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

(Public)

Sponsors:

Referred to:

April 11, 2019

A BILL TO BE ENTITLED

AN ACT TO AMEND THE RULES OF CIVIL PROCEDURE TO ALLOW FOR
ELECTRONIC FILING AND SERVICE.

The General Assembly of North Carolina enacts:

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

"Rule 3. Commencement of action.

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

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

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

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

The summons and the court's order shall be served in accordance with the provisions of Rule 4. When the complaint is filed it shall be served in accordance with the provisions of Rule 4 or by registered mail if the plaintiff so elects. If the complaint is not filed within the period specified in the clerk's order, the action shall abate. If electronic filing is available in the county of filing, attorneys shall file in accordance with Rule 5 of the General Rules of Practice for the Superior and District Courts. If electronic filing is available in the county of filing, self-represented litigants who are appropriately registered in the electronic filing system may file electronically in accordance with Rule 5 of the General Rules of Practice for the Superior and District Courts."

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

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

(a) Service of orders, subsequent pleadings, discovery papers, written motions, written notices, and other similar papers – When required. – Every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment and similar paper shall be served upon each of the parties, but no service need be made on parties in default for failure



1 to appear except that pleadings asserting new or additional claims for relief against them shall be
2 served upon them in the manner provided for service of summons in Rule 4.

3 (a1) Service of briefs or memoranda in support or opposition of certain dispositive
4 motions. – In actions in superior court, every brief or memorandum in support of or in opposition
5 to a motion to dismiss, a motion for judgment on the pleadings, a motion for summary judgment,
6 or any other motion seeking a final determination of the rights of the parties as to one or more of
7 the claims or parties in the action shall be served upon each of the parties at least two days before
8 the hearing on the motion. If the brief or memorandum is not served on the other parties at least
9 two days before the hearing on the motion, the court may continue the matter for a reasonable
10 period to allow the responding party to prepare a response, proceed with the matter without
11 considering the untimely served brief or memorandum, or take such other action as the ends of
12 justice require. The parties may, by consent, alter the period of time for service. For the purpose
13 of this two-day requirement only, service shall mean personal delivery, facsimile transmission,
14 electronic (e-mail) delivery, or other means such that the party actually receives the brief within
15 the required time.

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

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

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

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

- 30 a. By delivering a copy to the attorney. Delivery of a copy within this
31 sub-subdivision means handing it to the attorney, leaving it at the
32 attorney's office with a partner or employee, or sending it to the
33 attorney's office by a confirmed telefacsimile transmittal for receipt by
34 5:00 P.M. Eastern Time on a regular business day, as evidenced by a
35 telefacsimile receipt confirmation. If receipt of delivery by
36 telefacsimile is after 5:00 P.M., service will be deemed to have been
37 completed on the next business day. Service may also be made on the
38 attorney by electronic mail (e-mail) to an e-mail address of record with
39 the court in the case. Such e-mail must be sent by 5:00 P.M. Eastern
40 Time on a regular business day. If the e-mail is sent after 5:00 P.M., it
41 will be deemed to have been sent on the next business day.
42 b. By mailing a copy to the attorney's office.
43 c. In the manner provided in Rule 4 for service and return of process.

44 (2) Upon a party:

- 45 a. By delivering a copy to the party. Delivery of a copy within this
46 sub-subdivision means handing it to the party.
47 b. By mailing a copy to the party at the party's last known address or, if
48 no address is known, by filing it with the clerk of court.
49 c. Service may also be made on the party by electronic mail (e-mail) if
50 the party has consented to receive e-mail service in the case at a
51 particular e-mail address, and a copy of the consent is filed with the

1 court by any party. Such e-mail must be sent by 5:00 P.M. Eastern
2 Time on a regular business day. If the e-mail is sent after 5:00 P.M.
3 Eastern Time, it will be deemed to have been sent on the next business
4 day.

5 d. In the manner provided in Rule 4 for service and return of process.

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

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

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

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

- 29 (1) All pleadings, as defined by Rule 7(a) of these rules, subsequent to the
30 complaint, whether such pleadings are original or amended.
- 31 (2) Written motions and all notices of hearing.
- 32 (3) Any other application to the court for an order that may affect the rights of or
33 in any way commands any individual, business entity, governmental agency,
34 association, or partnership to act or to forego action of any kind.
- 35 (4) Notices of appearance.
- 36 (5) Any other paper required by rule or statute to be filed.
- 37 (6) Any other paper so ordered by the court.
- 38 (7) All orders issued by the court.

39 All other papers, regardless of whether these rules require them to be served upon a party,
40 should not be filed with the court unless (i) the filing is agreed to by all parties, or (ii) the papers
41 are submitted to the court in relation to a motion or other request for relief, or (iii) the filing is
42 permitted by another rule or statute. Briefs or memoranda provided to the court may not be filed
43 with the clerk of court unless ordered by the court. The party taking a deposition or obtaining
44 material through discovery is responsible for its preservation and delivery to the court if needed
45 or so ordered.

46 (e) (1) Filing with the court defined. – The filing of pleadings and other papers with
47 the court as required by these rules shall be made by filing them with the clerk
48 of the court, ~~pursuant to the rules promulgated under G.S. 7A-109 or~~
49 ~~subdivision (2) of this section,~~ except that the judge may permit the papers to
50 be filed with ~~him,~~ the judge, in which event ~~he~~ the judge shall note thereon the
51 filing date and forthwith transmit them to the office of the clerk.

- 1 (2) Filing by electronic means. – ~~If, pursuant to G.S. 7A 34, G.S. 7A 49.5, and~~
2 ~~G.S. 7A 343, the Supreme Court and the Administrative Officer of the Courts~~
3 ~~establish uniform rules, regulations, costs, procedures and specifications for~~
4 ~~the filing of pleadings or other court papers by electronic means, filing may~~
5 ~~be made by the electronic means when, in the manner, and to the extent~~
6 ~~provided therein.~~If electronic filing is available in the county of filing, filing
7 shall be made in accordance with Rule 5 of the General Rules of Practice for
8 the Superior and District Courts.
- 9 (3) The failure to affix a date stamp or file stamp on any order or judgment filed
10 in a civil action, estate proceeding, or special proceeding shall not affect the
11 sufficiency, validity, or enforceability of the order or judgment if the clerk or
12 the court, after giving the parties adequate notice and opportunity to be heard,
13 enters the order or judgment nunc pro tunc to the date of filing."
- 14 **SECTION 3.** This act becomes effective October 1, 2020, and applies to filings and
15 service effected on or after that date.