

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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SENATE BILL 419*

Short Title: Civil Procedure Rule Changes.

(Public)

Sponsors: Senator Clodfelter.

Referred to: Judiciary I.

March 12, 2001

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE RULES OF CIVIL PROCEDURE AS RECOMMENDED
3 BY THE CIVIL LITIGATION STUDY COMMISSION.

4 The General Assembly of North Carolina enacts:

5

6 **SERVICE BY NOTARIES (RULE 4(a))**

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

8 "(a) Summons – Issuance; who may serve. – Upon the filing of the complaint,
9 summons shall be issued forthwith, and in any event within five days. The complaint
10 and summons shall be delivered to some proper person for service. In this State, such
11 proper person shall be the sheriff of the county where service is to be ~~made~~made, a
12 notary public commissioned under Chapter 10A of the General Statutes, or some other
13 person duly authorized by law to serve summons. Outside this State, such proper person
14 shall be anyone who is not a party and is not less than 21 years of age or anyone duly
15 authorized to serve summons by the law of the place where service is to be made. Upon
16 request of the plaintiff separate or additional summons shall be issued against any
17 defendants. A summons is issued when, after being filled out and dated, it is signed by
18 the officer having authority to do so. The date the summons bears shall be prima facie
19 evidence of the date of issue."
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21 **SUMMONS ALIVE FOR 60 DAYS (RULE 4(c))**

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

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

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

8
9 **SERVICE BY DESIGNATED DELIVERY SERVICE (RULE 4(j)) AND**
10 **CONFORMING CHANGES TO PROOF OF SERVICE**

11 **SECTION 3.** G.S. 1A-1, Rule 4(j) reads as rewritten:

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

16 (1) Natural Person. – Except as provided in subsection (2) below, upon a
17 natural ~~person~~person by one of the following:

- 18 a. By delivering a copy of the summons and of the complaint to
19 him or by leaving copies thereof at the defendant's dwelling
20 house or usual place of abode with some person of suitable age
21 and discretion then residing ~~therein~~or therein.
22 b. By delivering a copy of the summons and of the complaint to an
23 agent authorized by appointment or by law to be served or to
24 accept service of process or by serving process upon such agent
25 or the party in a manner specified by any statute.
26 c. By mailing a copy of the summons and of the complaint,
27 registered or certified mail, return receipt requested, addressed
28 to the party to be served, and delivering to the addressee.
29 d. By depositing with a designated delivery service authorized
30 pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and
31 complaint, addressed to the party to be served, delivering to the
32 addressee, and obtaining a delivery receipt.

33 (2) Natural Person under Disability. – Upon a natural person under
34 disability by serving process in any manner prescribed in this section
35 (j) for service upon a natural person and, in addition, where required
36 by paragraph a or b below, upon a person therein designated.

- 37 a. Where the person under disability is a minor, process shall be
38 served separately in any manner prescribed for service upon a
39 natural person upon a parent or guardian having custody of the
40 child, or if there be none, upon any other person having the care
41 and control of the child. If there is no parent, guardian, or other
42 person having care and control of the child when service is
43 made upon the child, then service of process must also be made

1 upon a guardian ad litem who has been appointed pursuant to
2 Rule 17.

- 3 b. If the plaintiff actually knows that a person under disability is
4 under guardianship of any kind, process shall be served
5 separately upon his guardian in any manner applicable and
6 appropriate under this section (j). If the plaintiff does not
7 actually know that a guardian has been appointed when service
8 is made upon a person known to him to be incompetent to have
9 charge of his affairs, then service of process must be made upon
10 a guardian ad litem who has been appointed pursuant to Rule
11 17.

- 12 (3) The State. – Upon the State by personally delivering a copy of the
13 summons and of the complaint to the Attorney General or to a deputy
14 or assistant attorney ~~general or general~~; by mailing a copy of the
15 summons and of the complaint, registered or certified mail, return
16 receipt requested, addressed to the Attorney General or to a deputy or
17 assistant attorney ~~general-general~~; or by depositing with a designated
18 delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy
19 of the summons and complaint, addressed to the Attorney General or
20 to a deputy or assistant attorney general, delivering to the addressee,
21 and obtaining a delivery receipt.

