

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE DRS85170-RU-23 (03/08)

Short Title: Access to Public Trial Preparation Records. (Public)

Sponsors: Senator Clodfelter.

Referred to:

A BILL TO BE ENTITLED

AN ACT REGARDING ACCESS TO A PUBLIC RECORD THAT IS ALSO A TRIAL PREPARATION RECORD.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 132 of the General Statutes is amended by adding a new section to read:

"§ 132-1.9. Trial preparation records.

(a) Scope. – A request to inspect, examine, or copy a public record that is also a trial preparation record is governed by this section, and, to the extent this section conflicts with any other provision of law, this section applies.

(b) Right to Deny Access. – Except as provided otherwise in this section, a custodian may deny access to a public record that is also a trial preparation record. If the denial is based on an assertion that the public record is a trial preparation record that was prepared in anticipation of a legal proceeding that has not commenced, the custodian shall, upon request, provide a written justification for the assertion that the public record was prepared in anticipation of a legal proceeding.

(c) Preceding a Legal Proceeding. – Any person who is denied access to a public record that is also a trial preparation record that was prepared in anticipation of a legal proceeding that has not commenced may petition the court pursuant to G.S. 132-9 for determination as to whether the public record is a trial preparation record that was prepared in anticipation of a legal proceeding.

(d) During a Legal Proceeding. –

(1) When a legal proceeding is subject to G.S. 1A-1, Rule 26(b)(3), or subject to Rule 26(b)(3) of the Federal Rules of Civil Procedure, a party to the pending legal proceeding, including any appeal, who is denied access to a public record that is also a trial preparation record that pertains to the pending proceeding may seek access to such record

1 only through the pending legal proceeding and pursuant to the
2 procedural substantive standards of the rules of civil procedure that
3 apply to that proceeding. A party to the pending legal proceeding may
4 not directly or indirectly petition the court for such record pursuant to
5 G.S. 132-9.

6 (2) When a legal proceeding is not subject to G.S. 1A-1, Rule 26(b)(3),
7 and not subject to Rule 26(b)(3) of the Federal Rules of Civil
8 Procedure, a party to the pending legal proceeding, including any
9 appeal, who is denied access to a public record that is also a trial
10 preparation record that pertains to the pending legal proceeding may
11 petition the court pursuant to G.S. 132-9. In determining whether to
12 require the custodian to provide access to all or any portion of the
13 record, the court shall apply the substantive standards of G.S. 1A-1,
14 Rule 26(b)(3).

15 (3) Any person who is denied access to a public record that is also a trial
16 preparation record and who is not a party to the pending legal
17 proceeding, including any appeal, to which the trial preparation record
18 pertains, and who is not acting in concert with or as an agent for a
19 party to the pending legal proceeding, may petition the court pursuant
20 to G.S. 132-9 for a determination as to whether the public record is a
21 trial preparation record.

22 (e) Following a Legal Proceeding. – Upon the conclusion of a legal proceeding,
23 including the completion of all appeals, or if a legal proceeding has not been
24 commenced, upon the running of all applicable statutes of limitations, the custodian of a
25 public record that is also a trial preparation record shall permit the inspection,
26 examination, or copying of such record if any law that is applicable so provides.

27 (f) Effect of Disclosure. – Disclosure pursuant to this section of all or any
28 portion of a public record that is also a trial preparation record, whether voluntary or
29 pursuant to an order issued by a court, or issued by an officer in an administrative or
30 quasi-judicial legal proceeding, shall not constitute a waiver of the work-product
31 privilege as to any other trial preparation document.

32 (g) Trial Preparation Records That are Not Public. – This section does not require
33 disclosure, or authorize a court to require disclosure, of a trial preparation record that is
34 not also a public record or that is otherwise exempted or protected from disclosure by
35 law or by an order issued by a court, or by an officer in an administrative or
36 quasi-judicial legal proceeding.

37 (h) Definitions. – As used in this section, the following definitions apply:

38 (1) Legal proceeding. – Litigation in federal or State court. Legal
39 proceeding includes any federal, State, or local government
40 administrative or quasi-judicial proceeding not subject to federal or
41 State rules of civil procedure.

42 (2) Trial preparation record. – Any record, wherever located and in
43 whatever form, that is trial preparation material within the meaning of
44 G.S. 1A-1, Rule 26(b)(3), any comparable material prepared for any

1 other legal proceeding, and any comparable material exchanged
2 pursuant to a joint defense agreement."

3 **SECTION 2.** This act becomes effective October 1, 2005.