

1 Article 2.

2 Commencement of Action; Service of Process, Pleadings, Motions, and Orders.

3 **Rule 3. Commencement of action.**

4 (a) A civil action is commenced by filing a complaint with the court. The clerk shall
5 enter the date of filing on the original complaint, and such entry shall be prima facie evidence
6 of the date of filing.

7 A civil action may also be commenced by the issuance of a summons when

8 (1) A person makes application to the court stating the nature and purpose of
9 his action and requesting permission to file his complaint within 20 days and

10 (2) The court makes an order stating the nature and purpose of the action and
11 granting the requested permission.

12 The summons and the court's order shall be served in accordance with the provisions of Rule 4.
13 When the complaint is filed it shall be served in accordance with the provisions of Rule 4 or by
14 registered mail if the plaintiff so elects. If the complaint is not filed within the period specified
15 in the clerk's order, the action shall abate. (b) The clerk shall maintain as prescribed by the
16 Administrative Office of the Courts a separate index of all medical malpractice actions, as
17 defined in G.S. 90-21.11. Upon the commencement of a medical malpractice action, the clerk
18 shall provide a current copy of the index to the senior regular resident judge of the district in
19 which the action is pending. (1967, c. 954, s. 1; 1987, c. 859, s. 2.)
20

21 **Rule 4. Process.**

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

32 (b) Summons – Contents. – The summons shall run in the name of the State and be
33 dated and signed by the clerk, assistant clerk, or deputy clerk of the court in the county in
34 which the action is commenced. It shall contain the title of the cause and the name of the court
35 and county wherein the action has been commenced. It shall be directed to the defendant or
36 defendants and shall notify each defendant to appear and answer within 30 days after its service
37 upon him and further that if he fails so to appear, the plaintiff will apply to the court for the
38 relief demanded in the complaint. It shall set forth the name and address of plaintiff 's attorney,
39 or if there be none, the name and address of plaintiff. If a request for admission is served with
40 the summons, the summons shall so state.

41 (c) Summons – Return. – Personal service or substituted personal service of summons
42 as prescribed by Rules 4(j) and (j1) must be made within 60 days after the date of the issuance
43 of summons. When a summons has been served upon every party named in the summons, it
44 shall be returned immediately to the clerk who issued it, with notation thereon of its service.

45 Failure to make service within the time allowed or failure to return a summons to the clerk
46 after it has been served on every party named in the summons shall not invalidate the
47 summons. If the summons is not served within the time allowed upon every party named in the
48 summons, it shall be returned immediately upon the expiration of such time by the officer to
49 the clerk of the court who issued it with notation thereon of its nonservice and the reasons
50 therefor as to every such party not served, but failure to comply with this requirement shall not
51 invalidate the summons.

1 (d) Summons – Extension; endorsement, alias and pluries. – When any defendant in a
2 civil action is not served within the time allowed for service, the action may be continued in
3 existence as to such defendant by either of the following methods of extension:

4 (1) The plaintiff may secure an endorsement upon the original summons for an
5 extension of time within which to complete service of process. Return of the
6 summons so endorsed shall be in the same manner as the original process.
7 Such endorsement may be secured within 90 days after the issuance of
8 summons or the date of the last prior endorsement, or

9 (2) The plaintiff may sue out an alias or pluries summons returnable in the same
10 manner as the original process. Such alias or pluries summons may be sued
11 out at any time within 90 days after the date of issue of the last preceding
12 summons in the chain of summonses or within 90 days of the last prior
13 endorsement.

14 Provided, in tax and assessment foreclosures under G.S. 47-108.25 and G.S. 105-374, the
15 first endorsement may be made at any time within two years after the issuance of the original
16 summons, and subsequent endorsements may thereafter be made as in other actions; or an alias
17 or pluries summons may be sued out at any time within two years after the issuance of the
18 original summons, and after the issuance of such alias or pluries summons, the chain of
19 summonses may be kept up as in any other action.

20 Provided, for service upon a defendant in a place not within the United States, the first
21 endorsement may be made at any time within two years after the issuance of the original
22 summons, and subsequent endorsements may thereafter be made at least once every two years;
23 or an alias or pluries summons may be sued out at any time within two years after the issuance
24 of the original summons, and after the issuance of such alias or pluries summons, the chain of
25 summonses may be kept up as in any other action if sued out within two years of the last
26 preceding summons in the chain of summonses or within two years of the last prior
27 endorsement.