- 22 (4) An Agency of the State. –

- 23 a. Upon an agency of the State by personally delivering a copy of
24 the summons and of the complaint to the process agent
25 appointed by the agency in the manner hereinafter ~~provided~~
26 provided; ~~or~~ by mailing a copy of the summons and of the
27 complaint, registered or certified mail, return receipt requested,
28 addressed to said process ~~agent-agent~~; or by depositing with a
29 designated delivery service authorized pursuant to 26 U.S.C. §
30 7502(f)(2) a copy of the summons and complaint, addressed to
31 the process agent, delivering to the addressee, and obtaining a
32 delivery receipt.

- 33 b. Every agency of the State shall appoint a process agent by filing
34 with the Attorney General the name and address of an agent
35 upon whom process may be served.

- 36 c. If any agency of the State fails to comply with paragraph b
37 above, then service upon such agency may be made by
38 personally delivering a copy of the summons and of the
39 complaint to the Attorney General or to a deputy or assistant
40 attorney ~~general or general~~; by mailing a copy of the summons
41 and of the complaint, registered or certified mail, return receipt
42 requested, addressed to the Attorney General, or to a deputy or
43 assistant attorney ~~general-general~~; or by depositing with a
44 designated delivery service authorized pursuant to 26 U.S.C. §

- 1 7502(f)(2) a copy of the summons and complaint, addressed to
2 the Attorney General or to a deputy or assistant attorney
3 general, delivering to the addressee, and obtaining a delivery
4 receipt.
- 5 d. For purposes of this rule, the term "agency of the State"
6 includes every agency, institution, board, commission, bureau,
7 department, division, council, member of Council of State, or
8 officer of the State government of the State of North Carolina,
9 but does not include counties, cities, towns, villages, other
10 municipal corporations or political subdivisions of the State,
11 county or city boards of education, other local public districts,
12 units, or bodies of any kind, or private corporations created by
13 act of the General Assembly.
- 14 (5) Counties, Cities, Towns, Villages and Other Local Public Bodies. –
- 15 a. Upon a city, town, or village by personally delivering a copy of
16 the summons and of the complaint to its mayor, city manager or
17 ~~clerk or clerk;~~ by mailing a copy of the summons and of the
18 complaint, registered or certified mail, return receipt requested,
19 addressed to its mayor, city manager or ~~clerk.~~ clerk; or by
20 depositing with a designated delivery service authorized
21 pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and
22 complaint, addressed to the mayor, city manager, or clerk,
23 delivering to the addressee, and obtaining a delivery receipt.
- 24 b. Upon a county by personally delivering a copy of the summons
25 and of the complaint to its county manager or to the chairman,
26 clerk or any member of the board of commissioners for such
27 ~~county or county;~~ by mailing a copy of the summons and of the
28 complaint, registered or certified mail, return receipt requested,
29 addressed to its county manager or to the chairman, clerk, or
30 any member of this board of commissioners for such
31 ~~county.~~ county; or by depositing with a designated delivery
32 service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of
33 the summons and complaint, addressed to the county manager
34 or to the chairman, clerk, or any member of the board of
35 commissioners of that county, delivering to the addressee, and
36 obtaining a delivery receipt.
- 37 c. Upon any other political subdivision of the State, any county or
38 city board of education, or other local public district, unit, or
39 body of any kind (i) by personally delivering a copy of the
40 summons and of the complaint to an officer or director thereof,
41 ~~or~~ (ii) by personally delivering a copy of the summons and of
42 the complaint to an agent or attorney-in-fact authorized by
43 appointment or by statute to be served or to accept service in its
44 behalf, ~~or~~ (iii) by mailing a copy of the summons and of the

