

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

S

2

SENATE BILL 1851\*  
Judiciary II (Criminal) Committee Substitute Adopted 6/9/08

Short Title: Service of Process/Electronic or Fax Receipt.

(Public)

---

Sponsors:

---

Referred to:

---

May 22, 2008

A BILL TO BE ENTITLED

1  
2 AN ACT TO EXPRESSLY AUTHORIZE THE USE OF ELECTRONIC OR  
3 FACSIMILE RECEIPTS UNDER RULE 4 OF THE RULES OF CIVIL  
4 PROCEDURE WHEN SERVICE OF PROCESS IS PROVIDED BY A  
5 DESIGNATED PRIVATE DELIVERY SERVICE AND TO MAKE  
6 CONFORMING CHANGES REGARDING PROOF OF SERVICE, AS  
7 RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

8 The General Assembly of North Carolina enacts:

9 **SECTION 1.** G.S. 1A-1, Rule 4(j), reads as rewritten:

10 "(j) Process – Manner of service to exercise personal jurisdiction. – In any action  
11 commenced in a court of this State having jurisdiction of the subject matter and grounds  
12 for personal jurisdiction as provided in G.S. 1-75.4, the manner of service of process  
13 within or without the State shall be as follows:

14 (1) Natural Person. – Except as provided in ~~subsection~~subdivision (2)  
15 below, upon a natural person by one of the following:

- 16 a. By delivering a copy of the summons and of the complaint to  
17 the natural person or by leaving copies thereof at the  
18 defendant's dwelling house or usual place of abode with some  
19 person of suitable age and discretion then residing therein.  
20 b. By delivering a copy of the summons and of the complaint to an  
21 agent authorized by appointment or by law to be served or to  
22 accept service of process or by serving process upon such agent  
23 or the party in a manner specified by any statute.  
24 c. By mailing a copy of the summons and of the complaint,  
25 registered or certified mail, return receipt requested, addressed  
26 to the party to be served, and delivering to the addressee.  
27 d. By depositing with a designated delivery service authorized  
28 pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and  
29 complaint, addressed to the party to be served, delivering to the

- 1 addressee, and obtaining a delivery receipt. As used in this  
2 sub-subdivision, "delivery receipt" includes an electronic or  
3 facsimile receipt.
- 4 e. By mailing a copy of the summons and of the complaint by  
5 signature confirmation as provided by the United States Postal  
6 Service, addressed to the party to be served, and delivering to  
7 the addressee. ~~Nothing in this sub-subdivision authorizes the~~  
8 ~~use of electronic mailing for service on the party to be served.~~
- 9 (2) Natural Person under Disability. – Upon a natural person under  
10 disability by serving process in any manner prescribed in this section  
11 (j) for service upon a natural person and, in addition, where required  
12 by paragraph a or b below, upon a person therein designated.
- 13 a. Where the person under disability is a minor, process shall be  
14 served separately in any manner prescribed for service upon a  
15 natural person upon a parent or guardian having custody of the  
16 child, or if there be none, upon any other person having the care  
17 and control of the child. If there is no parent, guardian, or other  
18 person having care and control of the child when service is  
19 made upon the child, then service of process must also be made  
20 upon a guardian ad litem who has been appointed pursuant to  
21 Rule 17.
- 22 b. If the plaintiff actually knows that a person under disability is  
23 under guardianship of any kind, process shall be served  
24 separately upon his guardian in any manner applicable and  
25 appropriate under this section (j). If the plaintiff does not  
26 actually know that a guardian has been appointed when service  
27 is made upon a person known to him to be incompetent to have  
28 charge of his affairs, then service of process must be made upon  
29 a guardian ad litem who has been appointed pursuant to Rule  
30 17.
- 31 (3) The State. – Upon the State by personally delivering a copy of the  
32 summons and of the complaint to the Attorney General or to a deputy  
33 or assistant attorney general; by mailing a copy of the summons and of  
34 the complaint, registered or certified mail, return receipt requested,  
35 addressed to the Attorney General or to a deputy or assistant attorney  
36 general; or by depositing with a designated delivery service authorized  
37 pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and  
38 complaint, addressed to the Attorney General or to a deputy or  
39 assistant attorney general, delivering to the addressee, and obtaining a  
40 delivery receipt. As used in this subdivision, "delivery receipt"  
41 includes an electronic or facsimile receipt.
- 42 (4) An Agency of the State. –
- 43 a. Upon an agency of the State by personally delivering a copy of  
44 the summons and of the complaint to the process agent

