

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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HOUSE BILL 679
Committee Substitute Favorable 4/26/19
PROPOSED SENATE COMMITTEE SUBSTITUTE H679-PCS30600-TV-56

Short Title: Rules of Civ Procedure/E-Filing and Service.

(Public)

Sponsors:

Referred to:

April 11, 2019

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE RULES OF CIVIL PROCEDURE TO ALLOW FOR
3 ELECTRONIC FILING AND SERVICE.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 1A-1, Rule 3(a) reads as rewritten:

6 "**Rule 3. Commencement of action.**

7 (a) A civil action is commenced by filing a complaint with the court. The clerk shall enter
8 the date of filing on the original complaint, and such entry shall be prima facie evidence of the
9 date of filing.

10 A civil action may also be commenced by the issuance of a summons when

11 (1) A person makes application to the court stating the nature and purpose
12 of his action and requesting permission to file his complaint within 20
13 days and

14 (2) The court makes an order stating the nature and purpose of the action
15 and granting the requested permission.

16 The summons and the court's order shall be served in accordance with the provisions of Rule 4.
17 When the complaint is filed it shall be served in accordance with the provisions of Rule 4 or by
18 registered mail if the plaintiff so elects. If the complaint is not filed within the period specified
19 in the clerk's order, the action shall abate. If electronic filing is available in the county of filing,
20 filing shall be made in accordance with Rule 5 of the General Rules of Practice for the Superior
21 and District Courts."

22 SECTION 2. G.S. 1A-1, Rule 5 reads as rewritten:

23 "**Rule 5. Service and filing of pleadings and other papers.**

24 (a) Service of orders, subsequent pleadings, discovery papers, written motions, written
25 notices, and other similar papers – When required. – Every order required by its terms to be
26 served, every pleading subsequent to the original complaint unless the court otherwise orders
27 because of numerous defendants, every paper relating to discovery required to be served upon a
28 party unless the court otherwise orders, every written motion other than one which may be heard
29 ex parte, and every written notice, appearance, demand, offer of judgment and similar paper shall
30 be served upon each of the parties, but no service need be made on parties in default for failure
31 to appear except that pleadings asserting new or additional claims for relief against them shall be
32 served upon them in the manner provided for service of summons in Rule 4.

33 (a1) Service of briefs or memoranda in support or opposition of certain dispositive
34 motions. – In actions in superior court, every brief or memorandum in support of or in opposition
35 to a motion to dismiss, a motion for judgment on the pleadings, a motion for summary judgment,



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1 or any other motion seeking a final determination of the rights of the parties as to one or more of
2 the claims or parties in the action shall be served upon each of the parties at least two days before
3 the hearing on the motion. If the brief or memorandum is not served on the other parties at least
4 two days before the hearing on the motion, the court may continue the matter for a reasonable
5 period to allow the responding party to prepare a response, proceed with the matter without
6 considering the untimely served brief or memorandum, or take such other action as the ends of
7 justice require. The parties may, by consent, alter the period of time for service. For the purpose
8 of this two-day requirement only, service shall mean personal delivery, facsimile transmission,
9 electronic (e-mail) delivery, or other means such that the party actually receives the brief within
10 the required time.

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

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

20 Service is made under this subsection if performed through the court's electronic filing
21 system. When service through the court's electronic filing system is not available, or the party is
22 not registered to receive service through the court's electronic filing system, service may be made
23 as follows:

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

- 25 a. By delivering a copy to the attorney. Delivery of a copy within this
26 sub-subdivision means handing it to the attorney, leaving it at the
27 attorney's office with a partner or employee, or sending it to the
28 attorney's office by a confirmed telefacsimile transmittal for receipt by
29 5:00 P.M. Eastern Time on a regular business day, as evidenced by a
30 telefacsimile receipt confirmation. If receipt of delivery by
31 telefacsimile is after 5:00 P.M., service will be deemed to have been
32 completed on the next business day.
- 33 b. By mailing a copy to the attorney's office.
- 34 c. In the manner provided in Rule 4 for service and return of process.

