

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 929

Short Title: Civil Procedure Rules Amendments.

(Public)

Sponsors: Senator Cooper.

Referred to: Judiciary I/Constitution

May 1, 1995

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS AMENDMENTS TO THE NORTH CAROLINA RULES OF CIVIL PROCEDURE REGARDING SERVICE OF PROCESS AND DEPOSITIONS IN A FOREIGN COUNTRY AND THE DETERMINATION OF FOREIGN LAW TO BE APPLIED IN CERTAIN CIVIL ACTIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-75.4 reads as rewritten:

"§ 1-75.4. Personal jurisdiction, grounds for generally.

A court of this State having jurisdiction of the subject matter has jurisdiction over a person served in an action pursuant to ~~Rule 4(j) or Rule 4(j1)~~ Rule 4(j), Rule 4(j1), or Rule 4(j3) of the Rules of Civil Procedure under any of the following circumstances:

- (1) Local Presence or Status. – In any action, whether the claim arises within or without this State, in which a claim is asserted against a party who when service of process is made upon such party:
  - a. Is a natural person present within this State; or
  - b. Is a natural person domiciled within this State; or
  - c. Is a domestic corporation; or
  - d. Is engaged in substantial activity within this State, whether such activity is wholly interstate, intrastate, or otherwise.

- 1 (2) Special Jurisdiction Statutes. – In any action which may be brought  
2 under statutes of this State that specifically confer grounds for personal  
3 jurisdiction.
- 4 (3) Local Act or Omission. – In any action claiming injury to person or  
5 property or for wrongful death within or without this State arising out of  
6 an act or omission within this State by the defendant.
- 7 (4) Local Injury; Foreign Act. – In any action for wrongful death occurring  
8 within this State or in any action claiming injury to person or property  
9 within this State arising out of an act or omission outside this State by  
10 the defendant, provided in addition that at or about the time of the injury  
11 either:
- 12 a. Solicitation or services activities were carried on within this State  
13 by or on behalf of the defendant; or
- 14 b. Products, materials or thing processed, serviced or manufactured  
15 by the defendant were used or consumed, within this State in the  
16 ordinary course of trade.
- 17 (5) Local Services, Goods or Contracts. – In any action which:
- 18 a. Arises out of a promise, made anywhere to the plaintiff or to  
19 some third party for the plaintiff's benefit, by the defendant to  
20 perform services within this State or to pay for services to be  
21 performed in this State by the plaintiff; or
- 22 b. Arises out of services actually performed for the plaintiff by the  
23 defendant within this State, or services actually performed for the  
24 defendant by the plaintiff within this State if such performance  
25 within this State was authorized or ratified by the defendant; or
- 26 c. Arises out of a promise, made anywhere to the plaintiff or to  
27 some third party for the plaintiff's benefit, by the defendant to  
28 deliver or receive within this State, or to ship from this State  
29 goods, documents of title, or other things of value; or
- 30 d. Relates to goods, documents of title, or other things of value  
31 shipped from this State by the plaintiff to the defendant on his  
32 order or direction; or
- 33 e. Relates to goods, documents of title, or other things of value  
34 actually received by the plaintiff in this State from the defendant  
35 through a carrier without regard to where delivery to the carrier  
36 occurred.
- 37 (6) Local Property. – In any action which arises out of:
- 38 a. A promise, made anywhere to the plaintiff or to some third party  
39 for the plaintiff's benefit, by the defendant to create in either  
40 party an interest in, or protect, acquire, dispose of, use, rent, own,  
41 control or possess by either party real property situated in this  
42 State; or

