

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 393  
Judiciary II Committee Substitute Adopted 3/24/99

Short Title: Written Motions/Supporting Briefs.

(Public)

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Sponsors:

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Referred to:

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March 17, 1999

A BILL TO BE ENTITLED

1 AN ACT TO AMEND THE RULES OF CIVIL PROCEDURE TO REQUIRE BRIEFS  
2 AND MEMORANDA IN SUPPORT OF DISPOSITIVE MOTIONS TO BE  
3 SERVED UPON ALL PARTIES AND TO REQUIRE WRITTEN MOTIONS TO  
4 STATE THE GROUNDS FOR THE MOTION WITH PARTICULARITY.  
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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 motion  
14 other than one which may be heard ex parte, and every written notice, appearance,  
15 demand, offer of judgment and similar paper shall be served upon each of the parties, but  
16 no service need be made on parties in default for failure to appear except that pleadings  
17 asserting new or additional claims for relief against them shall be served upon them in the  
18 manner provided for service of summons in Rule 4.

1       (a1) Service of briefs or memoranda in support of certain dispositive motions –  
2 When required. – In actions in superior court, every brief or memorandum in support of  
3 a motion to dismiss, a motion for judgment on the pleadings, a motion for summary  
4 judgment, or any other motion seeking a final determination of the rights of the parties as  
5 to one or more of the claims or parties in the action shall be served by the moving party  
6 upon each of the parties no later than five days prior to the hearing on the motion, and  
7 every brief in opposition to the motion shall be served by any party opposing the motion  
8 upon each of the parties no later than two days prior to the hearing on the motion. The  
9 parties may, by consent, alter these periods of time. A brief or memorandum that is not  
10 served as required by this rule shall not be considered, unless otherwise ordered by the  
11 court for good cause shown or by the consent of the parties.

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

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

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

1 prescribed by this rule, or a certificate of acceptance of service by the attorney or the  
2 party to be served. Such certificate shall show the date and method of service or the date  
3 of acceptance of service.

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

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

16 Section 2. G.S. 1A-1, Rule 7(b) reads as rewritten:

17 "(b) Motions and other papers. –

18 (1) An application to the court for an order shall be by motion which, unless  
19 made during a hearing or trial or at a session at which a cause is on the  
20 calendar for that session, shall be made in writing, shall state with  
21 particularity the grounds therefor, and shall set forth the relief or order  
22 sought. The requirement of writing is fulfilled if the motion is stated in a  
23 written notice of the hearing of the motion.

24 (2) The rules applicable to captions, signing, and other matters of form of  
25 pleadings apply to all motions and other papers provided for by these  
26 rules.

27 (3) A motion to transfer under G.S. 7A-258 shall comply with the directives  
28 therein specified but the relief thereby obtainable may also be sought in  
29 a responsive pleading pursuant to Rule 12(b)."

30 Section 3. The Revisor of Statutes shall cause to be printed along with this act  
31 the following statement to the Official Comment for G.S. 1A-1, Rule 5(a1):

32 "For example, for the presiding judge to consider a brief or memorandum on a motion  
33 calendar for a Monday, the moving party must serve the brief or memorandum by the  
34 close of business on the preceding Monday. Any party opposing the motion must serve a  
35 brief or memorandum by the close of business on the preceding Thursday. The rule does  
36 not require any party to submit a brief or memorandum; it only applies in certain  
37 instances in which a party intends to submit a brief or memorandum to the court. The  
38 rule would not preclude a party from providing the judge with copies of cases or statutes  
39 at a hearing."

40 This addition to the Official Comment shall only be for annotation purposes  
41 and shall not be construed to be the law.

42 Section 4. The Revisor of Statutes shall cause to be printed along with this act  
43 the following statement to the Official Comment for G.S. 1A-1, Rule 7(b):

1        "The 1999 amendment conforms the North Carolina rule to federal Rule 7(b). The  
2 federal courts do not apply the particularity requirement as a procedural technicality to  
3 deny otherwise meritorious motions. Rather, the federal courts apply the rule to protect  
4 parties from prejudice, to assure that opposing parties can comprehend the basis for the  
5 motion and have a fair opportunity to respond."

6            Section 5. This act becomes effective October 1, 1999, and applies to motions  
7 subject to this act and to briefs and memoranda subject to this act filed on or after that  
8 date.