- 1 complaint, registered or certified mail, return receipt requested,
2 addressed to the officer, director, agent, or attorney-in-fact as
3 specified in (i) and ~~(ii)-(ii)~~; or by depositing with a designated
4 delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a
5 copy of the summons and complaint, addressed to the officer,
6 director, agent, or attorney-in-fact as specified in (i) and (ii),
7 delivering to the addressee, and obtaining a delivery receipt.
- 8 d. In any case where none of the officials, officers or directors
9 specified in paragraphs a, b and c can, after due diligence, be
10 found in the State, and that fact appears by affidavit to the
11 satisfaction of the court, or a judge thereof, such court or judge
12 may grant an order that service upon the party sought to be
13 served may be made by personally delivering a copy of the
14 summons and of the complaint to the Attorney General or any
15 deputy or assistant attorney general of the State of North
16 ~~Carolina, or Carolina;~~ by mailing a copy of the summons and of
17 the complaint, registered or certified mail, return receipt
18 requested, addressed to the Attorney General or any deputy or
19 assistant attorney general of the State of North
20 ~~Carolina, Carolina;~~ or by depositing with a designated delivery
21 service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of
22 the summons and complaint, addressed to the Attorney General
23 or any deputy or assistant attorney general of the State of North
24 Carolina, delivering to the addressee, and obtaining a delivery
25 receipt.
- 26 (6) Domestic or Foreign Corporation. – Upon a domestic or foreign
27 corporation:
- 28 a. By delivering a copy of the summons and of the complaint to an
29 officer, director, or managing agent of the corporation or by
30 leaving copies thereof in the office of such officer, director, or
31 managing agent with the person who is apparently in charge of
32 the office; or
- 33 b. By delivering a copy of the summons and of the complaint to an
34 agent authorized by appointment or by law to be served or to
35 accept service ~~or [of] of~~ process or by serving process upon
36 such agent or the party in a manner specified by any
37 ~~statute.~~ statute;
- 38 c. By mailing a copy of the summons and of the complaint,
39 registered or certified mail, return receipt requested, addressed
40 to the officer, director or agent to be served as specified in
41 paragraphs ~~a and b.~~ a. and b.; or
- 42 d. By depositing with a designated delivery service authorized
43 pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and
44 complaint, addressed to the officer, director, or agent to be

- 1 served as specified in paragraphs a. and b., delivering to the
2 addressee, and obtaining a delivery receipt.
- 3 (7) Partnerships. – Upon a general or limited partnership:
- 4 a. By delivering a copy of the summons and of the complaint to
5 any general partner, or to any attorney-in-fact or agent
6 authorized by appointment or by law to be served or to accept
7 service of process in its ~~behalf, or behalf;~~ by mailing a copy of
8 the summons and of the complaint, registered or certified mail,
9 return receipt requested, addressed to any general partner, or to
10 any attorney-in-fact or agent authorized by appointment or by
11 law to be served or to accept service of process in its ~~behalf, or~~
12 behalf; or by depositing with a designated delivery service
13 authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the
14 summons and complaint, addressed to any general partner or to
15 any attorney-in-fact or agent authorized by appointment or by
16 law to be served or to accept service of process in its behalf,
17 delivering to the addressee, and obtaining a delivery receipt; or
18 by leaving copies thereof in the office of such general partner,
19 attorney-in-fact or agent with the person who is apparently in
20 charge of the office.
- 21 b. If relief is sought against a partner specifically, a copy of the
22 summons and of the complaint must be served on such partner
23 as provided in this section (j).
- 24 (8) Other Unincorporated Associations and Their Officers. – Upon any
25 unincorporated association, organization, or society other than a
26 partnership:
- 27 a. By delivering a copy of the summons and of the complaint to an
28 officer, director, managing agent or member of the governing
29 body of the unincorporated association, organization or society,
30 or by leaving copies thereof in the office of such officer,
31 director, managing agent or member of the governing body with
32 the person who is apparently in charge of the office; ~~or~~
- 33 b. By delivering a copy of the summons and of the complaint to an
34 agent authorized by appointment or by law to be ~~served~~ or to
35 accept service of process or by serving process upon such agent
36 or the party in a manner specified by any ~~statute; statute;~~
- 37 c. By mailing a copy of the summons and of the complaint,
38 registered or certified mail, return receipt requested, addressed
39 to the officer, director, agent or member of the governing body
40 to be served as specified in paragraphs ~~a and b.~~ a. and b.; or
- 41 d. By depositing with a designated delivery service authorized
42 pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and
43 complaint, addressed to the officer, director, agent, or member
44 of the governing body to be served as specified in paragraphs a.