- 1           b.     A claim to recover for any benefit derived by the defendant  
2           through the use, ownership, control or possession by the  
3           defendant of tangible property situated within this State either at  
4           the time of the first use, ownership, control or possession or at  
5           the time the action is commenced; or  
6           c.     A claim that the defendant return, restore, or account to the  
7           plaintiff for any asset or thing of value which was within this  
8           State at the time the defendant acquired possession or control  
9           over it.
- 10       (7)    Deficiency Judgment on Local Foreclosure or Resale. – In any action to  
11       recover a deficiency judgment upon an obligation secured by a  
12       mortgage, deed of trust, conditional sale, or other security instrument  
13       executed by the defendant or his predecessor to whose obligation the  
14       defendant has succeeded and the deficiency is claimed either:  
15       a.     In an action in this State to foreclose such security instrument  
16       upon real property, tangible personal property, or an intangible  
17       represented by an indispensable instrument, situated in this State;  
18       or  
19       b.     Following sale of real or tangible personal property or an  
20       intangible represented by an indispensable instrument in this  
21       State under a power of sale contained in any security instrument.
- 22       (8)    Director or Officer of a Domestic Corporation. – In any action against a  
23       defendant who is or was an officer or director of a domestic corporation  
24       where the action arises out of the defendant's conduct as such officer or  
25       director or out of the activities of such corporation while the defendant  
26       held office as a director or officer.
- 27       (9)    Taxes or Assessments. – In any action for the collection of taxes or  
28       assessments levied, assessed or otherwise imposed by a taxing authority  
29       of this State after the date of ratification of this act.
- 30       (10)   Insurance or Insurers. – In any action which arises out of a contract of  
31       insurance as defined in G.S. 58-1-10 made anywhere between the  
32       plaintiff or some third party and the defendant and in addition either:  
33       a.     The plaintiff was a resident of this State when the event occurred  
34       out of which the claim arose; or  
35       b.     The event out of which the claim arose occurred within this  
36       State, regardless of where the plaintiff resided.
- 37       (11)   Personal Representative. – In any action against a personal  
38       representative to enforce a claim against the deceased person  
39       represented, whether or not the action was commenced during the  
40       lifetime of the deceased, where one or more of the grounds stated in  
41       subdivisions (2) to (10) of this section would have furnished a basis for  
42       jurisdiction over the deceased had he been living.

1 (12) Marital Relationship. – In any action under Chapter 50 that arises out of  
2 the marital relationship within this State, notwithstanding subsequent  
3 departure from the State, if the other party to the marital relationship  
4 continues to reside in this State."

5 Sec. 2. G.S. 1A-1, Rule 4(j), is amended by adding a new subdivision to read:

6 "(10) Service upon a foreign state or a political subdivision, agency, or  
7 instrumentality thereof shall be effected pursuant to 28 U.S.C. §  
8 1608."

9 Sec. 3. G.S. 1A-1, Rule 4 (j3), reads as rewritten:

10 "(j3) Service in a foreign country. —Where service is to be effected upon a party in a  
11 foreign country, in the alternative service of the summons and complaint may be made (i)  
12 in the manner prescribed by the law of the foreign country for service in that country in  
13 an action in any of its courts of general jurisdiction; or (ii) as directed by the foreign  
14 authority in response to a letter rogatory, when service in either case is reasonably  
15 calculated to give actual notice; or (iii) upon an individual, by delivery to him personally,  
16 and upon a corporation or partnership or association, by delivery to an officer or a  
17 managing or general agent; or (iv) by any form of mail, requiring a signed receipt, to be  
18 addressed and dispatched by the clerk of the court to the party to be served; or (v) as  
19 directed by order of the court. Service under (iii) or (v) may be made by any person  
20 authorized by section (a) of this rule or who is designated by order of the court or by the  
21 foreign court. On request, the clerk shall deliver the summons to the plaintiff for  
22 transmission to the person or the foreign court or officer who will make the service. Proof  
23 of service may be made as prescribed in G.S. 1-75.10, by the order of the court, or by the  
24 law of the foreign country. Proof of service by mail shall include an affidavit or  
25 certificate of addressing and mailing by the clerk of court.—Unless otherwise provided by  
26 federal law, service upon a defendant, other than an infant or an incompetent person, may  
27 be effected in a place not within the United States:

28 (1) By any internationally agreed means reasonably calculated to give  
29 notice, such as those means authorized by the Hague Convention on  
30 the Service Abroad of Judicial and Extrajudicial Documents; or

