

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 300*
PROPOSED COMMITTEE SUBSTITUTE S300-PCS85224-RF-49

Short Title: Miscellaneous Service/Process Amendments.

(Public)

Sponsors:

Referred to:

March 10, 2011

A BILL TO BE ENTITLED

AN ACT TO (1) ALLOW SERVICE BY SIGNATURE CONFIRMATION OR DESIGNATED DELIVERY SERVICE IN SMALL CLAIM ACTIONS ASSIGNED TO MAGISTRATES AND IN ADMINISTRATIVE CASES, (2) CLARIFY THAT THE SIXTY-DAY TIME FRAME FOR SERVING A SUMMONS UNDER RULE 4 OF THE RULES OF CIVIL PROCEDURE APPLIES TO ALL SUMMONSES UNDER RULE 4(J) AND (J1), (3) REQUIRE THAT A COPY OF A MOTION TO TERMINATE PARENTAL RIGHTS THAT IS SERVED ON A PARENT BE SENT TO THAT PARENT'S ATTORNEY OF RECORD, IF ANY, (4) REQUIRE THAT A PARTY'S ATTORNEY OF RECORD, IF ANY, MUST BE SERVED WHEN SERVICE IS MADE UNDER RULE 5(B) OF THE RULES OF CIVIL PROCEDURE, IN ADDITION TO ANY SERVICE ON THE PARTY, AND (5) CLARIFY THAT AN ATTORNEY MAY BE SERVED UNDER RULE 5(B) BY MAIL, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SERVICE BY DESIGNATED DELIVERY SERVICE IN SMALL CLAIMS CASES

SECTION 1.1. G.S. 7A-217 reads as rewritten:

"§ 7A-217. Methods of subjecting person of defendant to jurisdiction.

When by order or rule a small claim action is assigned to a magistrate, ~~the defendant may be subjected to the jurisdiction of the court over his person~~ the court may obtain jurisdiction over the person of the defendant by the following methods:

- (1) By delivering a copy of the summons and of the complaint to ~~him~~ the defendant or by leaving copies thereof at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. When the defendant is under any legal disability, ~~he~~ the defendant may be ~~subject~~ subjected to personal jurisdiction only by personal service of process in the manner provided by ~~law~~ G.S. 1A-1, Rule 4(j)(2).
- (2) When the defendant is not under any legal disability, ~~he~~ the defendant may be served by registered or certified ~~mail~~ mail, signature confirmation, or designated delivery service as provided in G.S. 1A-1, Rule 4(j). Proof of service is as provided in G.S. 1A-1, Rule 4(j2).
- (3) When the defendant is under no legal disability, ~~he~~ the defendant may be subjected to the jurisdiction of the court over ~~his person~~ by his ~~the person of~~



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1 the defendant by written acceptance of ~~service, service~~ or by his-voluntary
2 appearance.

- 3 (4) In summary ejectment cases only, service as provided in G.S. 42-29 is also
4 authorized."

5 **SERVICE BY DESIGNATED DELIVERY IN ADMINISTRATIVE CASES**

6 **SECTION 2.1.** G.S. 150B-23(c) reads as rewritten:

7 "**§ 150B-23. Commencement; assignment of administrative law judge; hearing required;**
8 **notice; intervention.**

9 ...
10 (c) Notice shall be given ~~personally or by certified mail, by one of the methods for~~
11 ~~service of process under G.S. 1A-1, Rule 4(j) or Rule 4(j3). If given by registered or certified~~
12 ~~mail, it by signature confirmation as provided by the United States Postal Service, or by~~
13 ~~designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt,~~
14 ~~notice shall be deemed to have been given on the delivery date appearing on the return receipt-~~
15 ~~receipt, copy of the proof of delivery provided by the United States Postal Service, or delivery~~
16 ~~receipt. If giving of notice cannot be accomplished either personally or by certified mail, by a~~
17 ~~method under G.S. 1A-1, Rule 4(j) or Rule 4(j3), notice shall then be given in the manner~~
18 ~~provided in G.S. 1A-1, Rule 4(j1).~~

19 "

20 **SECTION 2.2.** G.S. 150B-36(b3) reads as rewritten:

21 "(b3) Except as provided in G.S. 150B-34(c), the agency shall adopt the decision of the
22 administrative law judge unless the agency demonstrates that the decision of the administrative
23 law judge is clearly contrary to the preponderance of the admissible evidence in the record. If
24 the agency does not adopt the administrative law judge's decision as its final decision, the
25 agency shall set forth its reasoning for the final decision in light of the findings of fact and
26 conclusions of law in the final decision, including any exercise of discretion by the agency. The
27 agency may consider only the official record prepared pursuant to G.S. 150B-37 in making a
28 final decision. A copy of the decision shall be served upon each party ~~personally or by certified~~
29 ~~mail by one of the methods for service of process under G.S. 1A-1, Rule 5(b). If service is by~~
30 ~~registered, certified, or first-class mail, by signature confirmation as provided by the United~~
31 ~~States Postal Service, or by designated delivery service authorized pursuant to 26 U.S.C. §~~
32 ~~7502(f)(2) with delivery receipt, the copy shall be addressed to the party at the latest address~~
33 ~~given by the party to the agency, and a agency. Service by one of the additional methods~~
34 ~~provided in G.S. 1A-1, Rule 5(b), is effective as provided therein and shall be accompanied by~~
35 ~~a certificate of service as provided in G.S. 1A-1, Rule 5(b1). G.S. 1A-1, Rule 6(e), applies if~~
36 ~~service is by first-class mail. A copy shall be furnished to his-the party's attorney of record and~~
37 ~~the Office of Administrative Hearings."~~

38 **SECTION 2.3.** G.S. 150B-38(c) reads as rewritten:

39 "(c) Notice shall be given ~~personally or by certified mail, by one of the methods for~~
40 ~~service of process under G.S. 1A-1, Rule 4(j) or Rule 4(j3). If given by registered or certified~~
41 ~~mail, by signature confirmation as provided by the United States Postal Service, or by~~
42 ~~designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt,~~
43 ~~notice shall be deemed to have been given on the delivery date appearing on the return receipt-~~
44 ~~receipt, copy of proof of delivery provided by the United States Postal Service, or delivery~~
45 ~~receipt. If notice cannot be given personally or by certified mail, by one of the methods for~~
46 ~~service of process under G.S. 1A-1, Rule 4(j) or Rule 4(j3), then notice shall be given in the~~
47 ~~manner provided in G.S. 1A-1, Rule 4(j1)."~~

48 **SECTION 2.4.** G.S. 150B-42(a) reads as rewritten:

49 "(a) After compliance with the provisions of G.S. 150B-40(e), if applicable, and review
50 of the official record, as defined in subsection (b) of this section, an agency shall make a
51 written final decision or order in a contested case. The decision or order shall include findings

1 of fact and conclusions of law. Findings of fact shall be based exclusively on the evidence and
2 on matters officially noticed. Findings of fact, if set forth in statutory language, shall be
3 accompanied by a concise and explicit statement of the underlying facts supporting them. A
4 decision or order shall not be made except upon consideration of the record as a whole or such
5 portion thereof as may be cited by any party to the proceeding and shall be supported by
6 substantial evidence admissible under G.S. 150B-41. A copy of the decision or order shall be
7 served upon each party ~~personally or by certified mail~~ by one of the methods for service of
8 process under G.S. 1A-1, Rule 5(b). If service is by registered, certified, or first-class mail, by
9 signature confirmation as provided by the United States Postal Service, or by designated
10 delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, the copy
11 shall be addressed to the party at the latest address given by the party to the agency and a
12 agency. Service by one of the additional methods provided in G.S. 1A-1, Rule 5(b), is effective
13 as provided therein and shall be accompanied by a certificate of service as provided in
14 G.S. 1A-1, Rule 5(b1). G.S. 1A-1, Rule 6(e), applies if service is by first-class mail. A copy
15 shall be furnished to his the party's attorney of record."

16 **ALL SUMMONSES UNDER RULE 4 TO BE SERVED WITHIN 60 DAYS**

17 **SECTION 3.1.** G.S. 1A-1, Rule 4(c), reads as rewritten:

18 "(c) Summons – Return. – Personal service or substituted personal service of summons
19 as prescribed by ~~Rule 4(j)(1) a and b~~ Rules 4(j) and (j1) must be made within 60 days after the
20 date of the issuance of summons. When a summons has been served upon every party named in
21 the summons, it shall be returned immediately to the clerk who issued it, with notation thereon
22 of its service.

23 Failure to make service within the time allowed or failure to return a summons to the clerk
24 after it has been served on every party named in the summons shall not invalidate the
25 summons. If the summons is not served within the time allowed upon every party named in the
26 summons, it shall be returned immediately upon the expiration of such time by the officer to
27 the clerk of the court who issued it with notation thereon of its nonservice and the reasons
28 therefor as to every such party not served, but failure to comply with this requirement shall not
29 invalidate the summons."

30 **REQUIRING SERVICE ON ATTORNEYS OF RECORD UNDER RULE 5(B) AND IN** 31 **TERMINATION OF PARENTAL RIGHTS BY MOTION**

32 **SECTION 4.1.** G.S. 7B-1102 reads as rewritten:

33 **"§ 7B-1102. Pending child abuse, neglect, or dependency proceedings.**

34 (a) When the district court is exercising jurisdiction over a juvenile and the juvenile's
35 parent in an abuse, neglect, or dependency proceeding, a person or agency specified in
36 G.S. 7B-1103(a) may file in that proceeding a motion for termination of the parent's rights in
37 relation to the juvenile.