1 and b., delivering to the addressee, and obtaining a delivery
2 receipt.

- 3 (9) Service upon a foreign state or a political subdivision, agency, or
4 instrumentality thereof shall be effected pursuant to 28 U.S.C. §
5 1608.”

6 **SECTION 3.1.** G.S. 1A-1, Rule 4(j1) reads as rewritten:

7 “(j1) Service by publication on party that cannot otherwise be served. – A party
8 that cannot with due diligence be served by personal ~~delivery or delivery~~, registered or
9 certified ~~mail-mail~~, or by a designated delivery service authorized pursuant to 26 U.S.C.
10 § 7502(f)(2) may be served by publication. Except in actions involving jurisdiction in
11 rem or quasi in rem as provided in section (k), service of process by publication shall
12 consist of publishing a notice of service of process by publication once a week for three
13 successive weeks in a newspaper that is qualified for legal advertising in accordance
14 with G.S. 1-597 and G.S. 1-598 and circulated in the area where the party to be served
15 is believed by the serving party to be located, or if there is no reliable information
16 concerning the location of the party then in a newspaper circulated in the county where
17 the action is pending. If the party's post-office address is known or can with reasonable
18 diligence be ascertained, there shall be mailed to the party at or immediately prior to the
19 first publication a copy of the notice of service of process by publication. The mailing
20 may be omitted if the post-office address cannot be ascertained with reasonable
21 diligence. Upon completion of such service there shall be filed with the court an
22 affidavit showing the publication and mailing in accordance with the requirements of
23 G.S. 1-75.10(2), the circumstances warranting the use of service by publication, and
24 information, if any, regarding the location of the party served.

25 The notice of service of process by publication shall (i) designate the court in which
26 the action has been commenced and the title of the action, which title may be indicated
27 sufficiently by the name of the first plaintiff and the first defendant; (ii) be directed to
28 the defendant sought to be served; (iii) state either that a pleading seeking relief against
29 the person to be served has been filed or has been required to be filed therein not later
30 than a date specified in the notice; (iv) state the nature of the relief being sought; (v)
31 require the defendant being so served to make defense to such pleading within 40 days
32 after a date stated in the notice, exclusive of such date, which date so stated shall be the
33 date of the first publication of notice, or the date when the complaint is required to be
34 filed, whichever is later, and notify the defendant that upon his failure to do so the party
35 seeking service of process by publication will apply to the court for the relief sought;
36 (vi) in cases of attachment, state the information required by G.S. 1-440.14; (vii) be
37 subscribed by the party seeking service or his attorney and give the post-office address
38 of such party or his attorney; and (viii) be substantially in the following form:

39 **NOTICE OF SERVICE OF PROCESS BY PUBLICATION**
40 **STATE OF NORTH CAROLINA _____ COUNTY**

41
42 **IN THE _____ COURT**

43
44 [Title of action or special proceeding] [To Person to be served]:

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

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

8 This, the _____ day of _____, ____

9 _____ (Attorney) (Party)

10 _____ (Address)”.

11 **SECTION 3.2.** G.S. 1A-1, Rule 4(j2) reads as rewritten:

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

- 13 (1) Personal Service. – Before judgment by default may be had on
14 personal service, proof of service must be provided in accordance with
15 the requirements of G.S. 1-75.10(1).
- 16 (2) Registered or Certified ~~Mail~~–Mail or Designated Delivery Service. –
17 Before judgment by default may be had on service by registered or
18 certified ~~mail~~,–mail or by a designated delivery service authorized
19 pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, the serving
20 party shall file an affidavit with the court showing proof of such
21 service in accordance with the requirements of ~~G.S. 1-75.10(4)~~–G.S.
22 1-75.10(4) or G.S. 1-75.10(5), as appropriate. This affidavit together
23 with the return or delivery receipt signed by the person who received
24 the mail or delivery if not the addressee raises a presumption that the
25 person who received the mail or delivery and signed the receipt was an
26 agent of the addressee authorized by appointment or by law to be
27 served or to accept service of process or was a person of suitable age
28 and discretion residing in the addressee's dwelling house or usual place
29 of abode. In the event the presumption described in the preceding
30 sentence is rebutted by proof that the person who received the receipt
31 at the addressee's dwelling house or usual place of abode was not a
32 person of suitable age and discretion residing therein, the statute of
33 limitation may not be pleaded as a defense if the action was initially
34 commenced within the period of limitation and service of process is
35 completed within 60 days from the date the service is declared invalid.
36 Service shall be complete on the day the summons and complaint are
37 delivered to the address.
- 38 (3) Publication. – Before judgment by default may be had on service by
39 publication, the serving party shall file an affidavit with the court
40 showing the circumstances warranting the use of service by
41 publication, information, if any, regarding the location of the party
42 served which was used in determining the area in which service by
43 publication was printed and proof of service in accordance with G.S.
44 1-75.10(2).”

1 **SECTION 3.3.** G.S. 1-75.10 reads as rewritten:

2 **“§ 1-75.10. Proof of service of summons, defendant appearing in action.**

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

5 (1) Personal Service or Substituted Personal Service. –

6 a. If served by the sheriff of the county or the lawful process
7 officer in this State where the defendant was found, by the
8 officer's certificate thereof, showing place, time and manner of
9 service; or

10 b. If served by any other person, his affidavit thereof, showing
11 place, time and manner of service; his qualifications to make
12 service under Rule 4(a) or Rule 4(j3) of the Rules of Civil
13 Procedure; that he knew the person served to be the party
14 mentioned in the summons and delivered to and left with him a
15 copy; and if the defendant was not personally served, he shall
16 state in such affidavit when, where and with whom such copy
17 was left. If such service is made outside this State, the proof
18 thereof may in the alternative be made in accordance with the
19 law of the place where such service is made.

20 (2) Service of Publication. – In the case of publication, by the affidavit of
21 the publisher or printer, or his foreman or principal clerk, showing the
22 same and specifying the date of the first and last publication, and an
23 affidavit of mailing of a copy of the complaint or notice, as the case
24 may require, made by the person who mailed the same.

25 (3) Written Admission of Defendant. – The written admission of the
26 defendant, whose signature or the subscription of whose name to such
27 admission shall be presumptive evidence of genuineness.

28 (4) Service by Registered or Certified Mail. – In the case of service by
29 registered or certified mail, by affidavit of the serving party averring:

30 a. That a copy of the summons and complaint was deposited in the
31 post office for mailing by registered or certified mail, return
32 receipt requested;

33 b. That it was in fact received as evidenced by the attached
34 registry receipt or other evidence satisfactory to the court of
35 delivery to the addressee; and

36 c. That the genuine receipt or other evidence of delivery is
37 attached.

38 (5) Service by Designated Delivery Service. -- In the case of service by
39 designated delivery service, by affidavit of the serving party averring:

40 a. That a copy of the summons and complaint was deposited with
41 a designated delivery service as authorized under G.S. 1A-1,
42 Rule 4, delivery receipt requested;

- 1 **b.** That it was in fact received as evidenced by the attached
2 delivery receipt or other evidence satisfactory to the court of
3 delivery to the addressee; and
4 **c.** That the genuine receipt or other evidence of delivery is
5 attached.”
6

