

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001**

**SESSION LAW 2001-388  
SENATE BILL 951**

AN ACT TO AMEND RULE 5 OF THE RULES OF CIVIL PROCEDURE TO ELIMINATE THE REQUIREMENT OF FILING OF BRIEFS OR MEMORANDA REGARDING DISPOSITIVE MOTIONS WITHIN FIVE DAYS OF SERVICE, AS RECOMMENDED BY THE NORTH CAROLINA COURTS COMMISSION, AND TO ELIMINATE THE UNNECESSARY FILING OF COVER SHEETS.

The General Assembly of North Carolina enacts:

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

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

(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 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 is ordered by the court, upon his 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 or by mailing it to him at his 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 leaving it at the attorney's office with a partner or employee. 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.

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

(d) Filing. – All pleadings subsequent to the complaint shall be filed with the court. All other papers required to be served upon a party, including requests for admissions, shall be filed with the court either before service or within five days thereafter, except that depositions, interrogatories, requests for documents, and answers and responses to those requests may not be filed unless ordered by the court or until used in the proceeding. Briefs and memoranda provided to the court may not be filed with the clerk of the court unless ordered by the court. The party taking a deposition or obtaining material through discovery is responsible for its preservation and delivery to the court if needed or so ordered. With respect to all pleadings and other papers as to which service and return has not been made in the manner provided in Rule 4, proof of service shall be made by filing with the court a certificate either by the attorney or the party that the paper was served in the manner prescribed by this rule, or a certificate of acceptance of service by the attorney or the party to be served. Such certificate shall show the date and method of service or the date of acceptance of service.

- (e) (1) Filing with the court defined. – The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk.
- (2) Filing by telefacsimile transmission. – If, pursuant to G.S. 7A-34 and G.S. 7A-343, the Supreme Court and the Administrative Officer of the Courts establish uniform rules, regulations, procedures and specifications for the filing of pleadings or other court papers by telefacsimile transmission, filing may be made by the transmission when, in the manner, and to the extent provided therein."

**SECTION 2.** Article 5 of Chapter 7A of the General Statutes is amended by adding a new section to read:

**"§ 7A-34.1. Unnecessary cover sheets.**

A cover sheet summarizing the critical elements of the filing in a format prescribed by the Administrative Office of the Courts shall not be required for papers filed in civil actions subsequent to the initial filing if such subsequent filing contains:

- (1) A caption including the file number, on the first page thereof.
- (2) The name, address, and telephone number of the attorney filing the papers or, if the party filing the papers is not represented by an attorney, the name, address, and telephone number of the party filing the papers.
- (3) A designation of the party represented by the attorney filing the papers, if an attorney is filing the papers.
- (4) The name and designation of "plaintiff", "defendant", "petitioner", "respondent", or other relationship to the action of each other party to the action.
- (5) The code or codes, set forth on the first page next to the title thereof, corresponding to the codes located on the cover sheet forms

promulgated by the Administrative Office of the Courts which apply to the filing.

(6) The signature of the attorney or party filing the paper and the date signed."

**SECTION 3.** Section 2 of this act becomes effective October 1, 2001. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 15<sup>th</sup> day of August, 2001.

s/ Beverly E. Perdue  
President of the Senate

s/ James B. Black  
Speaker of the House of Representatives

s/ Michael F. Easley  
Governor

Approved 5:38 p.m. this 26<sup>th</sup> day of August, 2001