28 Provided, further, the methods of extension may be used interchangeably in any case and
29 regardless of the form of the preceding extension.

30 (e) Summons – Discontinuance. – When there is neither endorsement by the clerk nor
31 issuance of alias or pluries summons within the time specified in Rule 4(d), the action is
32 discontinued as to any defendant not theretofore served with summons within the time allowed.
33 Thereafter, alias or pluries summons may issue, or an extension be endorsed by the clerk, but,
34 as to such defendant, the action shall be deemed to have commenced on the date of such
35 issuance or endorsement.

36 (f) Summons – Date of multiple summonses. – If the plaintiff shall cause separate or
37 additional summonses to be issued as provided in Rule 4(a), the date of issuance of such
38 separate or additional summonses shall be considered the same as that of the original summons
39 for purposes of endorsement or alias summons under Rule 4(d).

40 (g) Summons – Docketing by clerk. – The clerk shall keep a record in which he shall
41 note the day and hour of issuance of every summons, whether original, alias, pluries, or
42 endorsement thereon. When the summons is returned, the clerk shall note on the record the date
43 of the return and the fact as to service or non-service.

44 (h) Summons – When proper officer not available. – If at any time there is not in a
45 county a proper officer, capable of executing process, to whom summons or other process can
46 be delivered for service, or if a proper officer refuses or neglects to execute such process, or if
47 such officer is a party to or otherwise interested in the action or proceeding, the clerk of the
48 issuing court, upon the facts being verified before him by written affidavit of the plaintiff or his
49 agent or attorney, shall appoint some suitable person who, after he accepts such process for
50 service, shall execute such process in the same manner, with like effect, and subject to the same
51 liabilities, as if such person were a proper officer regularly serving process in that county.

1 (h1) Summons – When process returned unexecuted. – If a proper officer returns a
2 summons or other process unexecuted, the plaintiff or his agent or attorney may cause service
3 to be made by anyone who is not less than 21 years of age, who is not a party to the action, and
4 who is not related by blood or marriage to a party to the action or to a person upon whom
5 service is to be made. This subsection shall not apply to executions pursuant to Article 28 of
6 Chapter 1 or summary ejectment pursuant to Article 3 of Chapter 42 of the General Statutes.

7 (i) Summons – Amendment. – At any time, before or after judgment, in its discretion
8 and upon such terms as it deems just, the court may allow any process or proof of service
9 thereof to be amended, unless it clearly appears that material prejudice would result to
10 substantial rights of the party against whom the process issued.

11 (j) Process – Manner of service to exercise personal jurisdiction. –
12 In any action commenced in a court of this State having jurisdiction of the subject matter and
13 grounds for personal jurisdiction as provided in G.S. 1-75.4, the manner of service of process
14 within or without the State shall be as follows:

15 (1) Natural Person. – Except as provided in subdivision (2) below, upon a
16 natural person by one of the following:

- 17 a. By delivering a copy of the summons and of the complaint to the
18 natural person or by leaving copies thereof at the defendant's
19 dwelling house or usual place of abode with some person of suitable
20 age and discretion then residing therein.
21 b. By delivering a copy of the summons and of the complaint to an
22 agent authorized by appointment or by law to be served or to accept
23 service of process or by serving process upon such agent or the party
24 in a manner specified by any statute.
25 c. By mailing a copy of the summons and of the complaint, registered
26 or certified mail, return receipt requested, addressed to the party to be
27 served, and delivering to the addressee.
28 d. By depositing with a designated delivery service authorized pursuant
29 to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint,
30 addressed to the party to be served, delivering to the addressee, and
31 obtaining a delivery receipt. As used in this sub-subdivision,
32 "delivery receipt" includes an electronic or facsimile receipt.
33 e. By mailing a copy of the summons and of the complaint by signature
34 confirmation as provided by the United States Postal Service,
35 addressed to the party to be served, and delivering to the addressee.

36 (2) Natural Person under Disability. – Upon a natural person under disability by
37 serving process in any manner prescribed in this section (j) for service upon
38 a natural person and, in addition, where required by paragraph a or b below,
39 upon a person therein designated.

