

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 929  
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Short Title: Civil Procedure Rules Amendments.

(Public)

Sponsors:

Referred to:

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

- 1 d. Is engaged in substantial activity within this State, whether such  
2 activity is wholly interstate, intrastate, or otherwise.
- 3 (2) Special Jurisdiction Statutes. – In any action which may be brought  
4 under statutes of this State that specifically confer grounds for personal  
5 jurisdiction.
- 6 (3) Local Act or Omission. – In any action claiming injury to person or  
7 property or for wrongful death within or without this State arising out of  
8 an act or omission within this State by the defendant.
- 9 (4) Local Injury; Foreign Act. – In any action for wrongful death occurring  
10 within this State or in any action claiming injury to person or property  
11 within this State arising out of an act or omission outside this State by  
12 the defendant, provided in addition that at or about the time of the injury  
13 either:
- 14 a. Solicitation or services activities were carried on within this State  
15 by or on behalf of the defendant; or
- 16 b. Products, materials or thing processed, serviced or manufactured  
17 by the defendant were used or consumed, within this State in the  
18 ordinary course of trade.
- 19 (5) Local Services, Goods or Contracts. – In any action which:
- 20 a. Arises out of a promise, made anywhere to the plaintiff or to  
21 some third party for the plaintiff's benefit, by the defendant to  
22 perform services within this State or to pay for services to be  
23 performed in this State by the plaintiff; or
- 24 b. Arises out of services actually performed for the plaintiff by the  
25 defendant within this State, or services actually performed for the  
26 defendant by the plaintiff within this State if such performance  
27 within this State was authorized or ratified by the defendant; or
- 28 c. Arises out of a promise, made anywhere to the plaintiff or to  
29 some third party for the plaintiff's benefit, by the defendant to  
30 deliver or receive within this State, or to ship from this State  
31 goods, documents of title, or other things of value; or
- 32 d. Relates to goods, documents of title, or other things of value  
33 shipped from this State by the plaintiff to the defendant on his  
34 order or direction; or
- 35 e. Relates to goods, documents of title, or other things of value  
36 actually received by the plaintiff in this State from the defendant  
37 through a carrier without regard to where delivery to the carrier  
38 occurred.
- 39 (6) Local Property. – In any action which arises out of:
- 40 a. A promise, made anywhere to the plaintiff or to some third party  
41 for the plaintiff's benefit, by the defendant to create in either  
42 party an interest in, or protect, acquire, dispose of, use, rent, own,

- 1 control or possess by either party real property situated in this  
2 State; or
- 3 b. A claim to recover for any benefit derived by the defendant  
4 through the use, ownership, control or possession by the  
5 defendant of tangible property situated within this State either at  
6 the time of the first use, ownership, control or possession or at  
7 the time the action is commenced; or
- 8 c. A claim that the defendant return, restore, or account to the  
9 plaintiff for any asset or thing of value which was within this  
10 State at the time the defendant acquired possession or control  
11 over it.
- 12 (7) Deficiency Judgment on Local Foreclosure or Resale. – In any action to  
13 recover a deficiency judgment upon an obligation secured by a  
14 mortgage, deed of trust, conditional sale, or other security instrument  
15 executed by the defendant or his predecessor to whose obligation the  
16 defendant has succeeded and the deficiency is claimed either:
- 17 a. In an action in this State to foreclose such security instrument  
18 upon real property, tangible personal property, or an intangible  
19 represented by an indispensable instrument, situated in this State;  
20 or
- 21 b. Following sale of real or tangible personal property or an  
22 intangible represented by an indispensable instrument in this  
23 State under a power of sale contained in any security instrument.
- 24 (8) Director or Officer of a Domestic Corporation. – In any action against a  
25 defendant who is or was an officer or director of a domestic corporation  
26 where the action arises out of the defendant's conduct as such officer or  
27 director or out of the activities of such corporation while the defendant  
28 held office as a director or officer.
- 29 (9) Taxes or Assessments. – In any action for the collection of taxes or  
30 assessments levied, assessed or otherwise imposed by a taxing authority  
31 of this State after the date of ratification of this act.
- 32 (10) Insurance or Insurers. – In any action which arises out of a contract of  
33 insurance as defined in G.S. 58-1-10 made anywhere between the  
34 plaintiff or some third party and the defendant and in addition either:
- 35 a. The plaintiff was a resident of this State when the event occurred  
36 out of which the claim arose; or
- 37 b. The event out of which the claim arose occurred within this  
38 State, regardless of where the plaintiff resided.
- 39 (11) Personal Representative. – In any action against a personal  
40 representative to enforce a claim against the deceased person  
41 represented, whether or not the action was commenced during the  
42 lifetime of the deceased, where one or more of the grounds stated in

1 subdivisions (2) to (10) of this section would have furnished a basis for  
2 jurisdiction over the deceased had he been living.

- 3 (12) Marital Relationship. – In any action under Chapter 50 that arises out of  
4 the marital relationship within this State, notwithstanding subsequent  
5 departure from the State, if the other party to the marital relationship  
6 continues to reside in this State."

7 Sec. 2. G.S. 1A-1, Rule 4(j), is amended by adding a new subdivision to read:

8 "(10) Service upon a foreign state or a political subdivision, agency, or  
9 instrumentality thereof shall be effected pursuant to 28 U.S.C. §  
10 1608."