31 (2) If there is no internationally agreed means of service or the  
32 applicable international agreement allows other means of service,  
33 provided that service is reasonably calculated to give notice:

34 a. In the manner prescribed by the law of the foreign country for  
35 service in that country in an action in any of its courts of general  
36 jurisdiction;

37 b. As directed by the foreign authority in response to a letter  
38 rogatory or letter of request; or

39 c. Unless prohibited by the law of the foreign country, by

40 1. Delivery to the individual personally of a copy of the  
41 summons and the complaint and, upon a corporation,  
42 partnership, association or other such entity, by delivery to  
43 an officer or a managing or general agent;

1                   2.     Any form of mail requiring a signed receipt, to be  
2                             addressed and dispatched by the clerk of the court to the  
3                             party to be served; or

4                   (3)     By other means not prohibited by international agreement as may be  
5                             directed by the court.

6     Service under subdivision (2)c.1. or (3) of this subsection may be made by any person  
7     authorized by subsection (a) of this Rule or who is designated by order of the court or by  
8     the foreign court.

9     On request, the clerk shall deliver the summons to the plaintiff for transmission to the  
10    person or the foreign court or officer who will make the service. Proof of service may be  
11    made as prescribed in G.S. 1-75.10, by the order of the court, or by the law of the foreign  
12    country.

13    Proof of service by mail shall include an affidavit or certificate of addressing and  
14    mailing by the clerk of court."

15             Sec. 4. G.S. 1A-1, Rule 28(b), reads as rewritten:

16             "(b) In foreign countries. —~~In a foreign country, depositions~~ Depositions may be taken  
17    ~~(i) on notice in a foreign country:~~

18             (1)     Pursuant to any applicable treaty or convention.

19             (2)     Pursuant to a letter of request, whether or not captioned a letter  
20                             rogatory, or

21             (3)     On notice before a person authorized to administer oaths in the  
22                             place ~~in which~~ where the examination is held, either by the law  
23                             thereof or by the law of the United States, or ~~(ii) before~~

24             (4)     Before a person commissioned by the court, and a person so  
25                             commissioned shall have the power by virtue of his commission to  
26                             administer any necessary oath and take ~~testimony, or (iii) pursuant to a~~  
27                             letter rogatory. ~~testimony.~~ A commission or a letter rogatory of  
28                             request shall be issued on application and notice and on terms that  
29                             are just and appropriate. It is not requisite to the issuance of a  
30                             commission or a letter rogatory of request that the taking of the  
31                             deposition in any other manner is impracticable or inconvenient; and  
32                             both a commission and a letter rogatory of request may be issued in  
33                             proper cases. A notice or commission may designate the person  
34                             before whom the deposition is to be taken either by name or  
35                             descriptive title. A letter rogatory of request may be addressed 'To  
36                             the Appropriate Authority in (here name the country).' When a letter  
37                             of request or any other device is used pursuant to any applicable  
38                             treaty or convention, it shall be captioned in the form prescribed by  
39                             that treaty or convention. Evidence obtained in response to a letter  
40                             rogatory of request need not be excluded merely for the reason that  
41                             because it is not a verbatim transcript or that the testimony was not  
42                             taken under oath ~~oath,~~ or for any similar departure from the

1 requirements for depositions taken within the United States under  
2 these rules."

3 Sec. 5. Chapter 1A of the General Statutes is amended by adding a new Rule  
4 to read:

5 "Rule 44.1. Determination of foreign law.

6 A party who intends to raise an issue concerning the law of a foreign country shall  
7 give notice by pleadings or by other reasonable written notice. The court, in determining  
8 foreign law, may consider any relevant material or source, including testimony, whether  
9 or not submitted by a party or admissible under Chapter 8 of the General Statutes and  
10 State law. The court's determination shall be treated as a ruling on a question of law."

11 Sec. 6. This act is effective upon ratification and applies to civil actions filed  
12 on or after that date.