

1 Article 4.

2 Parties.

3 **Rule 17. Parties plaintiff and defendant; capacity.**

4 (a) Real party in interest. – Every claim shall be prosecuted in the name of the real  
5 party in interest; but an executor, administrator, guardian, trustee of an express trust, a party  
6 with whom or in whose name a contract has been made for the benefit of another, or a party  
7 authorized by statute may sue in his own name without joining with him the party for whose  
8 benefit the action is brought; and when a statute of the State so provides, an action for the use  
9 or benefit of another shall be brought in the name of the State of North Carolina. No action  
10 shall be dismissed on the ground that it is not prosecuted in the name of the real party in  
11 interest until a reasonable time has been allowed after objection for ratification of  
12 commencement of the action by, or joinder or substitution of, the real party in interest; and such  
13 ratification, joinder, or substitution shall have the same effect as if the action had been  
14 commenced in the name of the real party in interest.

15 (b) Infants, incompetents, etc. –

16 (1) Infants, etc., Sue by Guardian or Guardian Ad Litem. – In actions or special  
17 proceedings when any of the parties plaintiff are infants or incompetent  
18 persons, whether residents or nonresidents of this State, they must appear by  
19 general or testamentary guardian, if they have any within the State or by  
20 guardian ad litem appointed as hereinafter provided; but if the action or  
21 proceeding is against such guardian, or if there is no such known guardian,  
22 then such persons may appear by guardian ad litem.

23 (2) Infants, etc., Defend by Guardian Ad Litem. – In actions or special  
24 proceedings when any of the defendants are infants or incompetent persons,  
25 whether residents or nonresidents of this State, they must defend by general  
26 or testamentary guardian, if they have any within this State or by guardian ad  
27 litem appointed as hereinafter provided; and if they have no known general  
28 or testamentary guardian in the State, and any of them have been summoned,  
29 the court in which said action or special proceeding is pending, upon motion  
30 of any of the parties, may appoint some discreet person to act as guardian ad  
31 litem, to defend in behalf of such infants, or incompetent persons, and fix  
32 and tax his fee as part of the costs. The guardian so appointed shall, if the  
33 cause is a civil action, file his answer to the complaint within the time  
34 required for other defendants, unless the time is extended by the court; and if  
35 the cause is a special proceeding, a copy of the complaint, with the  
36 summons, must be served on him. After 20 days' notice of the summons and  
37 complaint in the special proceeding, and after answer filed as above  
38 prescribed in the civil action, the court may proceed to final judgment as  
39 effectually and in the same manner as if there had been personal service  
40 upon the said infant or incompetent persons or defendants.

41 All orders or final judgments duly entered in any action or special  
42 proceeding prior to April 8, 1974, when any of the defendants were infants  
43 or incompetent persons, whether residents or nonresidents of this State, and  
44 were defended therein by a general or testamentary guardian or guardian ad  
45 litem, and summons and complaint or petition in said action or special  
46 proceeding were duly served upon the guardian or guardian ad litem and  
47 answer duly filed by said guardian or guardian ad litem, shall be good and  
48 valid notwithstanding that said order or final judgment was entered less than  
49 20 days after notice of the summons and complaint served upon said  
50 guardian or guardian ad litem.

