

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

**HOUSE BILL 439
RATIFIED BILL**

AN ACT TO AMEND THE RULES OF CIVIL PROCEDURE AS RECOMMENDED
BY THE CIVIL LITIGATION STUDY COMMISSION.

The General Assembly of North Carolina enacts:

SUMMONS ALIVE FOR 60 DAYS (RULE 4(c))

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

"(c) Summons – Return. – Personal service or substituted personal service of summons as prescribed by Rule 4(j)(1) a and b must be made within ~~30~~60 days after the date of the issuance of summons, ~~except that in tax and assessment foreclosures under G.S. 47-108.25 or G.S. 105-374 the time allowed for service is 60 days.~~ summons. When a summons has been served upon every party named in the summons, it shall be returned immediately to the clerk who issued it, with notation thereon of its service.

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

SERVICE BY DESIGNATED DELIVERY SERVICE (RULE 4(j)) AND CONFORMING CHANGES TO PROOF OF SERVICE

SECTION 2. G.S. 1A-1, Rule 4(j) reads as rewritten:

"(j) Process – Manner of service to exercise personal jurisdiction. – In any action commenced in a court of this State having jurisdiction of the subject matter and grounds for personal jurisdiction as provided in G.S. 1-75.4, the manner of service of process within or without the State shall be as follows:

- (1) Natural Person. – Except as provided in subsection (2) below, upon a natural ~~person;~~ person by one of the following:
 - a. By delivering a copy of the summons and of the complaint to him 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;~~ or therein.
 - b. By delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served or to accept service of process or by serving process upon such agent or the party in a manner specified by any statute.
 - c. By mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the party to be served, and delivering to the addressee.
 - d. By depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the party to be served, delivering to the addressee, and obtaining a delivery receipt.

- (2) Natural Person under Disability. – Upon a natural person under disability by serving process in any manner prescribed in this section (j) for service upon a natural person and, in addition, where required by paragraph a or b below, upon a person therein designated.
- a. Where the person under disability is a minor, process shall be served separately in any manner prescribed for service upon a natural person upon a parent or guardian having custody of the child, or if there be none, upon any other person having the care and control of the child. If there is no parent, guardian, or other person having care and control of the child when service is made upon the child, then service of process must also be made upon a guardian ad litem who has been appointed pursuant to Rule 17.
 - b. If the plaintiff actually knows that a person under disability is under guardianship of any kind, process shall be served separately upon his guardian in any manner applicable and appropriate under this section (j). If the plaintiff does not actually know that a guardian has been appointed when service is made upon a person known to him to be incompetent to have charge of his affairs, then service of process must be made upon a guardian ad litem who has been appointed pursuant to Rule 17.
- (3) The State. – Upon the State by personally delivering a copy of the summons and of the complaint to the Attorney General or to a deputy or assistant attorney ~~general or general~~; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the Attorney General or to a deputy or assistant attorney ~~general general~~; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the Attorney General or to a deputy or assistant attorney general, delivering to the addressee, and obtaining a delivery receipt.
- (4) An Agency of the State. –
- a. Upon an agency of the State by personally delivering a copy of the summons and of the complaint to the process agent appointed by the agency in the manner hereinafter ~~provided provided~~; ~~or~~ by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to said process ~~agent agent~~; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the process agent, delivering to the addressee, and obtaining a delivery receipt.
 - b. Every agency of the State shall appoint a process agent by filing with the Attorney General the name and address of an agent upon whom process may be served.
 - c. If any agency of the State fails to comply with paragraph b above, then service upon such agency may be made by personally delivering a copy of the summons and of the complaint to the Attorney General or to a deputy or assistant attorney ~~general or general~~; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the Attorney General, or to a deputy or assistant attorney ~~general general~~; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. §

7502(f)(2) a copy of the summons and complaint, addressed to the Attorney General or to a deputy or assistant attorney general, delivering to the addressee, and obtaining a delivery receipt.

