled to a judgment by default
33 shall apply to the judge therefor; but no judgment by default shall be entered
34 against an infant or incompetent person unless represented in the action by a
35 guardian ad litem or other such representative who has appeared therein. If
36 the party against whom judgment by default is sought has appeared in the
37 action, he (or, if appearing by representative, his representative) shall be
38 served with written notice of the application for judgment at least three days
39 prior to the hearing on such application. If, in order to enable the judge to
40 enter judgment or to carry it into effect, it is necessary to take an account or
41 to determine the amount of damages or to establish the truth of any averment
42 by evidence or to take an investigation of any other matter, the judge may
43 conduct such hearings or order such references as he deems necessary and
44 proper and shall accord a right of trial by jury to the parties when and as
45 required by the Constitution or by any statute of North Carolina.

46 (c) Service by Publication or Without the State. When service of the summons has been
47 made by published notice, no judgment shall be entered on default until the plaintiff shall have
48 filed a bond, approved by the court, conditioned to abide such order as the court may make
49 touching the restitution of any property collected or obtained by virtue of the judgment in case
50 a defense is thereafter permitted and sustained; provided, that in actions involving the title to
51 real estate or to foreclose mortgages thereon such bond shall not be required.

1 (d) Setting Aside Default. For good cause shown the court may set aside an entry of
2 default, and, if a judgment by default has been entered, the judge may set it aside in accordance
3 with Rule 60(b).

4 (e) Plaintiffs, Counterclaimants, Crossclaimants. The provisions of this Rule apply
5 whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff, or a
6 party who has pleaded a crossclaim or counterclaim. In all cases a judgment by default is
7 subject to the limitations of Rule 54(c).

8 (f) Judgment Against the State of North Carolina. No judgment by default shall be
9 entered against the State of North Carolina or an officer in his official capacity or agency
10 thereof unless the claimant establishes his claim or right to relief by evidence.

11 Rule 56

12 SUMMARY JUDGMENT

13 (a) For Claimant. A party seeking to recover upon a claim, counterclaim, or crossclaim
14 or to obtain a declaratory judgment may, at any time after the expiration of 30 days from the
15 commencement of the action or after service of a motion for summary judgment by the adverse
16 party, move with or without supporting affidavits for a summary judgment in his favor upon all
17 or any part thereof.

18 (b) For Defending Party. A party against whom a claim, counterclaim, or crossclaim is
19 asserted or a declaratory judgment is sought, may, at any time, move with or without
20 supporting affidavits for a summary judgment in his favor as to all or any part thereof.

21 (c) Motion and Proceedings Thereon. The motion shall be served at least 10 days before
22 the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing
23 affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions,
24 answers to interrogatories, and admissions on file, together with the affidavits, if any, show that
25 there is no genuine issue as to any material fact and that any party is entitled to a judgment as a
26 matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of
27 liability alone although there is genuine issue as to the amount of damages. Summary
28 judgment, when appropriate, may be rendered against the moving party.

29 (d) Case Not Fully Adjudicated on Motion. If on motion under this Rule judgment is
30 not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at
31 the hearing of the motion, by examining the pleadings and the evidence before it and by
32 interrogating counsel, shall if practicable ascertain what material facts exist without substantial
33 controversy and what material facts are actually and in good faith controverted. It shall
34 thereupon make an order specifying the facts that appear without substantial controversy,
35 including the extent to which the amount of damages or other relief is not in controversy, and
36 directing such further proceedings in the action as are just. Upon the trial of the action the facts
37 so specified shall be deemed established.

38 (e) Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing
39 affidavits shall be made on personal knowledge, shall set forth such facts as would be
40 admissible in evidence, and shall show affirmatively that the affiant is competent to testify to
41 the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in
42 an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be
43 supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When
44 a motion for summary judgment is made and supported as provided in this Rule, an adverse
45 party may not rest upon the mere allegations or denials of his pleading, but his response, by
46 affidavits or as otherwise provided in this Rule, must set forth specific facts showing that there
47 is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall
48 be entered against him.

49 (f) When Affidavits are Unavailable. Should it appear from the affidavits of a party
50 opposing the motion that he cannot for reasons stated present by affidavit facts essential to
51 justify his opposition, the court may refuse the application for judgment or may order a

1 continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had
2 or may make such other order as is just.

3 (g) Affidavits Made in Bad Faith. Should it appear to the satisfaction of the court at any
4 time that any of the affidavits presented pursuant to this Rule are presented in bad faith or
5 solely for the purpose of delay, the court shall forthwith order the party employing them to pay
6 to the other party the amount of the reasonable expenses which the filing of the affidavits
7 caused him to incur, including reasonable attorney's fees.

8 Rule 57

9 DECLARATORY JUDGMENTS

10 The procedure for obtaining a declaratory judgment pursuant to Article 26, Chapter 1,
11 General Statutes of North Carolina, shall be in accordance with these Rules, and the right to
12 trial by jury may be demanded under the circumstances and in the manner provided in Rules 38
13 and 39. The existence of another adequate remedy does not preclude a judgment for declaratory
14 relief in cases where it is appropriate. The court may order a prompt hearing of an action for a
15 declaratory judgment and may advance it on the calendar.

16 Rule 58

17 ENTRY OF JUDGMENT

18 Subject to the provisions of Rule 54(b): Upon a jury verdict that a party shall recover only a
19 sum certain or costs or that all relief shall be denied or upon a decision by the judge in open
20 court to like effect, the clerk, in the absence of any contrary direction by the judge, shall make a
21 notation in his minutes of such verdict or decision and such notation shall constitute the entry
22 of judgment for the purposes of these Rules. The clerk shall forthwith prepare, sign, and file the
23 judgment without awaiting any direction by the judge.

24 In other cases where judgment is rendered in open court, the clerk shall make a notation in
25 his minutes as the judge may direct and such notation shall constitute the entry of judgment for
26 the purposes of these Rules. The judge shall approve the form of the judgment and direct its
27 prompt preparation and filing.

28 In cases where judgment is not rendered in open court, entry of judgment for the purposes
29 of these Rules shall be deemed complete when an order for the entry of judgment is received by
30 the clerk from the judge, the judgment is filed and the clerk mails notice of its filing to all
31 parties. The clerk's notation on the judgment of the time of mailing shall be prima facie
32 evidence of mailing and the time thereof.

33 Rule 59

34 NEW TRIALS; AMENDMENT OF JUDGMENTS

35 (a) Grounds. A new trial may be granted to all or any of the parties and on all or part of
36 the issues for any of the following causes or grounds: (1) Any irregularity by which any party
37 was prevented from having a fair trial; (2) Misconduct of the jury or prevailing party; (3)
38 Accident or surprise which ordinary prudence could not have guarded against; (4) Newly
39 discovered evidence material for the party making the motion which he could not, with
40 reasonable diligence, have discovered and produced at the trial; (5) Manifest disregard by the
41 jury of the instructions of the court; (6) Excessive or inadequate damages appearing to have
42 been given under the influence of passion or prejudice; (7) Insufficiency of the evidence to
43 justify the verdict or that the verdict is contrary to law; (8) Error in law occurring at the trial
44 and objected to by the party making the motion, or (9) Any other reason heretofore recognized
45 as grounds for new trial. On a motion for a new trial in an action tried without a jury, the court
46 may open the judgment if one has been entered, take additional testimony, amend findings of
47 fact and conclusions of law or make new findings and conclusions, and direct the entry of a
48 new judgment.

49 (b) Time for Motion. A motion for a new trial shall be served not later than 10 days
50 after entry of the judgment.

1 (c) Time for Serving Affidavits. When a motion for new trial is based upon affidavits
2 they shall be served with the motion. The opposing party has 10 days after such service within
3 which to serve opposing affidavits, which period may be extended for an additional period not
4 exceeding 20 days either by the court for good cause shown or by the parties by written
5 stipulation. The court may permit reply affidavits.

6 (d) On Initiative of Court. Not later than 10 days after entry of judgment the court of its
7 own initiative, on notice to the parties and hearing, may order a new trial for any reason for
8 which it might have granted a new trial on motion of a party, and in the order shall specify the
9 grounds therefor.

