

Article 3
Pleadings and Motions.

Rule 7. Pleadings allowed; motions.

(a) Pleadings. – There shall be a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a crossclaim, if the answer contains a crossclaim; a third-party complaint if a person who was not an original party is summoned under the provisions of Rule 14; and a third-party answer, if a third-party complaint is served. If the answer alleges contributory negligence, a party may serve a reply alleging last clear chance. No other pleading shall be allowed except that the court may order a reply to an answer or a third-party answer.

(b) Motions and other papers. –

(1) An application to the court for an order shall be by motion which, unless made during a hearing or trial or at a session at which a cause is on the calendar for that session, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

(2) The rules applicable to captions, signing, and other matters of form of pleadings apply to all motions and other papers provided for by these rules.

(3) A motion to transfer under G.S. 7A-258 shall comply with the directives therein specified but the relief thereby obtainable may also be sought in a responsive pleading pursuant to Rule 12(b).

(4) A motion in a civil action in a county that is part of a multicounty judicial district may be heard in another county which is part of that same judicial district with the permission of the senior resident superior court judge of that district or of that judge's designee. Except for emergencies as determined by the senior resident superior court judge or that judge's designee, a motion in a civil action to be heard outside the county in which the case is filed shall be heard at a civil session of court.

(c) Demurrers, pleas, etc., abolished. – Demurrers, pleas, and exceptions for insufficiency shall not be used.

(d) Pleadings not read to jury. – Unless otherwise ordered by the judge, pleadings shall not be read to the jury. (1967, c. 954, s. 1; 1971, c. 1156, s. 1; 2000-127, s. 2; 2005-163, s. 1; 2011-317, s. 1.)

Rule 8. General rules of pleadings.

(a) Claims for relief. – A pleading which sets forth a claim for relief, whether an original claim, counterclaim, crossclaim, or third-party claim shall contain

(1) A short and plain statement of the claim sufficiently particular to give the court and the parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved showing that the pleader is entitled to relief, and

(2) A demand for judgment for the relief to which he deems himself entitled. Relief in the alternative or of several different types may be demanded. In all negligence actions, and in all claims for punitive damages in any civil action, wherein the matter in controversy exceeds the sum or value of ten thousand dollars (\$10,000), the pleading shall not state the demand for monetary relief, but shall state that the relief demanded is for damages incurred or to be incurred in excess of ten thousand dollars (\$10,000). However, at any time after service of the claim for relief, any party may request of the claimant a written statement of the monetary relief sought, and the claimant

1 shall, within 30 days after such service, provide such statement, which shall
2 not be filed with the clerk until the action has been called for trial or entry of
3 default entered. Such statement may be amended in the manner and at times
4 as provided by Rule 15.

5 (b) Defenses; form of denials. – A party shall state in short and plain terms his defenses
6 to each claim asserted and shall admit or deny the averments upon which the adverse party
7 relies. If he is without knowledge or information sufficient to form a belief as to the truth of an
8 averment, he shall so state and this has the effect of a denial. Denials shall fairly meet the
9 substance of the averments denied. When a pleader intends in good faith to deny only a part of
10 or a qualification of an averment, he shall specify so much of it as is true and material and shall
11 deny only the remainder. Unless the pleader intends in good faith to controvert all the
12 averments of the preceding pleading, he may make his denials as specific denials of designated
13 averments or paragraphs, or he may generally deny all the averments except such designated
14 averments or paragraphs as he expressly admits; but, when he does so intend to controvert all
15 its averments, he may do so by general denial subject to the obligations set forth in Rule 11.

16 (c) Affirmative defenses. – In pleading to a preceding pleading, a party shall set forth
17 affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory
18 negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality,
19 injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute
20 of limitations, truth in actions for defamation, usury, waiver, and any other matter constituting
21 an avoidance or affirmative defense. Such pleading shall contain a short and plain statement of
22 any matter constituting an avoidance or affirmative defense sufficiently particular to give the
23 court and the parties notice of the transactions, occurrences, or series of transactions or
24 occurrences, intended to be proved. When a party has mistakenly designated a defense as a
25 counterclaim or a counterclaim as a defense, the court, on terms, if justice so requires, shall
26 treat the pleading as if there had been a proper designation.