- 40 a. Where the person under disability is a minor, process shall be served
41 separately in any manner prescribed for service upon a natural person
42 upon a parent or guardian having custody of the child, or if there be
43 none, upon any other person having the care and control of the child.
44 If there is no parent, guardian, or other person having care and
45 control of the child when service is made upon the child, then service
46 of process must also be made upon a guardian ad litem who has been
47 appointed pursuant to Rule 17.
48 b. If the plaintiff actually knows that a person under disability is under
49 guardianship of any kind, process shall be served separately upon his
50 guardian in any manner applicable and appropriate under this section
51 (j). If the plaintiff does not actually know that a guardian has been

1 appointed when service is made upon a person known to him to be
2 incompetent to have charge of his affairs, then service of process
3 must be made upon a guardian ad litem who has been appointed
4 pursuant to Rule 17.

5 (3) The State. – Upon the State by personally delivering a copy of the summons
6 and of the complaint to the Attorney General or to a deputy or assistant
7 attorney general; by mailing a copy of the summons and of the complaint,
8 registered or certified mail, return receipt requested, addressed to the
9 Attorney General or to a deputy or assistant attorney general; or by
10 depositing with a designated delivery service authorized pursuant to 26
11 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the
12 Attorney General or to a deputy or assistant attorney general, delivering to
13 the addressee, and obtaining a delivery receipt. As used in this subdivision,
14 "delivery receipt" includes an electronic or facsimile receipt.

15 (4) An Agency of the State. –

16 a. Upon an agency of the State by personally delivering a copy of the
17 summons and of the complaint to the process agent appointed by the
18 agency in the manner hereinafter provided; by mailing a copy of the
19 summons and of the complaint, registered or certified mail, return
20 receipt requested, addressed to said process agent; or by depositing
21 with a designated delivery service authorized pursuant to 26 U.S.C. §
22 7502(f)(2) a copy of the summons and complaint, addressed to the
23 process agent, delivering to the addressee, and obtaining a delivery
24 receipt. As used in this sub-subdivision, "delivery receipt" includes
25 an electronic or facsimile receipt.

26 b. Every agency of the State shall appoint a process agent by filing with
27 the Attorney General the name and address of an agent upon whom
28 process may be served.

29 c. If any agency of the State fails to comply with paragraph b above,
30 then service upon such agency may be made by personally delivering
31 a copy of the summons and of the complaint to the Attorney General
32 or to a deputy or assistant attorney general; by mailing a copy of the
33 summons and of the complaint, registered or certified mail, return
34 receipt requested, addressed to the Attorney General, or to a deputy
35 or assistant attorney general; or by depositing with a designated
36 delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy
37 of the summons and complaint, addressed to the Attorney General or
38 to a deputy or assistant attorney general, delivering to the addressee,
39 and obtaining a delivery receipt. As used in this sub-subdivision,
40 "delivery receipt" includes an electronic or facsimile receipt.

41 d. For purposes of this rule, the term "agency of the State" includes
42 every agency, institution, board, commission, bureau, department,
43 division, council, member of Council of State, or officer of the State
44 government of the State of North Carolina, but does not include
45 counties, cities, towns, villages, other municipal corporations or
46 political subdivisions of the State, county or city boards of education,
47 other local public districts, units, or bodies of any kind, or private
48 corporations created by act of the General Assembly.

49 (5) Counties, Cities, Towns, Villages and Other Local Public Bodies. –

50 a. Upon a city, town, or village by personally delivering a copy of the
51 summons and of the complaint to its mayor, city manager or clerk;

1 by mailing a copy of the summons and of the complaint, registered or
2 certified mail, return receipt requested, addressed to its mayor, city
3 manager or clerk; or by depositing with a designated delivery service
4 authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons
5 and complaint, addressed to the mayor, city manager, or clerk,
6 delivering to the addressee, and obtaining a delivery receipt. As used
7 in this sub-subdivision, "delivery receipt" includes an electronic or
8 facsimile receipt.

9 b. Upon a county by personally delivering a copy of the summons and
10 of the complaint to its county manager or to the chairman, clerk or
11 any member of the board of commissioners for such county; by
12 mailing a copy of the summons and of the complaint, registered or
13 certified mail, return receipt requested, addressed to its county
14 manager or to the chairman, clerk, or any member of this board of
15 commissioners for such county; or by depositing with a designated
16 delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy
17 of the summons and complaint, addressed to the county manager or
18 to the chairman, clerk, or any member of the board of commissioners
19 of that county, delivering to the addressee, and obtaining a delivery
20 receipt. As used in this sub-subdivision, "delivery receipt" includes
21 an electronic or facsimile receipt.