10 (e) Motion to Alter or Amend a Judgment. A motion to alter or amend the judgment
11 under Section (a) of this Rule shall be served not later than 10 days after entry of the judging.

12 Rule 60

13 RELIEF FROM JUDGMENT OR ORDER

14 (a) Clerical Mistakes. Clerical mistakes in judgments, orders, or other parts of the
15 record and errors therein arising from oversight or omission may be corrected by the judge at
16 any time on his own initiative or on the motion of any party and after such notice, if any, as the
17 judge orders. During the pendency of an appeal, such mistakes may be so corrected before the
18 appeal is docketed in the appellate division, and thereafter while the appeal is pending may be
19 so corrected with leave of the appellate division.

20 (b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud,
21 etc. On motion and upon such terms as are just, the court may relieve a party or his legal
22 representative from a final judgment, order, or proceeding for the following reasons: (1)
23 mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by
24 due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
25 (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other
26 misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied,
27 released, or discharged, or a prior judgment upon which it is based has been reversed or
28 otherwise vacated, or it is no longer equitable that the judgment should have prospective
29 application; or (6) any other reason justifying relief from the operation of the judgment. The
30 motion shall be made within a reasonable time, and for reasons (1), (2) and (3) not more than
31 one year after the judgment, order, or proceeding was entered or taken. A motion under this
32 Section does not affect the finality of a judgment or suspend its operation. This Rule does not
33 limit the power of a court to entertain an independent action to relieve a party from a judgment,
34 order, or proceeding, or to set aside a judgment for fraud upon the court. The procedure for
35 obtaining any relief from a judgment order or proceeding shall be by motion as prescribed in
36 these Rules or by an independent action.

37 (c) Judgments Rendered by the Clerk. The clerk may, in respect of judgments rendered
38 by himself, exercise the same powers authorized in Sections (a) and (b). The judge has like
39 powers in respect of such judgments. Where such powers are exercised by the clerk, appeals
40 may be had to the judge in the manner provided by law.

41 Rule 61

42 HARMLESS ERROR

43 No error in either the admission or exclusion of evidence and no error or defect in any
44 ruling or order or in anything done or omitted by any of the parties is ground for granting a new
45 trial or for setting aside a verdict or for vacating, modifying, or otherwise disturbing a judgment
46 or order, unless refusal to take such action amounts to the denial of a substantial right.

47 Rule 62

48 STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT

49 (a) Automatic Stay; Exceptions — Injunctions and Receiverships. Except as stated
50 herein, no execution shall issue upon a judgment nor shall proceedings be taken for its
51 enforcement until the expiration of 10 days after its entry. Unless otherwise ordered by the

1 court, an interlocutory or final judgment in an action for an injunction or in a receivership
2 action shall not be stayed during the period after its entry and until an appeal is taken or during
3 the pendency of an appeal. The provisions of Section (c) govern the suspending, modifying,
4 restoring, or granting of an injunction during the pendency of an appeal.

5 (b) Stay on Motion for New Trial or for Judgment. In its discretion and on such
6 conditions for the security of the adverse party as are proper, the court may stay the execution
7 of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial
8 or to alter or amend a judgment made pursuant to Rule 59, or of a motion for relief from a
9 judgment or order made pursuant to Rule 60, or of a motion for judgment made pursuant to
10 Rule 50, or of a motion for amendment to the findings or for additional findings made pursuant
11 to Rule 52(b).

12 (c) Injunction Pending Appeal. When an appeal is taken from an interlocutory or final
13 judgment granting, dissolving, or denying an injunction, the court in its discretion may
14 suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such
15 terms as to bond or otherwise as it considers proper for the security of the rights of the adverse
16 party.

17 (d) Stay Upon Appeal. When an appeal is taken, the appellant may obtain a stay of
18 execution, subject to the exceptions contained in Section (a), by proceeding in accordance with
19 and subject to the conditions of G.S. 1-289, G.S. 1-290, G.S. 1-291, G.S. 1-292, G.S. 1-293,
20 G.S. 1-294, and G.S. 1-295.

21 When stay is had by giving supersedeas bond, the bond may be given at or after the time of
22 filing the notice of appeal or of procuring the order allowing the appeal as the case may be, and
23 stay is then effective when the supersedeas bond is approved by the court.

24 (e) Stay in Favor of North Carolina or Agency Thereof. When an appeal is taken by the
25 State of North Carolina or an officer in his official capacity or agency thereof or by direction of
26 any department or agency of the State of North Carolina and the operation or enforcement of
27 the judgment is stayed, no bond, obligation, or other security shall be required from the
28 appellant.

29 (f) Power of Appellate Court Not Limited. The provisions of this Rule do not limit any
30 power of an appellate court or of a judge or justice thereof to stay proceedings during the
31 pendency of an appeal or to suspend, modify, restore, or grant an injunction during the
32 pendency of an appeal or to make any order appropriate to preserve the status quo or the
33 effectiveness of the judgment subsequently to be entered.

34 (g) Stay of Judgment as to Multiple Claims or Multiple Parties. When a court has
35 ordered a final judgment under the conditions stated in Rule 54(b), the court may stay
36 enforcement of that judgment until the entering of a subsequent judgment or judgments and
37 may prescribe such conditions as are necessary to secure the benefit thereof to the party in
38 whose favor the judgment is entered.

39 Rule 63

40 DISABILITY OF A JUDGE

41 If by reason of death, sickness, or other disability, a judge before whom an action has been
42 tried is unable to perform the duties to be performed by the court under these Rules after a
43 verdict is returned or findings of fact and conclusions of law are filed, then those duties may be
44 performed:(1) In actions in the superior court by the judge senior in point of continuous service
45 on the superior court regularly holding the courts of the district. If such judge is himself under a
46 disability, then the resident judge of the district senior in point of service on the superior court
47 may perform those duties. If a resident judge, while holding court in his own district suffers
48 disability and there is no other resident judge of the district, such duties may be performed by a
49 judge of the superior court designated by the Chief Justice of the Supreme Court. (2) In actions
50 in the district court, by the chief judge of the district, or if the chief judge is disabled, by any
51 judge of the district court designated by the Director of the Administrative Office of the Courts.

1 If the substituted judge is satisfied that he cannot perform those duties because he did not
2 preside at the trial or for any other reason, he may in his discretion grant a new trial.

3 ARTICLE 8

4 Miscellaneous

5 Rule 64

6 SEIZURE OF PERSON OR PROPERTY

7 At the commencement of and during the course of an action, all remedies providing for
8 seizure of person or property for the purpose of securing satisfaction of the judgment ultimately
9 to be entered in the action are available under the circumstances and in the manner provided by
10 the law of this State.

11 Rule 65

12 INJUNCTIONS

13 (a) Preliminary Injunctions; Notice. No preliminary injunction shall be issued without
14 notice to the adverse party.

15 (b) Temporary Restraining Order; Notice; Hearing; Duration. A temporary restraining
16 order may be granted without notice to the adverse party if it clearly appears from specific facts
17 shown by affidavit or by verified complaint that immediate and irreparable injury, loss, or
18 damage will result to the applicant before notice can be served and a hearing had thereon.
19 Every temporary restraining order granted without notice shall be endorsed with the date and
20 hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall define
21 the injury and state why it is irreparable and why the order was granted without notice; and
22 shall expire by its terms within such time after entry, not to exceed 10 days, as the judge fixes,
23 unless within the time so fixed the order, for good cause shown, is extended for a like period or
24 unless the party against whom the order is directed consents that it may be extended for a
25 longer period. The reasons for the extension shall be entered of record. In case a temporary
26 restraining order is granted without notice and a motion for a preliminary injunction is made, it
27 shall be set down for hearing at the earliest possible time and takes precedence over all matters
28 except older matters of the same character; and when the motion comes on for hearing, the
29 party who obtained the temporary restraining order shall proceed with a motion for a
30 preliminary injunction, and, if he does not do so, the judge shall dissolve the temporary
31 restraining order. On two days' notice to the party who obtained the temporary restraining order
32 without notice or on such shorter notice to that party as the judge may prescribe, the adverse
33 party may appear and move its dissolution or modification and in that event the judge shall
34 proceed to hear and determine such motion as expeditiously as the ends of justice require.
35 Damages may be awarded in an order for dissolution as provided in Section (e).

