

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 551

Short Title: Amend Offer of Judgment Rule.

(Public)

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Sponsors: Senator Cooper.

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Referred to: Judiciary.

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March 27, 1997

1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND RULE 68 OF THE RULES OF CIVIL PROCEDURE  
3 REGARDING OFFERS OF JUDGMENT.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 1A-1, Rule 68 reads as rewritten:  
6 "Rule 68. Offer of judgment and disclaimer.

7 (a) Offer of judgment. –

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

17 (2) If within ~~40~~30 days after the service of the offer the adverse party  
18 serves written notice that the offer is accepted, either party may then file  
19 the offer and notice of acceptance together with proof of service ~~thereof~~  
20 ~~and thereupon the clerk shall enter judgment.~~ thereof. The court shall

1 determine costs, interest, and statutorily authorized attorneys' fees and  
2 enter judgment accordingly. An offer not accepted within ~~40~~30 days  
3 after its service shall be deemed withdrawn and evidence of the offer is  
4 not admissible except in a proceeding to determine costs. The defending  
5 party shall file the offer deemed withdrawn prior to the proceeding to  
6 determine costs. If the judgment finally obtained by the offeree is not  
7 more favorable than the offer, the offeree must pay the costs incurred  
8 after the making service of the offer. The fact that an offer is made-served  
9 but not accepted does not preclude a subsequent offer.

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

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

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

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

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

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

32 Section 2. G.S. 1A-1, Rule 84 is amended by adding a form at the end to read:

33 **"(17) OFFER OF JUDGMENT UNDER RULE 68(A).**

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

38 Section 3. This act becomes effective October 1, 1997, and applies to offers of  
39 judgment made on or after that date.