- d. For purposes of this rule, the term "agency of the State" includes every agency, institution, board, commission, bureau, department, division, council, member of Council of State, or officer of the State government of the State of North Carolina, but does not include counties, cities, towns, villages, other municipal corporations or political subdivisions of the State, county or city boards of education, other local public districts, units, or bodies of any kind, or private corporations created by act of the General Assembly.
- (5) Counties, Cities, Towns, Villages and Other Local Public Bodies. –
- a. Upon a city, town, or village by personally delivering a copy of the summons and of the complaint to its mayor, city manager or ~~clerk or clerk~~; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to its mayor, city manager or ~~clerk~~-clerk; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the mayor, city manager, or clerk, delivering to the addressee, and obtaining a delivery receipt.
 - b. Upon a county by personally delivering a copy of the summons and of the complaint to its county manager or to the chairman, clerk or any member of the board of commissioners for such ~~county or county~~; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to its county manager or to the chairman, clerk, or any member of this board of commissioners for such ~~county~~-county; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the county manager or to the chairman, clerk, or any member of the board of commissioners of that county, delivering to the addressee, and obtaining a delivery receipt.
 - c. Upon any other political subdivision of the State, any county or city board of education, or other local public district, unit, or body of any kind (i) by personally delivering a copy of the summons and of the complaint to an officer or director thereof, ~~or~~ (ii) by personally delivering a copy of the summons and of the complaint to an agent or attorney-in-fact authorized by appointment or by statute to be served or to accept service in its behalf, ~~or~~ (iii) by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the officer, director, agent, or attorney-in-fact as specified in (i) and ~~(ii)~~-(ii), or (iv) by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the officer, director, agent, or attorney-in-fact as specified in (i) and (ii), delivering to the addressee, and obtaining a delivery receipt.
 - d. In any case where none of the officials, officers or directors specified in paragraphs a, b and c can, after due diligence, be found in the State, and that fact appears by affidavit to the

satisfaction of the court, or a judge thereof, such court or judge may grant an order that service upon the party sought to be served may be made by personally delivering a copy of the summons and of the complaint to the Attorney General or any deputy or assistant attorney general of the State of North Carolina, ~~or Carolina;~~ by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the Attorney General or any deputy or assistant attorney general of the State of North Carolina, ~~Carolina;~~ or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the Attorney General or any deputy or assistant attorney general of the State of North Carolina, delivering to the addressee, and obtaining a delivery receipt.

- (6) Domestic or Foreign Corporation. – Upon a domestic or foreign corporation: ~~corporation by one of the following:~~
- a. By delivering a copy of the summons and of the complaint to an officer, director, or managing agent of the corporation or by leaving copies thereof in the office of such officer, director, or managing agent with the person who is apparently in charge of the ~~office; or office.~~
 - b. By delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served or to accept service ~~or [of] of~~ process or by serving process upon such agent or the party in a manner specified by any statute.
 - c. By mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the officer, director or agent to be served as specified in paragraphs a and b.
 - d. By depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the officer, director, or agent to be served as specified in paragraphs a. and b., delivering to the addressee, and obtaining a delivery receipt.
- (7) Partnerships. – Upon a general or limited partnership:
- a. By delivering a copy of the summons and of the complaint to any general partner, or to any attorney-in-fact or agent authorized by appointment or by law to be served or to accept service of process in its ~~behalf, or behalf;~~ by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to any general partner, or to any attorney-in-fact or agent authorized by appointment or by law to be served or to accept service of process in its ~~behalf, or behalf;~~ or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to any general partner or to any attorney-in-fact or agent authorized by appointment or by law to be served or to accept service of process in its behalf, delivering to the addressee, and obtaining a delivery receipt; or by leaving copies thereof in the office of such general partner, attorney-in-fact or agent with the person who is apparently in charge of the office.

- b. If relief is sought against a partner specifically, a copy of the summons and of the complaint must be served on such partner as provided in this section (j).
- (8) Other Unincorporated Associations and Their Officers. – Upon any unincorporated association, organization, or society other than a ~~partnership~~ partnership by one of the following:
- a. By delivering a copy of the summons and of the complaint to an officer, director, managing agent or member of the governing body of the unincorporated association, organization or society, or by leaving copies thereof in the office of such officer, director, managing agent or member of the governing body with the person who is apparently in charge of the ~~office; or office.~~
 - b. By delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served or to accept service of process or by serving process upon such agent or the party in a manner specified by any statute.
 - c. By mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the officer, director, agent or member of the governing body to be served as specified in paragraphs a and b.
 - d. By depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the officer, director, agent, or member of the governing body to be served as specified in paragraphs a. and b., delivering to the addressee, and obtaining a delivery receipt.
- (9) Service upon a foreign state or a political subdivision, agency, or instrumentality thereof shall be effected pursuant to 28 U.S.C. § 1608."