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

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

9 “(b) Service – How made. – A pleading setting forth a counterclaim or cross claim
10 shall be filed with the court and a copy thereof shall be served on the party against
11 whom it is asserted or on ~~his~~ the party’s attorney of record. With respect to all pleadings
12 subsequent to the original complaint and other papers required or permitted to be
13 served, service with due return may be made in the manner provided for service and
14 return of process in Rule 4 and may be made upon either the party or, unless service
15 upon the party ~~himself personally~~ is ordered by the court, upon ~~his~~ the party’s attorney
16 of record. With respect to such other pleadings and papers, service upon the attorney or
17 upon a party may also be made by delivering a copy to ~~him~~ the party or by mailing it to
18 ~~him~~ the party at ~~his~~ the party’s last known address or, if no address is known, by filing it
19 with the clerk of court. Delivery of a copy within this rule means handing it to the
20 attorney or to the ~~party; or~~ party, leaving it at the attorney’s office with a partner or
21 ~~employee.~~ employee, or by sending it to the attorney’s office by a confirmed
22 telefacsimile transmittal for receipt by 5:00 p.m. Eastern Time on a regular business
23 day, as evidenced by a telefacsimile receipt confirmation. If receipt of delivery by
24 telefacsimile is after 5:00 p.m., service will be deemed to have been completed on the
25 next business day. Service by mail shall be complete upon deposit of the pleading or
26 paper enclosed in a post-paid, properly addressed wrapper in a post office or official
27 depository under the exclusive care and custody of the United States Postal Service.”
28

29 **ATTORNEY’S EMPLOYEE NOT DISQUALIFIED FOR VIDEOTAPE** 30 **DEPOSITION (RULE 28(c))**

31 **SECTION 5.** G.S. 1A-1, Rule 28(c) reads as rewritten:

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

- 35 (1) A relative, employee, or attorney of any of the parties;
36 (2) A relative or employee of an attorney of the parties;
37 (3) Financially interested in the action; or
38 (4) An independent contractor if the contractor or the contractor’s
39 principal is under a blanket contract for the court reporting services
40 with an attorney of the parties, party to the action, or party having a
41 financial interest in the action. Notwithstanding the disqualification
42 under this rule, the party desiring to take the deposition under a
43 stipulation shall disclose the disqualification in writing in a Rule 30(b)
44 notice of deposition and shall inform all parties to the litigation on the

1 record of the existence of the disqualification under this rule and of the
2 proposed stipulation waiving the disqualification. Any party opposing
3 the proposed stipulation as provided in the notice of deposition shall
4 give timely written notice of his or her opposition to all parties.

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

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

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

21 22 **MEDIATION OF DISCOVERY DISPUTES (RULE 37)**

23 **SECTION 6.** G.S. 1A-1, Rule 37(a) reads as rewritten:

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

- 27 (1) Appropriate Court. – An application for an order to a party or a
28 deponent who is not a party may be made to a judge of the court in
29 which the action is pending, or, on matters relating to a deposition
30 where the deposition is being taken in this State, to a judge of the court
31 in the county where the deposition is being taken, as defined by Rule
32 30(h).
- 33 (2) Motion. – If a deponent fails to answer a question propounded or
34 submitted under Rules 30 or 31, or a corporation or other entity fails to
35 make a designation under Rule 30(b)(6) or 31(a), or a party fails to
36 answer an interrogatory submitted under Rule 33, or if a party, in
37 response to a request for inspection submitted under Rule 34, fails to
38 respond that inspection will be permitted as requested or fails to permit
39 inspection as requested, the discovering party may move for an order
40 compelling an answer, or a designation, or an order compelling
41 inspection in accordance with the request. The motion must include a
42 certification that the movant has in good faith conferred or attempted
43 to confer with the person or party failing to make the discovery in an
44 effort to secure the information or material without court action. When

1 taking a deposition on oral examination, the proponent of the question
2 shall complete the examination on all other matters before he adjourns
3 the examination in order to apply for an order.

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

7 (3) Evasive or Incomplete Answer. – For purposes of this subdivision an
8 evasive or incomplete answer is to be treated as a failure to answer.

9 (4) Award of Expenses of Motion. – If the motion is granted, the court
10 shall, after opportunity for hearing, require the party or deponent
11 whose conduct necessitated the motion or the party advising such
12 conduct or both of them to pay to the moving party the reasonable
13 expenses incurred in obtaining the order, including attorney's fees,
14 unless the court finds that the opposition to the motion was
15 substantially justified or that other circumstances make an award of
16 expenses unjust.