36 (c) Security. No restraining order or preliminary injunction shall issue except upon the
37 giving of security by the applicant, in such sum as the judge deems proper, for the payment of
38 such costs and damages as may be incurred or suffered by any party who is found to have been
39 wrongfully enjoined or restrained. No such security shall be required of the State of North
40 Carolina or of any county or municipality thereof, or any officer or agency thereof acting in an
41 official capacity, but damages may be awarded against such party in accord with this Rule. In
42 suits between spouses relating to support, alimony, custody of children, separation, divorce
43 from bed and board, and absolute divorce no such security shall be required of the plaintiff
44 spouse as a condition precedent to the issuing of a temporary restraining order or preliminary
45 injunction enjoining the defendant spouse from interfering with, threatening, or in any way
46 molesting the plaintiff spouse during pendency of the suit, until further order of the court, but
47 damages may be awarded against such party in accord with this Rule.

48 A surety upon a bond or undertaking under this Rule submits himself to the jurisdiction of
49 the court and irrevocably appoints the clerk of the court as his agent upon whom any papers
50 affecting his liability on the bond or undertaking may be served. His liability may be enforced
51 on motion without the necessity of an independent action. The motion and such notice of the

1 motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail
2 copies to the persons giving the security and the sureties thereon if their addresses are known.

3 (d) Form and Scope of Injunction or Restraining Order. Every order granting an
4 injunction and every restraining order shall set forth the reasons for its issuance; shall be
5 specific in terms; shall describe in reasonable detail, and not by reference to the complaint or
6 other document, the act or acts enjoined or restrained; and is binding only upon the parties to
7 the action, their officers, agents, servants, employees, and attorneys, and upon those persons in
8 active concert or participation with them who receive actual notice in any manner of the order
9 by personal service or otherwise.

10 (e) Damages on Dissolution. An order or judgment dissolving an injunction or
11 restraining order may include an award of damages against the party procuring the injunction
12 and the sureties on his undertaking without a showing of malice or want of probable cause in
13 procuring the injunction. The damages may be determined by the judge, or he may direct that
14 they be determined by a referee or jury.

15 Rule 66 — Omitted

16 Rule 67 — Omitted

17 Rule 68

18 OFFER OF JUDGMENT AND DISCLAIMER

19 (a) Offer of Judgment. At any time more than 10 days before the trial begins, a party
20 defending against a claim may serve upon the adverse party an offer to allow judgment to be
21 taken against him for the money or property or to the effect specified in his offer, with costs
22 then accrued. If within 10 days after the service of the offer the adverse party serves written
23 notice that the offer is accepted, either party may then file the offer and notice of acceptance
24 together with proof of service thereof and thereupon the clerk shall enter judgment. An offer
25 not accepted within 10 days after its service shall be deemed withdrawn and evidence of the
26 offer is not admissible except in a proceeding to determine costs. If the judgment finally
27 obtained by the offeree is not more favorable than the offer, the offeree must pay the costs
28 incurred after the making of the offer. The fact that an offer is made but not accepted does not
29 preclude a subsequent offer.

30 (b) Conditional Offer of Judgment for Damages. A party defending against a claim
31 arising in contract or quasi contract may, with his responsive pleading, serve upon the claimant
32 an offer in writing that if he fails in his defense, the damages shall be assessed at a specified
33 sum; and if the claimant signifies his acceptance thereof in writing within 20 days of the service
34 of such offer, and on the trial prevails, his damages shall be assessed accordingly. If the
35 claimant does not accept the offer, he must prove his damages as if the offer had not been
36 made. If the damages assessed in the claimant's favor do not exceed the sum stated in the offer,
37 the party defending shall recover the costs in respect to the question of damages.

38 Rule 68.1

39 CONFESSION OF JUDGMENT

40 (a) For Present or Future Liability. A judgment by confession may be entered without
41 action at any time in accordance with the procedure prescribed by this Rule. Such judgment
42 may be for money due or for money that may become due. Such judgment may also be entered
43 for alimony or for support of minor children.

44 (b) Procedure. A prospective defendant desiring to confess judgment shall file with the
45 clerk of the superior court as provided in Section (c) a statement in writing signed and verified
46 by such defendant authorizing the entry of judgment for the amount stated. The statement shall
47 contain the name of the prospective plaintiff, his county of residence, the name of the
48 defendant, his county of residence, and shall concisely show why the defendant is or may
49 become liable to the plaintiff. If either the plaintiff or defendant is not a natural person, for the
50 purposes of this Rule its county of residence shall be considered to be the county in which it
51 has its principal place of business, whether in this State or not.

1 (c) Where Entered. Judgment by confession may be entered only in the county where
2 the defendant resides or has real property or in the county where the plaintiff resides but the
3 entry of judgment in any county shall be conclusive evidence that this Section has been
4 complied with.

5 (d) Form of Entry. When a statement in conformity with this Rule is filed with the clerk
6 of the superior court, the clerk shall enter judgment thereon for the amount confessed, and
7 docket the judgment as in other cases, with costs, together with disbursements. The statement,
8 with the judgment, shall become the judgment roll.

9 (e) Force and Effect. Judgments entered in conformity with this Rule shall have the
10 same effect as other judgments except that no judgment by confession shall be held to be res
11 judicata as to any fact in any civil action except in an action on the judgment confessed. When
12 such judgment is for alimony or support of minor children, the failure of the defendant to make
13 any payments as required by such judgment shall subject him to such penalties as may be
14 adjudged by the court as in any other case of contempt of its orders. Executions may be issued
15 and enforced in the same manner as upon other judgments. When the full amount of the
16 judgment is not all due, or is payable in installments, and the installments are not all due,
17 execution may issue upon such judgment for the collection of such sums as have become due
18 and shall be in usual form. Notwithstanding the issue and satisfaction of such execution, the
19 judgment remains as security for the sums thereafter to become due; and whenever any further
20 sum becomes due, execution may in like manner be issued.

21 Rule 69 — Omitted

22 Rule 70

23 JUDGMENT FOR SPECIFIC ACTS; VESTING TITLE

24 If a judgment directs a party to execute a conveyance of land or to deliver deeds or other
25 documents or to perform any other specific act and the party fails to comply within the time
26 specified, the judge may direct the act to be done at the cost of the disobedient party by some
27 other person appointed by the judge and the act when so done has like effect as if done by the
28 party. On application of the party entitled to performance, the clerk shall issue a writ of
29 attachment or sequestration against the property of the disobedient party to compel obedience
30 to the judgment. The judge may also in proper cases adjudge the party in contempt. If real or
31 personal property is within the State, the judge in lieu of directing a conveyance thereof may
32 enter a judgment divesting the title of any party and vesting it in others and such judgment has
33 the effect of a conveyance executed in due form of law. When any order or judgment is for the
34 delivery of possession, the party in whose favor it is entered is entitled to execution upon
35 application to the clerk upon payment of the necessary fees.

36 Rule 71 through Rule 83 — Omitted

37 Rule 84

38 FORMS

39 The following forms are sufficient under these Rules and are intended to indicate the
40 simplicity and brevity of statement which the Rules contemplate:

41 (1) Complaint on a Promissory Note

- 42 1. On or about, 19..., defendant executed and delivered to
43 plaintiff a promissory note [in the following words and figures: (here set out
44 the note verbatim)]; [A copy of which is hereto annexed as Exhibit A];
45 [whereby defendant promised to pay to plaintiff or order
46 on....., 19..., the sum of dollars with interest thereon at the rate
47 of per cent per annum].
48 2. Defendant owes to plaintiff the amount of said note and interest. Wherefore,
49 plaintiff demands judgment against defendant for the sum of
50 dollars, interest and costs.

