

NORTH CAROLINA GENERAL ASSEMBLY  
1981 SESSION

CHAPTER 540  
HOUSE BILL 239

AN ACT TO CLARIFY RULE 4(j) OF THE RULES OF CIVIL PROCEDURE.

The General Assembly of North Carolina enacts:

**Section 1.** G.S. 1A-1, Rule 4(j) is amended by adding in the first sentence after the word "process" and before the word "shall" the phrase "within or without the State".

**Sec. 2.** G.S. 1A-1, Rule 4(j)(1)c. is amended by deleting the word "only".

**Sec. 3.** G.S. 1A-1, Rule 4(j)(9)c. is amended by redesignating the paragraph as section (jl) and rewriting the heading and the first sentence to read:

"(jl) Service by publication on party that cannot otherwise be served. — A party that cannot with due diligence be served by personal delivery or registered or certified mail may be served by publication."

**Sec. 4.** G.S. 1A-1, Rule 4 is amended by adding a new section to read:

"(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. — Before judgment by default may be had on service by registered or certified mail, 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). This affidavit together with the return receipt signed by the person who received the mail if not the addressee raises a presumption that the person who received the mail 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 and proof of service in accordance with G.S. 1-75.10(2)."

**Sec. 5.** G.S. 1A-1, Rule 4(j)(9)d. is amended by redesignating the paragraph as Section (j3) and rewriting the heading to read:

"Service in a foreign country. — " and by deleting in the first sentence the phrase "under this subsection (9)" and by deleting the last sentence and substituting in lieu thereof the following: "Proof of service may be made as prescribed in G.S. 1-75.10, by the order of the

court, or by the law of the foreign country. Proof of service by mail shall include an affidavit or certificate of addressing and mailing by the clerk of court."

**Sec. 6.** G.S. 1A-1, Rule 4 is amended by adding a new section to read:

"(j4) No party may attack service of process or a judgment of default on the basis that service should or could have been effected by personal service rather than service by registered or certified mail. No party that receives timely actual notice may attack a judgment by default on the basis that the statutory requirement of due diligence as a condition precedent to service by publication was not met."

**Sec. 7.** G.S. 1A-1, Rule 4(jl) is redesignated (j5).

**Sec. 8.** G.S. 1A-1, Rule 4(j)(9), except paragraphs c. and d., is repealed.

**Sec. 9.** G.S. 1-75.10(l)b is amended by deleting the phrase "Rule 4(j)(9)d" and inserting in lieu thereof the phrase "Rule 4(j3)".

**Sec. 10.** G.S. 1-75.10(4) is amended by deleting the phrase "showing the circumstances warranting the use of service by registered or certified mail and".

**Sec. 11.** This act shall become effective October 1, 1981, and applies to actions commenced on or after this date.

In the General Assembly read three times and ratified, this the 10th day of June, 1981.