

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

S

2

SENATE BILL 929
Second Edition Engrossed 5/10/95

Short Title: Civil Procedure Rules Amendments.

(Public)

Sponsors: Senator Cooper.

Referred to: Judiciary I/Constitution

May 1, 1995

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

6 The General Assembly of North Carolina enacts:

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

8 **"§ 1-75.4. Personal jurisdiction, grounds for generally.**

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

12 (1) Local Presence or Status. – In any action, whether the claim arises
13 within or without this State, in which a claim is asserted against a party
14 who when service of process is made upon such party:

- 15 a. Is a natural person present within this State; or
- 16 b. Is a natural person domiciled within this State; or
- 17 c. Is a domestic corporation; or
- 18 d. Is engaged in substantial activity within this State, whether such
19 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;

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, 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.