27 (d) Effect of failure to deny. – Averments in a pleading to which a responsive pleading
28 is required, other than those as to the amount of damage, are admitted when not denied in the
29 responsive pleading. Averments in a pleading to which no responsive pleading is required or
30 permitted shall be taken as denied or avoided.

31 (e) Pleading to be concise and direct; consistency. –

32 (1) Each averment of a pleading shall be simple, concise, and direct. No
33 technical forms of pleading or motions are required.

34 (2) A party may set forth two or more statements of a claim or defense
35 alternatively or hypothetically, either in one count or defense or in separate
36 counts or defenses. When two or more statements are made in the alternative
37 and one of them if made independently would be sufficient, the pleading is
38 not made insufficient by the insufficiency of one or more of the alternative
39 statements. A party may also state as many separate claims or defenses as he
40 has regardless of consistency and whether based on legal or on equitable
41 grounds or on both. All statements shall be made subject to the obligations
42 set forth in Rule 11.

43 (f) Construction of pleadings. – All pleadings shall be so construed as to do substantial
44 justice. (1967, c. 954, s. 1; 1975, 2nd Sess., c. 977, s. 5; 1979, ch. 654, s. 4; 1985 (Reg. Sess.,
45 1986), c. 1027, s. 56; 1989 (Reg. Sess., 1990), c. 995, s. 1.)
46

47 **Rule 9. Pleading special matters.**

48 (a) Capacity. – Any party not a natural person shall make an affirmative averment
49 showing its legal existence and capacity to sue. Any party suing in any representative capacity
50 shall make an affirmative averment showing his capacity and authority to sue. When a party
51 desires to raise an issue as to the legal existence of any party or the capacity of any party to sue

1 or be sued or the authority of a party to sue or be sued in a representative capacity, he shall do
2 so by specific negative averment, which shall include such supporting particulars as are
3 peculiarly within the pleader's knowledge.

4 (b) Fraud, duress, mistake, condition of the mind. – In all averments of fraud, duress or
5 mistake, the circumstances constituting fraud or mistake shall be stated with particularity.
6 Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

7 (c) Conditions precedent. – In pleading the performance or occurrence of conditions
8 precedent, it is sufficient to aver generally that all conditions precedent have been performed or
9 have occurred. A denial of performance or occurrence shall be made specifically and with
10 particularity.

11 (d) Official document or act. – In pleading an official document or official act it is
12 sufficient to aver that the document was issued or the act done in compliance with law.

13 (e) Judgment. – In pleading a judgment, decision or ruling of a domestic or foreign
14 court, judicial or quasi-judicial tribunal, or of a board or officer, it is sufficient to aver the
15 judgment, decision or ruling without setting forth matter showing jurisdiction to render it.

16 (f) Time and place. – For the purpose of testing the sufficiency of a pleading,
17 averments of time and place are material and shall be considered like all other averments of
18 material matter.

19 (g) Special damage. – When items of special damage are claimed each shall be averred.

20 (h) Private statutes. – In pleading a private statute or right derived therefrom it is
21 sufficient to refer to the statute by its title or the day of its ratification if ratified before January
22 1, 1996, or the date it becomes law if it becomes law on or after January 1, 1996, and the court
23 shall thereupon take judicial notice of it.

24 (i) Libel and slander. –

25 (1) In an action for libel or slander it is not necessary to state in the complaint
26 any extrinsic facts for the purpose of showing the application to the plaintiff
27 of the defamatory matter out of which the claim for relief arose, but it is
28 sufficient to state generally that the same was published or spoken
29 concerning the plaintiff, and if such allegation is controverted, the plaintiff is
30 bound to establish on trial that it was so published or spoken.

31 (2) The defendant may in his answer allege both the truth of the matter charged
32 as defamatory, and any mitigating circumstances to reduce the amount of
33 damages; and whether he proves the justification or not, he may give in
34 evidence the mitigating circumstances.