SECTION 2.1. G.S. 1A-1, Rule 4(j1) reads as rewritten:

"(j1) Service by publication on party that cannot otherwise be served. – A party that cannot with due diligence be served by personal ~~delivery or delivery,~~ registered or certified ~~mail-mail,~~ or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) may be served by publication. Except in actions involving jurisdiction in rem or quasi in rem as provided in section (k), service of process by publication shall consist of publishing a notice of service of process by publication once a week for three successive weeks in a newspaper that is qualified for legal advertising in accordance with G.S. 1-597 and G.S. 1-598 and circulated in the area where the party to be served is believed by the serving party to be located, or if there is no reliable information concerning the location of the party then in a newspaper circulated in the county where the action is pending. If the party's post-office address is known or can with reasonable diligence be ascertained, there shall be mailed to the party at or immediately prior to the first publication a copy of the notice of service of process by publication. The mailing may be omitted if the post-office address cannot be ascertained with reasonable diligence. Upon completion of such service there shall be filed with the court an affidavit showing the publication and mailing in accordance with the requirements of G.S. 1-75.10(2), the circumstances warranting the use of service by publication, and information, if any, regarding the location of the party served.

The notice of service of process by publication shall (i) designate the court in which the action has been commenced and the title of the action, which title may be indicated sufficiently by the name of the first plaintiff and the first defendant; (ii) be directed to the defendant sought to be served; (iii) state either that a pleading seeking relief against the person to be served has been filed or has been required to be filed therein not later than a date specified in the notice; (iv) state the nature of the relief being sought; (v) require the defendant being so served to make defense to such pleading within 40 days after a date stated in the notice, exclusive of such date, which date so stated shall be the

date of the first publication of notice, or the date when the complaint is required to be filed, whichever is later, and notify the defendant that upon his failure to do so the party seeking service of process by publication will apply to the court for the relief sought; (vi) in cases of attachment, state the information required by G.S. 1-440.14; (vii) be subscribed by the party seeking service or his attorney and give the post-office address of such party or his attorney; and (viii) be substantially in the following form:

NOTICE OF SERVICE OF PROCESS BY PUBLICATION
STATE OF NORTH CAROLINA _____ COUNTY
IN THE _____ COURT

[Title of action or special proceeding] [To Person to be served]:

Take notice that a pleading seeking relief against you (has been filed) (is required to be filed not later than _____, _____) in the above-entitled (action) (special proceeding). The nature of the relief being sought is as follows:
(State nature).

You are required to make defense to such pleading not later than (_____, _____) and upon your failure to do so the party seeking service against you will apply to the court for the relief sought.

This, the _____ day of _____, _____
_____ (Attorney) (Party)
_____ (Address)."

SECTION 2.2. G.S. 1A-1, Rule 4(j2) reads as rewritten:

"(j2) Proof of service. – Proof of service of process shall be as follows:

- (1) Personal Service. – Before judgment by default may be had on personal service, proof of service must be provided in accordance with the requirements of G.S. 1-75.10(1).
- (2) Registered or Certified ~~Mail~~ Mail or Designated Delivery Service. – Before judgment by default may be had on service by registered or certified ~~mail~~, mail or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, the serving party shall file an affidavit with the court showing proof of such service in accordance with the requirements of ~~G.S. 1-75.10(4)~~ G.S. 1-75.10(4) or G.S. 1-75.10(5), as appropriate. This affidavit together with the return or delivery receipt signed by the person who received the mail or delivery if not the addressee raises a presumption that the person who received the mail or delivery and signed the receipt was an agent of the addressee authorized by appointment or by law to be served or to accept service of process or was a person of suitable age and discretion residing in the addressee's dwelling house or usual place of abode. In the event the presumption described in the preceding sentence is rebutted by proof that the person who received the receipt at the addressee's dwelling house or usual place of abode was not a person of suitable age and discretion residing therein, the statute of limitation may not be pleaded as a defense if the action was initially commenced within the period of limitation and service of process is completed within 60 days from the date the service is declared invalid. Service shall be complete on the day the summons and complaint are delivered to the address.
- (3) Publication. – Before judgment by default may be had on service by publication, the serving party shall file an affidavit with the court showing the circumstances warranting the use of service by publication, information, if any, regarding the location of the party served which was used in determining the area in which service by publication was printed and proof of service in accordance with G.S. 1-75.10(2)."