51 (2) Complaint on Account

1 Defendant owes plaintiff dollars according to the account
2 hereto annexed as Exhibit A.

3 Wherefore, plaintiff demands judgment against defendant for the sum of
4 dollars, interest and costs.

5 (3) Complaint for Negligence

- 6 1. On, 19..., at [name of place where accident occurred],
7 defendant negligently drove a motor vehicle against plaintiff who was then
8 crossing said street.
9 2. Defendant was negligent in that:
10 (a) Defendant drove at an excessive speed.
11 (b) Defendant drove through a red light.
12 (c) Defendant failed to yield the right of way to plaintiff in a marked
13 cross walk.
14 3. As a result plaintiff was thrown down and had his leg broken and was
15 otherwise injured, was prevented from transacting his business, suffered
16 great pain of body and mind, and incurred expenses for medical attention
17 and hospitalization [in the sum of one thousand dollars] or [in an amount not
18 yet determined].

19 Wherefore, plaintiff demands judgment against defendant in the sum of
20 dollars and costs.

21 (4) Complaint for Negligence

22 (Where Plaintiff is Unable to Determine Definitely Whether One or the
23 Other of Two Persons is Responsible or Whether Both are Responsible and
24 Where His Evidence May Justify a Finding of Wilfulness or of Recklessness
25 or of Negligence.)

- 26 1. On, 19..., at, defendant X or defendant
27 Y, or both defendants X and Y, wilfully or recklessly or negligently drove or
28 caused to be driven a motor vehicle against plaintiff who was then crossing
29 said street.
30 2. Defendant X or defendant Y, or both defendants X and Y were negligent in
31 that:
32 (a) Either defendant or both defendants drove at an excessive speed.
33 (b) Either defendant or both defendants drove through a red light.
34 (c) Either defendant or both defendants failed to yield the right of way to
35 plaintiff in a marked cross walk.
36 3. As a result plaintiff was thrown down and had his leg broken and was
37 otherwise injured, was prevented from transacting his business, suffered
38 great pain of body and mind, and incurred expenses for medical attention
39 and hospitalization [in the sum of one thousand dollars] (or) [in an amount
40 not yet determined].

41 Wherefore, plaintiff demands judgment against X or against Y or against both in the sum of
42 dollars and costs.

43 (5) Complaint for Specific Performance

- 44 1. On or about, 19..., plaintiff and defendant entered into an
45 agreement in writing, a copy of which is hereto annexed as Exhibit A.
46 2. In accord with the provisions of said agreement plaintiff tendered to
47 defendant the purchase price and requested a conveyance of the land, but
48 defendant refused to accept the tender and refused to make the conveyance.
49 3. Plaintiff now offers to pay the purchase price.

1 Wherefore, plaintiff demands (1) that defendant be required specifically to perform said
2 agreement, (2) damages in the sum of dollars, and (3) that if specific performance is not granted
3 plaintiff have judgment against defendant in the sum of dollars.

4 (6) Complaint in the Alternative

5 I.

6 Defendant owes plaintiff dollars according to the account hereto annexed
7 as Exhibit A.

8 II. ALTERNATIVE COUNT

9 Plaintiff claims in the alternative that defendant owes plaintiff dollars for
10 goods sold and delivered by plaintiff to defendant between, 19..., and
11,19....

12 (7) Complaint for Fraud

- 13 1. On, 19..., at, defendant with intent to
14 defraud plaintiff represented to plaintiff that
15
16 ...
17 2. Said representations were known by defendant to be and were false. In truth,
18 [what the facts actually were].
19 3. Plaintiff believed and relied upon the false representations, and thus was
20 induced to
21 4. As a result of the foregoing, plaintiff has been damaged [nature and amount
22 of damage].

23 WHEREFORE, plaintiff demands judgment against defendant for dollars,
24 interest and costs.

25 (8) Complaint for Money Paid by Mistake

26 Defendant owes plaintiff dollars for money paid by plaintiff to defendant
27 by mistake under the following circumstances:

- 28 1. On, 19..., at, pursuant to a contract
29, plaintiff paid defendant dollars.

30 (9) Motion for Judgment on the Pleadings

31 Plaintiff moves that judgment be entered for plaintiff on the pleadings, on the ground that
32 the undisputed facts appearing therein entitle plaintiff to such judgment as a matter of law.

33 (10) Motion for More Definite Statement

34 Defendant moves for an order directing plaintiff to file a more definite statement of the
35 following matters: [set out]

36 The ground of this motion is that plaintiff's complaint is so [vague] [ambiguous] in respect
37 to these matters that defendant cannot reasonably be required to frame an answer hereto, in that
38 the complaint

39 (11) Answer to Complaint

40 First Defense

41 The complaint fails to state a claim against defendant upon which relief can be granted.

42 Second Defense

43 If defendant is indebted to plaintiff as alleged in the complaint, he is indebted to plaintiff
44 jointly with X. X is alive; is a resident of the State of North Carolina, and is subject to the
45 jurisdiction of this court as to service of process; and has not been made a party.

46 Third Defense

- 47 1. Defendant admits the allegations contained in paragraphs
48 and of the complaint.
49 2. Defendant alleges that he is without knowledge or information sufficient to
50 form a belief as to the truth of the allegations contained in paragraph
51 of the complaint.

1 injuries he has been made incapable of any gainful activity, has suffered
2 great physical and mental pain, and has incurred expense in the amount of
3 dollars for medicine, medical attendance, and
4 hospitalization.

5 Wherefore, plaintiff demands judgment against defendant in the sum of
6 dollars and costs.

7 (15) Complaint for Interpleader and Declaratory Relief

- 8 1. On or about June 1, 19..., plaintiff issued to G.H. a policy of life insurance
9 whereby plaintiff promised to pay to K.L. as beneficiary the sum of
10 dollars upon the death of G.H. The policy required the
11 payment by G.H. of a stipulated premium on June 1, 19..., and annually
12 thereafter as a condition precedent to its continuance in force.
13 2. No part of the premium due June 1, 19..., was ever paid and the policy
14 ceased to have any force or effect on July 1, 19....
15 3. Thereafter, on September 1, 19..., G.H. and K.L. died as the result of a
16 collision between a locomotive and the automobile in which G.H. and K.L.
17 were riding.
18 4. Defendant C.D. is the duly appointed and acting executor of the will of
19 G.H.; defendant E.F. is the duly appointed and acting executor of the will of
20 K.L.; defendant X.Y. claims to have been duly designated as beneficiary of
21 said policy in place of K.L.
22 5. Each of defendants, C.D., E.F., and X.Y. is claiming that the
23 above-mentioned policy was in full force and effect at the time of the death
24 of G.H.; each of them is claiming to be the only person entitled to receive
25 payment of the amount of the policy and has made demand for payment
26 thereof.
27 6. By reason of these conflicting claims of the defendants, plaintiff is in great
28 doubt as to which defendant is entitled to be paid the amount of the policy, if
29 it was in force at the death of G.H.

30 Wherefore plaintiff demands that the court adjudge:

- 31 (1) That none of the defendants is entitled to recover from plaintiff the
32 amount of said policy or any part thereof.
33 (2) That each of the defendants be restrained from instituting any action
34 against plaintiff for the recovery of the amount of said policy or any
35 part thereof.
36 (3) That, if the court shall determine that said policy was in force at the
37 death of G.H., the defendants be required to interplead and settle
38 between themselves their rights to the money due under said policy,
39 and that plaintiff be discharged from all liability in the premises
40 except to the person whom the court shall adjudge entitled to the
41 amount of said policy.
42 (4) That plaintiff recover its costs.

43 (16) Averment of Capacity Under Rule 9(a)

44 (North Carolina Corporation)

45 Plaintiff is a corporation incorporated under the law of North Carolina having its principal
46 office in [address].

47 (Foreign Corporation)

48 Plaintiff is a corporation incorporated under the law of the State of Delaware having [not
49 having] a registered office in the State of North Carolina.

50 (Unincorporated Association)

1 Plaintiff is an unincorporated association organized under the law of the State of New York
2 having its principal office in [address] and (if applicable) having a principal office in the State
3 of North Carolina at [address], and as such has the capacity to sue in its own name in North
4 Carolina."

5 **Sec. 2.** A new subchapter is hereby inserted in Chapter 1 of the General Statutes, to
6 read as follows:

7 **"SUBCHAPTER IIIA. — JURISDICTION**

8 **ARTICLE 6A**

9 **Jurisdiction**

10 **§ 1-75.1. Legislative Intent.** This Article shall be liberally construed to the end that actions be
11 speedily and finally determined on their merits. The rule that statutes in derogation of the
12 common law must be strictly construed does not apply to this Article.