35 (j) Medical malpractice. – Any complaint alleging medical malpractice by a health care
36 provider pursuant to G.S. 90-21.11(2)a. in failing to comply with the applicable standard of
37 care under G.S. 90-21.12 shall be dismissed unless:

38 (1) The pleading specifically asserts that the medical care and all medical
39 records pertaining to the alleged negligence that are available to the plaintiff
40 after reasonable inquiry have been reviewed by a person who is reasonably
41 expected to qualify as an expert witness under Rule 702 of the Rules of
42 Evidence and who is willing to testify that the medical care did not comply
43 with the applicable standard of care;

44 (2) The pleading specifically asserts that the medical care and all medical
45 records pertaining to the alleged negligence that are available to the plaintiff
46 after reasonable inquiry have been reviewed by a person that the
47 complainant will seek to have qualified as an expert witness by motion under
48 Rule 702(e) of the Rules of Evidence and who is willing to testify that the
49 medical care did not comply with the applicable standard of care, and the
50 motion is filed with the complaint; or

1 (3) The pleading alleges facts establishing negligence under the existing
2 common-law doctrine of res ipsa loquitur.

3 Upon motion by the complainant prior to the expiration of the applicable statute of
4 limitations, a resident judge of the superior court for a judicial district in which venue for the
5 cause of action is appropriate under G.S. 1-82 or, if no resident judge for that judicial district is
6 physically present in that judicial district, otherwise available, or able or willing to consider the
7 motion, then any presiding judge of the superior court for that judicial district may allow a
8 motion to extend the statute of limitations for a period not to exceed 120 days to file a
9 complaint in a medical malpractice action in order to comply with this Rule, upon a
10 determination that good cause exists for the granting of the motion and that the ends of justice
11 would be served by an extension. The plaintiff shall provide, at the request of the defendant,
12 proof of compliance with this subsection through up to ten written interrogatories, the answers
13 to which shall be verified by the expert required under this subsection. These interrogatories do
14 not count against the interrogatory limit under Rule 33.

15 (k) Punitive damages. – A demand for punitive damages shall be specifically stated,
16 except for the amount, and the aggravating factor that supports the award of punitive damages
17 shall be averred with particularity. The amount of damages shall be pled in accordance with
18 Rule 8. (1967, c. 954, s. 1; 1995, c. 20, s. 10; c. 309, s. 2; c. 514, s. 3; 1998-217, s. 61;
19 2001-121, s. 1; 2011-400, s. 3.)
20

21 **Rule 10. Form of pleadings.**

22 (a) Caption; names of parties. – Every pleading shall contain a caption setting forth the
23 division of the court in which the action is filed, the title of the action, and a designation as in
24 Rule 7(a). In the complaint the title of the action shall include the names of all the parties, but
25 in other pleadings it is sufficient to state the name of the first party on each side with an
26 appropriate indication of other parties.

27 (b) Paragraphs; separate statement. – All averments of claim or defense shall be made
28 in numbered paragraphs, the contents of each of which be limited as far as practicable to a
29 statement of a single set of circumstances; and a paragraph may be referred to by number in all
30 succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each
31 defense other than denials shall be stated in a separate count or defense whenever a separation
32 facilitates the clear presentation of the matters set forth.

33 (c) Adoption by reference; exhibits. – Statements in a pleading may be adopted by
34 reference in a different part of the same pleading or in another pleading or in any motion in the
35 action. A copy of any written instrument which is an exhibit to a pleading is a part thereof for
36 all purposes. (1967, c. 954, s. 1.)
37

38 **Rule 11. Signing and verification of pleadings.**

39 (a) Signing by Attorney. – Every pleading, motion, and other paper of a party
40 represented by an attorney shall be signed by at least one attorney of record in his individual
41 name, whose address shall be stated. A party who is not represented by an attorney shall sign
42 his pleading, motion, or other paper and state his address. Except when otherwise specifically
43 provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The
44 signature of an attorney or party constitutes a certificate by him that he has read the pleading,
45 motion, or other paper; that to the best of his knowledge, information, and belief formed after
46 reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith
47 argument for the extension, modification, or reversal of existing law, and that it is not
48 interposed for any improper purpose, such as to harass or to cause unnecessary delay or
49 needless increase in the cost of litigation. If a pleading, motion, or other paper is not signed, it
50 shall be stricken unless it is signed promptly after the omission is called to the attention of the
51 pleader or movant. If a pleading, motion, or other paper is signed in violation of this rule, the

1 court, upon motion or upon its own initiative, shall impose upon the person who signed it, a
2 represented party, or both, an appropriate sanction, which may include an order to pay to the
3 other party or parties the amount of the reasonable expenses incurred because of the filing of
4 the pleading, motion, or other paper, including a reasonable attorney's fee.