- 1 (3) Appointment of Guardian Ad Litem Notwithstanding the Existence of a  
2 General or Testamentary Guardian. – Notwithstanding the provisions of  
3 subsections (b)(1) and (b)(2), a guardian ad litem for an infant or  
4 incompetent person may be appointed in any case when it is deemed by the  
5 court in which the action is pending expedient to have the infant, or insane  
6 or incompetent person so represented, notwithstanding such person may  
7 have a general or testamentary guardian.
- 8 (4) Appointment of Guardian Ad Litem for Unborn Persons. – In all actions in  
9 rem and quasi in rem and in all actions and special proceedings which  
10 involve the construction of wills, trusts and contracts or any instrument in  
11 writing, or which involve the determination of the ownership of property or  
12 the distribution of property, if there is a possibility that some person may  
13 thereafter be born who, if then living, would be a necessary or proper party  
14 to such action or special proceeding, the court in which said action or special  
15 proceeding is pending, upon motion of any of the parties or upon its own  
16 motion, may appoint some discreet person guardian ad litem to defend on  
17 behalf of such unborn person. Service upon the guardian ad litem appointed  
18 for such unborn person shall have the same force and effect as service upon  
19 such unborn person would have had if such person had been living. All  
20 proceedings by and against the said guardian ad litem after appointment  
21 shall be governed by all provisions of the law applicable to guardians ad  
22 litem for living persons.
- 23 (5) Appointment of Guardian Ad Litem for Corporations, Trusts, or Other  
24 Entities Not in Existence. – In all actions which involve the construction of  
25 wills, trusts, contracts or written instruments, or the determination of the  
26 ownership of property or the disposition or distribution of property pursuant  
27 to the provisions of a will, trust, contract or written instrument, if such will,  
28 trust, contract or written instrument provides benefits for disposition or  
29 distribution of property to a corporation, a trust, or an entity thereafter to be  
30 formed for the purpose of carrying into effect some provision of the said  
31 will, trust, contract or written instrument, the court in which said action or  
32 special proceeding is pending, upon motion of any of the parties or upon its  
33 own motion, may appoint some discreet person guardian ad litem for such  
34 corporation, trust or other entity. Service upon the guardian ad litem  
35 appointed for such corporation, trust or other entity shall have the same force  
36 and effect as service upon such corporation, trust or entity would have had if  
37 such corporation, trust or other entity had been in existence. All proceedings  
38 by and against the said guardian ad litem after appointment shall be  
39 governed by all provisions of the law applicable to guardians ad litem for  
40 living persons.
- 41 (6) Repealed by Session Laws 1981, c. 599, s. 1.
- 42 (7) Miscellaneous Provisions. – The provisions of this rule are in addition to  
43 any other remedies or procedures authorized or permitted by law, and it shall  
44 not be construed to repeal or to limit the doctrine of virtual representation or  
45 any other law or rule of law by which unborn persons or nonexistent  
46 corporations, trusts or other entities may be represented in or bound by any  
47 judgment or order entered in any action or special proceeding. This rule shall  
48 apply to all pending actions and special proceedings to which it may be  
49 constitutionally applicable. All judgments and orders heretofore entered in  
50 any action in which a guardian or guardians ad litem have been appointed  
51 for any unborn person or persons or any nonexistent corporations, trusts or

1 other entities, are hereby validated as of the several dates of entry thereof in  
2 the same manner and to the full extent that they would have been valid if this  
3 rule had been in effect at the time of the appointment of such guardians ad  
4 litem; provided, however, that the provisions of this sentence shall be  
5 applicable only in such cases and to the extent to which the application  
6 thereof shall not be prevented by any constitutional limitation.

7 (c) Guardian ad litem for infants, insane or incompetent persons; appointment  
8 procedure. – When a guardian ad litem is appointed to represent an infant or insane or  
9 incompetent person, he must be appointed as follows:

10 (1) When an infant or insane or incompetent person is plaintiff, the appointment  
11 shall be made at any time prior to or at the time of the commencement of  
12 the action, upon the written application of any relative or friend of said  
13 infant or insane or incompetent person or by the court on its own motion.

14 (2) When an infant is defendant and service under Rule 4(j)(1)a is made upon  
15 him the appointment may be made upon the written application of any  
16 relative or friend of said infant, or, if no such application is made within 10  
17 days after service of summons, upon the written application of any other  
18 party to the action or, at any time by the court on its own motion.

19 (3) When an infant or insane or incompetent person is defendant and service can  
20 be made upon him only by publication, the appointment may be made upon  
21 the written application of any relative or friend of said infant, or upon the  
22 written application of any other party to the action, or by the court on its own  
23 motion, before completion of publication, whereupon service of the  
24 summons with copy of the complaint shall be made forthwith upon said  
25 guardian so appointed requiring him to make defense at the same time that  
26 the defendant is required to make defense in the notice of publication.

