

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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SENATE BILL 416*

Short Title: Amend Rule 68 Offer of Judgment.

(Public)

Sponsors: Senator Clodfelter.

Referred to: Judiciary I.

March 12, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND RULE 68 OF THE RULES OF CIVIL PROCEDURE BY
CLARIFYING THE DEFINITION OF "JUDGMENT FINALLY OBTAINED"
AND BY CHANGING THE TIME PERIODS FOR EXTENDING AND
ACCEPTING OFFERS OF JUDGMENT PRIOR TO TRIAL AND TO MAKE
OTHER CONFORMING CHANGES AS RECOMMENDED BY THE CIVIL
LITIGATION STUDY COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1A-1, Rule 68 reads as rewritten:

"Rule 68. Offer of judgment and disclaimer.

(a) Offer of judgment. –

(1) At any time more than ~~40~~30 days before the trial begins, a party defending against a claim may serve ~~upon the adverse party an a~~ written offer to allow judgment to be taken entered against him for the money or property or to the effect specified in his offer, with costs then accrued. the defending party and in favor of the adverse party for the relief specified in the offer, plus any interest that has accrued as of that date, and, as may be awarded by the court, costs and statutorily authorized attorneys' fees incurred as of that date. The defending party shall not file the written offer with the court at this time.

(2) If the offer is made more than 60 days before the trial, the adverse party shall have 30 days to accept the offer. Otherwise, the adverse party shall have 10 days to accept the offer. If within ~~10 days the~~ specified time after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon the clerk shall enter judgment. thereof. The court shall determine costs, interest, and statutorily authorized attorneys' fees and

1 enter judgment accordingly. An offer not accepted within ~~10 days~~ the
2 specified time after its service shall be deemed withdrawn and
3 evidence of the offer is not admissible except in a proceeding to
4 determine costs. The defending party shall file the offer deemed
5 withdrawn prior to the proceeding to determine costs. If the judgment
6 finally obtained by the offeree is not more favorable than the offer, the
7 offeree must pay the costs incurred after ~~the making~~ service of the
8 ~~offer.~~ offer and shall not be entitled to interest or attorneys' fees
9 incurred after service of the offer. The fact that an offer is ~~made~~ served
10 but not accepted does not preclude a subsequent offer.

11 (3) This subsection applies only to claims for monetary damages in which
12 any nonmonetary claims are ancillary and incidental to the monetary
13 claims.

14 (b) Conditional offer of judgment for damages. – A party defending against a
15 claim arising in contract or quasi contract may, with his responsive pleading, serve upon
16 the claimant an offer in writing that if he fails in his defense, the damages shall be
17 assessed at a specified sum; and if the claimant signifies his acceptance thereof in
18 writing within 20 days of the service of such offer, and on the trial prevails, his damages
19 shall be assessed accordingly. If the claimant does not accept the offer, he must prove
20 his damages as if the offer had not been made. If the damages assessed in the claimant's
21 favor do not exceed the sum stated in the offer, the party defending shall recover the
22 costs in respect to the question of damages.

23 (c) Definitions. – For purposes of this rule:

24 (1) 'Costs' mean the court costs that the court is authorized by law to
25 award. Costs do not include interest and attorneys' fees.

26 (2) 'Judgment finally obtained' means all relief to which the offeree is
27 finally adjudged entitled by the trial court, other than costs, interest,
28 and statutorily authorized attorneys' fees.

29 (3) 'Offer' means all relief tendered to the offeree pursuant to this rule.
30 Offer does not include costs, interest, or attorneys' fees. Further, offer
31 does not mean an offer of a lump sum that purports to include any or
32 all of the following: costs, interest, or attorneys' fees."

33 **SECTION 2.** G.S. 1A-1, Rule 84 is amended by adding a form at the end to

34 read:

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36 **"(17) Offer of Judgment Under Rule 68 (a).**

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38 Defendant offers that judgment be entered against it and in favor of the Plaintiff for
39 \$ _____, plus interest that has accrued as of the time of service of this offer, and,
40 as may be awarded by the court, costs and statutorily authorized attorneys' fees incurred
41 as of the time of service of this offer."

42 **SECTION 3.** This act becomes effective October 1, 2001, and applies to
43 offers of judgment made on or after that date.