35 (2) Upon a party:

- 36 a. By delivering a copy to the party. Delivery of a copy within this
37 sub-subdivision means handing it to the party.
- 38 b. By mailing a copy to the party at the party's last known address or, if
39 no address is known, by filing it with the clerk of court.
- 40 c. Service may also be made on the party by electronic mail (e-mail) if
41 the party has consented to receive e-mail service in the case at a
42 particular e-mail address, and a copy of the consent is filed with the
43 court by any party. Such e-mail must be sent by 5:00 P.M. Eastern
44 Time on a regular business day. If the e-mail is sent after 5:00 P.M.
45 Eastern Time, it will be deemed to have been sent on the next business
46 day.
- 47 d. In the manner provided in Rule 4 for service and return of process.

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

1 (b1) Service – Certificate of Service. – A certificate of service shall accompany every
2 pleading and every paper required to be served on any party or nonparty to the litigation, except
3 with respect to pleadings and papers whose service is governed by Rule 4. The certificate shall
4 show the date and method of service or the date of acceptance of service and shall show the name
5 and service address of each person upon whom the paper has been served. If one or more persons
6 are served by facsimile ~~transmission, transmission or electronic mail (e-mail)~~, the certificate shall
7 also show the telefacsimile number or e-mail address of each person so ~~served.~~ served in that
8 manner. Each certificate of service shall be signed in accordance with and subject to Rule 11 of
9 these rules. With respect to persons served through the court's electronic filing systems, an
10 automated certificate of service generated by that system satisfies the requirements of this rule.

11 (c) Service – Numerous defendants. – In any action in which there are unusually large
12 numbers of defendants, the court, upon motion or of its own initiative, may order that service of
13 the pleadings of the defendants and replies thereto need not be made as between the defendants
14 and that any crossclaim, counterclaim, or matter constituting an avoidance or affirmative defense
15 contained therein shall be deemed to be denied or avoided by all other parties and that the filing
16 of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the
17 parties. A copy of every such order shall be served upon the parties in such manner and form as
18 the court directs.

19 (d) Filing. – The following papers shall be filed with the court, either before service or
20 within five days after service:

- 21 (1) All pleadings, as defined by Rule 7(a) of these rules, subsequent to the
22 complaint, whether such pleadings are original or amended.
- 23 (2) Written motions and all notices of hearing.
- 24 (3) Any other application to the court for an order that may affect the rights of or
25 in any way commands any individual, business entity, governmental agency,
26 association, or partnership to act or to forego 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 party,
32 should not be filed with the court unless (i) the filing is agreed to by all parties, or (ii) the papers
33 are submitted to the court in relation to a motion or other request for relief, or (iii) the filing is
34 permitted by another rule or statute. Briefs or memoranda provided to the court may not be filed
35 with the clerk of court unless ordered by the court. The party taking a deposition or obtaining
36 material through discovery is responsible for its preservation and delivery to the court if needed
37 or so ordered.

- 38 (e) (1) Filing with the court defined. – The filing of pleadings and other papers with
39 the court as required by these rules shall be made by filing them with the clerk
40 of the court, ~~pursuant to the rules promulgated under G.S. 7A-109 or~~
41 ~~subdivision (2) of this section,~~ except that the judge may permit the papers to
42 be filed with ~~him,~~ the judge, in which event ~~he~~ the judge shall note thereon the
43 filing date and forthwith transmit them to the office of the clerk.
- 44 (2) Filing by electronic means. – ~~If, pursuant to G.S. 7A-34, G.S. 7A-49.5, and~~
45 ~~G.S. 7A-343, the Supreme Court and the Administrative Officer of the Courts~~
46 ~~establish uniform rules, regulations, costs, procedures and specifications for~~
47 ~~the filing of pleadings or other court papers by electronic means, filing may~~
48 ~~be made by the electronic means when, in the manner, and to the extent~~
49 ~~provided therein.~~ If electronic filing is available in the county of filing, filing
50 shall be made in accordance with Rule 5 of the General Rules of Practice for
51 the Superior and District Courts.

1 (3) ~~The failure to affix a date stamp or file stamp on any order or judgment filed~~
2 ~~in a civil action, estate proceeding, or special proceeding shall not affect the~~
3 ~~sufficiency, validity, or enforceability of the order or judgment if the clerk or~~
4 ~~the court, after giving the parties adequate notice and opportunity to be heard,~~
5 ~~enters the order or judgment nunc pro tunc to the date of filing."~~

6 **SECTION 3.** This act becomes effective October 1, 2020, and applies to filings and
7 service effected on or after that date.