5 (b) Verification of pleadings by a party. – In any case in which verification of a
6 pleading shall be required by these rules or by statute, it shall state in substance that the
7 contents of the pleading verified are true to the knowledge of the person making the
8 verification, except as to those matters stated on information and belief, and as to those matters
9 he believes them to be true. Such verification shall be by affidavit of the party, or if there are
10 several parties united in interest and pleading together, by at least one of such parties
11 acquainted with the facts and capable of making the affidavit. Such affidavit may be made by
12 the agent or attorney of a party in the cases and in the manner provided in section (c) of this
13 rule.

14 (c) Verification of pleadings by an agent or attorney. – Such verification may be made
15 by the agent or attorney of a party for whom the pleading is filed, if the action or defense is
16 founded upon a written instrument for the payment of money only and the instrument or a true
17 copy thereof is in the possession of the agent or attorney, or if all the material allegations of the
18 pleadings are within the personal knowledge of the agent or attorney. When the pleading is
19 verified by such agent or attorney, he shall set forth in the affidavit:

20 (1) That the action or defense is founded upon a written instrument for the
21 payment of money only and the instrument or a true copy thereof is in his
22 possession, or

23 (2) a. That all the material allegations of the pleadings are true to his
24 personal knowledge and

25 b. The reasons why the affidavit is not made by the party.

26 (d) Verification by corporation or the State. – When a corporation is a party the
27 verification may be made by any officer, or managing or local agent thereof upon whom
28 summons might be served; and when the State or any officer thereof in its behalf is a party, the
29 verification may be made by any person acquainted with the facts. (1967, c. 954, s. 1; 1985
30 (Reg. Sess., 1986), c. 1027, s. 55.)

31
32 **Rule 12. Defenses and objections; When and how presented; by pleading or motion;
33 motion for judgment on pleading.**

34 (a) (1) When Presented. – A defendant shall serve his answer within 30 days after
35 service of the summons and complaint upon him. A party served with a pleading stating a
36 crossclaim against him shall serve an answer thereto within 30 days after service upon him. The
37 plaintiff shall serve his reply to a counterclaim in the answer within 30 days after service of the
38 answer or, if a reply is ordered by the court, within 30 days after service of the order, unless the
39 order otherwise directs. Service of a motion permitted under this rule alters these periods of
40 time as follows, unless a different time is fixed by order of the court:

41 a. The responsive pleading shall be served within 20 days after notice
42 of the court's action in ruling on the motion or postponing its
43 disposition until the trial on the merits;

44 b. If the court grants a motion for a more definite statement, the
45 responsive pleading shall be served within 20 days after service of
46 the more definite statement.

47 (2) Cases Removed to United States District Court. – Upon the filing in a
48 district court of the United States of a petition for the removal of a civil
49 action or proceeding from a court in this State and the filing of a copy of the
50 petition in the State court, the State court shall proceed no further therein
51 unless and until the case is remanded. If it shall be finally determined in the

1 United States courts that the action or proceeding was not removable or was
2 improperly removed, or for other reason should be remanded, and a final
3 order is entered remanding the action or proceeding to the State court, the
4 defendant or defendants, or any other party who would have been permitted
5 or required to file a pleading had the proceedings to remove not been
6 instituted, shall have 30 days after the filing in such State court of a certified
7 copy of the order of remand to file motions and to answer or otherwise
8 plead.

9 (b) How Presented. – Every defense, in law or fact, to a claim for relief in any pleading,
10 whether a claim, counterclaim, crossclaim, or third-party claim, shall be asserted in the
11 responsive pleading thereto if one is required, except that the following defenses may at the
12 option of the pleader be made by motion:

- 13 (1) Lack of jurisdiction over the subject matter,
- 14 (2) Lack of jurisdiction over the person,
- 15 (3) Improper venue or division,
- 16 (4) Insufficiency of process,
- 17 (5) Insufficiency of service of process,
- 18 (6) Failure to state a claim upon which relief can be granted,
- 19 (7) Failure to join a necessary party.