1 appointed by the agency in the manner hereinafter provided; by  
2 mailing a copy of the summons and of the complaint, registered  
3 or certified mail, return receipt requested, addressed to said  
4 process agent; or by depositing with a designated delivery  
5 service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of  
6 the summons and complaint, addressed to the process agent,  
7 delivering to the addressee, and obtaining a delivery receipt. As  
8 used in this sub-subdivision, "delivery receipt" includes an  
9 electronic or facsimile receipt.

10 b. Every agency of the State shall appoint a process agent by filing  
11 with the Attorney General the name and address of an agent  
12 upon whom process may be served.

13 c. If any agency of the State fails to comply with paragraph b  
14 above, then service upon such agency may be made by  
15 personally delivering a copy of the summons and of the  
16 complaint to the Attorney General or to a deputy or assistant  
17 attorney general; by mailing a copy of the summons and of the  
18 complaint, registered or certified mail, return receipt requested,  
19 addressed to the Attorney General, or to a deputy or assistant  
20 attorney general; or by depositing with a designated delivery  
21 service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of  
22 the summons and complaint, addressed to the Attorney General  
23 or to a deputy or assistant attorney general, delivering to the  
24 addressee, and obtaining a delivery receipt. As used in this  
25 sub-subdivision, "delivery receipt" includes an electronic or  
26 facsimile receipt.

27 d. For purposes of this rule, the term "agency of the State"  
28 includes every agency, institution, board, commission, bureau,  
29 department, division, council, member of Council of State, or  
30 officer of the State government of the State of North Carolina,  
31 but does not include counties, cities, towns, villages, other  
32 municipal corporations or political subdivisions of the State,  
33 county or city boards of education, other local public districts,  
34 units, or bodies of any kind, or private corporations created by  
35 act of the General Assembly.

36 (5) Counties, Cities, Towns, Villages and Other Local Public Bodies. –

37 a. Upon a city, town, or village by personally delivering a copy of  
38 the summons and of the complaint to its mayor, city manager or  
39 clerk; by mailing a copy of the summons and of the complaint,  
40 registered or certified mail, return receipt requested, addressed  
41 to its mayor, city manager or clerk; or by depositing with a  
42 designated delivery service authorized pursuant to 26 U.S.C. §  
43 7502(f)(2) a copy of the summons and complaint, addressed to  
44 the mayor, city manager, or clerk, delivering to the addressee,

1 and obtaining a delivery receipt. As used in this  
2 sub-subdivision, "delivery receipt" includes an electronic or  
3 facsimile receipt.

4 b. Upon a county by personally delivering a copy of the summons  
5 and of the complaint to its county manager or to the chairman,  
6 clerk or any member of the board of commissioners for such  
7 county; by mailing a copy of the summons and of the  
8 complaint, registered or certified mail, return receipt requested,  
9 addressed to its county manager or to the chairman, clerk, or  
10 any member of this board of commissioners for such county; or  
11 by depositing with a designated delivery service authorized  
12 pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and  
13 complaint, addressed to the county manager or to the chairman,  
14 clerk, or any member of the board of commissioners of that  
15 county, delivering to the addressee, and obtaining a delivery  
16 receipt. As used in this sub-subdivision, "delivery receipt"  
17 includes an electronic or facsimile receipt.

18 c. Upon any other political subdivision of the State, any county or  
19 city board of education, or other local public district, unit, or  
20 body of any kind (i) by personally delivering a copy of the  
21 summons and of the complaint to an officer or director thereof,  
22 (ii) by personally delivering a copy of the summons and of the  
23 complaint to an agent or attorney-in-fact authorized by  
24 appointment or by statute to be served or to accept service in its  
25 behalf, (iii) by mailing a copy of the summons and of the  
26 complaint, registered or certified mail, return receipt requested,  
27 addressed to the officer, director, agent, or attorney-in-fact as  
28 specified in (i) and (ii), or (iv) by depositing with a designated  
29 delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a  
30 copy of the summons and complaint, addressed to the officer,  
31 director, agent, or attorney-in-fact as specified in (i) and (ii),  
32 delivering to the addressee, and obtaining a delivery receipt. As  
33 used in this sub-subdivision, "delivery receipt" includes an  
34 electronic or facsimile receipt.