13 **§ 1-75.2. Definitions.** In this Article the following words have the designated meanings:

14 (a) 'Person' means any natural person, partnership, corporation, body politic, and any
15 unincorporated association, organization, or society which may sue or be sued under a common
16 name.

17 (b) 'Plaintiff' means the person named as plaintiff in a civil action, and where in this
18 Article acts of the plaintiff are referred to, the reference includes the acts of his agent within the
19 scope of the agent's authority.

20 (c) 'Defendant' means the person named as defendant in a civil action, and where in this
21 Article acts of the defendant are referred to, the reference includes any person's acts for which
22 the defendant is legally responsible. In determining for jurisdictional purposes the defendant's
23 legal responsibility for the acts of another, the substantive liability of the defendant to the
24 plaintiff is irrelevant.

25 (d) Where jurisdiction of the person is drawn into question in respect to any claim
26 asserted under Rule 14 of the Rules of Civil Procedure, the terms 'Plaintiff' and 'Defendant' as
27 above defined shall include a third-party plaintiff and a third-party defendant respectively.

28 **§ 1-75.3. Jurisdictional Requirements for Judgments Against Persons, Status and Things.**

29 (a) Jurisdiction of Subject Matter Not Affected by this Article. Nothing in this Article shall be
30 construed to confer, enlarge or diminish the subject matter jurisdiction of any court.

31 (b) Personal Jurisdiction. A court of this State having jurisdiction of the subject matter
32 may render a judgment against a party personally only if there exists one or more of the
33 jurisdictional grounds set forth in § 1-75.4 or § 1-75.7 and in addition either:

34 (1) Personal service or substituted personal service of summons, or service of
35 publication of a notice of service of process is made upon the defendant
36 pursuant to Rule 4(j) of the Rules of Civil Procedure; or

37 (2) Service of a summons is dispensed with under the conditions in § 1-75.7.

38 (c) Jurisdiction in Rem or Quasi in Rem. A court of this State having jurisdiction of the
39 subject matter may render a judgment in rem or quasi in rem upon a status or upon a property
40 or other things pursuant to § 1-75.8 and the judgment in such action may affect the interests in
41 the status, property or thing of all persons served pursuant to Rule 4(k) of the Rules of Civil
42 Procedure.

43 **§ 1-75.4. Personal Jurisdiction, Grounds for Generally.** A court of this State having
44 jurisdiction of the subject matter has jurisdiction over a person served in an action pursuant to
45 Rule 4(j) of the Rules of Civil Procedure under any of the following circumstances:

46 (a) Local Presence or Status. In any action, whether the claim arises within or without
47 this State, in which a claim is asserted against a party who when service of process is made
48 upon such party:

49 (1) Is a natural person present within this State; or

50 (2) Is a natural person domiciled within this State; or

51 (3) Is a domestic corporation; or

- 1 (4) Is engaged in substantial activity within this State, whether such activity is
2 wholly interstate, intrastate, or otherwise.
- 3 (b) Special Jurisdiction Statutes. In any action which may be brought under statutes of
4 this State that specifically confer grounds for personal jurisdiction.
- 5 (c) Local Act or Omission. In any action claiming injury to person or property or for
6 wrongful death within or without this State arising out of an act or omission within this State by
7 the defendant.
- 8 (d) Local Injury; Foreign Act. In any action for wrongful death occurring within this
9 State or in any action claiming injury to person or property within this State arising out of an
10 act or omission outside this State by the defendant, provided in addition that at or about the
11 time of the injury either:
- 12 (1) Solicitation or services activities were carried on within this State by or on
13 behalf of the defendant; or
- 14 (2) Products, materials or things processed, serviced or manufactured by the
15 defendant were used or consumed within this State in the ordinary course of
16 trade.
- 17 (e) Local Services, Goods or Contracts. In any action which:
- 18 (1) Arises out of a promise, made anywhere to the plaintiff or to some third
19 party for the plaintiff's benefit, by the defendant to perform services within
20 this State or to pay for services to be performed in this State by the plaintiff;
21 or
- 22 (2) Arises out of services actually performed for the plaintiff by the defendant
23 within this State, or services actually performed for the defendant by the
24 plaintiff within this State if such performance within this State was
25 authorized or ratified by the defendant; or
- 26 (3) Arises out of a promise, made anywhere to the plaintiff or to some third
27 party for the plaintiff's benefit, by the defendant to deliver or receive within
28 this State, or to ship from this State goods, documents of title, or other things
29 of value; or
- 30 (4) Relates to goods, documents of title, or other things of value shipped from
31 this State by the plaintiff to the defendant on his order or direction; or
- 32 (5) Relates to goods, documents of title, or other things of value actually
33 received by the plaintiff in this State from the defendant through a carrier
34 without regard to where delivery to the carrier occurred.
- 35 (f) Local Property. In any action which arises out of:
- 36 (1) A promise, made anywhere to the plaintiff or to some third party for the
37 plaintiff's benefit, by the defendant to create in either party an interest in, or
38 protect, acquire, dispose of, use, rent, own, control or possess by either party
39 real property situated in this State; or
- 40 (2) A claim to recover for any benefit derived by the defendant through the use,
41 ownership, control or possession by the defendant of tangible property
42 situated within this State either at the time of the first use, ownership, control
43 or possession or at the time the action is commenced; or
- 44 (3) A claim that the defendant return, restore, or account to the plaintiff for any
45 asset or thing of value which was within this State at the time the defendant
46 acquired possession or control over it.
- 47 (g) Deficiency Judgment on Local Foreclosure or Resale. In any action to recover a
48 deficiency judgment upon an obligation secured by a mortgage, deed of trust, conditional sale,
49 or other security instrument executed by the defendant or his predecessor to whose obligation
50 the defendant has succeeded and the deficiency is claimed either:

1 (1) In an action in this State to foreclose such security instrument upon real
2 property, tangible personal property, or an intangible represented by an
3 indispensable instrument, situated in this State; or

4 (2) Following sale of real or tangible personal property or an intangible
5 represented by an indispensable instrument in this State under a power of
6 sale contained in any security instrument.

7 (h) Director or Officer of a Domestic Corporation. In any action against a defendant
8 who is or was an officer or director of a domestic corporation where the action arises out of the
9 defendant's conduct as such officer or director or out of the activities of such corporation while
10 the defendant held office as a director or officer.

11 (i) Taxes or Assessments. In any action for the collection of taxes or assessments
12 levied, assessed or otherwise imposed by a taxing authority of this State after the date of
13 ratification of this Act.

14 (j) Insurance or Insurers. In any action which arises out of a contract of insurance as
15 defined in G.S. 58-3 made anywhere between the plaintiff or some third party and the
16 defendant and in addition either:

17 (1) The plaintiff was a resident of this State when the event occurred out of
18 which the claim arose; or

19 (2) The event out of which the claim arose occurred within this State, regardless
20 of where the plaintiff resided.

21 (k) Personal Representative. In any action against a personal representative to enforce a
22 claim against the deceased person represented, whether or not the action was commenced
23 during the lifetime of the deceased, where one or more of the grounds stated in subsections (b)
24 to (j) of this Section would have furnished a basis for jurisdiction over the deceased had he
25 been living.

26 **§ 1-75.5. Joinder of Causes in the Same Action.** In any action brought in reliance upon
27 jurisdictional grounds stated in subsections (b) to (j) of § 1-75.4 there cannot be joined in the
28 same action any other claim or cause against the defendant unless grounds exist under § 1-75.4
29 for personal jurisdiction over the defendant as to the claim or cause to be joined.

30 **§ 1-75.6. Personal Jurisdiction; Manner of Exercising by Service of Process.** A court of
31 this State having jurisdiction of the subject matter and grounds for personal jurisdiction as
32 provided in § 1-75.4 may exercise personal jurisdiction over a defendant by service of process
33 in accordance with the provisions of Rule 4(j) of the Rules of Civil Procedure.