20 A motion making any of these defenses shall be made before pleading if a further pleading is
21 permitted. The consequences of failure to make such a motion shall be as provided in sections
22 (g) and (h). No defense or objection is waived by being joined with one or more other defenses
23 or objections in a responsive pleading or motion. Obtaining an extension of time within which
24 to answer or otherwise plead shall not constitute a waiver of any defense herein set forth. If a
25 pleading sets forth a claim for relief to which the adverse party is not required to serve a
26 responsive pleading, he may assert at the trial any defense in law or fact to that claim for relief.
27 If, on a motion asserting the defense numbered (6), to dismiss for failure of the pleading to state
28 a claim upon which relief can be granted, matters outside the pleading are presented to and not
29 excluded by the court, the motion shall be treated as one for summary judgment and disposed
30 of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all
31 material made pertinent to such a motion by Rule 56.

32 (c) Motion for judgment on the pleadings. – After the pleadings are closed but within
33 such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a
34 motion for judgment on the pleadings, matters outside the pleadings are presented to and not
35 excluded by the court, the motion shall be treated as one for summary judgment and disposed
36 of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all
37 material made pertinent to such a motion by Rule 56.

38 (d) Preliminary hearings. – The defenses specifically enumerated (1) through (7) in
39 section (b) of this rule, whether made in a pleading or by motion, and the motion for judgment
40 on the pleadings mentioned in section (c) of this rule shall be heard and determined before trial
41 on application of any party, unless the judge orders that the hearing and determination thereof
42 be deferred until the trial.

43 (e) Motion for more definite statement. – If a pleading to which a responsive pleading
44 is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a
45 responsive pleading, he may move for a more definite statement before interposing his
46 responsive pleading. The motion shall point out the defects complained of and the details
47 desired. If the motion is granted and the order of the judge is not obeyed within 20 days after
48 notice of the order or within such other time as the judge may fix, the judge may strike the
49 pleading to which the motion was directed or make such orders as he deems just.

50 (f) Motion to strike. – Upon motion made by a party before responding to a pleading
51 or, if no responsive pleading is permitted by these rules, upon motion made by a party within

1 30 days after the service of the pleading upon him or upon the judge's own initiative at any
2 time, the judge may order stricken from any pleading any insufficient defense or any redundant,
3 irrelevant, immaterial, impertinent, or scandalous matter.

4 (g) Consolidation of defenses in motion. – A party who makes a motion under this rule
5 may join with it any other motions herein provided for and then available to him. If a party
6 makes a motion under this rule but omits therefrom any defense or objection then available to
7 him which this rule permits to be raised by motion, he shall not thereafter make a motion based
8 on the defense or objection so omitted, except a motion as provided in section (h)(2) hereof on
9 any of the grounds there stated.

10 (h) Waiver or preservation of certain defenses. –

11 (1) A defense of lack of jurisdiction over the person, improper venue,
12 insufficiency of process, or insufficiency of service of process is waived (i)
13 if omitted from a motion in the circumstances described in section (g), or (ii)
14 if it is neither made by motion under this rule nor included in a responsive
15 pleading or an amendment thereof permitted by Rule 15(a) to be made as a
16 matter of course.

17 (2) A defense of failure to state a claim upon which relief can be granted, a
18 defense of failure to join a necessary party, and an objection of failure to
19 state a legal defense to a claim may be made in any pleading permitted or
20 ordered under Rule 7(a), or by motion for judgment on the pleadings, or at
21 the trial on the merits.

22 (3) Whenever it appears by suggestion of the parties or otherwise that the court
23 lacks jurisdiction of the subject matter, the court shall dismiss the action.
24 (1967, c. 954, s. 1; 1971, c. 1236; 1975, c. 76, s. 2.)
25

26 **Rule 13. Counterclaim and crossclaim.**

27 (a) Compulsory counterclaims. – A pleading shall state as a counterclaim any claim
28 which at the time of serving the pleading the pleader has against any opposing party, if it arises
29 out of the transaction or occurrence that is the subject matter of the opposing party's claim and
30 does not require for its adjudication the presence of third parties of whom the court cannot
31 acquire jurisdiction. But the pleader need not state the claim if

32 (1) At the time the action was commenced the claim was the subject of another
33 pending action, or

34 (2) The opposing party brought suit upon his claim by attachment or other process
35 by which the court did not acquire jurisdiction to render a personal judgment
36 on that claim, and the pleader is not stating any counterclaim under this rule.

37 (b) Permissive counterclaim. – A pleading may state as a counterclaim any claim
38 against an opposing party not arising out of the transaction or occurrence that is the subject
39 matter of the opposing party's claim.