22 c. Upon any other political subdivision of the State, any county or city
23 board of education, or other local public district, unit, or body of any
24 kind (i) by personally delivering a copy of the summons and of the
25 complaint to an officer or director thereof, (ii) by personally
26 delivering a copy of the summons and of the complaint to an agent or
27 attorney-in-fact authorized by appointment or by statute to be served
28 or to accept service in its behalf, (iii) by mailing a copy of the
29 summons and of the complaint, registered or certified mail, return
30 receipt requested, addressed to the officer, director, agent, or
31 attorney-in-fact as specified in (i) and (ii), or (iv) by depositing with
32 a designated delivery service authorized pursuant to 26 U.S.C. §
33 7502(f)(2) a copy of the summons and complaint, addressed to the
34 officer, director, agent, or attorney-in-fact as specified in (i) and (ii),
35 delivering to the addressee, and obtaining a delivery receipt. As used
36 in this sub-subdivision, "delivery receipt" includes an electronic or
37 facsimile receipt.

38 d. In any case where none of the officials, officers or directors specified
39 in paragraphs a, b and c can, after due diligence, be found in the
40 State, and that fact appears by affidavit to the satisfaction of the
41 court, or a judge thereof, such court or judge may grant an order that
42 service upon the party sought to be served may be made by
43 personally delivering a copy of the summons and of the complaint to
44 the Attorney General or any deputy or assistant attorney general of
45 the State of North Carolina; by mailing a copy of the summons and
46 of the complaint, registered or certified mail, return receipt requested,
47 addressed to the Attorney General or any deputy or assistant attorney
48 general of the State of North Carolina; or by depositing with a
49 designated delivery service authorized pursuant to 26 U.S.C. §
50 7502(f)(2) a copy of the summons and complaint, addressed to the
51 Attorney General or any deputy or assistant attorney general of the

1 State of North Carolina, delivering to the addressee, and obtaining a
2 delivery receipt. As used in this sub-subdivision, "delivery receipt"
3 includes an electronic or facsimile receipt.

4 (6) Domestic or Foreign Corporation. – Upon a domestic or foreign corporation
5 by one of the following:

- 6 a. By delivering a copy of the summons and of the complaint to an
7 officer, director, or managing agent of the corporation or by leaving
8 copies thereof in the office of such officer, director, or managing
9 agent with the person who is apparently in charge of the office.
- 10 b. By delivering a copy of the summons and of the complaint to an
11 agent authorized by appointment or by law to be served or to accept
12 service of process or by serving process upon such agent or the party
13 in a manner specified by any statute.
- 14 c. By mailing a copy of the summons and of the complaint, registered
15 or certified mail, return receipt requested, addressed to the officer,
16 director or agent to be served as specified in paragraphs a and b.
- 17 d. By depositing with a designated delivery service authorized pursuant
18 to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint,
19 addressed to the officer, director, or agent to be served as specified in
20 paragraphs a. and b., delivering to the addressee, and obtaining a
21 delivery receipt. As used in this sub-subdivision, "delivery receipt"
22 includes an electronic or facsimile receipt.

23 (7) Partnerships. – Upon a general or limited partnership:

- 24 a. By delivering a copy of the summons and of the complaint to any
25 general partner, or to any attorney-in-fact or agent authorized by
26 appointment or by law to be served or to accept service of process in
27 its behalf; by mailing a copy of the summons and of the complaint,
28 registered or certified mail, return receipt requested, addressed to any
29 general partner, or to any attorney-in-fact or agent authorized by
30 appointment or by law to be served or to accept service of process in
31 its behalf; or by depositing with a designated delivery service
32 authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons
33 and complaint, addressed to any general partner or to any
34 attorney-in-fact or agent authorized by appointment or by law to be
35 served or to accept service of process in its behalf, delivering to the
36 addressee, and obtaining a delivery receipt; or by leaving copies
37 thereof in the office of such general partner, attorney-in-fact or agent
38 with the person who is apparently in charge of the office. As used in
39 this sub-subdivision, "delivery receipt" includes an electronic or
40 facsimile receipt.
- 41 b. If relief is sought against a partner specifically, a copy of the
42 summons and of the complaint must be served on such partner as
43 provided in this section (j).