SECTION 2.3. G.S. 1-75.10 reads as rewritten:

"§ 1-75.10. Proof of service of summons, defendant appearing in action.

Where the defendant appears in the action and challenges the service of the summons upon him, proof of the service of process shall be as follows:

- (1) Personal Service or Substituted Personal Service. –
 - a. If served by the sheriff of the county or the lawful process officer in this State where the defendant was found, by the officer's certificate thereof, showing place, time and manner of service; or
 - b. If served by any other person, his affidavit thereof, showing place, time and manner of service; his qualifications to make service under Rule 4(a) or Rule 4(j3) of the Rules of Civil Procedure; that he knew the person served to be the party mentioned in the summons and delivered to and left with him a copy; and if the defendant was not personally served, he shall state in such affidavit when, where and with whom such copy was left. If such service is made outside this State, the proof thereof may in the alternative be made in accordance with the law of the place where such service is made.
- (2) Service of Publication. – In the case of publication, by the affidavit of the publisher or printer, or his foreman or principal clerk, showing the same and specifying the date of the first and last publication, and an affidavit of mailing of a copy of the complaint or notice, as the case may require, made by the person who mailed the same.
- (3) Written Admission of Defendant. – The written admission of the defendant, whose signature or the subscription of whose name to such admission shall be presumptive evidence of genuineness.
- (4) Service by Registered or Certified Mail. – In the case of service by registered or certified mail, by affidavit of the serving party averring:
 - a. That a copy of the summons and complaint was deposited in the post office for mailing by registered or certified mail, return receipt requested;
 - b. That it was in fact received as evidenced by the attached registry receipt or other evidence satisfactory to the court of delivery to the addressee; and
 - c. That the genuine receipt or other evidence of delivery is attached.
- (5) Service by Designated Delivery Service. – In the case of service by designated delivery service, by affidavit of the serving party averring:
 - a. That a copy of the summons and complaint was deposited with a designated delivery service as authorized under G.S. 1A-1, Rule 4, delivery receipt requested;
 - b. That it was in fact received as evidenced by the attached delivery receipt or other evidence satisfactory to the court of delivery to the addressee; and
 - c. That the genuine receipt or other evidence of delivery is attached."

SERVICE OF PLEADINGS AND PAPERS BY FAX (RULE 5(b))

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

"(b) Service – How made. – A pleading setting forth a counterclaim or cross claim shall be filed with the court and a copy thereof shall be served on the party against whom it is asserted or on ~~his~~ the party's attorney of record. With respect to all pleadings subsequent to the original complaint and other papers required or permitted to be served, service with due return may be made in the manner provided for service and

return of process in Rule 4 and may be made upon either the party or, unless service upon the party ~~himself personally~~ is ordered by the court, upon ~~his~~ the party's attorney of record. With respect to such other pleadings and papers, service upon the attorney or upon a party may also be made by delivering a copy to ~~him~~ the party or by mailing it to ~~him~~ the party at ~~his~~ the party's last known address or, if no address is known, by filing it with the clerk of court. Delivery of a copy within this rule means handing it to the attorney or to the ~~party; or party,~~ leaving it at the attorney's office with a partner or ~~employee.~~ employee, or by sending it to the attorney's office by a confirmed telefacsimile transmittal for receipt by 5:00 P.M. Eastern Time on a regular business day, as evidenced by a telefacsimile receipt confirmation. If receipt of delivery by telefacsimile is after 5:00 P.M., service will be deemed to have been completed on the next business day. Service by mail shall be complete upon deposit of the pleading or paper enclosed in a post-paid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service."