34 **§ 1-75.7. Personal Jurisdiction; Grounds for Without Service of Summons.** A court of this
35 State having jurisdiction of the subject matter may, without serving a summons upon him,
36 exercise jurisdiction in an action over a person:

37 (a) Who makes a general appearance in an action; or

38 (b) With respect to any counterclaim asserted against that person in an action which he
39 has commenced in this State.

40 **§ 1-75.8. Jurisdiction in Rem or Quasi in Rem, Grounds for Generally.** A court of this
41 State having jurisdiction of the subject matter may exercise jurisdiction in rem or quasi in rem
42 on the grounds stated in this Section. A judgment in rem or quasi in rem may affect the
43 interests of a defendant in a status, property or thing acted upon only if process has been served
44 upon the defendant pursuant to Rule 4(k) of the Rules of Civil Procedure. Jurisdiction in rem or
45 quasi in rem may be invoked in any of the following cases:

46 (a) When the subject of the action is real or personal property in this State and the
47 defendant has or claims any lien or interest therein, or the relief demanded consists wholly or
48 partially in excluding the defendant from any interest or lien therein. This subsection shall
49 apply whether any such defendant is known or unknown.

50 (b) When the action is to foreclose, redeem or satisfy a deed of trust, mortgage, claim or
51 lien upon real or personal property in this State.

1 (c) When the action is for a divorce or for annulment of marriage of a resident of this
2 State.

3 (d) When the defendant has property within this State which has been attached or has a
4 debtor within the State who has been garnished. Jurisdiction under this subsection may be
5 independent of or supplementary to jurisdiction acquired under subsections (a), (b) and (c) of
6 this Section.

7 (e) In any other action in which in rem or quasi in rem jurisdiction may be
8 constitutionally exercised.

9 **§ 1-75.9. Jurisdiction in Rem or Quasi in Rem; Manner of Exercising.** A court of this State
10 exercising jurisdiction in rem or quasi in rem pursuant to § 1-75.8 may affect the interests of a
11 defendant in such an action only if process has been served upon the defendant in accordance
12 with the provisions of Rule 4(k) of the Rules of Civil Procedure, but nothing herein shall
13 prevent the court from making interlocutory orders for the protection of the res while the action
14 is pending.

15 **§ 1-75.10. Proof of Service of Summons, Defendant Appearing in Action.** Where the
16 defendant appears in the action and challenges the service of the summons upon him, proof of
17 the service of process shall be as follows:

18 (a) Personal Service or Substituted Personal Service.

19 (1) If served by the sheriff of the county or other lawful process officer in this
20 State where the defendant was found, by the officer's certificate thereof,
21 showing place, time and manner of service; or

22 (2) If served by any other person, his affidavit thereof, showing place, time and
23 manner of service; that he is an adult resident of the state of service and is
24 not a party to the action; that he knew the person served to be the defendant
25 mentioned in the summons and left with, as well as delivered to, him a copy;
26 and if the defendant was not personally served, he shall state in such
27 affidavit when, where and with whom such copy was left.

28 (b) Service by Publication. In case of publication, by the affidavit of the publisher or
29 printer, or his foreman or principal clerk, showing the same and specifying the date of the first
30 and last publication, and an affidavit of mailing of a copy of the complaint or notice, as the case
31 may require, made by the person who mailed the same.

32 (c) Written Admission of Defendant. The written admission of the defendant, whose
33 signature or the subscription of whose name to such admission shall be presumptive evidence
34 of genuineness.

35 **§ 1-75.11. Judgment Against Nonappearing Defendant, Proof of Jurisdiction.** Where a
36 defendant fails to appear in the action within apt time the court shall, before entering a
37 judgment against such defendant, require proof of service of the summons in the manner
38 required by § 1-75.10 and, in addition, shall require further proof as follows:

39 (a) Where Personal Jurisdiction is Claimed Over the Defendant. Where a personal
40 claim is made against the defendant, the court shall require proof by affidavit or other evidence,
41 to be made and filed, of the existence of any fact not shown by verified complaint which is
42 needed to establish grounds for personal jurisdiction over the defendant. The court may require
43 such additional proof as the interests of justice require.

44 (b) Where Jurisdiction is in Rem or Quasi in Rem. Where no personal claim is made
45 against the defendant, the court shall require such proofs, by affidavit or otherwise, as are
46 necessary to show that the court's jurisdiction has been invoked over the status, property or
47 thing which is the subject of the action. The court may require such additional proof as the
48 interests of justice require.

49 **§ 1-75.12. Stay of Proceeding to Permit Trial in a Foreign Jurisdiction.** (a) When Stay
50 May be Granted. If, in any action pending in any court of this State, the judge shall find that it
51 would work substantial injustice for the action to be tried in a court of this State, the judge on

1 motion of any party may enter an order to stay further proceedings in the action in this State. A
2 moving party under this subsection must stipulate his consent to suit in another jurisdiction
3 found by the judge to provide a convenient, reasonable and fair place of trial.

4 (b) Subsequent Modification of Order to Stay Proceedings. In a proceeding in which a
5 stay has been ordered under this Section, jurisdiction of the court continues for a period of five
6 years from the entry of the last order affecting the stay; and the court may, on motion and
7 notice to the parties, modify the stay order and take such action as the interests of justice
8 require. When jurisdiction of the court terminates by reason of the lapse of five years following
9 the entry of the last order affecting the stay, the clerk shall without notice enter an order
10 dismissing the action.

11 (c) Review of Rulings on Motion. Whenever a motion for a stay made pursuant to
12 subsection (a) above is granted, any non-moving party shall have the right of immediate appeal.
13 Whenever such a motion is denied, the movant may seek review by means of a writ of
14 certiorari and failure to do so shall constitute a waiver of any error the judge may have
15 committed in denying the motion."

16 **Sec. 3.** The General Statutes are hereby amended as hereinafter set out:

17 (a) G.S. 1-15 is hereby amended by repealing the last sentence thereof.

18 (b) G.S. 1-87 is hereby amended by numbering the present provisions thereof as
19 subsection "(a)" and adding the following subsection "(b)":

20 "(b) After a cause has been directed to be removed, and prior to the time that the
21 transcript is deposited with the court to which the cause is removed, depositions may be taken
22 in the cause, and subpoenas for the attendance of witnesses and commissions to take
23 depositions may issue from either of the said courts, under the same rules as if the cause had
24 been originally commenced in the court from which the subpoenas or commissions issued."

25 (c) G.S. 1-108 is hereby amended by striking out the first sentence thereof, and
26 inserting in lieu of said sentence the following:

27 "If a judgment is set aside pursuant to Rule 60(b) or (c) of the Rules of Civil Procedure and
28 the judgment or any part thereof has been collected or otherwise enforced, such restitution may
29 be compelled as the court directs."

30 (d) Article 11 of Chapter 1 of the General Statutes is hereby amended as
31 follows:

32 (1) G.S. 1-116(c) is hereby rewritten to read as follows:

33 "(c) Notice of pending litigation may be filed:

34 (1) At or any time after the commencement of an action pursuant to Rule 3 of
35 the Rules of Civil Procedure; or

36 (2) At or any time after real property has been attached; or

37 (3) At or any time after the filing of an answer or other pleading in which the
38 pleading party states an affirmative claim for relief falling within the
39 provisions of subsection (a) of this Section."

40 (2) G.S. 1-116.1 is hereby rewritten to read as follows:

41 "**§ 1-116.1. Service of Notice.** In all actions as defined in §1-116 in which notice of pendency
42 of the action is filed, a copy of such notice shall be served on the other party or parties as
43 follows:

44 (1) If filed by the plaintiff at or after service of summons but before the filing of
45 the complaint, service shall be in the manner provided in Rule 4 of the Rules
46 of Civil Procedure for service of summons.

47 (2) If filed by the plaintiff at or after the filing of the complaint, service shall be
48 in the same manner as the complaint.

49 (3) All other such notices shall be served in the manner provided in Rule 5 of
50 the Rules of Civil Procedure."

51 (3) G.S. 1-119 is hereby rewritten to read as follows:

1 **"§ 1-119. Notice Void Unless Action Prosecuted.** (a) The notice of lis pendens is of no avail
2 unless it is followed by the first publication of notice of the summons or by an affidavit therefor
3 pursuant to Rule 4 (j)(1)c of the Rules of Civil Procedure or by personal service on the
4 defendant within 60 days after the cross-indexing.

