

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

H

2

HOUSE BILL 1324
Committee Substitute Favorable 5/5/89

Short Title: Amend Svce./Publication Rule.

(Public)

Sponsors:

Referred to:

April 12, 1989

A BILL TO BE ENTITLED

AN ACT TO AMEND THE RULES OF CIVIL PROCEDURE TO PROVIDE THAT,
WHEN JURISDICTION IS BASED ON THE SUBJECT MATTER, THE
REQUIREMENTS FOR SERVICE OF PROCESS BY PUBLICATION ARE
SATISFIED WHEN PUBLICATION IS MADE IN THE COUNTY WHERE THE
ACTION IS PENDING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1A-1, Rule 4(j1) reads as rewritten:

"(j1) Service by publication on party that cannot otherwise be served. – A party that cannot with due diligence be served by personal delivery or registered or certified mail may be served by publication. Except in actions involving jurisdiction in rem or quasi in rem as provided in section (k), ~~Service~~ service of process by publication shall consist of publishing a notice of service of process by publication once a week for three successive weeks in a newspaper that is qualified for legal advertising in accordance with G.S. 1-597 and G.S. 1-598 and circulated in the area where the party to be served is believed by the serving party to be located, or if there is no reliable information concerning the location of the party then in a newspaper circulated in the county where the action is pending. If the party's post-office address is known or can with reasonable diligence be ascertained, there shall be mailed to the party at or immediately prior to the first publication a copy of the notice of service of process by publication. The mailing may be omitted if the post-office address cannot be ascertained with reasonable diligence. Upon completion of such service there shall be filed with the court an affidavit showing the publication and mailing in accordance with the requirements of

1 G.S. 1-75.10(2), the circumstances warranting the use of service by publication, and
2 information, if any, regarding the location of the party served.

3 The notice of service of process by publication shall (i) designate the court in
4 which the action has been commenced and the title of the action, which title may be
5 indicated sufficiently by the name of the first plaintiff and the first defendant; (ii) be
6 directed to the defendant sought to be served; (iii) state either that a pleading seeking
7 relief against the person to be served has been filed or has been required to be filed
8 therein not later than a date specified in the notice; (iv) state the nature of the relief
9 being sought; (v) require the defendant being so served to make defense to such
10 pleading within 40 days after a date stated in the notice, exclusive of such date, which
11 date so stated shall be the date of the first publication of notice, or the date when the
12 complaint is required to be filed, whichever is later, and notify the defendant that upon
13 his failure to do so the party seeking service of process by publication will apply to the
14 court for the relief sought; (vi) in cases of attachment, state the information required by
15 G.S. 1-440.14; (vii) be subscribed by the party seeking service or his attorney and give
16 the post-office address of such party or his attorney; and (viii) be substantially in the
17 following form:

18
19 **NOTICE OF SERVICE OF PROCESS BY PUBLICATION**

20
21 **STATE OF NORTH CAROLINA _____ COUNTY**

22
23 **IN THE COURT**

24
25 [Title of action or special proceeding] To [Person to be served]:

26 Take notice that a pleading seeking relief against you (has been filed) (is required to
27 be filed not later than _____, 19__) in the above-entitled (action) (special proceeding).
28 The nature of the relief being sought is as follows:
29 (State nature.)

30 You are required to make defense to such pleading not later than (____, 19__) and
31 upon your failure to do so the party seeking service against you will apply to the court
32 for the relief sought.

33 This, the _____ day of _____, 19__
34 _____(Attorney) (Party)
35 _____(Address)"

36 Sec. 2. G.S. 1A-1, Rule 4(k) reads as rewritten:

37 "(k) Process – Manner of service to exercise jurisdiction in rem or quasi in rem. – In
38 any action commenced in a court of this State having jurisdiction of the subject matter
39 and grounds for the exercise of jurisdiction in rem or quasi in rem as provided in G.S. 1-
40 75.8, the manner of service of process shall be as follows:

- 41 (1) Defendant Known. – If the defendant is known, he may be served in
42 the appropriate manner prescribed for service of process in section ~~(j)~~
43 (j), or, if otherwise appropriate section (j1); except that the
44 requirement for service by publication in (j1) shall be satisfied if made

- 1 in the county where the action is pending and proof of service is made
2 in accordance with section (j2).
- 3 (2) Defendant Unknown. – If the defendant is unknown, he may be
4 designated by description and process may be served by publication in
5 the manner provided in section ~~(j)~~ (j1), except that the requirement for
6 service by publication in (j1) shall be satisfied if made in the county
7 where the action is pending and proof of service is made in accordance
8 with section (j2)."
- 9 ♦ Sec. 3. This act is effective upon ratification and applies to actions
10 instituted and service made on or after that date.