44 (8) Other Unincorporated Associations and Their Officers. – Upon any
45 unincorporated association, organization, or society other than a partnership
46 by one of the following:

- 47 a. By delivering a copy of the summons and of the complaint to an
48 officer, director, managing agent or member of the governing body
49 of the unincorporated association, organization or society, or by
50 leaving copies thereof in the office of such officer, director,

1 managing agent or member of the governing body with the person
2 who is apparently in charge of the office.

3 b. By delivering a copy of the summons and of the complaint to an
4 agent authorized by appointment or by law to be served or to accept
5 service of process or by serving process upon such agent or the party
6 in a manner specified by any statute.

7 c. By mailing a copy of the summons and of the complaint, registered
8 or certified mail, return receipt requested, addressed to the officer,
9 director, agent or member of the governing body to be served as
10 specified in paragraphs a and b.

11 d. By depositing with a designated delivery service authorized pursuant
12 to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint,
13 addressed to the officer, director, agent, or member of the governing
14 body to be served as specified in paragraphs a. and b., delivering to
15 the addressee, and obtaining a delivery receipt. As used in this
16 sub-subdivision, "delivery receipt" includes an electronic or facsimile
17 receipt.

18 (9) Foreign States and Their Political Subdivisions, Agencies, and
19 Instrumentalities. – Upon a foreign state or a political subdivision, agency,
20 or instrumentality thereof, pursuant to 28 U.S.C. § 1608.

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

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

51 NOTICE OF SERVICE OF PROCESS BY PUBLICATION

1 STATE OF NORTH CAROLINA _____ COUNTY

2
3 In the _____ Court
4

5 [Title of action or special proceeding] [To Person to be served]:

6 Take notice that a pleading seeking relief against you (has been filed) (is required to be filed
7 not later than _____, ____) in the above-entitled (action) (special proceeding). The
8 nature of the relief being sought is as follows:

9 (State nature.)

10 You are required to make defense to such pleading not later than (_____, ____) and
11 upon your failure to do so the party seeking service against you will apply to the court for the
12 relief sought.

13 This, the _____ day of _____, ____

14 _____ (Attorney) (Party)

15 _____ (Address)

16 (j2) Proof of service. – Proof of service of process shall be as follows:

17 (1) Personal Service. – Before judgment by default may be had on personal
18 service, proof of service must be provided in accordance with the
19 requirements of G.S. 1-75.10(a)(1).

20 (2) Registered or Certified Mail, Signature Confirmation, or Designated
21 Delivery Service. – Before judgment by default may be had on service by
22 registered or certified mail, signature confirmation, or by a designated
23 delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery
24 receipt, the serving party shall file an affidavit with the court showing proof
25 of such service in accordance with the requirements of G.S. 1-75.10(a)(4),
26 1-75.10(a)(5), or 1-75.10(a)(6), as appropriate. This affidavit together with
27 the return receipt, copy of the proof of delivery provided by the United
28 States Postal Service, or delivery receipt, signed by the person who received
29 the mail or delivery if not the addressee raises a presumption that the person
30 who received the mail or delivery and signed the receipt was an agent of the
31 addressee authorized by appointment or by law to be served or to accept
32 service of process or was a person of suitable age and discretion residing in
33 the addressee's dwelling house or usual place of abode. In the event the
34 presumption described in the preceding sentence is rebutted by proof that the
35 person who received the receipt at the addressee's dwelling house or usual
36 place of abode was not a person of suitable age and discretion residing
37 therein, the statute of limitation may not be pleaded as a defense if the action
38 was initially commenced within the period of limitation and service of
39 process is completed within 60 days from the date the service is declared
40 invalid. Service shall be complete on the day the summons and complaint
41 are delivered to the address. As used in this subdivision, "delivery receipt"
42 includes an electronic or facsimile receipt provided by a designated delivery
43 service.

44 (3) Publication. – Before judgment by default may be had on service by
45 publication, the serving party shall file an affidavit with the court showing
46 the circumstances warranting the use of service by publication, information,
47 if any, regarding the location of the party served which was used in
48 determining the area in which service by publication was printed and proof
49 of service in accordance with G.S. 1-75.10(a)(2).