35 d. In any case where none of the officials, officers or directors  
36 specified in paragraphs a, b and c can, after due diligence, be  
37 found in the State, and that fact appears by affidavit to the  
38 satisfaction of the court, or a judge thereof, such court or judge  
39 may grant an order that service upon the party sought to be  
40 served may be made by personally delivering a copy of the  
41 summons and of the complaint to the Attorney General or any  
42 deputy or assistant attorney general of the State of North  
43 Carolina; by mailing a copy of the summons and of the  
44 complaint, registered or certified mail, return receipt requested,

1 addressed to the Attorney General or any deputy or assistant  
2 attorney general of the State of North Carolina; or by depositing  
3 with a designated delivery service authorized pursuant to 26  
4 U.S.C. § 7502(f)(2) a copy of the summons and complaint,  
5 addressed to the Attorney General or any deputy or assistant  
6 attorney general of the State of North Carolina, delivering to the  
7 addressee, and obtaining a delivery receipt. As used in this  
8 sub-subdivision, "delivery receipt" includes an electronic or  
9 facsimile receipt.

10 (6) Domestic or Foreign Corporation. – Upon a domestic or foreign  
11 corporation by one of the following:

12 a. By delivering a copy of the summons and of the complaint to an  
13 officer, director, or managing agent of the corporation or by  
14 leaving copies thereof in the office of such officer, director, or  
15 managing agent with the person who is apparently in charge of  
16 the office.

17 b. By delivering a copy of the summons and of the complaint to an  
18 agent authorized by appointment or by law to be served or to  
19 accept service of process or by serving process upon such agent  
20 or the party in a manner specified by any statute.

21 c. By mailing a copy of the summons and of the complaint,  
22 registered or certified mail, return receipt requested, addressed  
23 to the officer, director or agent to be served as specified in  
24 paragraphs a and b.

25 d. By depositing with a designated delivery service authorized  
26 pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and  
27 complaint, addressed to the officer, director, or agent to be  
28 served as specified in paragraphs a. and b., delivering to the  
29 addressee, and obtaining a delivery receipt. As used in this  
30 sub-subdivision, "delivery receipt" includes an electronic or  
31 facsimile receipt.

32 (7) Partnerships. – Upon a general or limited partnership:

33 a. By delivering a copy of the summons and of the complaint to  
34 any general partner, or to any attorney-in-fact or agent  
35 authorized by appointment or by law to be served or to accept  
36 service of process in its behalf; by mailing a copy of the  
37 summons and of the complaint, registered or certified mail,  
38 return receipt requested, addressed to any general partner, or to  
39 any attorney-in-fact or agent authorized by appointment or by  
40 law to be served or to accept service of process in its behalf; or  
41 by depositing with a designated delivery service authorized  
42 pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and  
43 complaint, addressed to any general partner or to any  
44 attorney-in-fact or agent authorized by appointment or by law to

1 be served or to accept service of process in its behalf, delivering  
 2 to the addressee, and obtaining a delivery receipt; or by leaving  
 3 copies thereof in the office of such general partner,  
 4 attorney-in-fact or agent with the person who is apparently in  
 5 charge of the office. As used in this sub-subdivision, "delivery  
 6 receipt" includes an electronic or facsimile receipt.

7 b. If relief is sought against a partner specifically, a copy of the  
 8 summons and of the complaint must be served on such partner  
 9 as provided in this section (j).

10 (8) Other Unincorporated Associations and Their Officers. – Upon any  
 11 unincorporated association, organization, or society other than a  
 12 partnership by one of the following:

13 a. By delivering a copy of the summons and of the complaint to an  
 14 officer, director, managing agent or member of the governing  
 15 body of the unincorporated association, organization or society,  
 16 or by leaving copies thereof in the office of such officer,  
 17 director, managing agent or member of the governing body with  
 18 the person who is apparently in charge of the office.

