

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE DRH60155-LD-29F (02/18)

Short Title: Multicounty Superior Court District/Motions.

(Public)

Sponsors: Representative Faison.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT ANY MOTION FILED IN A CIVIL ACTION WHEN
THE ACTION IS PENDING IN A SUPERIOR COURT OF A COUNTY THAT IS
IN A SUPERIOR COURT DISTRICT CONSISTING OF MORE THAN ONE
COUNTY MAY BE HEARD IN ANY SUPERIOR COURT IN THAT SUPERIOR
COURT DISTRICT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1A-1, Rule 7, reads as rewritten:

"Rule 7. Pleadings allowed; ~~form of motions~~.

(a) Pleadings. – There shall be a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a crossclaim, if the answer contains a crossclaim; a third-party complaint if a person who was not an original party is summoned under the provisions of Rule 14; and a third-party answer, if a third-party complaint is served. If the answer alleges contributory negligence, a party may serve a reply alleging last clear chance. No other pleading shall be allowed except that the court may order a reply to an answer or a third-party answer.

(b) Motions and other papers. –

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

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

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

4 (4) A motion filed in a civil action when the action is pending in a
5 superior court of a county that is in a superior court district consisting
6 of more than one county may be heard in any superior court in that
7 superior court district. The motion may be heard at a regular civil or
8 civil priority session of court or, with the consent of the presiding
9 judge, at a regular criminal or criminal priority session of court. A
10 party shall not object to hearing the motion out of county so long as it
11 is heard within that superior court district.

12 (c) Demurrers, pleas, etc., abolished. – Demurrers, pleas, and exceptions for
13 insufficiency shall not be used.

14 (d) Pleadings not read to jury. – Unless otherwise ordered by the judge, pleadings
15 shall not be read to the jury."

16 **SECTION 2.** G.S. 1A-1, Rule 58, reads as rewritten:

17 **"Rule 58. Entry of judgment.**

18 Subject to the provisions of Rule 54(b), a judgment is entered when it is reduced to
19 writing, signed by the judge, and filed with the clerk of court. The party designated by
20 the judge or, if the judge does not otherwise designate, the party who prepares the
21 judgment, shall serve a copy of the judgment upon all other parties within three days
22 after the judgment is entered. Service and proof of service shall be in accordance with
23 Rule 5. If service is by mail, three days shall be added to the time periods prescribed by
24 Rule 50(b), Rule 52(b), and Rule 59. All time periods within which a party may further
25 act pursuant to Rule 50(b), Rule 52(b), or Rule 59 shall be tolled for the duration of any
26 period of noncompliance with this service requirement, provided however that no time
27 period under Rule 50(b), Rule 52(b), or Rule 59 shall be tolled longer than 90 days from
28 the date the judgment is entered. ~~Consent~~ Subject to the provisions of Rule 7(b)(4),
29 consent for the signing and entry of a judgment out of term, session, county, and district
30 shall be deemed to have been given unless an express objection to such action was made
31 on the record prior to the end of the term or session at which the matter was heard.

32 Notwithstanding any other law to the contrary, any judgment entered by a magistrate
33 in a small claims action pursuant to Article 19 of Chapter 7A shall be entered in
34 accordance with this Rule except judgments announced and signed in open court at the
35 conclusion of a trial are considered to be served on the parties, and copies of any
36 judgment not announced and signed in open court at the conclusion of a trial shall be
37 served by the magistrate on all parties in accordance with this Rule, within three days
38 after the judgment is entered. If service is by mail, three days shall be added to the time
39 periods prescribed by G.S. 7A-228. All time periods within which a party may further
40 act pursuant to G.S. 7A-228 shall be tolled for the duration of any period of
41 noncompliance of this service requirement, provided that no time period shall be tolled
42 longer than 90 days from the date judgment is entered."

43 **SECTION 3.** This act becomes effective October 1, 2005, and applies to
44 motions filed on or after that date.