ATTORNEY'S EMPLOYEE NOT DISQUALIFIED FOR VIDEOTAPE DEPOSITION (RULE 28(c))

SECTION 4. G.S. 1A-1, Rule 28(c) reads as rewritten:

"(c) Disqualification for interest. – Unless the parties agree otherwise by stipulation as provided in Rule 29, no deposition shall be taken before a person who is any of the following:

- (1) A relative, employee, or attorney of any of the parties;
- (2) A relative or employee of an attorney of the parties;
- (3) Financially interested in the action; or
- (4) An independent contractor if the contractor or the contractor's principal is under a blanket contract for the court reporting services with an attorney of the parties, party to the action, or party having a financial interest in the action. Notwithstanding the disqualification under this rule, the party desiring to take the deposition under a stipulation shall disclose the disqualification in writing in a Rule 30(b) notice of deposition and shall inform all parties to the litigation on the record of the existence of the disqualification under this rule and of the proposed stipulation waiving the disqualification. Any party opposing the proposed stipulation as provided in the notice of deposition shall give timely written notice of his or her opposition to all parties.

For the purposes of this rule, a blanket contract means a contract to perform court reporting services over a fixed period of time or an indefinite period of time, rather than on a case by case basis, or any other contractual arrangement which compels, guarantees, regulates, or controls the use of particular court reporting services in future cases.

Notwithstanding any other provision of law, a person is prohibited from taking a deposition under any contractual agreement that requires transmission of the original transcript without the transcript having been certified as provided in Rule 30(f) by the person before whom the deposition was taken.

Notwithstanding the provisions of this subsection, a person otherwise disqualified from taking a deposition under this subsection may take a deposition provided that the deposition is taken by videotape in compliance with Rule 30(b)(4) and Rule 30(f), and the notice for the taking of the deposition states the name of the person before whom the deposition will be taken and that person's relationship, if any, to a party or a party's attorney, provided that the deposition is also recorded by stenographic means by a nondisqualified person."

MEDIATION OF DISCOVERY DISPUTES (RULE 37)

SECTION 5. G.S. 1A-1, Rule 37(a) reads as rewritten:

"(a) Motion for order compelling discovery. – A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

- (1) Appropriate Court. – An application for an order to a party or a deponent who is not a party may be made to a judge of the court in which the action is pending, or, on matters relating to a deposition where the deposition is being taken in this State, to a judge of the court in the county where the deposition is being taken, as defined by Rule 30(h).
- (2) Motion. – If a deponent fails to answer a question propounded or submitted under Rules 30 or 31, or a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a), or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material without court action. When taking a deposition on oral examination, the proponent of the question shall complete the examination on all other matters before he adjourns the examination in order to apply for an order.

If the court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to Rule 26(c).

- (3) Evasive or Incomplete Answer. – For purposes of this subdivision an evasive or incomplete answer is to be treated as a failure to answer.
- (4) Award of Expenses of Motion. – If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is denied, the court shall, after opportunity for hearing, require the moving party to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner."

PRESERVING EXCEPTIONS TO RULINGS (RULE 46)

SECTION 6. G.S. 1A-1, Rule 46 reads as rewritten:

"Rule 46. Objections and exceptions.

- (a) Rulings on admissibility of evidence. –
 - (1) When there is objection to the admission of evidence on the ground that the witness is for a specified reason incompetent or not qualified or disqualified, it shall be deemed that a like objection has been made to any subsequent admission of evidence from the witness in question.

Similarly, when there is objection to the admission of evidence involving a specified line of questioning, it shall be deemed that a like objection has been taken to any subsequent admission of evidence involving the same line of questioning.

- (2) If there is proper objection to the admission of evidence and the objection is overruled, the ruling of the court shall be deemed excepted to by the party making the objection. If an objection to the admission of evidence is sustained or if the court for any reason excludes evidence offered by a party, the ruling of the court shall be deemed excepted to by the party offering the evidence.
- (3) No objections are necessary with respect to questions propounded to a witness by the court or a juror but it shall be deemed that each such question has been properly objected to and that the objection has been overruled and that an exception has been taken to the ruling of the court by all parties to the action.

