

## Changes to the North Carolina Rules of Civil Procedure Take Effect Oct. 1, 2020

09.30.2020

If opposing counsel sends you discovery or a pleading by email, it is no longer just a courtesy copy. Beginning Thursday, Oct. 1, 2020, that email effects service under the North Carolina Rules of Civil Procedure.

During the pandemic, the Chief Justice's interim orders permitted service by email only upon written consent. That interim order expires Sept. 30, 2020. The amendments to Rule 5 of the N.C. Rules of Civil Procedure enacted by House Bill 679 this summer take effect on Thursday, Oct. 1, 2020.

Under amended Rule 5, service by email (or eFiling where available) is permitted in most circumstances.

House Bill 679 amends N.C. Gen. Stat. § 1A-1, Rule 5 in several important ways:

- eFiling (where available) and email are permissible forms of service, with some exceptions.
  - Parties represented by an attorney may be served by email. Consent is not required. The email must be sent by 5:00 p.m. EST on a business day, otherwise it is considered served on the next business day. [N.C. R. Civ. P. 5(b)(1)(a)].
  - An unrepresented party may only be served by email if they have consented to such service, "and a copy of the consent is filed with the court by any party." [N.C. R. Civ. P. 5(b)(2)(c)].
  - Where electronic filing is available, service is achieved by eFiling, unless a party is not registered in the system. [N.C. R. Civ. P. 5(b)].
- Other methods of service, including hand-delivery, fax, and mail are still acceptable.
- Certificates of Service
  - If you're serving by email (or fax), the certificate of service must include the email address (or fax number) of every person served by that method. [N.C. R. Civ. P. 5(b1)].
  - The automated certificate of service generated by an eFiling system satisfies the requirements for a certificate of service as to every person registered for service through the system. [N.C. R. Civ. P. 5(b1)].
- The "3-Day Rule" adds three days to the period of time prescribed for taking some action after service by mail. H.B. 679 did not amend Rule 6(e). Therefore, there is no additional time added

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to a prescribed period after service by email.

- H.B. 679 does not alter or amend the North Carolina Business Court Rules. Business Court Rules are amended by orders of the North Carolina Supreme Court. **UPDATE:** The Court amended BCR 3 by Order on October 13, 2020 to track the changes to the general civil rules. Under amended Business Court Rules:
  - The former BCR 3.9(d) was eliminated. E-filing and e-mail service are no longer treated like mail under the 3-Day Rule.
  - Documents that are e-filed **no longer require a certificate of service**. Under the new BCR 3.9(b), "A Notice of Filing is an 'automated certificate of service.'"

**This amendment was spurred by the pandemic, but it also paves the way for expansion of the state's eFiling and case-management system.**

The North Carolina Supreme Court also amended the General Rules of Practice for the Superior and District Courts by order effective Oct. 1, 2020. The amendment adds subsection (a), which lists the matters where eFiling is currently available. The Comment to the amended Rule 5 of Practice states, "the North Carolina Judicial Branch will implement a statewide electronic filing and case-management system beginning in 2021. The system will be made available across the state in phases over a five-year period." The comment also notes that further changes to the General Rules of Practice, Business Court Rules and Supplemental Rules for the eFiling Pilot Project are expected.

**If you litigate in state Superior and District courts, the North Carolina Business Court and federal district courts, keep your rule books close.**

The chart below is a summary of generally applicable rules as of Nov. 20, 2020. Major differences are shown in red. Always consult the most up-to-date version of applicable civil rules, local rules, and eFiling rules for any differences based on specific circumstances or future changes.

You can subscribe to updates from the Judicial Branch, including Supreme Court rule announcements, at [www.nccourts.gov](http://www.nccourts.gov).

Filed Documents

(after Summons and Complaint)

Other Documents

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(e.g. discovery, certain notices)

**N.C. District and Superior Courts**

(Effective Oct. 1, 2020)

- **eFiling** (if available) serves any registered users
- **Email** by 5 p.m. (requires filed consent by unrepresented party)
- **U.S. Mail** (+3-Day Rule applies)
- **Hand-delivery** (delivery to office for represented parties only)
- **Fax** by 5 p.m. (represented parties only)
  
- **Email** by 5 p.m. (requires filed consent by unrepresented party)
- **U.S. Mail** (+3-Day Rule applies)
- **Hand-delivery** (delivery to office for represented parties only)
- **Fax** by 5 p.m. (represented parties only)

**N.C. Business Court**

(upon designation or assignment to a Business Court judge under Rule 2.1)

- **eFiling** by 5 p.m. is mandatory [BCR 3.6 and 3.9(a)]
- Unrepresented parties must request to forego use of eFiling [BCR 3.2, 3.9(a)]
- **Email** by 5 p.m. [BCR 3.9(d)]
- Email is exclusive method of service unless parties agree otherwise or CMO calls for a different method

**Federal District Court**

(Local Rules may vary)

- **CM/ECF** by 11:59 p.m. in court's time zone [FRCP 6(a)(4)(A)] (unregistered users must be served by other methods)
- **Mail** (+3-Day Rule applies)  
[FRCP 6(d)]
- **Email** (written consent required) [FRCP 5(b)(2)(E)]

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- **Hand-delivery**
- **Delivery to office or dwelling**

If you have questions on these changes, please contact the authors of this article.

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**SERVICES**

Corporate & Business

Litigation

North Carolina Business Court