27 (4) When an insane or incompetent person is defendant and service by  
28 publication is not required, the appointment may be made upon the written  
29 application of any relative or friend of said defendant, or upon the written  
30 application of any other party to the action, or by the court on its own  
31 motion, prior to or at the time of the commencement of the action, and  
32 service upon the insane or incompetent defendant may thereupon be  
33 dispensed with by order of the court making such appointment.

34 (d) Guardian ad litem for persons not ascertained or for persons, trusts or corporations  
35 not in being. – When under the terms of a written instrument, or for any other reason, a person  
36 or persons who are not in being, or any corporation, trust, or other legal entity which is not in  
37 being, may be or may become legally or equitably interested in any property, real or personal,  
38 the court in which an action or proceeding of any kind relative to or affecting such property is  
39 pending, may, upon the written application of any party to such action or proceeding or of other  
40 person interested, appoint a guardian ad litem to represent such person or persons not  
41 ascertained or such persons, trusts or corporations not in being.

42 (e) Duty of guardian ad litem; effect of judgment or decree where party represented by  
43 guardian ad litem. – Any guardian ad litem appointed for any party pursuant to any of the  
44 provisions of this rule shall file and serve such pleadings as may be required within the times  
45 specified by these rules, unless extension of time is obtained. After the appointment of a  
46 guardian ad litem under any provision of this rule and after the service and filing of such  
47 pleadings as may be required by such guardian ad litem, the court may proceed to final  
48 judgment, order or decree against any party so represented as effectually and in the same  
49 manner as if said party had been under no legal disability, had been ascertained and in being,  
50 and had been present in court after legal notice in the action in which such final judgment,

1 order or decree is entered. (1967, c. 954, s. 1; 1969, c. 895, ss. 5, 6; 1971, c. 1156, ss. 3, 4;  
2 1973, c. 1199; 1981, c. 599, s. 1; 1987, c. 550, s. 13.)

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4 **Rule 18. Joinder of claims and remedies.**

5 (a) Joinder of claims. – A party asserting a claim for relief as an original claim,  
6 counterclaim, cross claim, or third-party claim, may join, either as independent or as alternate  
7 claims, as many claims, legal or equitable, as he has against an opposing party.

8 (b) Joinder of remedies; fraudulent conveyances. – Whenever a claim is one heretofore  
9 cognizable only after another claim has been prosecuted to a conclusion, the two claims may be  
10 joined in a single action; but the court shall grant relief in that action only in accordance with  
11 the relative substantive rights of the parties. In particular, a plaintiff may state a claim for  
12 money and a claim to have set aside a conveyance fraudulent as to him, without first having  
13 obtained a judgment establishing the claim for money. (1967, c. 954, s. 1; 1969, c. 895, s. 7.)

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15 **Rule 19. Necessary joinder of parties.**

16 (a) Necessary joinder. – Subject to the provisions of Rule 23, those who are united in  
17 interest must be joined as plaintiffs or defendants; but if the consent of anyone who should have  
18 been joined as plaintiff cannot be obtained he may be made a defendant, the reason therefor  
19 being stated in the complaint; provided, however, in all cases of joint contracts, a claim may be  
20 asserted against all or any number of the persons making such contracts.

21 (b) Joinder of parties not united in interest. – The court may determine any claim before  
22 it when it can do so without prejudice to the rights of any party or to the rights of others not  
23 before the court; but when a complete determination of such claim cannot be made without the  
24 presence of other parties, the court shall order such other parties summoned to appear in the  
25 action.

26 (c) Joinder of parties not united in interest – Names of omitted persons and reasons for  
27 nonjoinder to be pleaded. – In any pleading in which relief is asked, the pleader shall set forth  
28 the names, if known to him, of persons who ought to be parties if complete relief is to be  
29 accorded between those already parties, but who are not joined, and shall state why they are  
30 omitted. (1967, c. 954, s. 1.)

