

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005**

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**SENATE BILL 465  
Judiciary I Committee Substitute Adopted 4/14/05**

Short Title: Civil Rules – Filing of Papers Clarified.

(Public)

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Sponsors:

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Referred to:

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March 10, 2005

A BILL TO BE ENTITLED

1 AN ACT TO CLARIFY THE SERVICE AND FILING REQUIREMENTS OF THE  
2 NORTH CAROLINA RULES OF CIVIL PROCEDURE.  
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4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** Subsection (b) of G.S. 1A-1, Rule 5, reads as rewritten:

6 "(b) Service – How made. – A pleading setting forth a counterclaim or cross claim  
7 shall be filed with the court and a copy thereof shall be served on the party against  
8 whom it is asserted or on the party's attorney of record. With respect to all pleadings  
9 subsequent to the original complaint and other papers required or permitted to be  
10 served, service with due return may be made in the manner provided for service and  
11 return of process in Rule 4 and may be made upon either the party or, unless service  
12 upon the party personally is ordered by the court, upon the party's attorney of record.  
13 With respect to such other pleadings and papers, service upon the attorney or upon a  
14 party may also be made by delivering a copy to the party or by mailing it to the party at  
15 the party's last known address or, if no address is known, by filing it with the clerk of  
16 court. Delivery of a copy within this rule means handing it to the attorney or to the  
17 party, leaving it at the attorney's office with a partner or employee, or by sending it to  
18 the attorney's office by a confirmed telefacsimile transmittal for receipt by 5:00 P.M.  
19 Eastern Time on a regular business day, as evidenced by a telefacsimile receipt  
20 confirmation. If receipt of delivery by telefacsimile is after 5:00 P.M., service will be  
21 deemed to have been completed on the next business day. Service by mail shall be  
22 complete upon deposit of the pleading or paper enclosed in a post-paid, properly  
23 addressed wrapper in a post office or official depository under the exclusive care and  
24 custody of the United States Postal Service.

25 A certificate of service shall accompany every pleading and every paper required to  
26 be served on any party or nonparty to the litigation, except with respect to pleadings and  
27 papers whose service is governed by Rule 4. The certificate shall show the date and  
28 method of service or the date of acceptance of service and shall show the name and  
29 service address of each person upon whom the paper has been served. If one or more

1 persons are served by facsimile transmission, the certificate shall also show the  
2 telefacsimile number of each person so served. Each certificate of service shall be  
3 signed in accordance with and subject to Rule 11 of these rules."

4 **SECTION 2.** Subsection (d) of G.S. 1A-1, Rule 5, reads as rewritten:

5 "(d) ~~Filing. – All pleadings subsequent to the complaint shall be filed with the~~  
6 ~~court. All other papers required to be served upon a party, including requests for~~  
7 ~~admissions, shall be filed with the court either before service or within five days~~  
8 ~~thereafter, except that subpoenas, objections to subpoenas under Rule 45(c)(3),~~  
9 ~~depositions, interrogatories, requests for documents, and answers and responses to those~~  
10 ~~requests may not be filed unless ordered by the court or until used in the proceeding.~~  
11 ~~Briefs and memoranda provided to the court may not be filed with the clerk of the court~~  
12 ~~unless ordered by the court. The party taking a deposition or obtaining material through~~  
13 ~~discovery is responsible for its preservation and delivery to the court if needed or so~~  
14 ~~ordered. With respect to all pleadings and other papers as to which service and return~~  
15 ~~has not been made in the manner provided in Rule 4, proof of service shall be made by~~  
16 ~~filing with the court a certificate either by the attorney or the party that the paper was~~  
17 ~~served in the manner prescribed by this rule, or a certificate of acceptance of service by~~  
18 ~~the attorney or the party to be served. Such certificate shall show the date and method of~~  
19 ~~service or the date of acceptance of service. The following papers shall be filed with the~~  
20 court, either before service or within five days after service:

- 21 (1) All pleadings, as defined by Rule 7(a) of these rules, subsequent to the  
22 complaint, whether such pleadings are original or amended.
- 23 (2) Written motions and all notices of hearing.
- 24 (3) Any other application to the court for an order that may affect the  
25 rights of or in any way commands any individual, business entity,  
26 governmental agency, association, or partnership to act or to forego  
27 action of any kind.
- 28 (4) Notices of appearance.
- 29 (5) Any other paper required by rule or statute to be filed.
- 30 (6) Any other paper so ordered by the court.
- 31 (7) All orders issued by the court.