5 (b) When an action is commenced by the issuance of summons and permission is
6 granted to file the complaint within 20 days, pursuant to Rule 3 of the Rules of Civil Procedure,
7 if the complaint is not filed within the time fixed by the order of the clerk, the notice of lis
8 pendens shall become inoperative and of no effect. The clerk may on his own motion and shall
9 on the ex parte application of any interested party cancel such notice of lis pendens by
10 appropriate entry on the records, which entry shall recite the failure of the plaintiff to file his
11 complaint within the time allowed. Such applications for cancellation, when made in a county
12 other than that in which the action was instituted, shall include a certificate over the hand and
13 seal of the clerk of the county in which the action was instituted that the plaintiff did not file his
14 complaint within the time allowed. The fees of the clerk may be recovered against the plaintiff
15 and his surety."

16 (e) G.S. 1-139 is hereby amended to read as follows:

17 **"§ 1-139. Burden of Proof of Contributory Negligence.** A party asserting the defense of
18 contributory negligence has the burden of proof of such defense."

19 (f) G.S. 1-180 is hereby rewritten to read as follows:

20 **"§ 1-180. Judge to Explain Law, But Give No opinion on Facts.** No judge, in giving a
21 charge to the petit jury in a criminal action, shall give an opinion whether a fact is fully or
22 sufficiently proven, that being the true office and province of the jury, but he shall declare and
23 explain the law arising on the evidence given in the case. He shall not be required to state such
24 evidence except to the extent necessary to explain the application of the law thereto; provided
25 the judge shall give equal stress to the State and defendant in a criminal action."

26 (g) G.S. 1-180.1 is hereby amended by inserting the words, "In criminal actions"
27 at the beginning of the first sentence thereof. Said first sentence is further amended by striking
28 from the end thereof the words, "upon motion of any party to such action, plaintiff for
29 defendant or upon motion of the solicitor for the State" and inserting in lieu thereof the words,
30 "upon motion of a defendant or upon motion of the State"

31 (h) G.S. 1-182 is hereby amended by inserting the word "criminal" immediately
32 before the word "action" in the first sentence thereof.

33 (i) G.S. 1-209(e) is hereby amended by striking out the references therein to "§§
34 1-211, 1-212, and 1-213", and inserting in lieu thereof, "Rule 55 of the Rules of Civil
35 Procedure".

36 (j) G.S. 1-277 is hereby amended by numbering the present provisions thereof
37 as subsection "(a)" and adding thereto the following subsection "(b)":

38 "(b) Any interested party shall have the right of immediate appeal from an adverse ruling
39 as to the jurisdiction of the court over the person or property of the defendant or such party may
40 preserve his exception for determination upon any subsequent appeal in the cause."

41 (k) G.S. 1-393 is hereby amended to read as follows:

42 **"§ 1-393. Chapter Applicable to Special Proceedings.** The Rules of Civil Procedure and the
43 provisions of this chapter on civil procedure are applicable to special proceedings, except as
44 otherwise provided."

45 (l) G.S. 1-394 is hereby amended as follows:

46 (1) By striking out of the second sentence thereof the phrase, "The summons
47 shall command the officer to summons the defendant or defendant to appear
48 and answer the complaint," and inserting in lieu thereof the phrase, "The
49 summons shall notify the defendant or defendants to appear and answer the
50 complaint,".

1 (2) By rewriting the third sentence thereof to read as follows: "The summons
2 must run in the name of the State, and be dated and signed by the clerk,
3 assistant clerk or deputy clerk of the superior court having jurisdiction in the
4 special proceeding, and be directed to the defendant or defendants, and be
5 delivered for service to some proper person, as denned by Rule 4(a) of the
6 Rules of Civil Procedure."

7 (3) By striking out the reference in the fourth sentence thereof to "§ 1-89" and
8 inserting in lieu thereof, "Rule 4 of the Rules of Civil Procedure".

9 (m) G.S. 1-395 is hereby amended by rewriting the first sentence thereof to read
10 as follows: "The person to whom the summons is delivered for service shall note on it the day
11 of its delivery to him, and, if required by the plaintiff, shall execute it immediately."

12 (n) G.S. 1-440.1(b) is hereby amended to read as follows:

13 "(b) No personal judgment, even for costs, may be rendered against a defendant unless
14 personal jurisdiction has been acquired as provided in G.S. 1-75.3."

15 (o) G.S. 1-440.6(a) is hereby amended to read as follows:

16 "(a) The order of attachment may be issued at the time the summons is issued or at any
17 time thereafter."

18 (p) G.S. 1-440.7 is hereby amended as follows:

19 (1) By striking out of subdivision (2) a the reference to "§ 1-104" and inserting
20 in lieu thereof, "Rule 4(j)(1)a or b of the Rules of Civil Procedure".

21 (2) By striking out of subdivision (2)b the reference to "§ 1-99" and inserting in
22 lieu thereof, "Rule 4(j)(1)c of the Rules of Civil Procedure".

23 (q) G.S. 1-440.14 is hereby amended as follows:

24 (1) Subsection (a) is rewritten to read, "(a) When service of process by
25 publication is made subsequent to the original order of attachment, the
26 published and mailed notice of service of process shall include notice of the
27 issuance of the order of attachment."

28 (2) The first sentence of subsection (b) is rewritten to read, "When the original
29 order of attachment is issued after publication is begun, a notice of the
30 issuance of the order of attachment shall be published once a week for four
31 successive weeks in some newspaper published in the county in which the
32 action is pending, such publication to be commenced within 30 days after
33 the issuance of the order of attachment."

34 (3) Subsection "(d)" is repealed.

35 (r) G.S. 1-485 is hereby amended by inserting the word "Preliminary" in lieu of
36 the word "temporary" in the catch line and the first sentence thereof.

37 (s) G.S. 1-498 is hereby rewritten to read as follows:

38 "**§ 1-498. Application to Extend, Modify, or Vacate, Before Whom Heard.** Applications to
39 extend, modify, or vacate temporary restraining orders and preliminary injunctions may be
40 heard by the judge having jurisdiction if he is within the district or in an adjoining district, but
41 if out of the district and not in an adjoining district, then before any judge who is at the time in
42 the district, and if there is no judge in the district, before any judge in an adjoining district."

43 (t) G.S. 1-514 is hereby amended by adding at the end thereof the following
44 sentence: "To the extent that rules of procedure are not provided for in this Article, the Rules of
45 Civil Procedure shall apply."

46 (u) G.S. 1-593 is hereby amended to read as follows:

47 "**§ 1-593. How Computed.** The time within which an act is to be done, as provided by law,
48 shall be computed in the manner prescribed by Rule 6(a) of the Rules of Civil Procedure."

49 (v) G.S. 7A-196 is hereby amended to read as follows:

50 "**§ 7A-196. Jury Trials.** (a) In civil cases in the district court there shall be a right to trial by a
51 jury of 12 in conformity with Rules 38 and 39 of the Rules of Civil Procedure.

1 "(b) In criminal cases there shall be no jury trials in the district court. Upon appeal to
2 superior court trial shall be de novo, with jury trial as provided by law."

3 (w) G.S. 8-59 is hereby amended to read as follows:

4 "**§ 8-59. Issue and Service of Subpoena.** In obtaining the testimony of witnesses in causes
5 depending in the superior, criminal and inferior courts, subpoenas shall be issued and served in
6 the manner provided in Rule 45 of the Rules of Civil Procedure for civil actions."

7 (x) G.S. 8-61 is hereby rewritten to read as follows:

8 "**§ 8-61. Subpoena for the Production of Documentary Evidence.** Subpoenas for the
9 production of records, books, papers, documents, or tangible things may be issued in criminal
10 actions in the same manner as provided for civil actions in Rule 45 of the Rules of Civil
11 Procedure".

12 (y) G.S. 41-11 is hereby amended by striking out the reference therein to "G.S.
13 1-94" and inserting in lieu thereof, "Rule 4 of the Rules of Civil Procedure".

