

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

1

SENATE BILL 311

Short Title: Modify Summons Under Rule 4.

(Public)

---

Sponsors: Senator Miller.

---

Referred to: Judiciary II.

---

March 10, 1999

A BILL TO BE ENTITLED

AN ACT TO MODIFY RULE 4 OF THE RULES OF CIVIL PROCEDURE TO  
EXTEND THE LENGTH OF THE LIFE OF A SUMMONS AND TO ABOLISH  
ENDORSEMENT AS A MEANS OF REVIVING A SUMMONS.

The General Assembly of North Carolina enacts:

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

"(c) Summons — Return. — Personal Time allowed for service. — Subject to Rule 4(d), (d1), and (d2), personal service or substituted personal service of summons as prescribed by Rule 4(j)(1) ~~a and b~~ a. and b. must be made within ~~30-90~~ 90 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 ~~60-120~~ 120 days. ~~When~~

(c1) Summons — Return. — 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 service.~~ 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~~ the time allowed by the officer to the clerk of the court who issued it with

1 notation thereon of its nonservice and the reasons therefor as to every such party not  
2 served, but failure to comply with this requirement shall not invalidate the summons."

3 Section 2. G.S. 1A-1, Rule 4(d) reads as rewritten:

4 "(d) Summons — ~~Extension; endorsement, alias and pluries.~~ Extension of time for  
5 servng. — When any defendant in a civil action is not served with the original summons  
6 within the time allowed for service, service under Rule 4(c), the action may be continued  
7 in existence as to such that unserved defendant by either of the following methods of  
8 extension:

- 9 (1) ~~The plaintiff may secure an endorsement upon the original summons for~~  
10 ~~an extension of time within which to complete service of process.~~  
11 ~~Return of the summons so endorsed shall be in the same manner as the~~  
12 ~~original process. Such endorsement may be secured within 90 days after~~  
13 ~~the issuance of summons or the date of the last prior endorsement, or~~  
14 (2) ~~The plaintiff may sue the plaintiff suing out an alias or pluries summons~~  
15 ~~returnable in the same manner as the original process. Such alias or~~  
16 ~~pluries summons may be sued out at any time within 90 days after the~~  
17 ~~date of issue of the last preceding summons in the chain of summonses~~  
18 ~~or within 90 days of the last prior endorsement. after the issuance of the~~  
19 ~~original summons. The alias or pluries summons shall be returned in~~  
20 ~~the manner prescribed under Rule 4(c1). Subsequent alias or pluries~~  
21 ~~summons, returnable in the same manner as the original summons, may~~  
22 ~~be sued out at any time within 90 days after the date of issuance of the~~  
23 ~~last preceding summons in the chain of summonses.~~

24 ~~Provided, in (d1) Summons – Extension of time for serving in tax and assessment~~  
25 ~~foreclosures. – In tax and assessment foreclosures under G.S. 47-108.25 and G.S. 105-~~  
26 ~~374, the first endorsement may be made at any time within two years after the issuance of the~~  
27 ~~original summons, and subsequent endorsements may thereafter be made as in other actions; or~~  
28 ~~an an alias or pluries summons may be sued out at any time within two years after the~~  
29 ~~issuance of the original summons, and after summons. After the issuance of such alias or~~  
30 ~~pluries summons, the chain of summonses may be kept up as in any other action.~~

31 ~~Provided, for (d2) Summons – Extension of time for serving defendant not within the~~  
32 ~~Unites States. – For service upon a defendant in a place not within the United States, the~~  
33 ~~first endorsement may be made at any time within two years after the issuance of the original~~  
34 ~~summons, and subsequent endorsements may thereafter be made at least once every two years;~~  
35 ~~or States at the time the action is commenced, an alias or pluries summons may be sued~~  
36 ~~out at any time within two years after the issuance of the original summons, and after~~  
37 ~~summons. After the issuance of such alias or pluries summons, the chain of summonses~~  
38 ~~may be kept up as in any other action if sued out within two years of the last preceding~~  
39 ~~summons in the chain of summonses or within two years of the last prior endorsement.~~

40 ~~Provided, further, the methods of extension may be used interchangeably in any case~~  
41 ~~and regardless of the form of the preceding extension. summonses."~~

42 Section 3. G.S. 1A-1, Rule 4(e) reads as rewritten:

1       "(e) Summons – Discontinuance. – When ~~there is neither endorsement by the clerk nor~~  
2 ~~issuance of an~~ alias or pluries summons is not issued within the time specified in Rule  
3 4(d), (d1), and (d2), the action is discontinued as to any defendant not theretofore served  
4 with summons within the time allowed. Thereafter, alias or pluries summons may issue,  
5 ~~or an extension be endorsed by the clerk,~~ but, as to such defendant, the action shall be  
6 deemed to have commenced on the date of such ~~issuance or endorsement.~~ issuance."

7           Section 4. G.S. 1A-1, Rule 4(f) reads as rewritten:

8       "(f) Summons – Date of multiple summonses. – If the plaintiff shall cause separate  
9 or additional summonses to be issued as provided in Rule 4(a), the date of issuance of  
10 ~~such that~~ separate or additional summonses shall be considered the same as that of the  
11 original summons for purposes of ~~endorsement or alias~~ or pluries summons under Rule  
12 ~~4(d).~~ 4(d), (d1), and (d2)."

13           Section 5. G.S. 1A-1, Rule 4(g) reads as rewritten:

14       "(g) Summons – Docketing by clerk. – The clerk shall keep a record in which ~~he~~ the  
15 clerk shall note the day and hour of issuance of every summons, whether original, alias,  
16 ~~pluries, or endorsement thereon.~~ or pluries. When the summons is returned, the clerk shall  
17 note on the record the date of the return and the fact as to service or ~~non-service.~~  
18 nonservice."

19           Section 6. This act becomes effective October 1, 1999, and applies to causes  
20 of action filed on or after that date.