32 All other papers, regardless of whether these rules require them to be served upon a  
33 party, should not be filed with the court unless (i) the filing is agreed to by all parties, or  
34 (ii) the papers are submitted to the court in relation to a motion or other request for  
35 relief, or (iii) the filing is permitted by another rule or statute. Briefs or memoranda  
36 provided to the court may not be filed with the clerk of court unless ordered by the  
37 court. The party taking a deposition or obtaining material through discovery is  
38 responsible for its preservation and delivery to the court if needed or so ordered."

39 **SECTION 3.** Subsection (f) of G.S. 1A-1, Rule 30, reads as rewritten:

40 "(f) ~~Certification and filing by person administering the oath; exhibits; copies;~~  
41 ~~notice of filing. copies. –~~

- 42 (1) The person administering the oath shall certify that the deponent was  
43 duly sworn by him and that the deposition is a true record of the  
44 testimony given by the deponent. This certificate shall be in writing

1 and accompany the sound-and-visual or sound recording or transcript  
2 of the deposition. He shall then place the deposition in an envelope or  
3 package endorsed with the title of the action and marked "Deposition  
4 of (here insert name of witness)" and shall personally deliver it or mail  
5 it by first class mail to the party taking the deposition or his attorney  
6 who shall preserve it as the court's copy.

7 Documents and things produced for inspection during the  
8 examination of the deponent shall, upon the request of a party, be  
9 marked for identification and annexed to and returned with the  
10 deposition, and may be inspected and copied by any party, except that  
11 (i) the person producing the materials may substitute copies to be  
12 marked for identification, if he affords to all parties fair opportunity to  
13 verify the copies by comparison with the originals, and (ii) if the  
14 person producing the materials requests their return, the person before  
15 whom the deposition is taken shall mark them, give each party an  
16 opportunity to inspect and copy them, and return them to the person  
17 producing them, and the materials may then be used in the manner as  
18 if annexed to and returned with the deposition. Any party may move  
19 for an order that the original be annexed to and returned with the  
20 deposition to the court, pending final disposition of the case.

21 (2) Upon payment of reasonable charges therefor, the person  
22 administering the oath shall furnish a copy of the deposition to any  
23 party or to the deponent.

24 (3) ~~The clerk shall give prompt notice of the filing of a deposition to all~~  
25 ~~parties."~~

26 **SECTION 4.** G.S. 1A-1, Rule 31, reads as rewritten:

27 **"Rule 31. Depositions upon written questions.**

28 (a) Serving questions; notice. – After commencement of the action, any party  
29 may take the testimony of any person, including a party, by deposition upon written  
30 questions. The attendance of witnesses may be compelled by the use of subpoena as  
31 provided in Rule 45 provided that no subpoena need be served on a deponent who is a  
32 party or an officer, director or managing agent of a party, provided the party has been  
33 served with notice pursuant to this rule. Such a deposition shall be taken in the county  
34 where the witness resides or is employed or transacts his business in person unless the  
35 witness agrees that it may be taken elsewhere. The deposition of a person confined in  
36 prison or of a patient receiving in-patient care in or confined to an institution or hospital  
37 for the mentally ill or mentally handicapped may be taken only by leave of court on  
38 such terms as the court prescribes.

39 A party desiring to take a deposition upon written questions shall serve them upon  
40 every other party with a notice stating (i) the name and address of the person who is to  
41 answer them, if known, and if the name is not known, a general description sufficient to  
42 identify him or the particular class or group to which he belongs, and (ii) the name or  
43 descriptive title and address of the officer before whom the deposition is to be taken. A  
44 deposition upon written questions may be taken of a public or private corporation or a

1 partnership or association or governmental agency in accordance with the provisions of  
2 Rule 30(b)(6).

3 Within 30 days after the notice and written questions are served, a party may serve  
4 cross questions upon all other parties. Within 10 days after being served with cross  
5 questions, a party may serve redirect questions upon all other parties. Within 10 days  
6 after being served with redirect questions, a party may serve recross questions upon all  
7 other parties. The court may for cause shown enlarge or shorten the time.

8 (b) Person to take responses and prepare record. – A copy of the notice and  
9 copies of all questions served shall be delivered by the party taking the deposition to the  
10 person designated in the notice to take the deposition, who shall proceed promptly, in  
11 the manner provided by Rule 30(c), (e), and (f), to take the testimony of the deponent in  
12 response to the questions and to prepare, certify, and file ~~or~~ mail the deposition,  
13 attaching thereto the copy of the notice and the questions received by him.

