

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

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SENATE BILL 1851*

Short Title: Service of Process/Electronic or Fax Receipt. (Public)

Sponsors: Senator Hartsell.

Referred to: Judiciary II (Criminal).

May 22, 2008

A BILL TO BE ENTITLED

1
2 AN ACT TO EXPRESSLY AUTHORIZE THE USE OF ELECTRONIC OR
3 FACSIMILE RECEIPTS UNDER RULE 4 OF THE RULES OF CIVIL
4 PROCEDURE WHEN SERVICE OF PROCESS IS PROVIDED BY A
5 DESIGNATED PRIVATE DELIVERY SERVICE, AND TO MAKE
6 CONFORMING CHANGES REGARDING PROOF OF SERVICE, AS
7 RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

8 The General Assembly of North Carolina enacts:

9 **SECTION 1.** G.S. 1A-1, Rule 4(j), reads as rewritten:

10 "(j) Process – Manner of service to exercise personal jurisdiction. – In any action
11 commenced in a court of this State having jurisdiction of the subject matter and grounds
12 for personal jurisdiction as provided in G.S. 1-75.4, the manner of service of process
13 within or without the State shall be as follows:

14 (1) Natural Person. – Except as provided in ~~subsection~~subdivision (2)
15 below, upon a natural person by one of the following:

- 16 a. By delivering a copy of the summons and of the complaint to
17 the natural person or by leaving copies thereof at the
18 defendant's dwelling house or usual place of abode with some
19 person of suitable age and discretion then residing therein.
20 b. By delivering a copy of the summons and of the complaint to an
21 agent authorized by appointment or by law to be served or to
22 accept service of process or by serving process upon such agent
23 or the party in a manner specified by any statute.
24 c. By mailing a copy of the summons and of the complaint,
25 registered or certified mail, return receipt requested, addressed
26 to the party to be served, and delivering to the addressee.
27 d. By depositing with a designated delivery service authorized
28 pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and
29 complaint, addressed to the party to be served, delivering to the

- 1 addressee, and obtaining a delivery receipt. As used in this
2 sub-subdivision, "delivery receipt" includes an electronic or
3 facsimile receipt.
- 4 e. By mailing a copy of the summons and of the complaint by
5 signature confirmation as provided by the United States Postal
6 Service, addressed to the party to be served, and delivering to
7 the addressee. ~~Nothing in this sub-subdivision authorizes the~~
8 ~~use of electronic mailing for service on the party to be served.~~
- 9 (2) Natural Person under Disability. – Upon a natural person under
10 disability by serving process in any manner prescribed in this section
11 (j) for service upon a natural person and, in addition, where required
12 by paragraph a or b below, upon a person therein designated.
- 13 a. Where the person under disability is a minor, process shall be
14 served separately in any manner prescribed for service upon a
15 natural person upon a parent or guardian having custody of the
16 child, or if there be none, upon any other person having the care
17 and control of the child. If there is no parent, guardian, or other
18 person having care and control of the child when service is
19 made upon the child, then service of process must also be made
20 upon a guardian ad litem who has been appointed pursuant to
21 Rule 17.
- 22 b. If the plaintiff actually knows that a person under disability is
23 under guardianship of any kind, process shall be served
24 separately upon his guardian in any manner applicable and
25 appropriate under this section (j). If the plaintiff does not
26 actually know that a guardian has been appointed when service
27 is made upon a person known to him to be incompetent to have
28 charge of his affairs, then service of process must be made upon
29 a guardian ad litem who has been appointed pursuant to Rule
30 17.
- 31 (3) The State. – Upon the State by personally delivering a copy of the
32 summons and of the complaint to the Attorney General or to a deputy
33 or assistant attorney general; by mailing a copy of the summons and of
34 the complaint, registered or certified mail, return receipt requested,
35 addressed to the Attorney General or to a deputy or assistant attorney
36 general; or by depositing with a designated delivery service authorized
37 pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and
38 complaint, addressed to the Attorney General or to a deputy or
39 assistant attorney general, delivering to the addressee, and obtaining a
40 delivery receipt. As used in this subdivision, "delivery receipt"
41 includes an electronic or facsimile receipt.
- 42 (4) An Agency of the State. –
- 43 a. Upon an agency of the State by personally delivering a copy of
44 the summons and of the complaint to the process agent

