

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

S

2

**SENATE BILL 951
Second Edition Engrossed 4/19/01**

Short Title: Prevent Unnecessary Filing of Briefs.

(Public)

Sponsors: Senator Odom.

Referred to: Judiciary II.

April 5, 2001

A BILL TO BE ENTITLED

1
2 AN ACT TO AMEND RULE 5 OF THE RULES OF CIVIL PROCEDURE TO
3 ELIMINATE THE REQUIREMENT OF FILING OF BRIEFS OR MEMORANDA
4 REGARDING DISPOSITIVE MOTIONS WITHIN FIVE DAYS OF SERVICE,
5 AS RECOMMENDED BY THE NORTH CAROLINA COURTS COMMISSION.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** G.S. 1A-1, Rule 5 reads as rewritten:

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

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

19 (a1) Service of briefs or memoranda in support or opposition of certain dispositive
20 motions. – In actions in superior court, every brief or memorandum in support of or in
21 opposition to a motion to dismiss, a motion for judgment on the pleadings, a motion for
22 summary judgment, or any other motion seeking a final determination of the rights of
23 the parties as to one or more of the claims or parties in the action shall be served upon
24 each of the parties at least two days before the hearing on the motion. If the brief or
25 memorandum is not served on the other parties at least two days before the hearing on
26 the motion, the court may continue the matter for a reasonable period to allow the
27 responding party to prepare a response, proceed with the matter without considering the
28 untimely served brief or memorandum, or take such other action as the ends of justice

1 require. The parties may, by consent, alter the period of time for service. For the
2 purpose of this two-day requirement only, service shall mean personal delivery,
3 facsimile transmission, or other means such that the party actually receives the brief
4 within the required time.

5 (b) Service – How made. – A pleading setting forth a counterclaim or cross claim
6 shall be filed with the court and a copy thereof shall be served on the party against
7 whom it is asserted or on his attorney of record. With respect to all pleadings
8 subsequent to the original complaint and other papers required or permitted to be
9 served, service with due return may be made in the manner provided for service and
10 return of process in Rule 4 and may be made upon either the party or, unless service
11 upon the party himself is ordered by the court, upon his attorney of record. With respect
12 to such other pleadings and papers, service upon the attorney or upon a party may also
13 be made by delivering a copy to him or by mailing it to him at his last known address
14 or, if no address is known, by filing it with the clerk of court. Delivery of a copy within
15 this rule means handing it to the attorney or to the party; or leaving it at the attorney's
16 office with a partner or employee. Service by mail shall be complete upon deposit of the
17 pleading or paper enclosed in a post-paid, properly addressed wrapper in a post office or
18 official depository under the exclusive care and custody of the United States Postal
19 Service.

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

28 (d) Filing. – All pleadings subsequent to the complaint shall be filed with the
29 court. All other papers required to be served upon a party, including requests for
30 admissions, shall be filed with the court either before service or within five days
31 thereafter, except that depositions, interrogatories, requests for documents, ~~and~~ answers
32 and responses to those requests may not be filed unless ordered by the court or until
33 used in the proceeding. Briefs and memoranda provided to the court may not be filed
34 with the clerk of the court unless ordered by the court. The party taking a deposition or
35 obtaining material through discovery is responsible for its preservation and delivery to
36 the court if needed or so ordered. With respect to all pleadings and other papers as to
37 which service and return has not been made in the manner provided in Rule 4, proof of
38 service shall be made by filing with the court a certificate either by the attorney or the
39 party that the paper was served in the manner prescribed by this rule, or a certificate of
40 acceptance of service by the attorney or the party to be served. Such certificate shall
41 show the date and method of service or the date of acceptance of service.

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

1 papers to be filed with him, in which event he shall note thereon the
2 filing date and forthwith transmit them to the office of the clerk.
3 (2) Filing by telefacsimile transmission. – If, pursuant to G.S. 7A-34 and
4 G.S. 7A-343, the Supreme Court and the Administrative Officer of the
5 Courts establish uniform rules, regulations, procedures and
6 specifications for the filing of pleadings or other court papers by
7 telefacsimile transmission, filing may be made by the transmission
8 when, in the manner, and to the extent provided therein."

9 **SECTION 2.** This act is effective when it becomes law.