

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

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SENATE BILL 465

Short Title: Civil Rules–Filing of Pleadings Clarified.

(Public)

Sponsors: Senator Berger of Rockingham.

Referred to: Judiciary I.

March 10, 2005

A BILL TO BE ENTITLED
AN ACT TO CLARIFY THE SERVICE AND FILING REQUIREMENTS OF THE
NORTH CAROLINA RULES OF CIVIL PROCEDURE.

The General Assembly of North Carolina enacts:

SECTION 1. Subsection (b) of G.S. 1A-1, Rule 5 reads as rewritten:

"(b) Service – How made. – A pleading setting forth a counterclaim or cross claim shall be filed with the court and a copy thereof shall be served on the party against whom it is asserted or on the party's attorney of record. With respect to all pleadings subsequent to the original complaint and other papers required or permitted to be served, service with due return may be made in the manner provided for service and return of process in Rule 4 and may be made upon either the party or, unless service upon the party personally is ordered by the court, upon the party's attorney of record. With respect to such other pleadings and papers, service upon the attorney or upon a party may also be made by delivering a copy to the party or by mailing it to the party at the party's last known address or, if no address is known, by filing it with the clerk of court. Delivery of a copy within this rule means handing it to the attorney or to the party, leaving it at the attorney's office with a partner or employee, or by sending it to the attorney's office by a confirmed telefacsimile transmittal for receipt by 5:00 P.M. Eastern Time on a regular business day, as evidenced by a telefacsimile receipt confirmation. If receipt of delivery by telefacsimile is after 5:00 P.M., service will be deemed to have been completed on the next business day. Service by mail shall be complete upon deposit of the pleading or paper enclosed in a post-paid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service.

A certificate of service shall accompany every pleading and every paper required to be served on any party or nonparty to the litigation. Such certificate shall show the date and method of service or the date of acceptance of service and shall show the name and service address of each person upon whom the paper has been served. If one or more persons are served by facsimile transmission, the certificate shall also show the

1 telefacsimile number of each person so served. Each certificate of service shall be
2 signed in accordance with and subject to Rule 11 of these rules."

3 **SECTION 2.** Subsection (d) of G.S. 1A-1, Rule 5 reads as rewritten:

4 "(d) ~~Filing. — All pleadings subsequent to the complaint shall be filed with the~~
5 ~~court. All other papers required to be served upon a party, including requests for~~
6 ~~admissions, shall be filed with the court either before service or within five days~~
7 ~~thereafter, except that subpoenas, objections to subpoenas under Rule 45(c)(3),~~
8 ~~depositions, interrogatories, requests for documents, and answers and responses to those~~
9 ~~requests may not be filed unless ordered by the court or until used in the proceeding.~~
10 ~~Briefs and memoranda provided to the court may not be filed with the clerk of the court~~
11 ~~unless ordered by the court. The party taking a deposition or obtaining material through~~
12 ~~discovery is responsible for its preservation and delivery to the court if needed or so~~
13 ~~ordered. With respect to all pleadings and other papers as to which service and return~~
14 ~~has not been made in the manner provided in Rule 4, proof of service shall be made by~~
15 ~~filing with the court a certificate either by the attorney or the party that the paper was~~
16 ~~served in the manner prescribed by this rule, or a certificate of acceptance of service by~~
17 ~~the attorney or the party to be served. Such certificate shall show the date and method of~~
18 ~~service or the date of acceptance of service. The following papers shall be filed with the~~
19 ~~court, either before service or within five days after service:~~

- 20 (1) All pleadings, as defined by Rule 7(a) of these rules, subsequent to the
21 complaint, whether such pleadings are original or amended.
22 (2) Written motions and all notices of hearing.
23 (3) Any other application to the court for an order that may affect the
24 rights of or in any way commands any individual, business entity,
25 governmental agency, association, or partnership to act or to forego
26 action of any kind.
27 (4) Notices of appearance.
28 (5) Any other paper required by rule or statute to be filed.
29 (6) Any other paper so ordered by the court.
30 (7) All orders issued by the court.

31 All other papers, regardless of whether these rules require them to be served upon a
32 party, should not be filed with the court unless (i) the filing is agreed to by all parties, or
33 (ii) the papers are submitted to the court in relation to a motion or other request for
34 relief, or (iii) the filing is permitted by another rule or statute. Briefs or memoranda
35 provided to the court may not be filed with the clerk of court unless ordered by the
36 court. The party taking a deposition or obtaining material through discovery is
37 responsible for its preservation and delivery to the court if needed or so ordered."

38 **SECTION 3.** Subsection (f) of G.S. 1A-1, Rule 30 reads as rewritten:

39 "(f) ~~Certification and filing by person administering the oath; exhibits; copies;~~
40 ~~notice of filing; copies. —~~

- 41 (1) The person administering the oath shall certify that the deponent was
42 duly sworn by him and that the deposition is a true record of the
43 testimony given by the deponent. This certificate shall be in writing
44 and accompany the sound-and-visual or sound recording or transcript

1 of the deposition. He shall then place the deposition in an envelope or
2 package endorsed with the title of the action and marked "Deposition
3 of (here insert name of witness)" and shall personally deliver it or mail
4 it by first class mail to the party taking the deposition or his attorney
5 who shall preserve it as the court's copy.