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

23 If the motion is granted in part and denied in part, the court may
24 apportion the reasonable expenses incurred in relation to the motion
25 among the parties and persons in a just manner.”
26

27 PRESERVING EXCEPTIONS TO RULINGS (RULE 46)

28 SECTION 7. G.S. 1A-1, Rule 46 reads as rewritten:

29 "Rule 46. Objections and exceptions.

30 (a) Rulings on admissibility of evidence. –

31 (1) When there is objection to the admission of evidence on the ground
32 that the witness is for a specified reason incompetent or not qualified
33 or disqualified, it shall be deemed that a like objection has been made
34 to any subsequent admission of evidence from the witness in question.
35 Similarly, when there is objection to the admission of evidence
36 involving a specified line of questioning, it shall be deemed that a like
37 objection has been taken to any subsequent admission of evidence
38 involving the same line of questioning.

39 (2) If there is proper objection to the admission of evidence and the
40 objection is overruled, the ruling of the court shall be deemed excepted
41 to by the party making the objection. If an objection to the admission
42 of evidence is sustained or if the court for any reason excludes
43 evidence offered by a party, the ruling of the court shall be deemed
44 excepted to by the party offering the evidence.

1 (3) No objections are necessary with respect to questions propounded to a
2 witness by the court or a juror but it shall be deemed that each such
3 question has been properly objected to and that the objection has been
4 overruled and that an exception has been taken to the ruling of the
5 court by all parties to the action.

6 (b) ~~Rulings—~~Pretrial rulings, interlocutory orders, trial rulings, and other orders
7 not directed to the admissibility of evidence. — With respect to ~~rulings~~pretrial rulings,
8 interlocutory orders, trial rulings, and other orders of the court not directed to the
9 admissibility of evidence, formal objections and exceptions are unnecessary. In order to
10 preserve an exception to any such ruling or order or to the court's failure to make any
11 such ruling or order, it shall be sufficient if a party, at the time the ruling or order is
12 made or sought, makes known to the court ~~his~~the party's objection to the action of the
13 court or makes known the action ~~which he~~that the party desires the court to take and ~~his~~
14 ~~ground therefor;~~the party's grounds for its position. ~~and if~~ If a party has no opportunity
15 to object or except to a ruling or order at the time it is made, the absence of an objection
16 or exception does not thereafter prejudice ~~him~~that party; ~~however, in order to preserve~~
17 exceptions to these rulings and orders for appellate review, a party shall promptly
18 present to the court a request, objection, or motion that states the specific grounds for
19 the ruling that the party desires the court to make upon having an opportunity to do so.

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

24 EXPAND CIRCUMSTANCES FOR SUBSTITUTION OF A JUDGE (RULE 63)

25 SECTION 8. G.S. 1A-1, Rule 63 reads as rewritten:

26 “Rule 63. Disability of a judge.

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

33 (1) In actions in the superior court by the judge senior in point of
34 continuous service on the superior court regularly holding the courts of
35 the district. If ~~such~~this judge is ~~himself~~ under a disability, then the
36 resident judge of the district senior in point of service on the superior
37 court may perform those duties. If a resident judge, while holding
38 court in ~~his~~the judge's own district suffers disability and there is no
39 other resident judge of the district, such duties may be performed by a
40 judge of the superior court designated by the Chief Justice of the
41 Supreme Court.

42 (2) In actions in the district court, by the chief judge of the district, or if
43 the chief judge is disabled, by any judge of the district court designated
44 by the Director of the Administrative Office of the Courts.

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

5
6 **ENHANCED NOTICE FOR TEMPORARY RESTRAINING ORDER (RULE 65)**

7 **SECTION 9.** G.S. 1A-1, Rule 65(b) reads as rewritten:

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

35
36 **EFFECTIVE DATE**

37 **SECTION 10.** This act becomes effective October 1, 2001, and applies to
38 actions filed on or after that date.