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32 **Rule 20. Permissive joinder of parties.**

33 (a) Permissive joinder. – All persons may join in one action as plaintiffs if they assert  
34 any right to relief jointly, severally, or in the alternative in respect of or arising out of the same  
35 transaction, occurrence, or series of transactions or occurrences and if any question of law or  
36 fact common to all parties will arise in the action. All persons may be joined in one action as  
37 defendants if there is asserted against them jointly, severally, or in the alternative, any right to  
38 relief in respect of or arising out of the same transaction, occurrence, or series of transactions or  
39 occurrences and if any question of law or fact common to all parties will arise in the action. A  
40 plaintiff or defendant need not be interested in obtaining or defending against all the relief  
41 demanded. Judgment may be given for one or more of the plaintiffs according to their  
42 respective rights to relief, and against one or more defendants according to their respective  
43 liabilities.

44 (b) Separate trial. – The court shall make such orders as will prevent a party from being  
45 embarrassed, delayed, or put to expense by the inclusion of a party against whom he asserts no  
46 claim and who asserts no claim against him, and shall order separate trials or make other orders  
47 to prevent delay or prejudice. (1967, c. 954, s. 1; 1973, c. 75.)

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49 **Rule 21. Procedure upon misjoinder and nonjoinder.**

50 Neither misjoinder of parties nor misjoinder of parties and claims is ground for dismissal of  
51 an action; but on such terms as are just parties may be dropped or added by order of the court

1 on motion of any party or on its own initiative at any stage of the action. Any claim against a  
2 party may be severed and proceeded with separately. (1967, c. 954, s. 1.)  
3

4 **Rule 22. Interpleader.**

5 (a) Persons having claims against the plaintiff may be joined as defendants and required  
6 to interplead when their claims expose or may expose the plaintiff to double or multiple  
7 liability. It is not ground for objection to the joinder that the claims of the several claimants or  
8 the titles on which their claims depend do not have a common origin or are not identical but are  
9 adverse to and independent of one another, or that the plaintiff avers that he is not liable in  
10 whole or in part to any or all of the claimants. A defendant exposed to similar liability may  
11 obtain such interpleader by way of crossclaim or counterclaim. The provisions of this rule  
12 supplement and do not in any way limit the joinder of parties permitted in Rule 20.

13 (b) Where funds are subject to competing claims by parties to the action, the court may  
14 order the party in possession of the funds either to deposit the funds in an interest bearing  
15 account in a bank, savings and loan, or trust company licensed to do business in this State or to  
16 deposit the funds with the clerk. If the funds are deposited in a bank, savings and loan, or trust  
17 company, the court shall specify the type of interest bearing account to be used. Funds  
18 deposited with the clerk shall be invested or deposited as provided in G.S. 7A-112 and G.S.  
19 7A-112.1. Upon determination of the action, the judgment shall provide for disbursement of  
20 the principal and interest earned on the funds while so deposited. (1967, c. 954, s. 1; 1989, c.  
21 668.)  
22

23 **Rule 23. Class actions.**

24 (a) Representation. – If persons constituting a class are so numerous as to make it  
25 impracticable to bring them all before the court, such of them, one or more, as will fairly insure  
26 the adequate representation of all may, on behalf of all, sue or be sued.

27 (b) Secondary action by shareholders. – In an action brought to enforce a secondary  
28 right on the part of one or more shareholders or members of a corporation or an unincorporated  
29 association because the corporation or association refuses to enforce rights which may properly  
30 be asserted by it, the complaint shall be verified by oath.

31 (c) Dismissal or compromise. – A class action shall not be dismissed or compromised  
32 without the approval of the judge. In an action under this rule, notice of a proposed dismissal or  
33 compromise shall be given to all members of the class in such manner as the judge directs.

34 (d) Tax Class Actions. – In addition to all of the requirements set out in this rule, a class  
35 action seeking the refund of a State tax paid due to an alleged unconstitutional statute may be  
36 brought and maintained only as provided in G.S. 105-241.18. (1967, c. 954, s. 1; 2008-107, s.  
37 28.28(a.)  
38

39 **Rule 24. Intervention.**

40 (a) Intervention of right. – Upon timely application anyone shall be permitted to  
41 intervene in an action:

42 (1) When a statute confers an unconditional right to intervene; or

43 (2) When the applicant claims an interest relating to the property or transaction  
44 which is the subject of the action and he is so situated that the disposition of  
45 the action may as a practical matter impair or impede his ability to protect  
46 that interest, unless the applicant's interest is adequately represented by  
47 existing parties.

