

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

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**SENATE BILL 951
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Short Title: Prevent Unnecessary Filing of Briefs.

(Public)

Sponsors:

Referred to:

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 AND TO ELIMINATE THE UNNECESSARY FILING OF COVER SHEETS.

7 The General Assembly of North Carolina enacts:

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

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

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

20 (a1) Service of briefs or memoranda in support or opposition of certain dispositive
21 motions. – In actions in superior court, every brief or memorandum in support of or in
22 opposition to a motion to dismiss, a motion for judgment on the pleadings, a motion for
23 summary judgment, or any other motion seeking a final determination of the rights of
24 the parties as to one or more of the claims or parties in the action shall be served upon
25 each of the parties at least two days before the hearing on the motion. If the brief or
26 memorandum is not served on the other parties at least two days before the hearing on
27 the motion, the court may continue the matter for a reasonable period to allow the

1 responding party to prepare a response, proceed with the matter without considering the
2 untimely served brief or memorandum, or take such other action as the ends of justice
3 require. The parties may, by consent, alter the period of time for service. For the
4 purpose of this two-day requirement only, service shall mean personal delivery,
5 facsimile transmission, or other means such that the party actually receives the brief
6 within the required time.

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

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

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

1 acceptance of service by the attorney or the party to be served. Such certificate shall
2 show the date and method of service or the date of acceptance of service.

3 (e) (1) Filing with the court defined. – The filing of pleadings and other
4 papers with the court as required by these rules shall be made by filing
5 them with the clerk of the court, except that the judge may permit the
6 papers to be filed with him, in which event he shall note thereon the
7 filing date and forthwith transmit them to the office of the clerk.

8 (2) Filing by telefacsimile transmission. – If, pursuant to G.S. 7A-34 and
9 G.S. 7A-343, the Supreme Court and the Administrative Officer of the
10 Courts establish uniform rules, regulations, procedures and
11 specifications for the filing of pleadings or other court papers by
12 telefacsimile transmission, filing may be made by the transmission
13 when, in the manner, and to the extent provided therein."

14 **SECTION 2.** Article 5 of Chapter 7A of the General Statutes is amended by
15 adding a new section to read:

16 "**§ 7A-34.1. Unnecessary cover sheets.**

17 A cover sheet summarizing the critical elements of the filing in a format prescribed
18 by the Administrative Office of the Courts shall not be required for papers filed in civil
19 actions subsequent to the initial filing if such subsequent filing contains:

- 20 (1) A caption including the file number, on the first page thereof.
21 (2) The name, address, and telephone number of the attorney filing the
22 papers or, if the party filing the papers is not represented by an
23 attorney, the name, address, and telephone number of the party filing
24 the papers.
25 (3) A designation of the party represented by the attorney filing the
26 papers, if an attorney is filing the papers.
27 (4) The name and designation of "plaintiff", "defendant", "petitioner",
28 "respondent", or other relationship to the action of each other party to
29 the action.
30 (5) The code or codes, set forth on the first page next to the title thereof,
31 corresponding to the codes located on the cover sheet forms
32 promulgated by the Administrative Office of the Courts which apply to
33 the filing.
34 (6) The signature of the attorney or party filing the paper and the date
35 signed."

36 **SECTION 3.** Section 2 of this act becomes effective October 1, 2001. The
37 remainder of this act is effective when it becomes law.