40 (c) Counterclaim exceeding opposing claim. – A counterclaim may or may not diminish
41 or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or
42 different in kind from that sought in the pleading of the opposing party.

43 (d) Counterclaim against the State of North Carolina. – These rules shall not be
44 construed to enlarge beyond the limits fixed by law the right to assert counterclaims or to claim
45 credit against the State of North Carolina or an officer or agency thereof.

46 (e) Counterclaim maturing or acquired after pleading. – A claim which either matured
47 or was acquired by the pleader after serving his pleading may, with the permission of the court,
48 be presented as a counterclaim by supplemental pleading.

49 (f) Omitted counterclaim. – When a pleader fails to set up a counterclaim through
50 oversight, inadvertence, or excusable neglect, or when justice requires, he may by leave of
51 court set up the counterclaim by amendment.

1 (g) Crossclaim against coparty. – A pleading may state as a crossclaim any claim by
2 one party against a coparty arising out of the transaction or occurrence that is the subject matter
3 either of the original action or of a counterclaim therein or relating to any property that is the
4 subject matter of the original action. Such crossclaim may include a claim that the party against
5 whom it is asserted is or may be liable to the crossclaimant for all or part of a claim asserted in
6 the action against the crossclaimant.

7 (h) Additional parties may be brought in. – When the presence of parties other than
8 those to the original action is required for the granting of complete relief in the determination of
9 a counterclaim or crossclaim, the court shall order them to be brought in as defendants as
10 provided in these rules, if jurisdiction of them can be obtained.

11 (i) Separate trial; separate judgment. – If the court orders separate trials as provided in
12 Rule 42(b), judgment on a counterclaim or crossclaim may be rendered in accordance with the
13 terms of Rule 54(b) when the court has jurisdiction so to do, even if the claims of the opposing
14 party have been dismissed or otherwise disposed of. (1967, c. 954, s. 1.)
15

16 **Rule 14. Third-party practice.**

17 (a) When defendant may bring in third party. – At any time after commencement of the
18 action a defendant, as a third-party plaintiff, may cause a summons and complaint to be served
19 upon a person not a party to the action who is or may be liable to him for all or part of the
20 plaintiff's claim against him. Leave to make the service need not be obtained if the third-party
21 complaint is filed not later than 45 days after the answer to the complaint is served. Otherwise
22 leave must be obtained on motion upon notice to all parties to the action. The person served
23 with the summons and third-party complaint, hereinafter called the third-party defendant, shall
24 make his defense to the third-party plaintiff's claim as provided in Rule 12 and his
25 counterclaims against the third-party plaintiff and crossclaim against other third-party
26 defendants as provided in Rule 13. The third-party defendant may assert against the plaintiff
27 any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party
28 defendant may also assert any claim against the plaintiff arising out of the transaction or
29 occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The
30 plaintiff may assert any claim against the third-party defendant arising out of the transaction or
31 occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and
32 the third-party defendant thereupon shall assert his defenses as provided in Rule 12 and his
33 counterclaims and crossclaims as provided in Rule 13. Any party may move for severance,
34 separate trial, or dismissal of the third-party claim. A third-party defendant may proceed under
35 this rule against any person not a party to the action who is or may be liable to him for all or
36 part of the claim made in the action against the third-party defendant.

37 Where the normal statute of limitations period in an action arising on a contract is extended
38 as provided in G.S. 1-47(2) or in any action arising on a contract or promissory note, upon
39 motion of the defendant the court may order to be made parties additional defendants, including
40 any party of whom the plaintiff is a subrogee, assignee, third-party beneficiary, endorsee, agent
41 or transferee, or such other person as has received the benefit of the contract by transfer of
42 interest.

43 (b) When plaintiff may bring in third party. – When a counterclaim is asserted against a
44 plaintiff, he may cause a third party to be brought in under circumstances which under this rule
45 would entitle a defendant to do so.

46 (c) Rule applicable to State of North Carolina. – Notwithstanding the provisions of the
47 Tort Claims Act, the State of North Carolina may be made a third party under subsection (a) or
48 a third-party defendant under subsection (b) in any tort action. In such cases, the same rules
49 governing liability and the limits of liability of the State and its agencies shall apply as is
50 provided for in the Tort Claims Act. (1967, c. 954, s. 1; 1969, c. 810, s. 2; 1975, c. 587, s. 1;
51 1981, c. 92; c. 810.)