19 b. By delivering a copy of the summons and of the complaint to an  
 20 agent authorized by appointment or by law to be served or to  
 21 accept service of process or by serving process upon such agent  
 22 or the party in a manner specified by any statute.

23 c. By mailing a copy of the summons and of the complaint,  
 24 registered or certified mail, return receipt requested, addressed  
 25 to the officer, director, agent or member of the governing body  
 26 to be served as specified in paragraphs a and b.

27 d. By depositing with a designated delivery service authorized  
 28 pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and  
 29 complaint, addressed to the officer, director, agent, or member  
 30 of the governing body to be served as specified in paragraphs a.  
 31 and b., delivering to the addressee, and obtaining a delivery  
 32 receipt. As used in this sub-subdivision, "delivery receipt"  
 33 includes an electronic or facsimile receipt.

34 (9) Foreign States and Their Political Subdivisions, Agencies, and  
 35 Instrumentalities. – ~~Service upon~~ Upon a foreign state or a political  
 36 subdivision, agency, or instrumentality ~~thereof shall be~~  
 37 ~~effected thereof,~~ pursuant to 28 U.S.C. § 1608."

38 **SECTION 2.** G.S. 1A-1, Rule 4(j2), reads as rewritten:

39 "(j2) Proof of service. – Proof of service of process shall be as follows:

40 (1) Personal Service. – Before judgment by default may be had on  
 41 personal service, proof of service must be provided in accordance with  
 42 the requirements of ~~G.S. 1-75.10(1).~~ G.S. 1-75.10(a)(1).

43 (2) Registered or Certified Mail, Signature Confirmation, or Designated  
 44 Delivery Service. – Before judgment by default may be had on service

1 by registered or certified mail, signature confirmation, or by a  
 2 designated delivery service authorized pursuant to 26 U.S.C. §  
 3 7502(f)(2) with delivery receipt, the serving party shall file an affidavit  
 4 with the court showing proof of such service in accordance with the  
 5 requirements of ~~G.S. 1-75.10(4), 1-75.10(5), or~~  
 6 ~~1-75.10(6),~~ G.S. 1-75.10(a)(4), 1-75.10(a)(5), or 1-75.10(a)(6), as  
 7 appropriate. This affidavit together with the return ~~or delivery receipt~~  
 8 ~~or receipt,~~ copy of the proof of delivery provided by the United States  
 9 Postal ~~Service~~ Service, or delivery receipt, signed by the person who  
 10 received the mail or delivery if not the addressee raises a presumption  
 11 that the person who received the mail or delivery and signed the  
 12 receipt was an agent of the addressee authorized by appointment or by  
 13 law to be served or to accept service of process or was a person of  
 14 suitable age and discretion residing in the addressee's dwelling house  
 15 or usual place of abode. In the event the presumption described in the  
 16 preceding sentence is rebutted by proof that the person who received  
 17 the receipt at the addressee's dwelling house or usual place of abode  
 18 was not a person of suitable age and discretion residing therein, the  
 19 statute of limitation may not be pleaded as a defense if the action was  
 20 initially commenced within the period of limitation and service of  
 21 process is completed within 60 days from the date the service is  
 22 declared invalid. Service shall be complete on the day the summons  
 23 and complaint are delivered to the address. As used in this subdivision,  
 24 "delivery receipt" includes an electronic or facsimile receipt provided  
 25 by a designated delivery service.

- 26 (3) Publication. – Before judgment by default may be had on service by  
 27 publication, the serving party shall file an affidavit with the court  
 28 showing the circumstances warranting the use of service by  
 29 publication, information, if any, regarding the location of the party  
 30 served which was used in determining the area in which service by  
 31 publication was printed and proof of service in accordance with  
 32 ~~G.S. 1-75.10(2).~~ G.S. 1-75.10(a)(2)."

33 **SECTION 3.** G.S. 1A-1, Rule 4, is amended by adding a new subsection to  
 34 read:

35 "(j6) Service by electronic mailing not authorized. – Nothing in subsection (j) of  
 36 this section authorizes the use of electronic mailing for service on the party to be  
 37 served."

