

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

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SENATE BILL 89  
Judiciary I Committee Substitute Adopted 3/10/15  
PROPOSED HOUSE COMMITTEE SUBSTITUTE S89-PCS45528-TJ-74

Short Title: Filing by Clerk/Mag. and Clerk Pilot.

(Public)

Sponsors:

Referred to:

February 19, 2015

1 A BILL TO BE ENTITLED  
2 AN ACT TO CLARIFY CERTAIN LAWS RELATING TO THE FILING OF DOCUMENTS  
3 BY THE CLERK OF COURT, TO DIRECT THE ADMINISTRATIVE OFFICE OF THE  
4 COURTS TO DEVELOP AND IMPLEMENT A PILOT MAGISTRATE/CLERK  
5 STAFFING PROJECT, AND TO REPEAL A SEPARATE MENTAL HEALTH RECORD  
6 CHECK REQUIREMENT FOR A PISTOL PURCHASE PERMIT UPON COMPLETION  
7 OF RECORD DIGITIZATION.

8 The General Assembly of North Carolina enacts:

9 SECTION 1. G.S. 1A-1, Rule 5, reads as rewritten:

10 "Rule 5. Service and filing of pleadings and other papers.

11 ...

12 (e) (1) Filing with the court defined. – The filing of pleadings and other papers with  
13 the court pursuant to the rules promulgated under G.S. 7A-109 or subdivision  
14 (2) of this subsection as required by these rules shall be made by filing them  
15 with the clerk of the court, except that the judge may permit the papers to be  
16 filed with him, in which event he shall note thereon the filing date and forthwith  
17 transmit them to the office of the clerk. The failure to affix a date stamp or file  
18 stamp on any pleading or other papers filed in the courts shall not affect the  
19 sufficiency, validity, or enforceability of the document.

20 (2) Filing by electronic means. – If, pursuant to ~~G.S. 7A-34~~ G.S. 7A-34,  
21 G.S. 7A-49.5, and G.S. 7A-343, the Supreme Court and the Administrative  
22 Officer of the Courts establish uniform rules, regulations, costs, procedures and  
23 specifications for the filing of pleadings or other court papers by electronic  
24 means, filing may be made by the electronic means when, in the manner, and to  
25 the extent provided therein."

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

27 "Rule 58. Entry of judgment.

28 Subject to the provisions of Rule 54(b), a judgment is entered when it is reduced to writing,  
29 signed by the judge, and filed with the clerk of ~~court~~ court in accordance with Rule 5. The party  
30 designated by the judge or, if the judge does not otherwise designate, the party who prepares the  
31 judgment, shall serve a copy of the judgment upon all other parties within three days after the  
32 judgment is entered. Service and proof of service shall be in accordance with Rule 5. If service is  
33 by mail, three days shall be added to the time periods prescribed by Rule 50(b), Rule 52(b), and  
34 Rule 59. All time periods within which a party may further act pursuant to Rule 50(b), Rule 52(b),  
35 or Rule 59 shall be tolled for the duration of any period of noncompliance with this service



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1 requirement, provided however that no time period under Rule 50(b), Rule 52(b), or Rule 59 shall  
2 be tolled longer than 90 days from the date the judgment is entered. Subject to the provisions of  
3 Rule 7(b)(4), consent for the signing and entry of a judgment out of term, session, county, and  
4 district shall be deemed to have been given unless an express objection to such action was made  
5 on the record prior to the end of the term or session at which the matter was heard.

6 Notwithstanding any other law to the contrary, any judgment entered by a magistrate in a  
7 small claims action pursuant to Article 19 of Chapter 7A shall be entered in accordance with this  
8 Rule except judgments announced and signed in open court at the conclusion of a trial are  
9 considered to be served on the parties, and copies of any judgment not announced and signed in  
10 open court at the conclusion of a trial shall be served by the magistrate on all parties in accordance  
11 with this Rule, within three days after the judgment is entered. If service is by mail, three days  
12 shall be added to the time periods prescribed by G.S. 7A-228. All time periods within which a  
13 party may further act pursuant to G.S. 7A-228 shall be tolled for the duration of any period of  
14 noncompliance of this service requirement, provided that no time period shall be tolled longer than  
15 90 days from the date judgment is entered."

16 **SECTION 3.** Pilot Magistrate/Clerk Staffing Project. – The Administrative Office of  
17 the Courts shall establish and implement a pilot project that will allow the clerk of superior court  
18 of a county, with the written consent of the chief district court judge for the district in which the  
19 county is located, to hire one deputy clerk or assistant clerk, based on the assistant clerk allocation  
20 formula established by the Administrative Office of the Courts, in lieu of one of the magistrate  
21 positions allocated to that county, notwithstanding the minimum number of magistrates prescribed  
22 for each county under G.S. 7A-133(c). The pilot project is authorized for counties with three or  
23 four magistrate allocations. To provide accessibility to law enforcement personnel and citizens, in  
24 counties participating in this pilot project, the clerk of superior court's office will provide some of  
25 the services traditionally provided by the magistrates' office during some or all of the regular  
26 courthouse hours. The Administrative Office of the Courts shall report to the Joint Legislative  
27 Oversight Committee on Justice and Public Safety on the outcomes of the pilot project by March  
28 1, 2017, and shall include recommendations on continuation or expansion of the pilot.

29 **SECTION 4.** At such time as the Administrative Office of the Courts (AOC)  
30 completes the digitization of mental health records to facilitate clerks' compliance with the  
31 requirements of S.L. 2015-195, Amend Firearm Laws, G.S. 14-404(e1)(5) shall be repealed. The  
32 Administrative Officer of the Courts is directed to notify the Revisor of Statutes when the AOC  
33 has completed this digitization of mental health records. The Administrative Officer of the Courts  
34 is directed to report to the Joint Legislative Oversight Committee on Justice and Public Safety by  
35 February 1, 2017, as to whether the digitization will be completed by March 15, 2017.

36 **SECTION 5.** G.S. 1A-1, Rule 5(e)(1), as enacted by Section 1 of this act, is effective  
37 when the act becomes law and applies to all pleadings and papers filed with the courts, including  
38 pleadings and papers filed prior to that date. G.S. 1A-1, Rule 5(e)(2), as enacted by Section 1 of  
39 this act, is effective when it becomes law and applies to all pleadings and papers filed with the  
40 courts on or after that date. Sections 2, 3, and 4 of this act are effective when it becomes law. The  
41 remainder of this act is effective when it becomes law.