1 appointed by the agency in the manner hereinafter provided; by
2 mailing a copy of the summons and of the complaint, registered
3 or certified mail, return receipt requested, addressed to said
4 process agent; or by depositing with a designated delivery
5 service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of
6 the summons and complaint, addressed to the process agent,
7 delivering to the addressee, and obtaining a delivery receipt. As
8 used in this sub-subdivision, "delivery receipt" includes an
9 electronic or facsimile receipt.

10 b. Every agency of the State shall appoint a process agent by filing
11 with the Attorney General the name and address of an agent
12 upon whom process may be served.

13 c. If any agency of the State fails to comply with paragraph b
14 above, then service upon such agency may be made by
15 personally delivering a copy of the summons and of the
16 complaint to the Attorney General or to a deputy or assistant
17 attorney general; by mailing a copy of the summons and of the
18 complaint, registered or certified mail, return receipt requested,
19 addressed to the Attorney General, or to a deputy or assistant
20 attorney general; or by depositing with a designated delivery
21 service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of
22 the summons and complaint, addressed to the Attorney General
23 or to a deputy or assistant attorney general, delivering to the
24 addressee, and obtaining a delivery receipt. As used in this
25 sub-subdivision, "delivery receipt" includes an electronic or
26 facsimile receipt.

27 d. For purposes of this rule, the term "agency of the State"
28 includes every agency, institution, board, commission, bureau,
29 department, division, council, member of Council of State, or
30 officer of the State government of the State of North Carolina,
31 but does not include counties, cities, towns, villages, other
32 municipal corporations or political subdivisions of the State,
33 county or city boards of education, other local public districts,
34 units, or bodies of any kind, or private corporations created by
35 act of the General Assembly.

36 (5) Counties, Cities, Towns, Villages and Other Local Public Bodies. –

37 a. Upon a city, town, or village by personally delivering a copy of
38 the summons and of the complaint to its mayor, city manager or
39 clerk; by mailing a copy of the summons and of the complaint,
40 registered or certified mail, return receipt requested, addressed
41 to its mayor, city manager or clerk; or by depositing with a
42 designated delivery service authorized pursuant to 26 U.S.C. §
43 7502(f)(2) a copy of the summons and complaint, addressed to
44 the mayor, city manager, or clerk, delivering to the addressee,

1 and obtaining a delivery receipt. As used in this
2 sub-subdivision, "delivery receipt" includes an electronic or
3 facsimile receipt.

4 b. Upon a county by personally delivering a copy of the summons
5 and of the complaint to its county manager or to the chairman,
6 clerk or any member of the board of commissioners for such
7 county; by mailing a copy of the summons and of the
8 complaint, registered or certified mail, return receipt requested,
9 addressed to its county manager or to the chairman, clerk, or
10 any member of this board of commissioners for such county; or
11 by depositing with a designated delivery service authorized
12 pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and
13 complaint, addressed to the county manager or to the chairman,
14 clerk, or any member of the board of commissioners of that
15 county, delivering to the addressee, and obtaining a delivery
16 receipt. As used in this sub-subdivision, "delivery receipt"
17 includes an electronic or facsimile receipt.

18 c. Upon any other political subdivision of the State, any county or
19 city board of education, or other local public district, unit, or
20 body of any kind (i) by personally delivering a copy of the
21 summons and of the complaint to an officer or director thereof,
22 (ii) by personally delivering a copy of the summons and of the
23 complaint to an agent or attorney-in-fact authorized by
24 appointment or by statute to be served or to accept service in its
25 behalf, (iii) by mailing a copy of the summons and of the
26 complaint, registered or certified mail, return receipt requested,
27 addressed to the officer, director, agent, or attorney-in-fact as
28 specified in (i) and (ii), or (iv) by depositing with a designated
29 delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a
30 copy of the summons and complaint, addressed to the officer,
31 director, agent, or attorney-in-fact as specified in (i) and (ii),
32 delivering to the addressee, and obtaining a delivery receipt. As
33 used in this sub-subdivision, "delivery receipt" includes an
34 electronic or facsimile receipt.