(b) ~~Rulings~~ Pretrial rulings, interlocutory orders, trial rulings, and other orders not directed to the admissibility of evidence. – With respect to ~~rulings~~ pretrial rulings, interlocutory orders, trial rulings, and other orders of the court not directed to the admissibility of evidence, formal objections and exceptions are unnecessary. In order to preserve an exception to any such ruling or order or to the court's failure to make any such ruling or order, it shall be sufficient if a party, at the time the ruling or order is made or sought, makes known to the court ~~his~~ the party's objection to the action of the court or makes known the action ~~which he~~ that the party desires the court to take and ~~his ground therefor;~~ the party's grounds for its position. ~~and if~~ If a party has no opportunity to object or except to a ruling or order at the time it is made, the absence of an objection or exception does not thereafter prejudice ~~him~~ that party.

(c) ~~Instruction. — If there is error, either in the refusal of the judge to grant a prayer for instructions, or in granting a prayer, or in his instructions generally, the same is deemed excepted to without the filing of any formal objections.~~

EXPAND CIRCUMSTANCES FOR SUBSTITUTION OF A JUDGE (RULE 63)

SECTION 7. G.S. 1A-1, Rule 63 reads as rewritten:

"Rule 63. Disability of a judge.

If by reason of death, ~~sickness,~~ sickness or other disability, resignation, retirement, expiration of term, removal from office, or other reason, a judge before whom an action has been tried ~~or a hearing has been held~~ is unable to perform the duties to be performed by the court under these rules after a verdict is returned or ~~findings of fact and conclusions of law are filed,~~ a trial or hearing is otherwise concluded, then those ~~duties~~ duties, including entry of judgment, may be performed:

- (1) In actions in the superior court by the judge senior in point of continuous service on the superior court regularly holding the courts of the district. If ~~such~~ this judge is ~~himself~~ under a disability, then the resident judge of the district senior in point of service on the superior court may perform those duties. If a resident judge, while holding court in ~~his~~ the judge's own district suffers disability and there is no other resident judge of the district, such duties may be performed by a judge of the superior court designated by the Chief Justice of the Supreme Court.
- (2) In actions in the district court, by the chief judge of the district, or if the chief judge is disabled, by any judge of the district court designated by the Director of the Administrative Office of the Courts.

If the substituted judge is satisfied that he or she cannot perform those duties because ~~he~~ the judge did not preside at the trial or hearing or for any other reason, ~~he~~ the judge may in his discretion ~~may,~~ in the judge's discretion, grant a new ~~trial.~~ trial or hearing."

ENHANCED NOTICE FOR TEMPORARY RESTRAINING ORDER (RULE 65)

SECTION 8. G.S. 1A-1, Rule 65(b) reads as rewritten:

"(b) Temporary restraining order; notice; hearing; duration. – A temporary restraining order may be granted without written or oral notice to the adverse party or that party's attorney only if (i) it clearly appears from specific facts shown by affidavit or by verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before ~~notice can be served and a hearing had thereon.~~ the adverse party or that party's attorney can be heard in opposition, and (ii) the applicant's attorney certifies to the court in writing the efforts, if any, that have been made to give the notice and the reasons supporting the claim that notice should not be required. Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed 10 days, as the judge fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice and a motion for a preliminary injunction is made, it shall be set down for hearing at the earliest possible time and takes precedence over all matters except older matters of the same character; and when the motion comes on for hearing, the party who obtained the temporary restraining order shall proceed with a motion for a preliminary injunction, and, if he does not do so, the judge shall dissolve the temporary restraining order. On two days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the judge may prescribe, the adverse party may appear and move its dissolution or modification and in that event the judge shall proceed to hear and determine such motion as expeditiously as the ends of justice require. Damages may be awarded in an order for dissolution as provided in section (e)."

EFFECTIVE DATE

SECTION 9. Section 7 of this act is effective when it becomes law and applies to actions pending on or after that date. The remainder of this act becomes effective October 1, 2001, and applies to actions filed on or after that date.

In the General Assembly read three times and ratified this the 13th day of August, 2001.

Beverly E. Perdue
President of the Senate

James B. Black
Speaker of the House of Representatives

Michael F. Easley
Governor

Approved _____ .m. this _____ day of _____, 2001