1 (j3) Service in a foreign country. – Unless otherwise provided by federal law, service
2 upon a defendant, other than an infant or an incompetent person, may be effected in a place not
3 within the United States:

4 (1) By any internationally agreed means reasonably calculated to give notice,
5 such as those means authorized by the Hague Convention on the Service
6 Abroad of Judicial and Extrajudicial Documents; or

7 (2) If there is no internationally agreed means of service or the applicable
8 international agreement allows other means of service, provided that service
9 is reasonably calculated to give notice:

10 a. In the manner prescribed by the law of the foreign country for service
11 in that country in an action in any of its courts of general jurisdiction;

12 b. As directed by the foreign authority in response to a letter rogatory or
13 letter of request; or

14 c. Unless prohibited by the law of the foreign country, by

15 1. Delivery to the individual personally of a copy of the
16 summons and the complaint and, upon a corporation,
17 partnership, association or other such entity, by delivery to an
18 officer or a managing or general agent;

19 2. Any form of mail requiring a signed receipt, to be addressed
20 and dispatched by the clerk of the court to the party to be
21 served; or

22 (3) By other means not prohibited by international agreement as may be directed
23 by the court.

24 Service under subdivision (2)c.1. or (3) of this subsection may be made by any person
25 authorized by subsection (a) of this Rule or who is designated by order of the court or by the
26 foreign court.

27 On request, the clerk shall deliver the summons to the plaintiff for transmission to the
28 person or the foreign court or officer who will make the service. Proof of service may be made
29 as prescribed in G.S. 1-75.10, by the order of the court, or by the law of the foreign country.

30 Proof of service by mail shall include an affidavit or certificate of addressing and mailing
31 by the clerk of court.

32 (j4) Process or judgment by default not to be attacked on certain grounds. – No party
33 may attack service of process or a judgment of default on the basis that service should or could
34 have been effected by personal service rather than service by registered or certified mail. No
35 party that receives timely actual notice may attack a judgment by default on the basis that the
36 statutory requirement of due diligence as a condition precedent to service by publication was
37 not met.

38 (j5) Personal jurisdiction by acceptance of service. – Any party personally, or through
39 the persons provided in Rule 4(j), may accept service of process by notation of acceptance of
40 service together with the signature of the party accepting service and the date thereof on an
41 original or copy of a summons, and such acceptance shall have the same force and effect as
42 would exist had the process been served by delivery of copy and summons and complaint to the
43 person signing said acceptance.

44 (j6) Service by electronic mailing not authorized. – Nothing in subsection (j) of this
45 section authorizes the use of electronic mailing for service on the party to be served.

46 (k) Process – Manner of service to exercise jurisdiction in rem or quasi in rem. – In any
47 action commenced in a court of this State having jurisdiction of the subject matter and grounds
48 for the exercise of jurisdiction in rem or quasi in rem as provided in G.S. 1-75.8, the manner of
49 service of process shall be as follows:

50 (1) Defendant Known. – If the defendant is known, he may be served in the
51 appropriate manner prescribed for service of process in section (j), or, if

1 otherwise appropriate section (j1); except that the requirement for service by
2 publication in (j1) shall be satisfied if made in the county where the action is
3 pending and proof of service is made in accordance with section (j2).

- 4 (2) Defendant Unknown. – If the defendant is unknown, he may be designated
5 by description and process may be served by publication in the manner
6 provided in section (j1), except that the requirement for service by
7 publication in (j1) shall be satisfied if made in the county where the action is
8 pending and proof of service is made in accordance with section (j2). (1967,
9 c. 954, s. 1; 1969, c. 895, ss. 1-4; 1971, c. 962; c. 1156, s. 2; 1975, cc. 408,
10 609; 1977, c. 910, ss. 1-3; 1981, c. 384, s. 3; c. 540, ss. 1-8; 1983, c. 679, ss.
11 1, 2; 1989, c. 330; c. 575, ss. 1, 2; 1995, c. 275, s. 1; c. 389, ss. 2, 3; c. 509,
12 s. 135.1(e), (f); 1997-469, s. 1; 1999-456, s. 59; 2001-379, ss. 1, 2, 2.1, 2.2;
13 2005-221, ss. 1, 2; 2008-36, ss. 1-3, 5; 2011-332, s. 3.1.)
14

15 **Rule 5. Service and filing of pleadings and other papers.**

16 (a) Service of orders, subsequent pleadings, discovery papers, written motions, written
17 notices, and other similar papers – When required. – Every order required by its terms to be
18 served, every pleading subsequent to the original complaint unless the court otherwise orders
19 because of numerous defendants, every paper relating to discovery required to be served upon a
20 party unless the court otherwise orders, every written motion other than one which may be
21 heard ex parte, and every written notice, appearance, demand, offer of judgment and similar
22 paper shall be served upon each of the parties, but no service need be made on parties in default
23 for failure to appear except that pleadings asserting new or additional claims for relief against
24 them shall be served upon them in the manner provided for service of summons in Rule 4.