35 d. In any case where none of the officials, officers or directors
36 specified in paragraphs a, b and c can, after due diligence, be
37 found in the State, and that fact appears by affidavit to the
38 satisfaction of the court, or a judge thereof, such court or judge
39 may grant an order that service upon the party sought to be
40 served may be made by personally delivering a copy of the
41 summons and of the complaint to the Attorney General or any
42 deputy or assistant attorney general of the State of North
43 Carolina; by mailing a copy of the summons and of the
44 complaint, registered or certified mail, return receipt requested,

1 addressed to the Attorney General or any deputy or assistant
2 attorney general of the State of North Carolina; or by depositing
3 with a designated delivery service authorized pursuant to 26
4 U.S.C. § 7502(f)(2) a copy of the summons and complaint,
5 addressed to the Attorney General or any deputy or assistant
6 attorney general of the State of North Carolina, delivering to the
7 addressee, and obtaining a delivery receipt. As used in this
8 sub-subdivision, "delivery receipt" includes an electronic or
9 facsimile receipt.

10 (6) Domestic or Foreign Corporation. – Upon a domestic or foreign
11 corporation by one of the following:

12 a. By delivering a copy of the summons and of the complaint to an
13 officer, director, or managing agent of the corporation or by
14 leaving copies thereof in the office of such officer, director, or
15 managing agent with the person who is apparently in charge of
16 the office.

17 b. By delivering a copy of the summons and of the complaint to an
18 agent authorized by appointment or by law to be served or to
19 accept service of process or by serving process upon such agent
20 or the party in a manner specified by any statute.

21 c. By mailing a copy of the summons and of the complaint,
22 registered or certified mail, return receipt requested, addressed
23 to the officer, director or agent to be served as specified in
24 paragraphs a and b.

25 d. By depositing with a designated delivery service authorized
26 pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and
27 complaint, addressed to the officer, director, or agent to be
28 served as specified in paragraphs a. and b., delivering to the
29 addressee, and obtaining a delivery receipt. As used in this
30 sub-subdivision, "delivery receipt" includes an electronic or
31 facsimile receipt.

32 (7) Partnerships. – Upon a general or limited partnership:

33 a. By delivering a copy of the summons and of the complaint to
34 any general partner, or to any attorney-in-fact or agent
35 authorized by appointment or by law to be served or to accept
36 service of process in its behalf; by mailing a copy of the
37 summons and of the complaint, registered or certified mail,
38 return receipt requested, addressed to any general partner, or to
39 any attorney-in-fact or agent authorized by appointment or by
40 law to be served or to accept service of process in its behalf; or
41 by depositing with a designated delivery service authorized
42 pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and
43 complaint, addressed to any general partner or to any
44 attorney-in-fact or agent authorized by appointment or by law to

1 be served or to accept service of process in its behalf, delivering
 2 to the addressee, and obtaining a delivery receipt; or by leaving
 3 copies thereof in the office of such general partner,
 4 attorney-in-fact or agent with the person who is apparently in
 5 charge of the office. As used in this sub-subdivision, "delivery
 6 receipt" includes an electronic or facsimile receipt.

7 b. If relief is sought against a partner specifically, a copy of the
 8 summons and of the complaint must be served on such partner
 9 as provided in this section (j).

10 (8) Other Unincorporated Associations and Their Officers. – Upon any
 11 unincorporated association, organization, or society other than a
 12 partnership by one of the following:

13 a. By delivering a copy of the summons and of the complaint to an
 14 officer, director, managing agent or member of the governing
 15 body of the unincorporated association, organization or society,
 16 or by leaving copies thereof in the office of such officer,
 17 director, managing agent or member of the governing body with
 18 the person who is apparently in charge of the office.