11 Sec. 3. G.S. 1A-1, Rule 4 (j3), reads as rewritten:

12 "(j3) Service in a foreign country. —Where service is to be effected upon a party in a  
13 foreign country, in the alternative service of the summons and complaint may be made (i)  
14 in the manner prescribed by the law of the foreign country for service in that country in  
15 an action in any of its courts of general jurisdiction; or (ii) as directed by the foreign  
16 authority in response to a letter rogatory, when service in either case is reasonably  
17 calculated to give actual notice; or (iii) upon an individual, by delivery to him personally,  
18 and upon a corporation or partnership or association, by delivery to an officer or a  
19 managing or general agent; or (iv) by any form of mail, requiring a signed receipt, to be  
20 addressed and dispatched by the clerk of the court to the party to be served; or (v) as  
21 directed by order of the court. Service under (iii) or (v) may be made by any person  
22 authorized by section (a) of this rule or who is designated by order of the court or by the  
23 foreign court. On request, the clerk shall deliver the summons to the plaintiff for  
24 transmission to the person or the foreign court or officer who will make the service. Proof  
25 of service may be made as prescribed in G.S. 1-75.10, by the order of the court, or by the  
26 law of the foreign country. Proof of service by mail shall include an affidavit or  
27 certificate of addressing and mailing by the clerk of court. Unless otherwise provided by  
28 federal law, service upon a defendant, other than an infant or an incompetent person, may  
29 be effected in a place not within the United States:

30 (1) By any internationally agreed means reasonably calculated to give  
31 notice, such as those means authorized by the Hague Convention on  
32 the Service Abroad of Judicial and Extrajudicial Documents; or

33 (2) If there is no internationally agreed means of service or the  
34 applicable international agreement allows other means of service,  
35 provided that service is reasonably calculated to give notice:

36 a. In the manner prescribed by the law of the foreign country for  
37 service in that country in an action in any of its courts of general  
38 jurisdiction;

39 b. As directed by the foreign authority in response to a letter  
40 rogatory or letter of request; or

41 c. Unless prohibited by the law of the foreign country, by

42 1. Delivery to the individual personally of a copy of the  
43 summons and the complaint and, upon a corporation,

1 partnership, association or other such entity, by delivery to  
2 an officer or a managing or general agent;

3 2. Any form of mail requiring a signed receipt, to be  
4 addressed and dispatched by the clerk of the court to the  
5 party to be served; or

6 (3) By other means not prohibited by international agreement as may be  
7 directed by the court.

8 Service under subdivision (2)c.1. or (3) of this subsection may be made by any person  
9 authorized by subsection (a) of this Rule or who is designated by order of the court or by  
10 the foreign court.

11 On request, the clerk shall deliver the summons to the plaintiff for transmission to the  
12 person or the foreign court or officer who will make the service. Proof of service may be  
13 made as prescribed in G.S. 1-75.10, by the order of the court, or by the law of the foreign  
14 country.

15 Proof of service by mail shall include an affidavit or certificate of addressing and  
16 mailing by the clerk of court."

17 Sec. 4. G.S. 1A-1, Rule 28(b), reads as rewritten:

18 "(b) In foreign countries. ~~In a foreign country, depositions~~ Depositions may be taken  
19 ~~(i) on notice in a foreign country:~~

20 (1) Pursuant to any applicable treaty or convention;

21 (2) Pursuant to a letter of request, whether or not captioned a letter  
22 rogatory;

23 (3) On notice before a person authorized to administer oaths in the  
24 place ~~in which~~ where the examination is held, either by the law  
25 thereof or by the law of the United States, ~~States;~~ or (ii) before

26 (4) Before a person commissioned by the court, and a person so  
27 commissioned shall have the power by virtue of his commission to  
28 administer any necessary oath and take ~~testimony, or (iii) pursuant to a~~  
29 ~~letter rogatory.~~ testimony. A commission or a letter rogatory of  
30 request shall be issued on application and notice and on terms that  
31 are just and appropriate. It is not requisite to the issuance of a  
32 commission or a letter rogatory of request that the taking of the  
33 deposition in any other manner is impracticable or inconvenient; and  
34 both a commission and a letter rogatory of request may be issued in  
35 proper cases. A notice or commission may designate the person  
36 before whom the deposition is to be taken either by name or  
37 descriptive title. A letter rogatory of request may be addressed 'To  
38 the Appropriate Authority in (here name the country).' When a letter  
39 of request or any other device is used pursuant to any applicable  
40 treaty or convention, it shall be captioned in the form prescribed by  
41 that treaty or convention. Evidence obtained in response to a letter  
42 rogatory of request need not be excluded merely for the reason that  
43 because it is not a verbatim transcript or that the testimony was not

1                    taken under ~~oath~~oath, or ~~for~~ any similar departure from the  
2                    requirements for depositions taken within the United States under  
3                    these rules."

4                    Sec. 5. Chapter 1A of the General Statutes is amended by adding a new Rule  
5 to read:

6 "Rule 44.1. Determination of foreign law.

7                    A party who intends to raise an issue concerning the law of a foreign country shall  
8 give notice by pleadings or by other reasonable written notice. The court, in determining  
9 foreign law, may consider any relevant material or source, including testimony, whether  
10 or not submitted by a party or admissible under Chapter 8 of the General Statutes and  
11 State law. The court's determination shall be treated as a ruling on a question of law."

12                    Sec. 6. This act becomes effective October 1, 1995, and applies to civil actions  
13 filed on or after that date.