14 (aa) G.S. 43-9 is hereby amended by rewriting the first sentence thereof to read
15 as follows: "Summons shall be issued and shall be returnable as in other cases of special
16 proceedings, except that the return shall be at least 60 days from the date of the summons."

17 (bb) G.S. 50-8 is hereby amended by striking out the several references therein to
18 "G.S. 1-145", and inserting in lieu thereof in each place that the same appears, "Rule 11 of the
19 Rules of Civil Procedure".

20 (cc) Chapter 55 of the General Statutes is hereby amended by adding the
21 following Section:

22 "**G.S. 55-146.1. Alternative Jurisdiction Over and Service of Process on Foreign**
23 **Corporations.** In addition to the procedures set out in this Chapter, foreign corporations may
24 be served with process and subjected to the jurisdiction of the courts of this State pursuant to
25 applicable provisions of Chapter 1 and Chapter 1A of the General Statutes."

26 (dd) Chapter 55A of the General Statutes is hereby amended by adding the
27 following Section:

28 "**§ 55A-68.1. Alternative Jurisdiction Over and Service of Process on Foreign**
29 **Corporations.** In addition to the procedures set out in this Chapter foreign corporations may be
30 served with process and subjected to the jurisdiction of the courts of this State pursuant to
31 applicable provisions of Chapter 1 and Chapter 1A of the General Statutes."

32 (ee) Chapter 58 of the General Statutes is hereby amended by inserting the
33 following Section:

34 "**§ 58-153.2. Alternative Service of Process on Insurers.** In addition to the procedures set out
35 in this Chapter, insurers may be served with process and subjected to the jurisdiction of the
36 courts of this State pursuant to applicable provisions of Chapter 1 and Chapter 1A of the
37 General Statutes."

38 (ff) G.S. 130-205 is hereby amended by adding to the end thereof ", and Rule 65
39 of the Rules of Civil Procedure."

40 (gg) G.S. 7A-258(f) is hereby amended by rewriting the second sentence thereof
41 to read, "In no other case does the filing of a motion to transfer waive any rights under other
42 motions or pleadings, nor does it prevent the filing of other motions or pleadings, except as
43 provided in Rule 12 of the Rules of Civil Procedure."

44 (hh) G.S. 7A-258(g) is hereby amended by striking out the period at the end
45 thereof and adding thereto the following: "; provided, however, that transfer may be sought in a
46 responsive pleading when permitted by Rules 7(b) and 12(b) of the Rules of Civil Procedure."

47 **Sec. 4.** The following Sections of the General Statutes of North Carolina are hereby
48 repealed:

| | | | |
|---------|---------|---------|---------|
| 49 §1-9 | § 1-102 | § 1-146 | § 1-184 |
| 50 1-12 | 1-103 | 1-147 | 1-185 |
| 51 1-14 | 1-104 | 1-150 | 1-187 |

| | | | | |
|----|---------|-----------|------------|---------|
| 1 | 1-16 | 1-105 | 1-151 | 1-188 |
| 2 | 1-25 | 1-105.1 | 1-152 | 1-189 |
| 3 | 1-61 | 1-106 | 1-153 | 1-190 |
| 4 | 1-63 | 1-107 | 1-154 | 1-191 |
| 5 | 1-64 | 1-107.1 | 1-155 | 1-192 |
| 6 | 1-65 | 1-107.2 | 1-156 | 1-193 |
| 7 | 1-65.1 | 1-107.3 | 1-157 | 1-194 |
| 8 | 1-65.2 | 1-115 | 1-158 | 1-195 |
| 9 | 1-65.3 | 1-121 | 1-159 | 1-196 |
| 10 | 1-65.4 | 1-122 | 1-160 | 1-197 |
| 11 | 1-66 | 1-123 | 1-161 | 1-198 |
| 12 | 1-67 | 1-124 | 1-162 | 1-199 |
| 13 | 1-68 | 1-125 | 1-163 | 1-200 |
| 14 | 1-69 | 1-126 | 1-165 | 1-201 |
| 15 | 1-70 | 1-127 | 1-167 | 1-203 |
| 16 | 1-71 | 1-128 | 1-168 | 1-204 |
| 17 | 1-73 | 1-129 | 1-169 | 1-205 |
| 18 | 1-74 | 1-130 | 1-169.1 | 1-206 |
| 19 | 1-75 | 1-131 | 1-169.2 | 1-207 |
| 20 | 1-87.1 | 1-132 | 1-169.3 | 1-208 |
| 21 | 1-88 | 1-133 | 1-169.4 | 1-211 |
| 22 | 1-88.1 | 1-134 | 1-169.5 | 1-212 |
| 23 | 1-89 | 1-134.1 | 1-169.6 | 1-213 |
| 24 | 1-90 | 1-135 | 1-170 | 1-214 |
| 25 | 1-91 | 1-136 | 1-171 | 1-215 |
| 26 | 1-94 | 1-137 | 1-172 | 1-218 |
| 27 | 1-95 | 1-138 | 1-173 | 1-219 |
| 28 | 1-96 | 1-140 | 1-175 | 1-220 |
| 29 | 1-97 | 1-141 | 1-176 | 1-221 |
| 30 | 1-98 | 1-142 | 1-177 | 1-222 |
| 31 | 1-99 | 1-143 | 1-178 | 1-224 |
| 32 | 1-100 | 1-144 | 1-179 | 1-225 |
| 33 | 1-101 | 1-145 | 1-183 | 1-226 |
| 34 | § 1-227 | § 1-568.1 | § 1-568.21 | § 1-590 |
| 35 | 1-247 | 1-568.2 | 1-568.22 | 1-591 |
| 36 | 1-248 | 1-568.3 | 1-568.23 | 1-592 |
| 37 | 1-249 | 1-568.4 | 1-568.24 | 8-50(b) |
| 38 | 1-250 | 1-568.5 | 1-568.25 | 8-50(c) |
| 39 | 1-251 | 1-568.6 | 1-568.26 | 8-60 |
| 40 | 1-252 | 1-568.7 | 1-568.27 | 8-62 |
| 41 | 1-489 | 1-568.8 | 1-577 | 8-71 |
| 42 | 1-490 | 1-568.9 | 1-578 | 8-72 |
| 43 | 1-491 | 1-568.10 | 1-579 | 8-73 |
| 44 | 1-492 | 1-568.11 | 1-580 | 8-85 |
| 45 | 1-496 | 1-568.12 | 1-581 | 8-86 |
| 46 | 1-497 | 1-568.13 | 1-582 | 8-87 |
| 47 | 1-499 | 1-568.14 | 1-583 | 8-88 |
| 48 | 1-511 | 1-568.15 | 1-584 | 8-89 |
| 49 | 1-512 | 1-568.16 | 1-585 | 8-90 |
| 50 | 1-513 | 1-568.17 | 1-586 | 8-91 |
| 51 | 1-541 | 1-568.18 | 1-587 | |

1 1-542 1-568.19 1-588

2 1-543 1-568.20 1-589

3 **Sec. 5.** All those portions of Chapter 1 of the General Statutes of North Carolina not
4 repealed by this Act, not amended by this Act, or not in conflict with this Act, are hereby
5 re-enacted.

6 **Sec. 6.** All provisions of the General Statutes of North Carolina which refer to
7 Sections repealed or amended by this Act shall be deemed, insofar as possible, to refer to those
8 provisions of this Act which accomplish the same or an equivalent purpose.

9 **Sec. 7.** None of the provisions of this Act providing for the repeal of certain
10 Sections of the General Statutes shall constitute a re-enactment of the Common Law.

11 **Sec. 8.** If any provisions of this Act or the application thereof to any person or
12 circumstances is held invalid, such invalidity shall not affect other provisions or applications of
13 the Act which can be given effect without the invalid provision or application, and to this end
14 the provisions of this Act are declared to be severable.

15 **Sec. 9.** All laws and clauses of laws in conflict with this Act are hereby repealed.

16 **Sec. 10.** This Act shall be in full force and effect on and after July 1, 1969, and
17 shall apply to actions and proceedings pending on that date as well as to actions and
18 proceedings commenced on and after that date.

19 In the General Assembly read three times and ratified, this the 27th day of June,
20 1967.