19 b. By delivering a copy of the summons and of the complaint to an
 20 agent authorized by appointment or by law to be served or to
 21 accept service of process or by serving process upon such agent
 22 or the party in a manner specified by any statute.

23 c. By mailing a copy of the summons and of the complaint,
 24 registered or certified mail, return receipt requested, addressed
 25 to the officer, director, agent or member of the governing body
 26 to be served as specified in paragraphs a and b.

27 d. By depositing with a designated delivery service authorized
 28 pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and
 29 complaint, addressed to the officer, director, agent, or member
 30 of the governing body to be served as specified in paragraphs a.
 31 and b., delivering to the addressee, and obtaining a delivery
 32 receipt. As used in this sub-subdivision, "delivery receipt"
 33 includes an electronic or facsimile receipt.

34 (9) Foreign States and Their Political Subdivisions, Agencies, and
 35 Instrumentalities. – ~~Service upon~~ Upon a foreign state or a political
 36 subdivision, agency, or instrumentality thereof shall be
 37 effected thereof, pursuant to 28 U.S.C. § 1608."

38 **SECTION 2.** G.S. 1A-1, Rule 4(j2), reads as rewritten:

39 "(j2) Proof of service. – Proof of service of process shall be as follows:

40 (1) Personal Service. – Before judgment by default may be had on
 41 personal service, proof of service must be provided in accordance with
 42 the requirements of ~~G.S. 1-75.10(1)~~ G.S. 1-75.10(a)(1).

43 (2) Registered or Certified Mail, Signature Confirmation, or Designated
 44 Delivery Service. – Before judgment by default may be had on service

1 by registered or certified mail, signature confirmation, or by a
2 designated delivery service authorized pursuant to 26 U.S.C. §
3 7502(f)(2) with delivery receipt, the serving party shall file an affidavit
4 with the court showing proof of such service in accordance with the
5 requirements of ~~G.S. 1-75.10(4), 1-75.10(5), or~~
6 ~~1-75.10(6),~~ G.S. 1-75.10(a)(4), 1-75.10(a)(5), or 1-75.10(a)(6), as
7 appropriate. This affidavit together with the return ~~or delivery receipt~~
8 ~~or receipt,~~ copy of the proof of delivery provided by the United States
9 Postal ~~Service~~ Service, or delivery receipt, signed by the person who
10 received the mail or delivery if not the addressee raises a presumption
11 that the person who received the mail or delivery and signed the
12 receipt was an agent of the addressee authorized by appointment or by
13 law to be served or to accept service of process or was a person of
14 suitable age and discretion residing in the addressee's dwelling house
15 or usual place of abode. In the event the presumption described in the
16 preceding sentence is rebutted by proof that the person who received
17 the receipt at the addressee's dwelling house or usual place of abode
18 was not a person of suitable age and discretion residing therein, the
19 statute of limitation may not be pleaded as a defense if the action was
20 initially commenced within the period of limitation and service of
21 process is completed within 60 days from the date the service is
22 declared invalid. Service shall be complete on the day the summons
23 and complaint are delivered to the address. As used in this subdivision,
24 "delivery receipt" includes an electronic or facsimile receipt provided
25 by a designated delivery service.

- 26 (3) Publication. – Before judgment by default may be had on service by
27 publication, the serving party shall file an affidavit with the court
28 showing the circumstances warranting the use of service by
29 publication, information, if any, regarding the location of the party
30 served which was used in determining the area in which service by
31 publication was printed and proof of service in accordance with
32 ~~G.S. 1-75.10(2).~~ G.S. 1-75.10(a)(2)."

33 **SECTION 3.** G.S. 1A-1, Rule 4, is amended by adding a new subsection to
34 read:

35 "(j6) Service by electronic mailing not authorized. – Nothing in subsection (j) of
36 this section authorizes the use of electronic mailing for service on the party to be
37 served."

