

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

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HOUSE BILL 1284

Short Title: Openness of Court Records and Proceedings.

(Public)

Sponsors: Representatives Weiss; and Luebke.

Referred to: Judiciary II.

April 12, 2001

A BILL TO BE ENTITLED

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2 AN ACT TO ESTABLISH A PRESUMPTION THAT COURT RECORDS FOR
3 CIVIL, ADMINISTRATIVE, AND CRIMINAL CASES ARE OPEN, TO
4 PROVIDE THE PROCEDURE TO OBTAIN AN ORDER TO SEAL A COURT
5 RECORD, TO ESTABLISH A PRESUMPTION THAT THE HEARINGS,
6 PROCEEDINGS, AND TRIALS FOR CIVIL, ADMINISTRATIVE, AND
7 CRIMINAL CASES ARE OPEN, AND TO PROVIDE THE PROCEDURE TO
8 OBTAIN AN ORDER TO CONDUCT A CLOSED HEARING, PROCEEDING,
9 OR TRIAL.

10 The General Assembly of North Carolina enacts:

11 **SECTION 1.** G.S. 1A-1, Rule 5 is amended by adding a new subsection to
12 read:

13 "(f) No pleadings and no other papers that must be filed with the court under this
14 rule shall be removed from the court files unless specifically provided by statute or
15 court rule."

16 **SECTION 2.** Article 2 of Chapter 1A of the General Statutes is amended by
17 adding a new Rule to read:

18 **Rule 5.1. Openness of court records.**

19 (a) Standard. – No court record shall be sealed except as provided in this section.
20 Court records are presumed to be open. The presumption under this section may be
21 rebutted by the party seeking to seal a court record upon a showing of all of the
22 following:

23 (1) A specific, serious, and substantial interest exists that outweighs any
24 likely adverse effect that sealing the record would have upon the
25 public health or safety.

26 (2) There is no less restrictive means than sealing the court record to
27 adequately and effectively protect the interest alleged under
28 subdivision (1) of this subsection.

1 **(b) Motion to Seal Court Record.** – Upon the written motion of a party, the court
2 may order a court record to be sealed. The moving party shall post a public notice where
3 notices for meetings of county government are required to be posted in the county
4 where the action was brought. This notice shall contain a statement that shall
5 substantially comply with the following:

6 'A hearing will be held in open court on a motion to seal one or more court records
7 in (case name). Any person may intervene and be heard concerning the sealing of the
8 court records.' The notice also shall include the time and place of hearing the motion to
9 seal the court records, the type and number of the action, a brief description of both the
10 nature of the case and the court record that the moving party seeks to have sealed, and
11 the name of the moving party. The moving party shall also file a verified copy of the
12 notice under this subsection under Rule 5 and with the Clerk of the North Carolina
13 Supreme Court.

14 **(c) Hearing on Motion.** – A hearing shall be held in open court on the motion
15 under subsection (b) of this section as soon as practicable, but not less than 14 days after
16 the public notice was posted under subsection (b) of this section. Any party may
17 participate in the hearing of the motion. Upon filing a motion to intervene, a nonparty
18 may intervene for the limited purpose of participating in the hearing on the motion to
19 seal a court record. The court may inspect any court record in camera that the court
20 determines necessary to inspect.

21 **(d) Order.** – The court's ruling on the motion to seal a court record shall be a
22 written order and shall be open to the public. The order shall state: the type and number
23 of the case; the findings of fact and the conclusions of law to support the order; the
24 specific court records that are to be sealed and the time period for which the sealed court
25 records are to be sealed. The order under this subsection is severed from the action,
26 shall not be included in any judgment on the rights of the parties or any other order in
27 the action, and shall be a separate order in the action. Failure to comply with this
28 subsection does affect an appeal of the order on the motion to seal a court record.

29 **(e) Appeal.** – Any order under this section may be appealed before the judgment
30 on the rights of the parties is entered and may be appealed by any party or intervener
31 who participated in the hearing on the motion to seal a court record. Upon appeal, the
32 court may order the trial court to give further public notice, hold further hearings, or
33 make additional findings.

34 **(f) Continuing Jurisdiction.** – Any person may intervene as a matter of right at
35 any time before or after the order on the motion to seal a court record is entered. A court
36 that issues an order to seal court records retains continuing jurisdiction to enforce, alter,
37 or vacate that order. An order on the motion to seal a court record shall not be
38 reconsidered on the motion of any party or intervener who had actual notice of the
39 hearing on the motion to seal a court record, unless the party or intervener is able to
40 show changed circumstances that materially affect the order. Such changed
41 circumstances need not be related to the action in which the order was issued.

42 **(g) Definition.** – As used in this section, 'court record' means any pleading, order
43 of the court, or any other paper that is filed with the court under Rule 5."

