

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001**

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**SENATE BILL 951**

Short Title: Prevent Unnecessary Filing of Briefs.

(Public)

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Sponsors: Senator Odom.

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Referred to: Judiciary II.

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April 5, 2001

A BILL TO BE ENTITLED

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2 AN ACT TO AMEND RULE 5 OF THE RULES OF CIVIL PROCEDURE TO  
3 ELIMINATE THE REQUIREMENT OF FILING OF BRIEFS OR MEMORANDA  
4 REGARDING DISPOSITIVE MOTIONS WITHIN FIVE DAYS OF SERVICE,  
5 AS RECOMMENDED BY THE NORTH CAROLINA COURTS COMMISSION.

6 The General Assembly of North Carolina enacts:

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

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

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

19 (a1) Service of briefs or memoranda in support or opposition of certain dispositive  
20 motions. – In actions in superior court, every brief or memorandum in support of or in  
21 opposition to a motion to dismiss, a motion for judgment on the pleadings, a motion for  
22 summary judgment, or any other motion seeking a final determination of the rights of  
23 the parties as to one or more of the claims or parties in the action shall be served upon  
24 each of the parties at least two days before the hearing on the motion. If the brief or  
25 memorandum is not served on the other parties at least two days before the hearing on  
26 the motion, the court may continue the matter for a reasonable period to allow the  
27 responding party to prepare a response, proceed with the matter without considering the  
28 untimely served brief or memorandum, or take such other action as the ends of justice

1 require. The parties may, by consent, alter the period of time for service. For the  
2 purpose of this two-day requirement only, service shall mean personal delivery,  
3 facsimile transmission, or other means such that the party actually receives the brief  
4 within the required time.

5 (b) Service – How made. – A pleading setting forth a counterclaim or cross claim  
6 shall be filed with the court and a copy thereof shall be served on the party against  
7 whom it is asserted or on his attorney of record. With respect to all pleadings  
8 subsequent to the original complaint and other papers required or permitted to be  
9 served, service with due return may be made in the manner provided for service and  
10 return of process in Rule 4 and may be made upon either the party or, unless service  
11 upon the party himself is ordered by the court, upon his attorney of record. With respect  
12 to such other pleadings and papers, service upon the attorney or upon a party may also  
13 be made by delivering a copy to him or by mailing it to him at his last known address  
14 or, if no address is known, by filing it with the clerk of court. Delivery of a copy within  
15 this rule means handing it to the attorney or to the party; or leaving it at the attorney's  
16 office with a partner or employee. Service by mail shall be complete upon deposit of the  
17 pleading or paper enclosed in a post-paid, properly addressed wrapper in a post office or  
18 official depository under the exclusive care and custody of the United States Postal  
19 Service.

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

28 (d) Filing. – All pleadings subsequent to the complaint shall be filed with the  
29 court. All other papers required to be served upon a party, including requests for  
30 admissions, shall be filed with the court either before service or within five days  
31 thereafter, except that depositions, interrogatories, requests for documents, ~~and~~ answers  
32 and responses to those ~~requests~~ requests, and briefs served pursuant to subsection (a)  
33 of this rule may not be filed unless ordered by the court or until used in the proceeding.  
34 The party taking a deposition or obtaining material through discovery is responsible for  
35 its preservation and delivery to the court if needed or so ordered. With respect to all  
36 pleadings and other papers as to which service and return has not been made in the  
37 manner provided in Rule 4, proof of service shall be made by filing with the court a  
38 certificate either by the attorney or the party that the paper was served in the manner  
39 prescribed by this rule, or a certificate of acceptance of service by the attorney or the  
40 party to be served. Such certificate shall show the date and method of service or the date  
41 of acceptance of service.

42 (e) (1) Filing with the court defined. – The filing of pleadings and other  
43 papers with the court as required by these rules shall be made by filing  
44 them with the clerk of the court, except that the judge may permit the

1 papers to be filed with him, in which event he shall note thereon the  
2 filing date and forthwith transmit them to the office of the clerk.  
3 (2) Filing by telefacsimile transmission. – If, pursuant to G.S. 7A-34 and  
4 G.S. 7A-343, the Supreme Court and the Administrative Officer of the  
5 Courts establish uniform rules, regulations, procedures and  
6 specifications for the filing of pleadings or other court papers by  
7 telefacsimile transmission, filing may be made by the transmission  
8 when, in the manner, and to the extent provided therein."

9 **SECTION 2.** This act is effective when it becomes law.