

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001

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HOUSE BILL 1284  
Committee Substitute Favorable 4/24/01

Short Title: Openness of Court Records and Proceedings.

(Public)

Sponsors:

Referred to:

April 12, 2001

1 A BILL TO BE ENTITLED  
2 AN ACT TO ESTABLISH A PRESUMPTION THAT COURT RECORDS FOR  
3 CIVIL AND ADMINISTRATIVE CASES ARE OPEN, TO PROVIDE THE  
4 PROCEDURE TO OBTAIN AN ORDER TO SEAL A COURT RECORD, TO  
5 ESTABLISH A PRESUMPTION THAT THE HEARINGS, PROCEEDINGS, AND  
6 TRIALS FOR CIVIL AND ADMINISTRATIVE CASES ARE OPEN, AND TO  
7 PROVIDE THE PROCEDURE TO OBTAIN AN ORDER TO CONDUCT A  
8 CLOSED HEARING, PROCEEDING, OR TRIAL.

9 The General Assembly of North Carolina enacts:

10 **SECTION 1.** G.S. 1A-1, Rule 5 is amended by adding a new subsection to  
11 read:

12 "(f) No pleadings and no other papers filed with the court under this rule shall be  
13 removed from the court files unless specifically provided by statute or court rule."

14 **SECTION 2.** Article 2 of Chapter 1A of the General Statutes is amended by  
15 adding a new Rule to read:

16 **Rule 5.1. Openness of court records.**

17 (a) Standard. – No court record shall be sealed except as provided in this section  
18 or otherwise provided by law. This section does not apply to the court records of  
19 juvenile proceedings held under Chapter 7B of the General Statutes. Court records are  
20 presumed to be open. The presumption under this section may be rebutted by the party  
21 seeking to seal a court record upon a showing of all of the following:

22 (1) A specific, serious, and substantial interest exists that outweighs any  
23 likely adverse effect that sealing the record would have upon the  
24 public interest, public health, or public safety.

25 (2) There is no less restrictive means than sealing the court record to  
26 adequately and effectively protect the interest alleged under  
27 subdivision (1) of this subsection.

28 (b) Motion to Seal Court Record. – Upon the written motion of a party, the court  
29 may order a court record to be sealed. The moving party shall post a public notice where

1 notices for meetings of county government are required to be posted in the county  
2 where the action was brought. This notice shall contain a statement that shall  
3 substantially comply with the following: 'A hearing will be held in open court on a  
4 motion to seal one or more court records in (case name). Any person may intervene and  
5 be heard concerning the sealing of the court records.' The notice also shall include the  
6 time and place of hearing the motion to seal the court records, the type and number of  
7 the action, a brief description of both the nature of the case and the court record that the  
8 moving party seeks to have sealed, and the name of the moving party. The moving party  
9 shall also file a verified copy of the notice under this subsection under Rule 5.

10 (c) Hearing on Motion. – A hearing shall be held in open court on the motion  
11 under subsection (b) of this section as soon as practicable, but not less than three days  
12 after the public notice was posted under subsection (b) of this section. Any party may  
13 participate in the hearing of the motion. Upon filing a motion to intervene, a nonparty  
14 may intervene for the limited purpose of participating in the hearing on the motion to  
15 seal a court record. The court may inspect any court record in camera that the court  
16 determines necessary to inspect.

17 (d) Order. – The court's ruling on the motion to seal a court record shall be a  
18 written order and shall be open to the public. The order shall state: the type and number  
19 of the case; the findings of fact and the conclusions of law to support the order; a  
20 reference to the specific court records that are to be sealed and the time period for which  
21 the sealed court records are to be sealed. The order under this subsection is severed from  
22 the action, shall not be included in any judgment on the rights of the parties or any other  
23 order in the action, and shall be a separate order in the action.

24 (e) Appeal. – Any order under this section may be appealed before the judgment  
25 on the rights of the parties is entered and may be appealed by any party or intervener  
26 who participated in the hearing on the motion to seal a court record.

27 (f) Continuing Jurisdiction. – A court that issues an order to seal court records  
28 retains continuing jurisdiction to enforce, alter, or vacate that order. An order on the  
29 motion to seal a court record shall not be reconsidered on the motion of any party or  
30 intervener who had actual notice of the hearing on the motion to seal a court record,  
31 unless the party or intervener is able to show changed circumstances that materially  
32 affect the order. Such changed circumstances need not be related to the action in which  
33 the order was issued.

34 (g) Definition. – As used in this section, 'court record' means:

35 (1) Any pleading, order of the court, or any other paper that is filed with  
36 the court under Rule 5 except documents that are reviewed by the  
37 court in camera and excluded from the trial or hearing.