6 Documents and things produced for inspection during the
7 examination of the deponent shall, upon the request of a party, be
8 marked for identification and annexed to and returned with the
9 deposition, and may be inspected and copied by any party, except that
10 (i) the person producing the materials may substitute copies to be
11 marked for identification, if he affords to all parties fair opportunity to
12 verify the copies by comparison with the originals, and (ii) if the
13 person producing the materials requests their return, the person before
14 whom the deposition is taken shall mark them, give each party an
15 opportunity to inspect and copy them, and return them to the person
16 producing them, and the materials may then be used in the manner as
17 if annexed to and returned with the deposition. Any party may move
18 for an order that the original be annexed to and returned with the
19 deposition to the court, pending final disposition of the case.

20 (2) Upon payment of reasonable charges therefor, the person
21 administering the oath shall furnish a copy of the deposition to any
22 party or to the deponent.

23 ~~(3) The clerk shall give prompt notice of the filing of a deposition to all~~
24 ~~parties."~~

25 **SECTION 4.** Subsection (c) of G.S. 1A-1, Rule 31 is repealed.

26 **SECTION 5.** Subsection (a) of G.S. 1A-1, Rule 32 reads as rewritten:

27 "(a) Use of depositions. – At the trial or upon the hearing of a motion or an
28 interlocutory proceeding or upon a hearing before a referee, any part or all of a
29 deposition, so far as admissible under the rules of evidence applied as though the
30 witness were then present and testifying, may be used against any party who was
31 present or represented at the taking of the deposition or who had reasonable notice
32 thereof, in accordance with any of the following provisions:

33 (1) Any deposition may be used by any party for the purpose of
34 contradicting or impeaching the testimony of deponent as a witness.

35 (2) The deposition of a person called as a witness may also be used as
36 substantive evidence by any party adverse to the party who called the
37 deponent as a witness and it may be used by the party calling deponent
38 as a witness as substantive evidence of such facts stated in the
39 deposition as are in conflict with or inconsistent with the testimony of
40 deponent as a witness.

41 (3) The deposition of a party or of any one who at the time of taking the
42 deposition was an officer, director, or managing agent, or a person
43 designated under Rule 30(b)(6) or 31(a) to testify on behalf of a public
44 or private corporation, partnership or association or governmental

1 agency which is a party may be used by an adverse party for any
2 purpose, whether or not the deponent testifies at the trial or hearing.

- 3 (4) The deposition of a witness, whether or not a party, may be used by
4 any party for any purpose if the court finds: that the witness is dead; or
5 that the witness is at a greater distance than 100 miles from the place
6 of trial or hearing, or is out of the United States, unless it appears that
7 the absence of the witness was procured by the party offering the
8 deposition; or that the witness is unable to attend or testify because of
9 age, illness, infirmity, or imprisonment; or that the party offering the
10 deposition has been unable to procure the attendance of the witness by
11 subpoena; or upon application and notice, that such exceptional
12 circumstances exist as to make it desirable, in the interest of justice
13 and with due regard to the importance of presenting testimony of
14 witnesses orally in open court, to allow the deposition to be used; or
15 the witness is an expert witness whose testimony has been procured by
16 videotape as provided for under Rule 30(b)(4).

- 17 (5) If only part of a deposition is offered in evidence by a party, an
18 adverse party may require him to introduce any other part which is
19 relevant to the part introduced, and any party may introduce any other
20 parts.

21 Substitution of parties pursuant to Rule 25 does not affect the right
22 to use depositions previously taken; and, when an action in any court
23 of the United States or of any state has been dismissed and another
24 action involving the same subject matter is afterward brought between
25 the same parties or their representatives or successors in interest, all
26 depositions lawfully taken in the former action and duly ~~filed in the~~
27 ~~former action~~ prepared, certified, and delivered in accordance with
28 Rule 30 may be used in the latter as if originally taken therefor."

29 **SECTION 6.** Subsection (d) of G.S. 1A-1, Rule 32 reads as rewritten:

30 "(d) Effect of errors and irregularities in depositions. –

- 31 (1) As to Notice. – All errors and irregularities in the notice for taking a
32 deposition are waived unless written objection is promptly served upon
33 the party giving the notice.
- 34 (2) As to Disqualification of Person before Whom Taken. – Objection to
35 taking a deposition because of disqualification of the person before
36 whom it is to be taken is waived unless made before the taking of the
37 deposition begins or as soon thereafter as the disqualification becomes
38 known or could be discovered with reasonable diligence.
- 39 (3) As to Taking of Deposition. –
- 40 a. Objections to the competency of a witness or to the
41 competency, relevancy, or materiality of testimony are not
42 waived by failure to make them before or during the taking of
43 the deposition, unless the ground of the objection is one which
44 might have been obviated or removed if presented at that time.

- 1 b. Errors and irregularities occurring at the oral examination in the
2 manner of taking the deposition, in the form of the questions or
3 answers, in the oath or affirmation, or in the conduct of parties,
4 and errors of any kind which might be obviated, removed, or
5 cured if promptly presented, are waived unless reasonable
6 objection thereto is made at the taking of the deposition.
7 c. Objections to the form of written questions submitted under
8 Rule 31 are waived unless served in writing upon the party
9 propounding them within the time allowed for serving the
10 succeeding cross or other questions and within five days after
11 service of the last questions authorized.

- 12 (4) As to Completion and Return of Deposition. – Errors and irregularities
13 in the manner in which the testimony is transcribed or the deposition is
14 prepared, signed, certified, sealed, indorsed, transmitted, ~~filed,~~ or
15 otherwise dealt with by the person taking the deposition under Rules
16 30 and 31 are waived unless a motion to suppress the deposition or
17 some part thereof is made with reasonable promptness after such
18 defeat is, or with due diligence might have been, ascertained."

19 **SECTION 7.** This act becomes effective October 1, 2006, and applies to all
20 pending cases and all cases filed after the effective date of this act.