

Can a verification problem be corrected after a divorce complaint is filed?

[GS 50-8](#) requires verification for a complaint requesting a divorce. What can be done if the divorce complaint is filed without a verification or if the verification is faulty in some way? Must the complaint be dismissed and a new action instituted – requiring another payment of the substantial filing fee?

There is no appellate opinion answering this question in the context of a divorce proceeding, but there are cases indicating that verification problems in general can be fixed by filing an amended complaint.

Lack of Proper Verification Results in a Void Judgment

The court of appeals has held that the requirement in [GS 50-8](#) that a complaint for absolute divorce be verified is jurisdictional. See *Boyd v. Boyd*, 61 NC App 334 (1983). That case also held that the complaint must be verified at the time of filing and that it is not sufficient to obtain verification before the complaint and summons is served on defendant. According to the court, a complaint is not sufficient to ‘commence’ an action and invoke the jurisdiction of the court unless it is verified at the time it is filed. The opinion includes the statement that plaintiff should have taken a voluntary dismissal and filed a new divorce complaint with the appropriate verification. See also [In re. TRP, 360 NC 588 \(2006\)](#) (lack of verification of juvenile petition rendered all subsequent actions in the case void), and [Arispe v. Arispe, unpublished opinion, 165 NC App 904 \(2004\)](#) (divorce judgment must be set aside where divorce complaint was not verified).

Rule 15 Amended Complaint

There is no indication in *Boyd* that plaintiff attempted to amend the complaint for divorce to include the verification. Instead, plaintiff simply verified the complaint that had been filed without verification. [Rule 15 of the Rules of Civil Procedure](#) allows a complaint to be amended once without leave of court at any time before a responsive pleading is filed. After a responsive pleading is filed, the party must request leave of court before amending and leave of court “shall be freely given when justice requires.” [Rule 15\(a\)](#). In addition, [Rule 15\(c\)](#) provides that “a claim asserted in an amended pleading is deemed to have been interposed at the time the claim in the original pleading was interposed, unless the original pleading does not give notice of the transactions, occurrences, or series of transactions or occurrences, to be proved pursuant to the amended pleading.” In other words, an amended complaint relates back to the time of filing.

There is no appellate case regarding whether a divorce complaint can be amended to add a verification, and the court in *Boyd* does not discuss amendment. However, in [Brisson v. Kathy A. Santoriello, 134 NC App 65 \(1999\)](#), the court of appeals held that a plaintiff in a medical

malpractice case should have been allowed to amend the complaint to provide the certification required by [Rule 9\(j\) of the Rules of Civil Procedure](#). [Rule 9\(j\)](#) provides that a medical malpractice complaint must be dismissed unless the complaint includes the certification. In [Brisson](#), the court of appeals held that the trial court erred by dismissing the complaint rather than allowing the amendment. In addition, *Gladstein v. South Square Associates*, 39 NC App 171 (1979), the court of appeals held that a request to amend a negligence complaint in order to add a verification was a request for a ‘technical’ amendment that should have been allowed by the trial court.

Given [Rule 15](#) and the two cases cited above, it seems reasonable to conclude that a lack of verification can be fixed, but only if plaintiff files an amended complaint. If an amended complaint is filed, the verified complaint will relate back to the time of the original filing and should be sufficient to invoke the subject matter jurisdiction of the court. However, as previously discussed, the court in *Boyd* stated that plaintiff should have taken a voluntary dismissal of the divorce complaint rather than attaching the verification after filing. This statement does raise some question about whether amendment is an appropriate alternative to dismissal, even though there is no indication in that opinion amendment was considered by either the trial court or the appellate court. That statement in *Boyd* clearly is *dicta* and is not an indication that the appellate court actually has considered and decided whether amendment is an appropriate remedy.

When is a verification required?

Remember that there is no requirement that **all** complaints be verified. A complaint must be verified only if there is a specific statute requiring verification. [Rule 11\(a\), Rules of Civil procedure](#). Domestic relations complaints that require verification include absolute divorce ([GS 50-8](#)), divorce from bed and board ([GS 50-8](#)) and postseparation support ([GS 50-16.2A](#)). In addition, civil contempt proceedings require a sworn statement or affidavit at time motion is filed or show cause order is requested. [GS 5A-23](#).

What about signatures? Is the lack of a signature by a party or an attorney a jurisdictional problem as well?

[Rule 11 of the North Carolina Rules of Civil Procedure](#) does require that all complaints **be signed** by the attorney representing the plaintiff or by the plaintiff if unrepresented. However, unlike verification, [Rule 11](#) specifically provides that the lack of a signature can be remedied at any time after the commencement of the proceeding. [Rule 11\(a\)](#) states that an unsigned pleading “shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant.”