

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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SENATE BILL 417*

Short Title: Amend Rule 9(j).

(Public)

Sponsors: Senator Clodfelter.

Referred to: Judiciary I.

March 12, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND RULE 9(J) OF THE RULES OF CIVIL PROCEDURE BY
CLARIFYING WHICH JUDGE MAY SIGN ORDERS EXTENDING THE
STATUTE OF LIMITATIONS IN CERTAIN CASES AS RECOMMENDED BY
THE CIVIL LITIGATION STUDY COMMISSION.

The General Assembly of North Carolina enacts:

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

“(j) Medical malpractice. – Any complaint alleging medical malpractice by a health care provider as defined in G.S. 90-21.11 in failing to comply with the applicable standard of care under G.S. 90-21.12 shall be dismissed unless:

- (1) The pleading specifically asserts that the medical care has been reviewed by a person who is reasonably expected to qualify as an expert witness under Rule 702 of the Rules of Evidence and who is willing to testify that the medical care did not comply with the applicable standard of care;
- (2) The pleading specifically asserts that the medical care has been reviewed by a person that the complainant will seek to have qualified as an expert witness by motion under Rule 702(e) of the Rules of Evidence and who is willing to testify that the medical care did not comply with the applicable standard of care, and the motion is filed with the complaint; or
- (3) The pleading alleges facts establishing negligence under the existing common-law doctrine of res ipsa loquitur.

Upon motion by the complainant prior to the expiration of the applicable statute of limitations, a resident judge of the superior court ~~of the county~~ for the judicial district in which venue for the cause of action arose is appropriate under G.S. 1-82 or if no resident judge for that judicial district is physically present in that judicial district, otherwise available, or able or willing to consider the motion, then any presiding judge

1 of the superior court for that judicial district may allow a motion to extend the statute of
2 limitations for a period not to exceed 120 days to file a complaint in a medical
3 malpractice action in order to comply with this Rule, upon a determination that good
4 cause exists for the granting of the motion and that the ends of justice would be served
5 by an extension. The plaintiff shall provide, at the request of the defendant, proof of
6 compliance with this subsection through up to ten written interrogatories, the answers to
7 which shall be verified by the expert required under this subsection. These
8 interrogatories do not count against the interrogatory limit under Rule 33.”

9 **SECTION 2.** This act becomes effective October 1, 2001, and applies to
10 actions filed on or after that date.