1
2 **Rule 15. Amended and supplemental pleadings.**

3 (a) Amendments. – A party may amend his pleading once as a matter of course at any
4 time before a responsive pleading is served or, if the pleading is one to which no responsive
5 pleading is permitted and the action has not been placed upon the trial calendar, he may so
6 amend it at any time within 30 days after it is served. Otherwise a party may amend his
7 pleading only by leave of court or by written consent of the adverse party; and leave shall be
8 freely given when justice so requires. A party shall plead in response to an amended pleading
9 within 30 days after service of the amended pleading, unless the court otherwise orders.

10 (b) Amendments to conform to the evidence. – When issues not raised by the pleadings
11 are tried by the express or implied consent of the parties, they shall be treated in all respects as
12 if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary
13 to cause them to conform to the evidence and to raise these issues may be made upon motion
14 of any party at any time, either before or after judgment, but failure so to amend does not affect
15 the result of the trial of these issues. If evidence is objected to at the trial on the ground that it
16 is not within the issues raised by the pleadings, the court may allow the pleadings to be
17 amended and shall do so freely when the presentation of the merits of the action will be served
18 thereby and the objecting party fails to satisfy the court that the admission of such evidence
19 would prejudice him in maintaining his action or defense upon the merits. The court may grant
20 a continuance to enable the objecting party to meet such evidence.

21 (c) Relation back of amendments. – A claim asserted in an amended pleading is deemed
22 to have been interposed at the time the claim in the original pleading was interposed, unless the
23 original pleading does not give notice of the transactions, occurrences, or series of transactions
24 or occurrences, to be proved pursuant to the amended pleading.

25 (d) Supplemental pleadings. – Upon motion of a party the court may, upon reasonable
26 notice and upon such terms as are just, permit him to serve a supplemental pleading setting
27 forth transactions or occurrences or events which may have happened since the date of the
28 pleading sought to be supplemented, whether or not the original pleading is defective in its
29 statement of a claim for relief or defense. If the court deems it advisable that the adverse party
30 plead thereto, it shall so order, specifying the time therefor. (1967, c. 954, s. 1.)

31
32 **Rule 16. Pre-trial procedure; formulating issues.**

33 (a) In any action, the court may in its discretion direct the attorneys for the parties to
34 appear before the court for a conference to consider

- 35 (1) The simplification and formulation of the issues;
36 (2) The necessity or desirability of amendments to the pleadings;
37 (3) The possibility of obtaining admissions of fact and of documents which will
38 avoid unnecessary proof;
39 (4) The limitation of the number of expert witnesses;
40 (5) The advisability or necessity of a reference of the case, either in whole or in
41 part;
42 (6) Matters of which the court is to be asked to take judicial notice;
43 (7) Such other matters as may aid in the disposition of the action.

44 If a conference is held, the judge shall make an order which recites the action taken at the
45 conference, any amendments allowed to the pleadings, and any agreements made by the parties
46 as to any of the matters considered, and which may limit the issues for trial to those not
47 disposed of by admissions or agreements of counsel; and such order when entered controls the
48 subsequent course of the action, unless modified at the trial to prevent manifest injustice. If any
49 issue for trial as stated in the order is not raised by the pleadings in accordance with the
50 provisions of Rule 8, upon motion of any party, the order shall require amendment of the
51 pleadings.

1 (b) In a medical malpractice action as defined in G.S. 90-21.11, at the close of the
2 discovery period scheduled pursuant to Rule 26(g), the judge shall schedule a final conference.
3 After the conference, the judge shall refer any consent order calendaring the case for trial to the
4 senior resident superior court judge or the chief district court judge, who shall approve the
5 consent order unless the judge finds that:

- 6 (1) The date specified in the order is unavailable,
- 7 (2) The terms of the order unreasonably delay the trial, or
- 8 (3) The ends of justice would not be served by approving the order.

9 If the senior resident superior court judge or the chief district court judge does not approve
10 the consent order, the judge shall calendar the case for trial.

11 In calendaring the case, the court shall take into consideration the nature and complexity of
12 the case, the proximity and convenience of witnesses, the needs of counsel for both parties
13 concerning their respective calendars, the benefits of an early disposition and such other
14 matters as the court may deem proper. (1967, c. 954, s. 1; 1987, c. 859, s. 4; 2011-199, s. 1.)