48 (b) Permissive intervention. – Upon timely application anyone may be permitted to  
49 intervene in an action.

50 (1) When a statute confers a conditional right to intervene; or

1 (2) When an applicant's claim or defense and the main action have a question of  
2 law or fact in common. When a party to an action relies for ground of claim  
3 or defense upon any statute or executive order administered by a federal or  
4 State governmental officer or agency or upon any regulation, order,  
5 requirement, or agreement issued or made pursuant to the statute or  
6 executive order, such officer or agency upon timely application may be  
7 permitted to intervene in the action. In exercising its discretion the court  
8 shall consider whether the intervention will unduly delay or prejudice the  
9 adjudication of the rights of the original parties.

10 (c) Procedure. – A person desiring to intervene shall serve a motion to intervene upon  
11 all parties affected thereby. The motion shall state the grounds therefor and shall be  
12 accompanied by a pleading setting forth the claim or defense for which intervention is sought.  
13 The same procedure shall be followed when a statute gives a right to intervene, except when  
14 the statute prescribes a different procedure. (1967, c. 954, s. 1.)  
15

16 **Rule 25. Substitution of parties upon death, incompetency or transfer of interest;**  
17 **abatement.**

18 (a) Death. – No action abates by reason of the death of a party if the cause of action  
19 survives. In such case, the court, on motion at any time within the time specified for the  
20 presentation of claims in G.S. 28A-19-3, may order the substitution of said party's personal  
21 representative or collector and allow the action to be continued by or against the substituted  
22 party.

23 (b) Insanity or incompetency. – No action abates by reason of the incompetency or  
24 insanity of a party. If such incompetency or insanity is adjudicated, the court, on motion at any  
25 time within one year after such adjudication, or afterwards on a supplemental complaint, may  
26 order that said party be represented by his general guardian or trustee or a guardian ad litem,  
27 and, allow the action to be continued. If there is no adjudication, any party may suggest such  
28 incompetency or insanity to the court and it shall enter such order in respect thereto as justice  
29 may require.

30 (c) Abatement ordered unless action continued. – At any time after the death, insanity  
31 or incompetency of a party, the court in which an action is pending, upon notice to such person  
32 as it directs and upon motion of any party aggrieved, may order that the action be abated,  
33 unless it is continued by the proper parties, within a time to be fixed by the court, not less than  
34 six nor more than 12 months from the granting of the order.

35 (d) Transfer of interest. – In case of any transfer of interest other than by death, the  
36 action shall be continued in the name of the original party; but, upon motion of any party, the  
37 court may allow the person to whom the transfer is made to be joined with the original party.

38 (e) Death of receiver of corporation. – No action against a receiver of a corporation  
39 abates by reason of his death, but, upon suggestion of the facts on the record, it continues  
40 against his successor or against the corporation in case a new receiver is not appointed and such  
41 successor or the corporation is automatically substituted as a party.

42 (f) Public officers; death or separation from office. –

43 (1) When a public officer is a party to an action in his official capacity and  
44 during its pendency dies, resigns or otherwise ceases to hold office, the  
45 action does not abate and his successor is automatically substituted as a  
46 party. Proceedings following the substitution shall be in the name of the  
47 substituted party, but any misnomer not affecting substantial rights of the  
48 parties shall be disregarded. An order of substitution may be entered at any  
49 time, but the omission to enter such an order shall not affect the substitution.

- 1                   (2)     When a public officer sues or is sued in his official capacity, he may be  
2                   described as a party by his official title rather than by name; but the court  
3                   may require his name to be added.
- 4     (g)     No abatement after verdict. – After a verdict is rendered in any action, the action  
5     does not abate by reason of the death of a party, whether or not the cause of action upon which  
6     it is based is a type which survives. (1967, c. 954, s. 1; 1977, c. 446, s. 3.)