

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 300*

Short Title: Miscellaneous Service/Process Amendments. (Public)

Sponsors: Senator Hartsell.

Referred to: Judiciary II.

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 the defendant by~~ written acceptance of service, service or by ~~his~~ voluntary appearance.
- (4) In summary ejection cases only, service as provided in G.S. 42-29 is also authorized."



SERVICE BY DESIGNATED DELIVERY IN ADMINISTRATIVE CASES

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

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

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

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

"(b3) Except as provided in G.S. 150B-34(c), the agency shall adopt the decision of the administrative law judge unless the agency demonstrates that the decision of the administrative law judge is clearly contrary to the preponderance of the admissible evidence in the record. If the agency does not adopt the administrative law judge's decision as its final decision, the agency shall set forth its reasoning for the final decision in light of the findings of fact and conclusions of law in the final decision, including any exercise of discretion by the agency. The agency may consider only the official record prepared pursuant to G.S. 150B-37 in making a final decision. A copy of the decision shall be served upon each party ~~personally or by certified mail~~ by one of the methods for service of process under G.S. 1A-1, Rule 4(j) or Rule 4(j3). If service is by registered mail or certified mail, by signature confirmation as provided by the United States Postal Service, or by designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, the copy shall be addressed to the party at the latest address given by the party to the agency, and a copy shall be furnished to his the party's attorney of record and the Office of Administrative Hearings."

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

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

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

"(a) After compliance with the provisions of G.S. 150B-40(e), if applicable, and review of the official record, as defined in subsection (b) of this section, an agency shall make a written final decision or order in a contested case. The decision or order shall include findings of fact and conclusions of law. Findings of fact shall be based exclusively on the evidence and on matters officially noticed. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting them. A decision or order shall not be made except upon consideration of the record as a whole or such portion thereof as may be cited by any party to the proceeding and shall be supported by substantial evidence admissible under G.S. 150B-41. A copy of the decision or order shall be served upon each party ~~personally or by certified mail~~ by one of the methods for service of process under G.S. 1A-1, Rule 4(j) or Rule 4(j3). If service is by registered mail or certified mail, by signature confirmation as provided by the United States Postal Service, or by

1 designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt,
2 the copy shall be addressed to the party at the latest address given by the party to the agency
3 and a agency. A copy shall be furnished to his the party's attorney of record."

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

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

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

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

18 **REQUIRING SERVICE ON ATTORNEYS OF RECORD UNDER RULE 5(B) AND IN** 19 **TERMINATION OF PARENTAL RIGHTS BY MOTION**

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

21 **"§ 7B-1102. Pending child abuse, neglect, or dependency proceedings.**

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

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

- 28 (1) Service must be in accordance with G.S. 1A-1, Rule 4, if one of the
29 following applies:
30 a. The person or agency to be served was not served originally with
31 summons.
32 b. The person or agency to be served was served originally by
33 publication that did not include notice substantially in conformity
34 with the notice required by G.S. 7B-406(b)(4)e.
35 c. Two years has elapsed since the date of the original action.

- 36 (2) In any case, the court may order that service of the motion and notice be
37 made pursuant to G.S. 1A-1, Rule 4.

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

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

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

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

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

1 With respect to all pleadings subsequent to the original complaint and other papers required
2 or permitted to be served, service with due return may be made in the manner provided for
3 service and return of process in Rule 4 and may be made upon either the party or, unless
4 service upon the party personally is shall be made upon the party's attorney of record and, if
5 ordered by the court, upon the party's attorney of record. With court, also upon the party. If the
6 party has no attorney of record, service shall be made upon the party. With respect to such
7 other pleadings and papers, service upon the attorney or upon a party with due return may be
8 made in a manner provided for service and return of process in Rule 4. Service under this
9 subsection may also be made by one of the following methods:

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

- 11 a. By delivering a copy to the attorney. party or by mailing it to the
12 party at the party's last known address or, if no address is known, by
13 filing it with the clerk of court. Delivery of a copy within this rule
14 sub-subdivision means handing it to the attorney or to the party,
15 attorney, leaving it at the attorney's office with a partner or
16 employee, or by sending it to the attorney's office by a confirmed
17 telefacsimile transmittal for receipt by 5:00 P.M. Eastern Time on a
18 regular business day, as evidenced by a telefacsimile receipt
19 confirmation. If receipt of delivery by telefacsimile is after 5:00
20 P.M., service will be deemed to have been completed on the next
21 business day.
22 b. By mailing a copy to the attorney's office.

23 (2) Upon a party:

- 24 a. By delivering a copy to the party. Delivery of a copy within this
25 sub-subdivision means handing it to the party.
26 b. By mailing a copy to the party at the party's last known address or, if
27 no address is known, by filing it with the clerk of court.

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

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

39 **EFFECTIVE DATES AND APPLICABILITY**

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