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

38 (b) Service – How made. – A pleading setting forth a counterclaim or cross claim shall
39 be filed with the court and a copy thereof shall be served on the party against whom it is
40 asserted or on the party's attorney of record as provided by this subsection.

41 With respect to all pleadings subsequent to the original complaint and other papers required
42 or permitted to be served, service shall be made upon the party's attorney of record and, if
43 ordered by the court, also upon the party. If the party has no attorney of record, service shall be
44 made upon the party. With respect to such other pleadings and papers, service with due return
45 may be made in a manner provided for service and return of process in Rule 4. Service under
46 this subsection may also be made by one of the following methods:

- 47 (1) Upon a party's attorney of record:

48 a. By delivering a copy to the attorney. Delivery of a copy within this
49 sub-subdivision means handing it to the attorney, leaving it at the
50 attorney's office with a partner or employee, or sending it to the
51 attorney's office by a confirmed telefacsimile transmittal for receipt

1 by 5:00 P.M. Eastern Time on a regular business day, as evidenced
2 by a telefacsimile receipt confirmation. If receipt of delivery by
3 telefacsimile is after 5:00 P.M., service will be deemed to have been
4 completed on the next business day.

5 b. By mailing a copy to the attorney's office.

6 (2) Upon a party:

7 a. By delivering a copy to the party. Delivery of a copy within this
8 sub-subdivision means handing it to the party.

9 b. By mailing a copy to the party at the party's last known address or, if
10 no address is known, by filing it with the clerk of court.

11 Service by mail shall be complete upon deposit of the pleading or paper enclosed in a
12 post-paid, properly addressed wrapper in a post office or official depository under the exclusive
13 care and custody of the United States Postal Service.

14 (b1) Service – Certificate of Service. – A certificate of service shall accompany every
15 pleading and every paper required to be served on any party or nonparty to the litigation, except
16 with respect to pleadings and papers whose service is governed by Rule 4. The certificate shall
17 show the date and method of service or the date of acceptance of service and shall show the
18 name and service address of each person upon whom the paper has been served. If one or more
19 persons are served by facsimile transmission, the certificate shall also show the telefacsimile
20 number of each person so served. Each certificate of service shall be signed in accordance with
21 and subject to Rule 11 of these rules.

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

30 (d) Filing. – The following papers shall be filed with the court, either before service or
31 within five days after service:

32 (1) All pleadings, as defined by Rule 7(a) of these rules, subsequent to the
33 complaint, whether such pleadings are original or amended.

34 (2) Written motions and all notices of hearing.

35 (3) Any other application to the court for an order that may affect the rights of
36 or in any way commands any individual, business entity, governmental
37 agency, association, or partnership to act or to forego action of any kind.

38 (4) Notices of appearance.

39 (5) Any other paper required by rule or statute to be filed.

40 (6) Any other paper so ordered by the court.

41 (7) All orders issued by the court.

42 All other papers, regardless of whether these rules require them to be served upon a party,
43 should not be filed with the court unless (i) the filing is agreed to by all parties, or (ii) the
44 papers are submitted to the court in relation to a motion or other request for relief, or (iii) the
45 filing is permitted by another rule or statute. Briefs or memoranda provided to the court may
46 not be filed with the clerk of court unless ordered by the court. The party taking a deposition or
47 obtaining material through discovery is responsible for its preservation and delivery to the court
48 if needed or so ordered.

49 (e) (1) Filing with the court defined. – The filing of pleadings and other papers with
50 the court as required by these rules shall be made by filing them with the
51 clerk of the court, except that the judge may permit the papers to be filed

1 with him, in which event he shall note thereon the filing date and forthwith
2 transmit them to the office of the clerk.

