

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 625

Short Title: Service by Fax Machine.

(Public)

Sponsors: Representatives Rhyne; Stam, Cooper, Blue, Wicker, and S. Thompson.

Referred to: Judiciary.

March 15, 1989

A BILL TO BE ENTITLED

AN ACT TO ALLOW SERVICE OF PLEADINGS AND OTHER PAPERS BY
FACSIMILE MACHINE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1A-1, Rule 5 reads as rewritten:

"Rule 5. Service and filing of pleadings and other papers.

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

(b) Service – How made. – A pleading setting forth a counterclaim or cross claim shall be filed with the court and a copy thereof shall be served on the party against whom it is asserted or on his attorney of record. With respect to all pleadings subsequent to the original complaint and other papers required or permitted to be served, service with due return may be made in the manner provided for service and return of process in Rule 4 and may be made upon either the party or, unless service upon the party himself is ordered by the court, upon his attorney of record. With respect to such other pleadings and papers, service upon the attorney or upon a party may also be made by delivering a copy to him or by mailing it to him at his last known address

1 or, if no address is known, by filing it with the clerk of court. Service upon an attorney
2 may also be made by transmission to a telefacsimile machine in his office. Delivery of a
3 copy within this rule means handing it to the attorney or to the party; or leaving it at the
4 attorney's office with a partner or employee. Service by mail shall be complete upon
5 deposit of the pleading or paper enclosed in a post-paid, properly addressed wrapper in
6 a post office or official depository under the exclusive care and custody of the United
7 States Postal Service. Service by telefacsimile machine shall be complete upon
8 transmission.

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

17 (d) Filing. – All pleadings subsequent to the complaint shall be filed with the
18 court. All other papers required to be served upon a party, including requests for
19 admissions, shall be filed with the court either before service or within five days
20 thereafter, except that depositions, interrogatories, requests for documents, and answers
21 and responses to those requests may not be filed unless ordered by the court or until
22 used in the proceeding. The party taking a deposition or obtaining material through
23 discovery is responsible for its preservation and delivery to the court if needed or so
24 ordered. With respect to all pleadings and other papers as to which service and return
25 has not been made in the manner provided in Rule 4, proof of service shall be made by
26 filing with the court a certificate either by the attorney or the party that the paper was
27 served in the manner prescribed by this rule, or a certificate of acceptance of service by
28 the attorney or the party to be ~~served~~-served; additionally, if service was made by
29 telefacsimile machine, the receipt or photocopy thereof that was generated by the
30 sending telefacsimile machine shall be attached to the certificate of service. The receipt
31 or photocopy thereof generated by the sending telefacsimile machine shall indicate the
32 date of transmission, the telephone number of the receiving telefacsimile machine, and a
33 statement that the transmission was completed. ~~Such~~ The certificate shall show the date
34 and method of service or the date of acceptance of service.

35 (e) Filing with the court defined. – The filing of pleadings and other papers with
36 the court as required by these rules shall be made by filing them with the clerk of the
37 court, except that the judge may permit the papers to be filed with him, in which event
38 he shall note thereon the filing date and forthwith transmit them to the office of the
39 clerk."

40 Sec. 2. G.S. 1A-1, Rule 6(e) reads as rewritten:

41 "(e) Additional time after service by mail. – Whenever a party has the right to do
42 some act or take some proceedings within a prescribed period after the service of a
43 notice or other paper upon him and the notice or paper is served upon him by ~~mail~~, mail
44 or by telefacsimile machine, three days shall be added to the prescribed period."

1 Sec. 3. This act shall become effective October 1, 1989, and shall apply to
2 pleadings and papers served on or after that date.