

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001**

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**HOUSE BILL 439**

Short Title: Civil Procedure Rule Changes.

(Public)

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Sponsors: Representatives Haire, Pope; and Barefoot.

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Referred to: Judiciary II.

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March 1, 2001

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

The General Assembly of North Carolina enacts:

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

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

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

**SUMMONS ALIVE FOR 60 DAYS (RULE 4(c))**

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

"(c) Summons – Return. – Personal service or substituted personal service of summons as prescribed by Rule 4(j)(1) a and b must be made within ~~30~~60 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 days.~~ summons. 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."

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~~; 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~~; 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.

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

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

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

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

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

NOTICE OF SERVICE OF PROCESS BY PUBLICATION
STATE OF NORTH CAROLINA \_\_\_\_\_ COUNTY

IN THE \_\_\_\_\_ COURT

[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 telextransmission for receipt by 5:00 p.m. Eastern Time on a regular business  
23 day, as evidenced by a telextransmission receipt confirmation. If receipt of delivery by  
24 telextransmission 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.”~~

## 23 EXPAND CIRCUMSTANCES FOR SUBSTITUTION OF A JUDGE (RULE 63)

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

### 25 “Rule 63. Disability of a judge.

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

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

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

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.