38 **SECTION 4.** G.S. 1-75.10 reads as rewritten:

39 "**§ 1-75.10. Proof of service of summons, defendant appearing in action.**

40 (a) Where the defendant appears in the action and challenges the service of the  
 41 summons upon him, proof of the service of process shall be as follows:

42 ...

1 (5) Service by Designated Delivery Service. – In the case of service by  
2 designated delivery service, by affidavit of the serving party  
3 ~~averring;averring~~ all of the following:

- 4 a. That a copy of the summons and complaint was deposited with  
5 a designated delivery service as authorized under G.S. 1A-1,  
6 Rule 4, delivery receipt ~~requested;requested.~~  
7 b. That it was in fact received as evidenced by the attached  
8 delivery receipt or other evidence satisfactory to the court of  
9 delivery to the ~~addressee; and~~ addressee.  
10 c. That the ~~genuine-delivery~~ receipt or other evidence of delivery  
11 is attached.

12 ...

13 (b) As used in subdivision (5) of subsection (a) of this section, "delivery receipt"  
14 includes a facsimile receipt and a printout of an electronic receipt."

15 **SECTION 5.** G.S. 1A-1, Rule 4(j1), reads as rewritten:

16 "(j1) Service by publication on party that cannot otherwise be served. – A party  
17 that cannot with due diligence be served by personal delivery, registered or certified  
18 mail, or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2)  
19 may be served by publication. Except in actions involving jurisdiction in rem or quasi in  
20 rem as provided in section (k), service of process by publication shall consist of  
21 publishing a notice of service of process by publication once a week for three successive  
22 weeks in a newspaper that is qualified for legal advertising in accordance with  
23 G.S. 1-597 and G.S. 1-598 and circulated in the area where the party to be served is  
24 believed by the serving party to be located, or if there is no reliable information  
25 concerning the location of the party then in a newspaper circulated in the county where  
26 the action is pending. If the party's post-office address is known or can with reasonable  
27 diligence be ascertained, there shall be mailed to the party at or immediately prior to the  
28 first publication a copy of the notice of service of process by publication. The mailing  
29 may be omitted if the post-office address cannot be ascertained with reasonable  
30 diligence. Upon completion of such service there shall be filed with the court an  
31 affidavit showing the publication and mailing in accordance with the requirements of  
32 ~~G.S. 1-75.10(2),G.S. 1-75.10(a)(2),~~ the circumstances warranting the use of service by  
33 publication, and information, if any, regarding the location of the party served.

34 The notice of service of process by publication shall (i) designate the court in which  
35 the action has been commenced and the title of the action, which title may be indicated  
36 sufficiently by the name of the first plaintiff and the first defendant; (ii) be directed to  
37 the defendant sought to be served; (iii) state either that a pleading seeking relief against  
38 the person to be served has been filed or has been required to be filed therein not later  
39 than a date specified in the notice; (iv) state the nature of the relief being sought; (v)  
40 require the defendant being so served to make defense to such pleading within 40 days  
41 after a date stated in the notice, exclusive of such date, which date so stated shall be the  
42 date of the first publication of notice, or the date when the complaint is required to be  
43 filed, whichever is later, and notify the defendant that upon his failure to do so the party  
44 seeking service of process by publication will apply to the court for the relief sought;



(vi) in cases of attachment, state the information required by G.S. 1-440.14; (vii) be subscribed by the party seeking service or his attorney and give the post-office address of such party or his attorney; and (viii) be substantially in the following form:

NOTICE OF SERVICE OF PROCESS BY PUBLICATION  
STATE OF NORTH CAROLINA \_\_\_\_\_ COUNTY

In the \_\_\_\_\_ Court

[Title of action or special proceeding] [To Person to be served]:

Take notice that a pleading seeking relief against you (has been filed) (is required to be filed not later than \_\_\_\_\_, \_\_\_\_ ) in the above-entitled (action) (special proceeding). The nature of the relief being sought is as follows:

(State nature.)

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

This, the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_

\_\_\_\_\_ (Attorney) (Party)

\_\_\_\_\_ (Address)"

**SECTION 6.** This act becomes effective October 1, 2008, and applies to receipts given on or after that date.