- 3 (2) Filing by electronic means. – If, pursuant to G.S. 7A-34 and G.S. 7A-343,
4 the Supreme Court and the Administrative Officer of the Courts establish
5 uniform rules, regulations, costs, procedures and specifications for the filing
6 of pleadings or other court papers by electronic means, filing may be made
7 by the electronic means when, in the manner, and to the extent provided
8 therein. (1967, c. 954, s. 1; 1971, c. 538; c. 1156, s. 2.5; 1975, c. 762, s. 1;
9 1983, c. 201, s. 1; 1985, c. 546; 1991, c. 168, s. 1; 2000-127, s. 1; 2001-379,
10 s. 3; 2001-388, s. 1; 2001-487, s. 107.5(a); 2004-199, s. 5(a); 2005-138, ss.
11 1, 2; 2006-187, s. 2(a); 2011-332, s. 4.2.)
12

13 **Rule 6. Time.**

14 (a) Computation. – In computing any period of time prescribed or allowed by these
15 rules, by order of court, or by any applicable statute, including rules, orders or statutes
16 respecting publication of notices, the day of the act, event, default or publication after which
17 the designated period of time begins to run is not to be included. The last day of the period so
18 computed is to be included, unless it is a Saturday, Sunday or a legal holiday when the
19 courthouse is closed for transactions, in which event the period runs until the end of the next
20 day which is not a Saturday, Sunday, or a legal holiday when the courthouse is closed for
21 transactions. When the period of time prescribed or allowed is less than seven days,
22 intermediate Saturdays, Sundays, and holidays shall be excluded in the computation. A half
23 holiday shall be considered as other days and not as a holiday.

24 (b) Enlargement. – When by these rules or by a notice given thereunder or by order of
25 court an act is required or allowed to be done at or within a specified time, the court for cause
26 shown may at any time in its discretion with or without motion or notice order the period
27 enlarged if request therefor is made before the expiration of the period originally prescribed or
28 as extended by a previous order. Upon motion made after the expiration of the specified period,
29 the judge may permit the act to be done where the failure to act was the result of excusable
30 neglect. Notwithstanding any other provisions of this rule, the parties may enter into binding
31 stipulations without approval of the court enlarging the time, not to exceed in the aggregate 30
32 days, within which an act is required or allowed to be done under these rules, provided,
33 however, that neither the court nor the parties may extend the time for taking any action under
34 Rules 50(b), 52, 59(b), (d), (e), 60(b), except to the extent and under the conditions stated in
35 them.

36 (c) Unaffected by expiration of session. – The period of time provided for the doing of
37 any act or the taking of any proceeding is not affected or limited by the continued existence or
38 expiration of a session of court. The continued existence or expiration of a session of court in
39 no way affects the power of a court to do any act or take any proceeding, but no issue of fact
40 shall be submitted to a jury out of session.

41 (d) For motions, affidavits. – A written motion, other than one which may be heard ex
42 parte, and notice of the hearing thereof shall be served not later than five days before the time
43 specified for the hearing, unless a different period is fixed by these rules or by order of the
44 court. Such an order may for cause shown be made on ex parte application. When a motion is
45 supported by affidavit, the affidavit shall be served with the motion; and except as otherwise
46 provided in Rule 59(c), opposing affidavits shall be served at least two days before the hearing.
47 If the opposing affidavit is not served on the other parties at least two days before the hearing
48 on the motion, the court may continue the matter for a reasonable period to allow the
49 responding party to prepare a response, proceed with the matter without considering the
50 untimely served affidavit, or take such other action as the ends of justice require. For the
51 purpose of this two-day requirement only, service shall mean personal delivery, facsimile

1 transmission, or other means such that the party actually receives the affidavit within the
2 required time.

3 (e) Additional time after service by mail. – Whenever a party has the right to do some
4 act or take some proceedings within a prescribed period after the service of a notice or other
5 paper upon him and the notice or paper is served upon him by mail, three days shall be added to
6 the prescribed period.

7 (f) Additional time for Address Confidentiality Program participants. – Whenever a
8 person participating in the Address Confidentiality Program established by Chapter 15C of the
9 General Statutes has a legal right to act within a prescribed period of 10 days or less after the
10 service of a notice or other paper upon the program participant, and the notice or paper is
11 served upon the program participant by mail, five days shall be added to the prescribed period.

12 (1967, c. 954, s. 1; 2000-127, s. 5; 2002-171, s. 2; 2003-337, s. 2.)