

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 814

Short Title: Memorandum Filed With Motion.

(Public)

Sponsors: Senators Winner, Rand, Cooper, and Gulley.

Referred to: Judiciary I/Constitution

April 25, 1995

A BILL TO BE ENTITLED

**AN ACT TO REQUIRE CERTAIN DISPOSITIVE MOTIONS TO BE
ACCOMPANIED BY A MEMORANDUM.**

The General Assembly of North Carolina enacts:

Section 1. G.S. 1A-1, Rule 7(b), is amended by adding a new subdivision to
read:

"(4) A motion for summary judgment and a motion made pursuant to Rule 12, whether asserted in a responsive pleading or otherwise, that would, if allowed, dispose of one or more claims, shall be accompanied by a supporting memorandum that shall contain a concise statement of the nature of the case, the facts relevant to the motion, and an argument in support of the motion. For a motion made pursuant to Rule 12 asserted in a responsive pleading, the requirement of the memorandum accompanying the motion is fulfilled if the memorandum accompanies the notice of hearing of the motion. If such a motion or notice is not accompanied by a supporting memorandum, it shall be considered abandoned.

Parties opposing such a motion may file an opposing memorandum that shall contain a concise statement of the facts and an argument in opposition to the motion. Any opposing memorandum shall be filed

1 and served at least five business days before the scheduled hearing on
2 the motion. A reply to any opposing memorandum may be filed by the
3 moving party. Any reply shall be filed and served at least one business
4 day before the scheduled hearing on the motion.

5 Supporting and opposing memoranda shall not exceed 20 pages, and a
6 reply to an opposing memorandum shall not exceed 10 pages, without
7 prior court approval."

8 Sec. 2. G.S. 1A-1, Rule 6(d) reads as rewritten:

9 "(d) For motions, affidavits. – A written motion, other than one which may be heard
10 ex parte, and notice of the hearing thereof shall be served not later than five days before
11 the time specified for the hearing, unless a different period is fixed by these rules or by
12 order of the court. Such an order may for cause shown be made on ex parte application.
13 When a motion is supported by affidavit, the affidavit shall be served with the motion;
14 and except as otherwise provided in Rule 59(c), opposing affidavits may unless the court
15 permits them to be served at some other time be served not later than one day before the
16 hearing. Motions or notices of hearing that require supporting memoranda pursuant to
17 Rule 7(b)(4) shall be served not later than 30 days before the time specified for the
18 hearing."

19 Sec. 3. G.S. 1A-1, Rule 56(c) reads as rewritten:

20 "(c) Motion and proceedings thereon. —~~The motion shall be served at least 10 days~~
21 ~~before the time fixed for the hearing.—~~The motion and supporting affidavits shall be served
22 at least 30 days before the time fixed for the hearing. The adverse party prior to the day
23 of hearing may serve opposing affidavits. The judgment sought shall be rendered
24 forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file,
25 together with the affidavits, if any, show that there is no genuine issue as to any material
26 fact and that any party is entitled to a judgment as a matter of law. A summary judgment,
27 interlocutory in character, may be rendered on the issue of liability alone although there
28 is genuine issue as to the amount of damages. Summary judgment, when appropriate,
29 may be rendered against the moving party."

30 Sec. 4. This act becomes effective October 1, 1995, and applies to any motions
31 for summary judgment and any motions made pursuant to G.S. 1A-1, Rule 12, filed on or
32 after that date.