1 **SECTION 3.** Article 8 of Chapter 1A of the General Statutes is amended by
2 adding a new Rule to read:

3 **"Rule 85. Openness of court proceedings.**

4 (a) Standard. – Trials and court hearings are presumed to be open. The
5 presumption under this section may be rebutted by the party seeking to have the trial or
6 hearing conducted as a closed trial or hearing upon a showing of all of the following:

7 (1) A specific, serious, and substantial interest exists that outweighs any
8 likely adverse effect that conducting a closed trial or hearing would
9 have upon the public health or safety.

10 (2) There is no less restrictive means than conducting a closed trial or
11 hearing to adequately and effectively protect the interest alleged under
12 subdivision (1) of this subsection.

13 (b) Motion to Conduct a Closed Trial or Hearing. – Upon the written motion of a
14 party, the court may order a trial or hearing to be conducted as a closed trial or hearing.
15 The moving party shall post a public notice where notices for meetings of county
16 government are required to be posted in the county in which the action was brought.
17 This notice shall contain a statement that shall substantially comply with the following:

18 'A hearing will be held in open court on a motion to conduct a closed trial or hearing
19 in (case name). Any person may intervene and be heard concerning whether to conduct
20 a closed trial or hearing.' The notice also shall include the time and place of the hearing
21 on the motion to conduct a closed trial or hearing, the type and number of the action, a
22 brief description of both the nature of the case and the trial or hearing that the moving
23 party seeks to have conducted as a closed trial or hearing, and the name of the moving
24 party. The moving party shall also file a verified copy of the notice under this
25 subsection under Rule 5 and with the Clerk of the North Carolina Supreme Court.

26 (c) Hearing on Motion. – A hearing shall be held in open court on the motion
27 under subsection (b) of this section as soon as practicable, but not less than 14 days after
28 the public notice was posted under subsection (b) of this section. Any party may
29 participate in the hearing of the motion. Upon filing a motion to intervene, a nonparty
30 may intervene for the limited purpose of participating in the hearing on the motion to
31 conduct a closed trial or hearing.

32 (d) Order. – The court's ruling on the motion to conduct a closed trial or hearing
33 shall be a written order and shall be open to the public. The order shall state: the type
34 and number of the case; the findings of fact and the conclusions of law to support the
35 order; the matters to be decided at the trial or hearing that the moving party seeks to
36 have conducted as a closed trial or hearing. The order under this subsection is severed
37 from the action and shall not be included in any judgment on the rights of the parties or
38 any other order in the action, but shall be a separate order in the action. The failure to
39 comply with this subsection does affect the appeal of the order on the motion to conduct
40 a closed trial or hearing.

41 (e) Appeal. – Any order under this section may be appealed before the judgment
42 on the rights of the parties is entered and may be appealed by any party or intervener
43 who participated in the hearing on the motion to conduct a closed trial or hearing. Upon

1 appeal, the court may order the trial court to give further public notice, hold further
2 hearings, or make additional findings.

3 (f) Continuing Jurisdiction. – Any person may intervene as a matter of right at
4 any time before or after the order on the motion to conduct a closed trial or hearing. A
5 court that issues an order to conduct a closed trial or hearing retains continuing
6 jurisdiction to enforce, alter, or vacate that order. An order on the motion to conduct a
7 closed trial or hearing shall not be reconsidered on the motion of any party or intervener
8 who had actual notice of the hearing on the motion to conduct a closed trial or hearing,
9 unless the party or intervener is able to show changed circumstances that materially
10 affect the order. Such changed circumstances need not be related to the action in which
11 the order was issued."

12 **SECTION 4.** G.S. 150B-25 is amended by adding a new subsection to read:

13 "(e) The hearing of a case under this section is subject to Rule 85 of the Rules of
14 Civil Procedure."

15 **SECTION 5.** G.S. 150B-37 is amended by adding a new subsection to read:

16 "(d) The official record of a contested case is subject to Rule 5.1 of the Rules of
17 Civil Procedure."

18 **SECTION 6.** Article 71 of Chapter 15A of the General Statutes is amended
19 by adding a new section to read:

20 **"§ 15A-1202. Jury trial presumed open; court records presumed open.**

21 (a) A trial under this Article is subject to Rule 85 of the Rules of Civil Procedure.

22 (b) All court records for a criminal case that are filed with the court are subject to
23 Rule 5.1 of the Rules of Civil Procedure."

24 **SECTION 7.** This act becomes effective October 1, 2001, and applies to all
25 court records subject to this act that are filed on or after that date, applies to all civil
26 actions, contested administrative cases, and criminal cases commenced or pending on or
27 after that date, and applies to all motions to alter or vacate a trial or hearing that is
28 conducted as a closed trial or hearing on or after that date.