38 (b) A motion pursuant to subsection (a) of this section and the notice required by
39 G.S. 7B-1106.1 shall be served in accordance with G.S. 1A-1, Rule 5(b), except:

- 40 (1) Service must be in accordance with G.S. 1A-1, Rule 4, if one of the
41 following applies:
 - 42 a. The person or agency to be served was not served originally with
43 summons.
 - 44 b. The person or agency to be served was served originally by
45 publication that did not include notice substantially in conformity
46 with the notice required by G.S. 7B-406(b)(4)e.
 - 47 c. Two years has elapsed since the date of the original action.
- 48 (2) In any case, the court may order that service of the motion and notice be
49 made pursuant to G.S. 1A-1, Rule 4.

50 For purposes of this section, the parent of the juvenile shall not be deemed to be under
51 disability even though the parent is a minor.

1 **(b1)** If a parent who is served under G.S. 1A-1, Rule 4, with a motion under this section
2 has an attorney of record, a copy of the motion and the notice served upon the parent shall also
3 be sent to the parent's attorney.

4 **(c)** When a petition for termination of parental rights is filed in the same district in
5 which there is pending an abuse, neglect, or dependency proceeding involving the same
6 juvenile, the court on its own motion or motion of a party may consolidate the action pursuant
7 to G.S. 1A-1, Rule 42."

8 **SECTION 4.2.** G.S. 1A-1, Rule 5(b), reads as rewritten:

9 **"(b)** Service – How made. – A pleading setting forth a counterclaim or cross claim shall
10 be filed with the court and a copy thereof shall be served on the party against whom it is
11 asserted or on the party's attorney of ~~record.~~ record as provided by this subsection. ~~With~~

12 With respect to all pleadings subsequent to the original complaint and other papers required
13 or permitted to be served, service with due return may be made in the manner provided for
14 service and return of process in Rule 4 and may be made upon either the party or, unless
15 service upon the party personally is shall be made upon the party's attorney of record and, if
16 ordered by the court, upon the party's attorney of record. With court, also upon the party. If the
17 party has no attorney of record, service shall be made upon the party. With respect to such
18 other pleadings and papers, service upon the attorney or upon a party with due return may be
19 made in a manner provided for service and return of process in Rule 4. Service under this
20 subsection may also be made by one of the following methods:

21 **(1)** Upon a party's attorney of record:

22 a. By delivering a copy to the attorney. party or by mailing it to the
23 party at the party's last known address or, if no address is known, by
24 filing it with the clerk of court. Delivery of a copy within this rule
25 sub-subdivision means handing it to the attorney or to the party,
26 attorney, leaving it at the attorney's office with a partner or
27 employee, or by sending it to the attorney's office by a confirmed
28 telefacsimile transmittal for receipt by 5:00 P.M. Eastern Time on a
29 regular business day, as evidenced by a telefacsimile receipt
30 confirmation. If receipt of delivery by telefacsimile is after 5:00
31 P.M., service will be deemed to have been completed on the next
32 business day.

33 b. By mailing a copy to the attorney's office.

34 **(2)** Upon a party:

35 a. By delivering a copy to the party. Delivery of a copy within this
36 sub-subdivision means handing it to the party.

37 b. By mailing a copy to the party at the party's last known address or, if
38 no address is known, by filing it with the clerk of court.

39 Service by mail shall be complete upon deposit of the pleading or paper enclosed in a
40 post-paid, properly addressed wrapper in a post office or official depository under the exclusive
41 care and custody of the United States Postal Service.

42 **(b1)** Service – Certificate of Service. – A certificate of service shall accompany every
43 pleading and every paper required to be served on any party or nonparty to the litigation, except
44 with respect to pleadings and papers whose service is governed by Rule 4. The certificate shall
45 show the date and method of service or the date of acceptance of service and shall show the
46 name and service address of each person upon whom the paper has been served. If one or more
47 persons are served by facsimile transmission, the certificate shall also show the telefacsimile
48 number of each person so served. Each certificate of service shall be signed in accordance with
49 and subject to Rule 11 of these rules."

50 **EFFECTIVE DATES AND APPLICABILITY**

1 **SECTION 5.** This act becomes effective October 1, 2011. Section 1.1 of this act
2 applies to small claims actions filed on or after that date. Section 2.1 and Section 2.3 of this act
3 apply to notices given on or after that date. Section 2.2 and Section 2.4 of this act apply to
4 decisions or orders served on or after that date. Section 3.1 of this act applies to summonses
5 issued on or after that date. Section 4.1 of this act applies to motions filed on or after that date.
6 Section 4.2 of this act applies to service made under G.S. 1A-1, Rule 5(b), on or after that date.