38 **SECTION 4.** G.S. 1-75.10 reads as rewritten:

39 "**§ 1-75.10. Proof of service of summons, defendant appearing in action.**

40 (a) Where the defendant appears in the action and challenges the service of the
41 summons upon him, proof of the service of process shall be as follows:

42 ...

1 (5) Service by Designated Delivery Service. – In the case of service by
2 designated delivery service, by affidavit of the serving party
3 ~~averring;averring~~ all of the following:

- 4 a. That a copy of the summons and complaint was deposited with
5 a designated delivery service as authorized under G.S. 1A-1,
6 Rule 4, delivery receipt ~~requested;requested.~~
7 b. That it was in fact received as evidenced by the attached
8 delivery receipt or other evidence satisfactory to the court of
9 delivery to the ~~addressee; and~~ addressee.
10 c. That the ~~genuine-delivery~~ receipt or other evidence of delivery
11 is attached.

12

13 (b) As used in subdivision (5) of subsection (a) of this section, "delivery receipt"
14 includes a facsimile receipt and a printout of an electronic receipt."

15 **SECTION 5.** G.S. 1A-1, Rule 4(j1), reads as rewritten:

16 "(j1) Service by publication on party that cannot otherwise be served. – A party
17 that cannot with due diligence be served by personal delivery, registered or certified
18 mail, or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2)
19 may be served by publication. Except in actions involving jurisdiction in rem or quasi in
20 rem as provided in section (k), service of process by publication shall consist of
21 publishing a notice of service of process by publication once a week for three successive
22 weeks in a newspaper that is qualified for legal advertising in accordance with
23 G.S. 1-597 and G.S. 1-598 and circulated in the area where the party to be served is
24 believed by the serving party to be located, or if there is no reliable information
25 concerning the location of the party then in a newspaper circulated in the county where
26 the action is pending. If the party's post-office address is known or can with reasonable
27 diligence be ascertained, there shall be mailed to the party at or immediately prior to the
28 first publication a copy of the notice of service of process by publication. The mailing
29 may be omitted if the post-office address cannot be ascertained with reasonable
30 diligence. Upon completion of such service there shall be filed with the court an
31 affidavit showing the publication and mailing in accordance with the requirements of
32 ~~G.S. 1-75.10(2),G.S. 1-75.10(a)(2),~~ the circumstances warranting the use of service by
33 publication, and information, if any, regarding the location of the party served.

34 The notice of service of process by publication shall (i) designate the court in which
35 the action has been commenced and the title of the action, which title may be indicated
36 sufficiently by the name of the first plaintiff and the first defendant; (ii) be directed to
37 the defendant sought to be served; (iii) state either that a pleading seeking relief against
38 the person to be served has been filed or has been required to be filed therein not later
39 than a date specified in the notice; (iv) state the nature of the relief being sought; (v)
40 require the defendant being so served to make defense to such pleading within 40 days
41 after a date stated in the notice, exclusive of such date, which date so stated shall be the
42 date of the first publication of notice, or the date when the complaint is required to be
43 filed, whichever is later, and notify the defendant that upon his failure to do so the party
44 seeking service of process by publication will apply to the court for the relief sought;

(vi) in cases of attachment, state the information required by G.S. 1-440.14; (vii) be subscribed by the party seeking service or his attorney and give the post-office address of such party or his attorney; and (viii) be substantially in the following form:

NOTICE OF SERVICE OF PROCESS BY PUBLICATION
STATE OF NORTH CAROLINA _____ COUNTY

In the _____ Court

[Title of action or special proceeding] [To Person to be served]:

Take notice that a pleading seeking relief against you (has been filed) (is required to be filed not later than _____, ____) in the above-entitled (action) (special proceeding). The nature of the relief being sought is as follows:

(State nature.)

You are required to make defense to such pleading not later than (_____, ____) and upon your failure to do so the party seeking service against you will apply to the court for the relief sought.

This, the _____ day of _____, ____

_____ (Attorney) (Party)

_____ (Address)"

SECTION 6. This act becomes effective October 1, 2008, and applies to actions filed on or after that date.