14 ~~(e) Notice of filing. – When the deposition is filed the clerk shall promptly give~~  
15 ~~notice thereof to all parties."~~

16 **SECTION 5.** Subsection (a) of G.S. 1A-1, Rule 32, reads as rewritten:

17 "(a) Use of depositions. – At the trial or upon the hearing of a motion or an  
18 interlocutory proceeding or upon a hearing before a referee, any part or all of a  
19 deposition, so far as admissible under the rules of evidence applied as though the  
20 witness were then present and testifying, may be used against any party who was  
21 present or represented at the taking of the deposition or who had reasonable notice  
22 thereof, in accordance with any of the following provisions:

- 23 (1) Any deposition may be used by any party for the purpose of  
24 contradicting or impeaching the testimony of deponent as a witness.
- 25 (2) The deposition of a person called as a witness may also be used as  
26 substantive evidence by any party adverse to the party who called the  
27 deponent as a witness and it may be used by the party calling deponent  
28 as a witness as substantive evidence of such facts stated in the  
29 deposition as are in conflict with or inconsistent with the testimony of  
30 deponent as a witness.
- 31 (3) The deposition of a party or of any one who at the time of taking the  
32 deposition was an officer, director, or managing agent, or a person  
33 designated under Rule 30(b)(6) or 31(a) to testify on behalf of a public  
34 or private corporation, partnership or association or governmental  
35 agency which is a party may be used by an adverse party for any  
36 purpose, whether or not the deponent testifies at the trial or hearing.
- 37 (4) The deposition of a witness, whether or not a party, may be used by  
38 any party for any purpose if the court finds: that the witness is dead; or  
39 that the witness is at a greater distance than 100 miles from the place  
40 of trial or hearing, or is out of the United States, unless it appears that  
41 the absence of the witness was procured by the party offering the  
42 deposition; or that the witness is unable to attend or testify because of  
43 age, illness, infirmity, or imprisonment; or that the party offering the  
44 deposition has been unable to procure the attendance of the witness by

1 subpoena; or upon application and notice, that such exceptional  
2 circumstances exist as to make it desirable, in the interest of justice  
3 and with due regard to the importance of presenting testimony of  
4 witnesses orally in open court, to allow the deposition to be used; or  
5 the witness is an expert witness whose testimony has been procured by  
6 videotape as provided for under Rule 30(b)(4).

- 7 (5) If only part of a deposition is offered in evidence by a party, an  
8 adverse party may require him to introduce any other part which is  
9 relevant to the part introduced, and any party may introduce any other  
10 parts.

11 Substitution of parties pursuant to Rule 25 does not affect the right  
12 to use depositions previously taken; and, when an action in any court  
13 of the United States or of any state has been dismissed and another  
14 action involving the same subject matter is afterward brought between  
15 the same parties or their representatives or successors in interest, all  
16 depositions lawfully taken in the former action and duly filed ~~in the~~  
17 ~~former action~~ prepared, certified, and delivered in accordance with  
18 Rule 30 may be used in the latter as if originally taken therefor."

19 **SECTION 6.** Subsection (d) of G.S. 1A-1, Rule 32, reads as rewritten:

20 "(d) Effect of errors and irregularities in depositions. –

- 21 (1) As to Notice. – All errors and irregularities in the notice for taking a  
22 deposition are waived unless written objection is promptly served upon  
23 the party giving the notice.
- 24 (2) As to Disqualification of Person before Whom Taken. – Objection to  
25 taking a deposition because of disqualification of the person before  
26 whom it is to be taken is waived unless made before the taking of the  
27 deposition begins or as soon thereafter as the disqualification becomes  
28 known or could be discovered with reasonable diligence.
- 29 (3) As to Taking of Deposition. –
- 30 a. Objections to the competency of a witness or to the  
31 competency, relevancy, or materiality of testimony are not  
32 waived by failure to make them before or during the taking of  
33 the deposition, unless the ground of the objection is one which  
34 might have been obviated or removed if presented at that time.
- 35 b. Errors and irregularities occurring at the oral examination in the  
36 manner of taking the deposition, in the form of the questions or  
37 answers, in the oath or affirmation, or in the conduct of parties,  
38 and errors of any kind which might be obviated, removed, or  
39 cured if promptly presented, are waived unless seasonable  
40 objection thereto is made at the taking of the deposition.
- 41 c. Objections to the form of written questions submitted under  
42 Rule 31 are waived unless served in writing upon the party  
43 propounding them within the time allowed for serving the

1                                   succeeding cross or other questions and within five days after  
2                                   service of the last questions authorized.

3                   (4)   As to Completion and Return of Deposition. – Errors and irregularities  
4                   in the manner in which the testimony is transcribed or the deposition is  
5                   prepared, signed, certified, sealed, indorsed, transmitted, ~~filed,~~ or  
6                   otherwise dealt with by the person taking the deposition under Rules  
7                   30 and 31 are waived unless a motion to suppress the deposition or  
8                   some part thereof is made with reasonable promptness after such  
9                   defeat is, or with due diligence might have been, ascertained."

10                   **SECTION 7.** This act becomes effective October 1, 2005, and applies to all  
11                   pending cases and all cases filed after the effective date of this act.