38 (2) With the exception of references in a settlement agreement to money  
39 damages to be paid for personal injuries, settlement agreements not  
40 filed of record that concern actions alleging personal injury, wrongful  
41 death, monetary or property damages caused by a defective product, an  
42 environmental hazard, or a financial fraud."

1           **SECTION 3.** Article 8 of Chapter 1A of the General Statutes is amended by  
2 adding a new Rule to read:

3 **"Rule 85. Openness of court proceedings.**

4       (a) Standard. – Trials and court hearings are presumed to be open except as  
5 otherwise provided by law. This section does not apply to juvenile proceedings held  
6 under Chapter 7B of the General Statutes. The presumption under this section may be  
7 rebutted by the party seeking to have the trial or hearing conducted as a closed trial or  
8 hearing upon a showing of all of the following:

9           (1) A specific, serious, and substantial interest exists that outweighs any  
10 likely adverse effect that conducting a closed trial or hearing would  
11 have upon the public interest, public health, or public safety.

12          (2) There is no less restrictive means than conducting a closed trial or  
13 hearing to adequately and effectively protect the interest alleged under  
14 subdivision (1) of this subsection.

15       (b) Motion to Conduct a Closed Trial or Hearing. – Upon the written motion of a  
16 party, the court may order a trial or hearing to be conducted as a closed trial or hearing.  
17 The moving party shall post a public notice where notices for meetings of county  
18 government are required to be posted in the county in which the action was brought.  
19 This notice shall contain a statement that shall substantially comply with the following:  
20 'A hearing will be held in open court on a motion to conduct a closed trial or hearing in  
21 (case name). Any person may intervene and be heard concerning whether to conduct a  
22 closed trial or hearing.' The notice also shall include the time and place of the hearing  
23 on the motion to conduct a closed trial or hearing, the type and number of the action, a  
24 brief description of both the nature of the case and the trial or hearing that the moving  
25 party seeks to have conducted as a closed trial or hearing, and the name of the moving  
26 party. The moving party shall also file a verified copy of the notice under this  
27 subsection under Rule 5.

28       (c) Hearing on Motion. – A hearing shall be held in open court on the motion  
29 under subsection (b) of this section as soon as practicable, but not less than three days  
30 after the public notice was posted under subsection (b) of this section. Any party may  
31 participate in the hearing of the motion. Upon filing a motion to intervene, a nonparty  
32 may intervene for the limited purpose of participating in the hearing on the motion to  
33 conduct a closed trial or hearing.

34       (d) Order. – The court's ruling on the motion to conduct a closed trial or hearing  
35 shall be a written order and shall be open to the public. The order shall state: the type  
36 and number of the case; the findings of fact and the conclusions of law to support the  
37 order; a reference to the matters to be decided at the trial or hearing that the moving  
38 party seeks to have conducted as a closed trial or hearing. The order under this  
39 subsection is severed from the action and shall not be included in any judgment on the  
40 rights of the parties or any other order in the action, but shall be a separate order in the  
41 action.

1       (e) Appeal. – Any order under this section may be appealed before the judgment  
2 on the rights of the parties is entered and may be appealed by any party or intervener  
3 who participated in the hearing on the motion to conduct a closed trial or hearing.

4       (f) Continuing Jurisdiction. – A court that issues an order to conduct a closed  
5 trial or hearing retains continuing jurisdiction to enforce, alter, or vacate that order. An  
6 order on the motion to conduct a closed trial or hearing shall not be reconsidered on the  
7 motion of any party or intervener who had actual notice of the hearing on the motion to  
8 conduct a closed trial or hearing, unless the party or intervener is able to show changed  
9 circumstances that materially affect the order. Such changed circumstances need not be  
10 related to the action in which the order was issued."

11               **SECTION 4.** G.S. 150B-25 is amended by adding a new subsection to read:

12       "(e) The hearing of a case under this section is subject to Rule 85 of the Rules of  
13 Civil Procedure."

14               **SECTION 5.** G.S. 150B-37 is amended by adding a new subsection to read:

15       "(d) The official record of a contested case is subject to Rule 5.1 of the Rules of  
16 Civil Procedure."

17               **SECTION 6.** This act becomes effective October 1, 2001, and applies to all  
18 court records subject to this act that are filed on or after that date, applies to all civil  
19 actions and contested administrative cases commenced or pending on or after that date,  
20 and applies to all motions to alter or vacate a trial or hearing that is conducted as a  
21 closed trial or hearing on or after that date.